

Planning and Environmental Appeals (DPEA)

APPEAL TO SCOTTISH MINISTERS:
NOTES FOR APPELLANTS SUBMITTING AN
ENVIRONMENTAL CONSENT APPEAL OR AN
ENVIRONMENTAL ENFORCEMENT NOTICE APPEAL
USING FORM ENV

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Notes for appellant

You have the right to make an environmental appeal to Scottish Ministers where decisions are made by regulatory authority's such as the Scottish Environment Protection Agency (SEPA) or Scottish Water in the following types of cases:

- pollution prevention and control
- water environment
- waste management
- radioactive substances
- environmental impact assessment - agriculture
- private water supplies

DPEA have produced a code of practice for [Handling environmental appeals through hearings or local inquiries](#) which provides information about the procedures that will be followed for the following appeal types:

- the [Pollution Prevention and Control \(Scotland\) Regulations 2012](#) (the PPC Regulations)
- the [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011](#) (CAR)
- section 4 of the [Control of Pollution \(Amendment\) Act 1989](#) (registration as a broker of or dealer in controlled waste)
- the [Waste Management Licensing \(Scotland\) Regulations 2011](#) (registration as a broker of or dealer in controlled waste)
- the [Environmental Protection Act 1990](#) (waste management licences)
- section 26 of the [Radioactive Substances Act 1993](#)

If you want to appeal a decision or an enforcement notice issued by an environmental regulatory authority you should use form ENV.

Deadline for making an appeal

The deadline for making an appeal is variable and is dependent on which legislation the decision or enforcement notice has been issued under. The decision or notice should tell you what your deadline is.

Completing the appeal form

The notes below are intended to help you complete the appeal form.

Page 1 of appeal form

Appellant(s)

This section should be fully completed with the name, address and contact details of the appellant. The Appeals Regulations require that the appellant's name and address must be supplied.

Agent

This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect, friend). The Appeals Regulations require that, where an agent is appointed, the agent's name and address must be supplied.

You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided.

Do you agree to all correspondence being sent by E-mail

We seek to use electronic communications wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.

Regulatory authority

This will be the name of the authority who considered your application or served a notice on you requiring you to take action.

Regulatory authority's reference number

If the authority provided a reference number for the application or notice, please provide it.

Site address

Please give the location of the proposed development or the site covered by the enforcement notice. To ensure we have properly identified the location of the site, you should provide the Ordnance Survey National Grid reference and/or the site's postcode

Statutory Provision(s)

Please detail the Acts and/or Regulations under which the application was made or under which the enforcement notice was served.

Description of proposal or alleged breach

This should describe what works you wish to carry out on the site, and must be the same proposal which the planning authority considered i.e. you must not change the nature of your proposal for consideration at appeal.

Appeal Against

You can select one of three options in this section.

If you select either the:

- Refusal or variation of an application, or conditions imposed by a decision option, or the
- Failure to give a decision option,

you should complete the 'Date of Application' and the 'Date of Authority's Decision' boxes.

If you select the:

- A notice requiring you to take action option,

you should fill in the three date boxes below that option.

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Statement of appeal

Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence

upon which you intend to rely in your appeal should accompany this form.

List of documents/ evidence

As well as providing a full statement of your appeal please provide a full list of your supporting documents here and or on a separate document.

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Appeal procedure

The appeal process will be managed by the person appointed by Scottish Ministers to consider and decide your appeal. If, having received your appeal, the planning authority's response and any other correspondence received from any interested parties, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole), before reaching a final decision. There are several methods available to the appointed person to obtain this information:

- Inspection of the Site - The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit wherever possible. If an accompanied site inspection is necessary, there will be no scope to discuss the merits of the proposed works with the appointed person.
- Further Written Submissions - Parties will be invited to provide information on a specific issue in writing and each of these parties will then be entitled to respond to the written submissions provided by others.
- Hearing Session - This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross examination of hearing participants is not allowed.
- Inquiry Session - Where a more formal inquiry structure is needed, this session can be held to examine the specific matters identified by the appointed person. Cross-examination of witnesses is likely to occur in inquiry sessions.

The appointed persons may arrange a meeting to discuss and consider the manner in which the appeal, or any parts of it, will be handled (a 'pre-examination meeting').

Where a meeting is required DPEA will set the date, time and venue for the meeting and will give notice of the arrangements to all parties.

If the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed to consider a specific matter, both you and the planning authority will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.

While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and the planning authority are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.

Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.

Site inspection

This section of the form seeks your assistance and opinion in relation to the accessibility of the site of your proposed works, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.

Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be aware of before they carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide on a separate sheet.

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Checklist

The appeal form is structured to guide you in making a full and valid appeal.

The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.

Other appeals

If you have any other related appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide the details on this part of the form.

Declaration

To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date – your e-mail address will act as an electronic signature.

What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to Planning and Environmental Appeals (DPEA), either by email, post or fax. The contact details are at the end of the form.

The Appeals Regulations also require that, at the same time as you send the appeal to us, you must send to the planning authority:

- a copy of the notice of appeal (the form);
- a list of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (you will have provided this on page 2 of the form); and
- a copy of any documents or other information from that list which you have not already provided to the planning authority when it was handling your planning application.

Further information

For further information about the appeals process please see the DPEA's code of practice for [Handling environmental appeals through hearings or local inquiries](#). If you wish to have a hard copy of the code please contact us as per the below.

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) on 0300 244 6668.

Written queries can be sent to us at either by e-mailing dpea@gov.scot or by post to Planning and Environmental Appeals Division, Hadrian House, Callendar Business Park, Falkirk, FK1 1XR.

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