

**WATER RESOURCES ACT 1991  
(AS AMENDED)**

**WATER ABSTRACTION & IMPOUNDMENT  
LICENCES**

**THE APPEALS PROCEDURE  
GUIDANCE**



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# WATER RESOURCES ACT 1991 (AS AMENDED) ABSTRACTION & IMPOUNDMENT LICENCE APPEALS

## GUIDANCE ON THE APPEAL PROCEDURE

**For appeals in Wales, please forward appeal documents to or contact:  
The Planning Inspectorate, Crown Buildings, Cathay's Park, Cardiff CF10  
3NQ or Tel: 029 2082 3857**

### Introduction

1. This guidance covers the procedures for appeals in respect of licences to abstract water and licences to impound the flow of inland waters that have been issued by the Environment Agency. It explains the legislative background, draws together the various publications which are relevant to this process and highlights some of the specific issues which may be the subject of appeal. This information was believed to be correct at the time of publication and relates to procedures in England, but the guidance has no legal status. The procedures to be followed are set out in The Water Resources (Abstraction and Impounding) Regulations 2006, SI 2006 No. 641 and are made under the provisions of Section 43 of the Water Resources Act 1991 as amended by the Environment Act 1995 and Water Act 2003.

### Grounds for Appeal

2. Applicants for abstraction/impoundment licences may appeal under Section 43 of the Water Resources Act 1991 on the following grounds:
  - i. if an application has been refused;
  - ii. if a licence has been granted subject to conditions;
  - iii. if the Environment Agency has failed to determine the application within the specified period of time (or any extension agreed in writing); or
  - iv. if the Environment Agency fails to give notice within the specified period (or any extension agreed in writing) that the application has been referred to the Secretary of State in accordance with Section 41 of the Act.

### Before making an appeal

3. Prospective appellants are advised to try to resolve any difficulties or disagreements with the Environment Agency. Agreement may sometimes be possible by amending the conditions in the licence. **An appeal should be treated as a last resort.**

4. Appendix 1 contains a brief background note on the legislative provisions of the 1991 Act relating to abstraction/impoundment licences, and more detailed guidance on some of the specific issues an appeal might cover under these provisions.

### **Who decides your appeal**

5. Most appeals are decided by an Inspector appointed from the Planning Inspectorate, but the Secretary of State for Environment, Food and Rural Affairs may take over the case if it is particularly important or controversial (see Appendix 2). If this happens you will be told the reason why. An Inspector would still deal with the case, but would submit a report to Defra, with his/her recommendations.

### **HOW TO MAKE AN APPEAL**

6. Full details of the procedures for making an appeal are contained in Regulations 12 & 13 of The Water Resources (Abstraction and Impoundment) Regulations 2006. For convenience, the main steps are now outlined.

### **Time limit for making an appeal**

7. Once an applicant for a licence or an existing licence holder has concluded that it is necessary to make an appeal, the appeal must be lodged within **28 days** of the date of the decision which is subject of the appeal. The Agency is required to determine an application within 4 months of the 'relevant date' defined under regulation 5 of the 2006 regulations. This period is 3 months for applications which are not advertised. The 'relevant date' is set by the Agency, and notified to the applicant, and is generally the date on which the application is considered valid. Where the Agency fails to determine an application within the statutory time period (which can be extended by mutual agreement), an appeal must be made within 28 days from the end of this period (Regulation 12(2)). In very exceptional circumstances, the Secretary of State may allow appeals after this time.

### **Notice of Appeal**

8. The notice of appeal must be made on the appropriate form which may be obtained from:

The Environment Team  
Major & Specialist Casework  
The Planning Inspectorate  
Room 4/04 Kite Wing  
Temple Quay

2 The Square  
Temple Quay  
Bristol BS1 6PN

Tel: 0117 372 8726  
Fax: 0117 372 6241

9. The form should be accompanied by:
- a statement of the grounds of appeal;
  - a copy of the relevant application and supporting documents;
  - a copy of the decision notice or licence (if any);
  - any other documents including maps and plans and correspondence between the parties which is relevant to the appeal.
10. At the same time as sending the notice of appeal to the Inspectorate, a copy should be sent to the relevant office of the Environment Agency.

### **The effect of making an appeal**

11. If an appeal is made against either (i) the Agency's decision to refuse a licence or (ii) the Agency's failure to determine the application within the specified period, no licence is in force until and unless the appeal is allowed. If a licence is granted subject to conditions and some of the conditions are appealed against, those conditions apply until the appeal is decided and they are either modified or deleted.

### **Action on receipt of an appeal**

12. When an appeal is received, the Inspectorate will check the appeal to see if it is valid and then, if everything is in order, give you an appeal timetable **start date**. We will then write to the Environment Agency informing them that the appeal has been received and, if you have requested that the appeal proceed by way of written representations, ask whether they agree to this or would wish to proceed by way of a hearing or local inquiry. We will also inform the Agency of the **start date** of the appeal.
13. We will ask the Agency to notify, within 14 days, anyone who made representations about the application to which the appeal relates that an appeal has been lodged and that any further written representations should be made to the inspectorate within 21 days of the start date. The Agency will also inform any National Park planning authority who may have been involved in the original application.

## Written Representations

14. Appeals are dealt with in the spirit of the Town and Country Planning (Appeals)(Written Representations Procedure)(England) Regulations 2000, SI 2000 No. 1628.
15. The written method of dealing with an appeal is an exchange of statements between you and the Environment Agency, followed by a visit to the site by an Inspector who will determine the appeal. This is normally the quickest, simplest and cheapest way of deciding an appeal.
16. You and the Agency will be asked to send 2 copies of any additional appeal statement to the Inspectorate within 6 weeks of the start date. Any interested party may also comment within this period. You and the Agency then have the opportunity to comment on all the representations within 9 weeks of the start date. The Inspector will then visit the site.
17. It is normal practice for the Inspector to be accompanied at the site visit by a representative of both parties, in order to gain access to the site. However, the Inspector will not allow any discussion about the merits of the case and will restrict questions to the physical features of the site itself.

## Hearings

18. Hearings are conducted in the spirit of the Town and Country Planning (Hearings Procedure)(England) Rules 2000, SI 2000 No. 1626. A hearing allows the parties to present their case in a more relaxed and less formal atmosphere than at an inquiry (see below). It usually takes the form of a discussion led by the Inspector, followed by a site visit. If the Inspector so decides, the discussion may be extended to the site.
19. Either party may request a hearing or the Inspectorate may decide a hearing is needed if comparatively complex issues are involved. The timetable for the submission of evidence is the same as that for written representations i.e. within 6 and 9 weeks of the start date. Local residents and other interested people are allowed to attend a hearing and at the discretion of the Inspector, give their views.
20. However, there may be occasions when particularly complex issues are raised or which give rise to considerable controversy where a more formal procedure would be appropriate. In such cases the hearing would be more akin to a public inquiry, including any appropriate pre-hearing procedures. The Inspector will decide which procedure is to be adopted at the hearing after considering all the material on the file.

## **Inquiries**

21. Inquiries are conducted in the spirit of the Town and Country Planning (Inquiries Procedure) Rules 2000, SI 2000 No. 1624 and the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000 No. 1625, as appropriate.
22. Either party may ask for a public inquiry, or the Inspectorate may decide that one is needed, but this procedure should only apply to exceptional cases. For example, where particularly complex technical evidence is submitted or cross examination may be needed, or where there are a large number of submissions or a considerable amount of public interest.
23. Within 6 weeks of the start date, you and the Agency must submit a statement to the Inspectorate giving full details of the case to be put forward at the inquiry. At 9 weeks both parties will have a chance to submit final comments on each others statements. Not later than 4 weeks before the inquiry, proofs of evidence and a statement of common ground should also be submitted. A proof of evidence is a written statement of the evidence a witness intends to give at the inquiry and, if it is more than 1,500 words long, there should also be a summary that is no more than 10% of the length of the proof. A statement of common ground is a list of all the matters that you and the Agency are agreed about.
24. An inquiry is more formal than a hearing and usually begins with brief opening statements from both the main parties. They then call their witnesses to give their evidence, which can be cross-examined by the other side. The Agency will normally present its case first. Other interested parties may also attend the inquiry and will usually be allowed to give their views.

Appeal procedures should follow those set out in DETR Circular 05/2000, Planning Appeals: Procedures (Including Inquiries into called-in planning applications), which explains the procedures in more detail.

## **DECISIONS ON APPEALS**

### **25. a) Inspector's decision**

The Inspector's decision will be sent to the appellant and the Agency at the same time. Copies will be sent to interested persons where they have requested one, unless confidentiality is involved. The decision will include the important and relevant points which give effect to the Inspector's decision.

25. b) **Secretary of State decisions**

In these cases, the Inspector will send a report to the Secretary of State. The report will describe the site and give a summary of the arguments and evidence presented. The Inspector will also make a recommendation as to whether or not the appeal should be allowed. The Secretary of State will then consider all the issues involved and his decision will be sent to the appellant and the Agency with a copy of the Inspector's report.

## **OTHER POINTS**

### **Withdrawal of appeals**

26. An appellant may withdraw the appeal at any time, as long as written notification is sent to the Planning Inspectorate, and a copy sent to the Agency.

### **Confidentiality**

27. In cases where the appellant considers that matters of confidentiality will arise during the appeal, the case may be recovered for decision by the Secretary of State. However, if these are minor points in the appeal then the Inspector will decide the appeal but deal with these points in confidence.

### **Assessors**

28. Exceptionally, in some inquiry cases an assessor may be appointed by the Planning Inspectorate on behalf of the Secretary of State to advise the Inspector on specific technical issues. The assessor will sit alongside the Inspector and consider the representations made. The assessor will write a report to the Inspector, the contents of which will be made public (unless issues of confidentiality are involved) when the decision is issued.
29. Where an assessor is appointed, everyone entitled to appear at the inquiry will be notified of the assessor's name and the matters on which he or she is to advise the Inspector.

## **Costs**

30. You and the Agency normally have to pay your own expenses for an appeal. However, if the appeal is to be decided by a hearing or an inquiry, you can ask that the Agency be ordered to pay all or part of your costs. The Agency has the same right to ask you to pay some or all of their costs. Applications for costs are normally heard towards the end of the proceedings and will only be allowed if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense.

## **Complaints about the Decision**

31. Once the decision notice has been sent to the appellant, either by the Secretary of State or the Inspector, the decision is final. The Secretary of State, or the Inspector, can no longer consider further representations or make any further comments on the merits or otherwise of the case.

## **Complaints about the Planning Inspectorate**

32. The letters acknowledging receipt of the appeal will give the name of the Case Officer. The Case Officer should be the first person contacted with any queries or complaints about the handling of the appeal. If this is not satisfactory, the Complaints Officer can be contacted at the following address:

The Complaints Officer  
The Planning Inspectorate  
Room 4/11 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Tel: 0117 372 8252  
Fax: 0117 372 8139

## **LEGISLATIVE BACKGROUND**

### **MAIN LEGISLATION**

#### **Water Resources Act 1991 (c. 57)**

This Act consolidates previous water legislation in respect of both quantity and quality.

#### **Water Industry Act 1991 (c. 56)**

This Act consolidates enactments relating to the supply of water and the provision of sewerage services.

#### **Environment Act 1995 (c.25)**

This Act established the Environment Agency and also made new provisions, including those for control of pollution, conservation of natural resources and conservation or enhancement of the environment. The relevant parts of this Act are Section 114, Schedule 20, Schedule 22 (Paragraphs 134-135), Schedule 23 (Paragraph 20), which amend the Water Resources Act 1991.

#### **Water Act 2003 (c.37)**

This Act builds upon previous legislation to further the sustainable use of water resources, strengthen the voice of water consumers, increase the opportunity for competition in the supply of water; and promote water conservation.

### **SECONDARY LEGISLATION**

#### **The Water Resources (Abstraction and Impoundment) Regulations 2006, SI 2006 No. 641**

These Regulations contain provisions relating to the licensing of abstraction and impounding of water in England & Wales, implementing amendments made by the Water Act 2003 to the Water Resources Act 1991. The relevant parts are Regulations 12 & 13. These Regulations replace The Water Resources (Licences) Regulations 1965, SI 1965 No. 534. Also relevant are Parts 4 and 5 in relation to works notices and conservation notice appeals.

## **The Anti-Pollution Works Regulations 1999, SI 1999 No. 1006 (as amended)**

These regulations prescribe the contents of anti-pollution works notice served under S161A of the Water Resources Act 1991. Regulations 3 – 6 also apply to appeals under S3 of the Water Act 2003 and S199A of the 1991 Act

## **EC DIRECTIVES**

### **Water Framework Directive (2000/60/EC)**

The most substantial piece of EC water legislation to date, the Directive requires all inland and coastal waters to reach 'good status' by 2015. It will do this by establishing a river basin district structure within which demanding environmental objectives will be set, including ecological targets for surface waters.

### **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, SI 2003 No. 3242**

These Regulations make provision for the purpose of implementing the requirements of the Directive in relation to frameworks for river basin districts.

### **Habitats Directive (92/43/EEC)**

This sets out the requirements for the conservation of natural habitats and of wild fauna and flora.

### **The Conservation (Natural Habitats, & c.) Regulations 1994, SI 1994 No. 2716 (as amended)**

These Regulations make provision for implementing the above EC Directive.

### **Environmental Impact Assessment Directives (85/337/EEC & 97/11/EEC)**

This sets out requirements on the assessment of the effect of certain public and private projects on the environment.

### **The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, SI 2003 No. 164 (as amended)**

These Regulations make provision for implementing the above EC Directive in relation to water management projects for agriculture in England and Wales.

### SECRETARY OF STATE CASES

1. These are cases of major significance which the Secretary of State **may** recover for determination. In these cases, the Inspector will carry out a site visit, hearing or inquiry in the usual way but then prepare a report. The report will describe the site in question, summarise the case for both the appellant and the Agency, outline the Inspector's conclusions and make a recommendation about the decision which will be made by the Secretary of State.
2. Each case will be looked at on an individual basis and it is not possible to anticipate every kind of appeal which might fall into this category, but they may include for example:-
  - a) cases involving sites of major importance and/or having more than local or regional significance;
  - b) cases raising more than local or regional issues;
  - c) cases which raise significant legal difficulties;
  - d) cases which can only be decided in conjunction with other cases over which Inspectors have no jurisdiction;
  - e) cases which raise major new policies of abstraction/water supply; and
  - f) all appeals made under Section 43 (1)(b)(ii) of the Water Resources Act 1991 involving requests for a Direction (i.e. where the applicant and the Agency have reached agreement on conditions previously in dispute).
3. There may be, exceptionally, other cases which merit recovery because of the particular circumstances. It is also possible that the circumstances of cases which have been recovered may alter during the course of the decision process e.g. if an accompanying appeal over which the Inspector has no jurisdiction is withdrawn. In such cases the appeal may be returned to the Inspector for decision.

# PROCEDURE FLOW CHART

## Appendix 3

