



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

WATER ABSTRACTION & IMPOUNDMENT LICENCES

APPEAL GUIDANCE



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1. Introduction

1.1 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 Natural Resources Wales (NRW). 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 Wales only, but the guidance has no legal status.

1.2 The relevant legislation to be followed is:

- Appeals against Abstraction and Impoundment licences fall under Section 36A and 43 of the Water Resources Act 1991, as amended by the Environment Act 1995 and the Water Act 2003. The procedures to be followed are set out in The Water Resources (Abstraction and Impounding) Regulations 2006 “the 2006 Regs”.
- Appeals against Abstraction transitional licences¹ fall under Section 36A and 43 of the Water Resources Act 1991, as amended by the Environment Act 1995 and the Water Act 2003. The procedures to be followed are set out in the Water Abstraction (Transitional Provisions) Regulations 2017 “the 2017 Regs”.
- Relevant projects with Environmental Impact Assessments fall under the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 “the 2003 Regs”.

2. Grounds for appeal

2.1 Applicants for abstraction and impoundment licences may appeal on the following grounds:

- if an application has been refused;
- if a licence has been granted subject to conditions; or
- if NRW has failed to determine the application within the specified period of time (3 months or such extended agreed period).

2.2 Applicants for abstraction transitional licences may appeal on the following grounds:

- if you disagree that an application for a full licence, a transfer licence or a temporary licence is needed for one of the other types of licence;

¹ Regulatory changes now require previously exempt abstractors to apply for a licence. They apply to applicants who since 2010 carried out abstraction without the requirement of a licence.

- if you disagree that a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);
- if you disagree that an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types): or
- if you disagree that any such application ought to be accompanied by an application for revocation of an existing licence to abstract water.

2.3 Applicants for relevant projects, which include Environmental Impact Assessments, may appeal on the following grounds:

- the decision of NRW on an application for consent under regulation 10 of the Regulations; or
- failure of NRW to give notice to the applicant of their decision within the prescribed period (3 months or such extended agreed period).

3. Before making an appeal

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

4. Who decides an appeal

4.1 Most appeals are decided by an Inspector appointed from the Planning Inspectorate, but the Welsh Ministers may take over the case if it is particularly important or controversial. If this happens you will be told the reason why. An Inspector would still deal with the case, but would submit a report to the Welsh Government, with his/her recommendations. The Inspectors report will not be publicly available until the Welsh Ministers have issued the final decision.

5. Time limit for making an appeal

5.1 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 from receipt of NRW's decision**². All supporting information/documents must also be submitted within this period.

² Regulation 12(2) of the 2006 Regs; Part 3 of the Schedule para. 11 & 12 of the 2017 Regs; Regulation 11(2) of the 2003 regs

5.2 Where NRW 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. In very exceptional circumstances, the Planning Inspectorate may allow appeals after this time.

6. Notice of appeal

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

Planning Inspectorate Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 0303 444 5940

Email: wales@planninginspectorate.gov.uk

6.2 The appeal form should be accompanied by:

- A copy of the relevant application;
- Any information or supporting documents submitted to NRW;
- A copy of the decision notice (if any); and
- Any other documents including maps and plans and correspondence between the parties which is relevant to the appeal.

6.3 At the same time as sending the notice of appeal to the Planning Inspectorate, a copy should be sent to the relevant office of NRW.

7. The effect of making an appeal

7.1 If an appeal is made against either (i) NRW's decision to refuse a licence or (ii) NRW'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.

8. Action on receipt of an appeal

8.1 When an appeal is received, the Planning Inspectorate will check the appeal to see if it is valid. A valid appeal must be made within the appeal period and include all the supporting documentation. The Planning Inspectorate can request missing documents from the appellant. However, if the appeal is late or incomplete then the Planning Inspectorate may decide to take no further action.

- 8.2 Once an appeal is valid the Planning Inspectorate will write to NRW informing them that the appeal has been received and, if the appellant has 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.

9. Appeal procedures

- 9.1 The Regulations³ prescribe appeal procedures however these lack detail. The Planning Inspectorate has used the essence of the prescribed regulations, although the deadlines may vary somewhat, to formulate a more detailed procedure which is considered to be more beneficial and efficient for all parties.

Written Representation Procedure

- 9.2 As soon as practicable after receipt of all the necessary information the Planning Inspectorate will write to the appellant and NRW to give notice of the start date for an appeal. The start letter will confirm the contact details of the case officer and the procedure to be adopted. The start date is the date the clock starts ticking for the submission of further representations, and the letter will set out the timetable which applies to the appellant and NRW. **It is the party's responsibility to keep to this timetable – the Planning Inspectorate will not send reminders.**

The 2-week deadline

- 9.3 Within 2 weeks of the start date NRW must notify interested persons of the appeal. NRW must send the Planning Inspectorate a copy of the notice and a list of those persons notified and any other documentation they consider to be relevant.

The 6-week deadline

- 9.4 The Planning Inspectorate must receive the appellants and NRW's **statement of case**, which sets out their argument, within 6 weeks of the start date. An appellant may wish to rely only upon their grounds of appeal from the appeal form. The statement does not have to be in any particular format and it can be submitted on paper or electronically. A statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. If either party decides not to send a statement of case within 6 weeks they will still be given the opportunity to comment

³ 2006 Regs, 2017 Regs and 2003 Regs

on the statements and representations submitted by the other party's (see *The 9-week deadline below*).

- 9.5 The Planning Inspectorate must also receive any comments from interested persons within 6 weeks of the start date.
- 9.6 All statements and representations that have been received by the Planning Inspectorate within the specified time will be copied to the appellant and NRW once the deadline has passed.

The 9-week deadline

- 9.7 Within 9 weeks of the start date the appellant and NRW may comment on each other's statements and on any comments submitted by interested parties. The Planning Inspectorate expects both the appellant and NRW to have given all their evidence in the grounds of appeal and statements of case, so the opportunity to comment at 9 weeks must not be used as a means of introducing new material or putting forward arguments that should have been included in the 6-week statement. **The Planning Inspectorate will reject and return representations received at this stage if they raise new issues.**

Site Visit

- 9.8 If a site visit is required, 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

- 9.9 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.
- 9.10 Either party may request a hearing or the Planning 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.
- 9.11 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

- 9.12 Either party may ask for a public inquiry, or the Planning 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.
- 9.13 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.
- 9.14 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 the appellant and NRW are agreed about.
- 9.15 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. NRW will normally present its case first. Other interested parties may also attend the inquiry and will usually be allowed to give their views.

10. Decisions on appeals

Inspector's decision

- 10.1 The Inspector's decision will be sent to the appellant and NRW 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. An Inspector may determine that the appeal is dismissed, allowed or allowed with conditions.
- 10.2 The Planning Inspectorate will aim to issue an Inspectors decision within the following timeframes:

Written Representations – 14 weeks (from the start date)
Hearings – 21 weeks (from the start date)
Inquiry – 29 weeks (from the start date)

Welsh Ministers decisions

- 10.3 In these cases, see paragraph 4.1 above, the Inspector will send a report to the Welsh Government. 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 Welsh Ministers will then consider all the issues involved and their decision will be sent to the appellant and NRW with a copy of the Inspector's report. The Inspector's report will not be publicly available until the Welsh Ministers have issued the final decision.

11. Additional information

Withdrawal of appeals

- 11.1 An appellant may withdraw their appeal at any time, as long as written notification is sent to the Planning Inspectorate.

Confidentiality

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

Assessors

- 11.3 Exceptionally, in some inquiry cases an assessor may be appointed by the Planning Inspectorate on behalf of the Welsh Ministers 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.
- 11.4 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.

12. Feedback and complaints

- 12.1 The Planning Inspectorate welcomes feedback both positive and negative about people's experience of dealing with the organisation.
- 12.2 Complaints against an Inspector's decision or the Inspector or the way the Planning Inspectorate administered a case are dealt with by the Quality team. The Planning inspectorate operates to a target that 99% of decisions are free from justified complaint or successful legal challenge. All complaints are investigated thoroughly and impartially.

13. Challenges

- 13.1 Any person aggrieved by a decision can only challenge the decision by applying for judicial review by the Courts. If the challenge is successful, the court will quash the decision and ask the Planning Inspectorate to redetermine the case.
- 13.2 Applications for judicial review must be received by the Administrative Court, as soon as possible, and in any case, within 3 months of the date of the decision, unless the Court extends this period.
- 13.3 Further advice about making a High Court challenge can be obtained from the Administrative Court at:

Cardiff Civil Justice Centre,
2 Park Street
Cardiff
CF10 1ET

Tel: 029 20376400
Website: <http://www.justice.gov.uk/>

14. How the Planning Inspectorate use your personal information

- 14.1 The Planning Inspectorate receives personal data from the appellant, NRW and other interested persons who provide representations. The personal data normally includes name and contact details and any other personal data included within their representations.
- 14.2 The Planning Inspectorate copies the representations received to the appellant, NRW and any other statutory appeal parties.
- 14.3 Further information about the Planning Inspectorate's privacy policy can be found at <http://planninginspectorate.gov.wales/?lang=en> or on request. If you have any queries about the policy, or wish to request your personal data, then please contact the Planning Inspectorate.

Contacting the Planning Inspectorate

- 14.4 To discuss a particular appeal please contact the Case Officer directly. For general enquiries:

The Planning Inspectorate Wales
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

General Enquiry Line: 0303 444 5940
Email: wales@planninginspectorate.gov.uk

Further information on the Planning Inspectorate is available at:
<http://planninginspectorate.gov.wales/?skip=1&lang=en>