



Llywodraeth Cymru
Welsh Government



Independent Appeals Process for Farmers and
Landowners in Wales under the Environmental
Impact Assessment (Agriculture) (Wales)
Regulations 2017

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

1. Introduction

This document provides an overview of the Welsh Government's Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 ("the Regulations") appeals process for farmers and landowners in Wales.

Important note: this guide is for information purposes only and has no legal force. It is suggested that those intending to appeal also familiarise themselves with the Regulations and seek professional advice.

1.1 Purpose of the Appeal Process

The appeals process is a transparent and simple procedure which allows applicants to request a review of a decision of the Welsh Ministers made pursuant to the Regulations. An Independent Person will usually be appointed to hear the appeals and make recommendations to the Welsh Ministers, ensuring individuals and businesses have access to an appeals procedure which is open and fair.

2. What is covered by the Appeals Process?

The process will consider appeals against decisions taken and notices issued by the Welsh Ministers pursuant to the Regulations. This includes Screening and Consent decisions and the issuing of Remediation and/or Stop Notices. Further information can be found in the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 via the link below: www.legislation.gov.uk

If an appeal relates to any other agricultural or forestry related grant or subsidy then please contact the Rural Payments Wales (RPW) Customer Contact Centre (details in Section 10).

3. Decisions covered by the Appeals Process

The Regulations allow appeals against decisions taken by the Welsh Ministers in relation to a Relevant Decision or Relevant Notice.

A Relevant Decision is any of the following:

- Screening decision;
- Consent decision; or
- Decision made under paragraph 3 of Schedule 4 of the Regulations.

A Relevant Notice is any of the following:

- Remediation Notice;
- Stop Notice;
- a notice issued under paragraph 5 of Schedule 4 of the Regulations.

Should you receive notification from the Welsh Ministers in respect of any of the above, a written explanation setting out why the decision was taken will be provided. You will also be advised of your right to appeal.

For the avoidance of doubt, the following are not eligible for appeal using the processes in the Regulations:

- Draft Remediation Notices; and
- Financial penalties imposed due to breaches of the Regulations¹.

4. Obtaining more information about a decision

If the reason for the decision is not clear, or you have any other query in relation to the notification you receive (e.g. the contents of a letter are not fully understood), please contact the EIA officer dealing with your case directly in the first instance. Officials will offer further assistance over the telephone, in person or in writing, with the objective that the matter may be resolved without the need for a formal appeal.

¹ Appeals concerning such financial penalties must be brought in accordance with the Environment and Rural Affairs – Rural Payments Wales – Independent Appeals Process for Rural Grants & Payments www.gov.wales/sites/default/files/publications/2018-11/rural-grants-and-payments-appeals-guidance.pdf

5. Submitting an Appeal

If you are appealing a Relevant Decision, the notification of appeal must be received by the Welsh Government no later than 28 days after the date on which the Welsh Ministers made the decision you wish to appeal.

If you are appealing against a Relevant Notice, the notification of appeal must be received by the Welsh Government no later than 28 days after the date on which the Welsh Ministers send the notice.

In accordance with Regulation 30 of the Regulations, an appeal against a Relevant Notice or Relevant Decision must be made to the Welsh Ministers in writing.

Appeals against Notices

An appeal against a Relevant Notice may be brought on any of the following grounds:

- that the Welsh Ministers did not have power to serve the notice, or to include a particular condition in it; or
- that there has been some material irregularity, defect or error in, or in connection with, the notice;
- or that any of the requirements of the notice are unreasonable.

To Note:

- When appealing a **Stop Notice**, the notice will **remain in force** until the appeal has been determined.
- When appealing a **Remediation Notice**, the notice **will not come into force** until the appeal has been determined.

Appeals against Decisions

An appeal against a Relevant Decision may be made where:

- the Welsh Ministers have considered a screening application and have taken or deemed to have taken the decision that a project is a significant project; or
- the Welsh Ministers have refused an application for consent for a significant project; or
- the relevant individual has been notified of a decision under paragraph 3 of Schedule 4 of the Regulations.

How to appeal

If you wish to appeal, you must do so by giving written notice, which must:

- include a copy of the notice or decision you wish to appeal;
- state why you are appealing and include all the details of the evidence on which you intend to rely; and
- be served on the Welsh Ministers no later than 28 days after the date on which Welsh Ministers sent the Relevant Notice or made the Relevant Decision to which the appeal relates.

The appeal notice must also:

- State how you wish your appeal to be heard. You may state your preference of one of the following:
 - (i) written representations;
 - (ii) an oral hearing; or
 - (iii) a local inquiry.
- State whether you wish the appeal to be considered in Welsh or English.

Please note that whilst the Welsh Ministers will take into account your preferred form of appeal, it is for the Welsh Ministers to determine how the appeal proceedings are carried out.

The grounds for the appeal should be as comprehensive as possible. Please attach any supporting evidence you wish to be considered – e.g. photographs, specialist reports and/or other supporting documents.

The completed appeal and any enclosures should be sent to:

Strategy and Policy Unit
Agriculture – Sustainability and Development Division
Welsh Government
Government Buildings
Spa Road East
Llandrindod Wells
Powys
LD1 5HA

To Note

- Appeals served on the Welsh Ministers after the 28 day appeal period **will not** be accepted.

Any information submitted will be treated in accordance with the Welsh Ministers' Privacy Policy (see section 9 below).

5.1 Costs

You do not have to pay a fee to access the appeal process.

However, should you wish to appoint a legal representative and/or expert witness to appear at the hearing you will need to do so at your own expense.

The parties to an appeal will normally meet their own expenses. However, any party can apply for costs if they consider that the other party has behaved unreasonably. A costs award, where justified, is an order which can be enforced in the courts. It states that one party shall pay to another party the costs, in full or part, which have been incurred during the appeal process.

As an example, if a party fails to attend a hearing without good reason, or causes a hearing to be postponed due to the late provision of evidence, the Welsh Ministers are likely to apply for their costs to be paid by the party at fault.

6. A Guide to the Appeals Procedure

The Regulations permit the Welsh Ministers to appoint an independent person to consider appeals on behalf of the Welsh Ministers (the appointed person). The Welsh Ministers will usually appoint the Planning Inspectorate to carry out this role.

Once a notice of appeal has been received by the Welsh Ministers, you will be provided with a timetable of the actions that need to be undertaken and the procedures involved. These will be set by the appointed person on a case by case basis, however, indicative examples are given below.

You will be able to withdraw your appeal at any time prior to the Welsh Ministers making a decision. To withdraw an appeal, you must give notice in writing to the Welsh Ministers.

Written Representations

- The timetable will detail the actions required in this process. As a guide, you are likely to be given 6 weeks to submit your detailed case statement (including all of the evidence you wish to be considered in support of your case) along with your grounds of appeal.
- The Welsh Ministers will usually then be given 4 weeks to provide their case statement in response, along with any evidence they wish to be considered in support of their case.
- A recommendation will then be made by the appointed person, usually within 8 weeks of all necessary documents having been submitted. The Welsh Ministers will then consider the recommendation and inform the Appellant of the decision made as soon as possible.

Oral Hearing/Local Inquiry

- An oral hearing is an opportunity to present your case to the appointed person (usually an Inspector from the Planning Inspectorate) setting out why you believe the relevant notice or decision is incorrect.
- The timetable will detail the actions required in this process. As a guide, you are likely to be given 6 weeks to submit your detailed case statement (including all of the evidence you wish to be considered in support of your case) along with your grounds of appeal.
- The Welsh Ministers will usually then be given 4 weeks to provide their case statement in response, along with any evidence they wish to be considered in support of the case.
- In the case of local inquiries, witness statements and a statement of common ground will need to be submitted. The appointed person who will conduct the inquiry (usually an Inspector from the Planning Inspectorate) may issue a summons to any person requiring them to attend. Failure to attend having been served a summons can lead to prosecution.
- Local inquiries are more formal than oral hearings and allow parties to be cross examined. There are a number of specific requirements that are outside the scope of this guidance. It is strongly recommended that independent legal advice is sought prior to opting for an appeal to be dealt with by a local inquiry.
- All parties will be given at least 6 weeks notice of the date, time and place fixed for an oral hearing or local inquiry, along with the name of the appointed person who will conduct the oral hearing or local inquiry.
- **The oral hearing or local inquiry will be open to the public and notice will be given to the public not less than 21 days before the hearing or local inquiry is due to take place.**

- Both parties will receive copies of all documents relating to the case prior to the hearing or inquiry.
- The Regulations state that the Welsh Ministers must determine how the appeal hearing should be publically advertised. This could include by placing a notice of appeal at the site which is the subject of the appeal, in local/national media and/or on the Welsh Government website. This is not an exhaustive list and the individual circumstances of each appeal may determine the need to advertise by other means.
- The hearing/local inquiry will be held in a location as close to the appeal site as possible. The hearing/local inquiry typically comprises oral submissions and then a site visit (if required). Hearings are typically held between 10am and 5pm. Local inquiries can take place over multiple days.
- An oral hearing is less formal than a local inquiry and takes the form of a discussion led by the appointed person who will consider the evidence submitted. A local inquiry will take the form of formal submissions and examination of witnesses. It should be noted that the oral hearing or local inquiry is open to any member of the public who may have an interest in the case.
- Should a site visit be undertaken, the necessary biosecurity procedures will be carried out and provided by Welsh Government officials in attendance.

6.1 After the Hearing or Local Inquiry

- After the conclusion of the hearing or inquiry, the appointed person will compile and submit a report to the Welsh Ministers. The report will contain a conclusion and make a recommendation to the Welsh Ministers as to how the appeal should be determined.
- Having considered the report, the final decision on the outcome of the appeal will be taken by the Welsh Ministers.
- The Welsh Ministers will notify all parties to the appeal of the final decision in writing along with a copy of the appointed person's report.

7. Application to the High Court

If, after the appeals process has concluded, you are aggrieved by the decision of the Welsh Ministers that a project is not a significant project or the decision to grant consent for a significant project, you may make an application to the High Court for an order quashing the decision.

The High Court may quash a decision mentioned above if it satisfied that:

- (a) the decision is not lawfully made; or
- (b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

An application to the High Court must be made within 6 weeks of the date the decision is:

- (a) entered in the register in accordance with regulation 7(6)(b) of the Regulations; or
- (b) published in accordance with regulation 18(b) of the Regulations.

The High Court may, by interim order, pending the determination of an application under the Regulations, stay the operation of the decision on such terms as it considers appropriate.

8. Judicial Review

If, after the appeals process, you believe that the decision in relation to a matter not included in section 7 above has been made unlawfully (for example that the Welsh Ministers acted irrationally, illegally or contrary to procedure) then you may wish to consider seeking permission to judicially review the decision. Further guidance on judicial review can be found here:

www.judiciary.uk/you-and-the-judiciary/judicial-review/

Please note that the judicial review procedure does not allow the Court to award relief from a particular decision just because it disagrees with the merits of the original decision. It also cannot substitute its own decision for the original.

An application for judicial review must be made promptly and in any event within 3 months of the date when grounds for the application first arose.

9. General Data Protection: Privacy Notice

This notice informs you about the Welsh Government's use of the information provided in your appeal. It also explains the Welsh Government's processing and use of the personal data provided with your application and your rights under the General Data Protection Regulation. The data controller for the information is the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

The contact details for the data protection officer for the same information is:

Data Protection Officer
Welsh Government
Cathays Park
Cardiff,
CF10 3NQ
Email: DataProtectionOfficer@gov.wales

9.1 Rights under the General Data Protection Regulation (GDPR)

The GDPR gives individual's rights in respect of the personal data processed about them.

These rights include:

- the right to be informed (this notice);
- the right to ask for and receive copies of the personal data that the Welsh Government holds about them, although the Welsh Government can sometimes withhold some data or not provide copies;
- the right, in some circumstances, to prevent or restrict the Welsh Government processing personal data;
- the right, in some circumstances, to have wrong data rectified;
- the right, in some circumstances, to have data erased (to be forgotten).

If you wish to exercise any of your rights under the GDPR, you should contact the Welsh Government at the address provided at the beginning of this notice. Further information in relation to these rights can be found on the Information Commissioner's Office web page relating to Individual Rights at www.ico.org.uk.

9.2 The Freedom of Information Act and your information

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by public bodies, including the Welsh Government. The information you provide us may be the subject of a freedom of information request by another member of the public. We would consult with you to seek your views before disclosing any personal data in response to such a request.

9.3 Raising Concerns

Should you have any concerns as to the handling of your personal data then we would ask that you raise these directly with the Welsh Government in the first instance at the Customer Contact Helpline 0300 062 5004 or you can contact the EIA Team at eia.unit@gov.wales.

Individuals also have the right to raise any concerns with the Information Commissioner, who enforces and oversees data protection matters. Further information is available on the website: www.ico.org.uk.

10. Contacts

Rural Payments Wales
Customer Contact Centre
Contact us by email using your RPW Online account

If you do not have an RPW Online account please phone 0300 062 5004

Or you can write to the Agriculture – Sustainability and Development Division
Welsh Government
Spa Road East
Llandrindod Wells
Powys
LD1 5HA

E-mail: EIAAppeals@gov.wales