



The Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011

Marine Licensing Appeal Procedure Guidance

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THE MARINE LICENSING (APPEALS AGAINST LICENSING DECISIONS) (WALES) REGULATIONS 2011

MARINE LICENSING APPEAL PROCEDURE GUIDANCE

Note: The information contained within this guidance relates to procedures in [Wales only](#).

The information in this leaflet was correct when it was published, but it has no legal status.

1. Introduction

- 1.1 Planning and Environment Decisions Wales (PEDW) is an Agency of the Welsh Government¹. Our main work is the processing of planning and enforcement appeals and holding inquiries into local development plans. We also deal with a wide variety of other appeal casework including Environmental appeals and Rights of Way Orders.
- 1.2 These instructions cover the procedures for the determination of appeals under the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011. These provide that:
 - a) a person who has applied for a Marine Licence may by notice appeal to the Welsh Ministers against a decision made under section 71 of the Marine and Coastal Access Act 2009, and;
 - b) the Welsh Ministers must appoint a person (“the appointed person” to:
 - (i) determine whether the notice of appeal is a valid notice and if so;
 - (ii) determine the appeal.

The time limits, grounds and procedure for appeals are described below.

- 1.3 The appeal procedures to be followed are set out in The Marine Licensing (Appeals Against Licensing Decisions) (Wales) 2011, [SI 2011 No. 925 \(W.134\)](#) (the “Regulations”).
- 1.4 The Regulations provide for appeals to be considered and decided by a person appointed by the Welsh Ministers. An Inspector, employed by PEDW, will be appointed by the Welsh Ministers to determine an appeal.

¹ The powers and duties under the Regulations are exercisable by the Welsh Ministers. In this context “Welsh Government” refers to the Welsh Ministers.

2. Before making an appeal

2.1 Prospective appellants are advised to review and consider the reasons why the decision has been made by the licensing authority, Natural Resources Wales (NRW). A Marine Licence application is assessed against the following criteria:

- The need to protect the marine environment;
- The need to protect human health;
- The need to prevent interference with legitimate uses of the sea; and
- Any such other matters as NRW thinks relevant.

3. Who can appeal?

3.1 Only the original applicant for a Marine Licence will be able to appeal against a decision made by NRW on their application. This includes a decision to refuse an application or to grant a licence subject to conditions.

4. How to make an Appeal

4.1 An applicant wishing to appeal against a licensing decision should submit a notice of appeal to PEDW within **6 months** of the date of NRW's decision. PEDW cannot accept appeals if they are received after the end of the appeal period.

4.2 For an appeal to be valid, appellants are required to provide the following information in accordance with Regulation 7:

- i. Written notice of appeal (preferably using the published appeal form), including the appellants name, address and contact details;
- ii. A statement of the grounds of appeal. An appellant should respond directly to the reasons of refusal issued by NRW, focussing their arguments on why they disagree with those reasons. It is important that full grounds of appeal are set out, along with any supporting and background information;
- iii. A statement indicating whether you wish the appeal to be dealt with by the written representations procedure, a hearing or an inquiry (the procedure for each is explained later in this guidance).
- iv. A copy of NRW's decision to which the appeal relates;
- v. Copies of all the documents upon which you wish to rely during your appeal; and
- vi. A list of all the documents upon which you wish to rely, including dates (when a document is dated).

- vii. A copy of the Environment Impact Assessment and consent decision, if applicable (please provide one hard copy and one electronic copy).
- 4.3 The notice of appeal/appeal form and accompanying documents must be sent to:

Planning and Environment Decisions Wales
2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 03000 604 400

E-mail: PEDW.Casework@gov.wales

You must also send a copy of your appeal to NRW, as the licensing authority. NRW's contact details will be found on their decision notice.

5. Action on receipt of an appeal

- 5.1 When an appeal is received PEDW will check the validity of the appeal. If the appeal is submitted late or if any of the essential supporting document is missing then the Inspectorate may invalidate appeal.
- 5.2 The notice of appeal/appeal form should contain the appellant's preferred procedure and NRW will be asked to indicate their preferred procedure. Should a hearing or inquiry be requested then the appellant should give reasons why they consider a hearing or an inquiry to be necessary.
- 5.3 PEDW will decide the procedure to be followed and will notify the appellant and NRW of its decision in the start date letter. The start date letter will confirm the procedure to be followed and set the timetable for the submission of further evidence.

6. Notifying interested persons

- 6.1 Within two weeks of the start date NRW must send notification of the appeal to those persons that submitted representations on the application during the application process or any other person they think may have an interest.
- 6.2 The notification letter will let the additional parties know that an appeal has been made and by whom, describe the designation to which the appeal relates and state that if they wish to submit any representations to be considered by the appointed Inspector, these must be made in writing to PEDW within 6 weeks of the appeal start date (the notification letter will give the deadline for submission). The requirements for the content of the notification letter are set out in Regulation 9(2).
- 6.3 The notification letter must be accompanied by a copy of the decision to which the appeal relates.

- 6.4 During this period NRW must send to PEDW and the appellant a list of persons who received the notification letter and a copy of any representations NRW received during the original application process.

7. Written representations procedure

- 7.1 All appeals will be determined by way of the written representations procedure (except in **exceptional** circumstances where the Inspector may convene an oral event). The written procedure for dealing with an appeal is an exchange of statements between the appellant and NRW, followed by a visit to the site (if required) by an Inspector who will determine the appeal. This is usually the quickest, simplest and most cost effective way of deciding an appeal.
- 7.2 Appeals are dealt with according to the procedural structure provided by the Regulations. The appellant and NRW will be asked to send a copy of their appeal statements to PEDW within **6 weeks** of the **start date**. The appellant and NRW have the opportunity to comment on all the submitted statements and evidence (including any representations made by additional parties) within **9 weeks** of the **start date**.

Electronic working

- 7.3 PEDW encourages the appellant, NRW and interested parties to communicate electronically with us where it is practical to do so. Where documents are submitted electronically it is not necessary to submit a hard copy. Where a statement has been submitted with a substantial amount of appendices, the Inspectorate may request an electronic and hard copy in those circumstances.

The Site Visit

- 7.4 After the final deadline for representations has passed, in most cases an Inspector will visit the site, this will be dependent on the type of project and location within the Welsh marine area – if the site is entirely at sea, it may not be appropriate or useful, for example.
- 7.5 In normal circumstances the Inspector will be accompanied by both the appellant and NRW.
- 7.6 A site visit is not an opportunity for anyone present to discuss the merits of the appeal or the written evidence they may have previously provided. The Inspector will therefore not allow any discussion about the appeal with anyone at a site visit, however, the Inspector may ask the invited parties to point out certain features that they have referred to in their written evidence.
- 7.7 The Inspectorate will notify all parties, in writing, of the site visit arrangements, no less than 2 weeks before the date of the visit.

Hearings and Inquiries

7.8 Information on the procedures for hearings and inquiries is at Appendix 2.

Withdrawal of appeals

7.9 The appellant may withdraw an appeal at any time; to do so they must send written notification to PEDW. Please note that if you withdraw your appeal, your decision to withdraw is final. You cannot revive your appeal.

Costs

7.10 There is no charge for making an appeal; however, please note that all parties to an appeal are responsible for meeting their own appeal expenses.

8. Decision on appeals

Inspector's decision

8.1 The decision will indicate the important and relevant points which the Inspector has taken into account. The Inspector may dismiss the appeal, or allow the appeal and quash NRW's original decision in whole or in part. The key question for the Inspector will be whether the appellant has demonstrated, on the balance of probabilities, the grounds the appellant asserted in making the appeal.

8.2 Where an Inspector quashes a decision, NRW will be instructed to grant a Marine Licence, or grant a licence subject to conditions defined by the decision on the appeal.

8.3 PEDW's decision will be sent to the appellant, NRW and any other person who requests a copy. The appeal decision will be legally binding on NRW.

8.4 If appropriate, appeal decisions will also be published on the Welsh Government's Agriculture, Food and Marine Department's web pages on www.gov.wales, as they become available.

9. The Welsh Language

9.1 PEDW and the Welsh Government recognises the importance of the Welsh Language in building a nation where people take pride in, their communities, in the Welsh identity and language, and our place in the world. Legislation in Wales is enacted bilingually in Welsh and English.

9.2 PEDW also recognises that our customers can express their views better in their preferred language of communication. Accordingly, we welcome all communications to us in Welsh or English.

10. Challenging the decision by Judicial Review

- 10.1 The decision on the appeal is final; after it has been issued, the Inspector cannot consider further representations or make any comments on the merits or otherwise of the case. The decision can only be challenged in the courts by judicial review. An application to seek permission for judicial review should be made to the Administrative Court of the High Court of Justice. This should be done no longer than 3 months after the date of the decision.
- 10.2 A decision cannot be challenged merely because someone disagrees with the Inspector's decision. For a challenge to be successful you would have to satisfy the High Court that the Inspector made an error in law, e.g. misinterpreting or misapplying a policy or failing to take account of an important consideration. If a mistake has been made and the High Court considers it might have affected the outcome of the appeal it will quash the Inspector's decision and return the appeal to PEDW for re-determination.

11. Complaints about PEDW

- 11.1 If you have any complaints about the handling of an appeal at any stage you should contact the Complaints Officer at the following address:

The Complaints Officer
Planning and Environment Decisions Wales
2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 03000 604 400

E-mail: PEDW.Casework@gov.wales

- 11.2 PEDW will investigate complaints and send a full response within 20 working days from receipt. However, we cannot reconsider an appeal if a decision has already been given on it. The decision can only be challenged in the courts by judicial review.

12. The Public Services Ombudsman

- 12.1 If you have a complaint about the way we have dealt with a case, you can, in some cases, ask the Public Services Ombudsman for Wales to investigate a complaint about a decision. However, the Ombudsman can't investigate a complaint about a decision just because you don't agree about it and the Ombudsman does not have power to alter the decision. The Ombudsman's contact details are as follows:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae

Pencoed
CF35 5LJ

Tel: 0300 790 0203

E-mail: ask@ombudsman.wales

Website: www.ombudsman-wales.org.uk

13. How we use personal information

13.1 Personal data can be received 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. PEDW will copy the representations received to the appellant and NRW.

Further information

13.2 Further information about PEDW's privacy policy can be found at <https://gov.wales/welsh-government-privacy-notice> or is available on request. If you have any queries about PEDW's policy, or wish to request your personal data, then please contact PEDW.

Appendix 2

HEARINGS AND INQUIRIES

Topic Based Discussions

If an appeal is being processed by the written representation procedure and evidence comes to light that requires further investigation and discussions, the Inspectorate may decide to hold a topic specific hearing or inquiry, therefore combining the written and hearing or inquiry procedures.

PEDW will notify all parties of our intention to hold a topic specific hearing or inquiry, what the topic(s) are to be discussed and who is required to be present. PEDW will only invite those parties who have raised concerns on the selected topic to be present at the hearing or inquiry sessions. It will not be an opportunity for any other issues to be discussed.

Hearings

A hearing is a discussion, held under the direction of the Inspector, followed by a site visit if necessary. It lets parties exchange their views in a round-table discussion led by the Inspector. Hearings are open to the public and third parties may be heard at the discretion of the Inspector.

Inquiries

An inquiry is a more formal event that is necessary where issues are complex and require forensic investigation. Inquiries are the best option when there is a lot of evidence, or there is conflicting evidence, or there are numerous objectors. An inquiry allows for evidence to be tested through cross examination.

In some cases there may also be a need for a pre-inquiry meeting (PIM). PEDW will notify parties at the earliest opportunity if a PIM is required.

Hearing and Inquiry procedures

Hearing and inquiries are conducted according to the framework provided by the Regulations. Except as otherwise provided by the Regulations, PEDW may determine the procedure for a hearing or an inquiry to follow a process equivalent to that provided by the Town and Country Planning (referred applications and Appeals Procedure) (Wales) Regulations 2017.

If it is decided that an appeal will proceed by way of a hearing or an inquiry, the appeal will initially follow the same procedure as for written representations (see Section 7). Where a PIM is required PEDW will notify the parties of any changes to the procedure. For inquiries only, the timetable will include the submission of proofs of evidence and a statement of agreed facts (see below for further information).

Arranging a hearing or an inquiry

PEDW will notify the appellant and NRW if we intend to call a hearing or an inquiry.

A date for the hearing or inquiry is offered to NRW as they are responsible for providing the venue. Please see our Venue and facilities note for more information of appropriate venues:

<https://gov.wales/public-planning-inquiries-and-hearings-venue-and-facilities>

The provisional date agreed with NRW, is then offered to the appellant. NRW and the appellant have only one refusal of a hearing or an inquiry date, before we set a date, time and place for the hearing or inquiry. If either party cannot accept the date offered, they may offer PEDW a reasonable alternative. However, as the availability of the Inspector is a crucial factor in this process, we would suggest that either party contact us in the first instance, in order that we can indicate alternative available dates for the hearing or inquiry.

Once arrangements have been finalised we will inform all parties of the name of the Inspector and the date, time and location of the hearing or inquiry, no later than 6 weeks before the date of the hearing or inquiry.

Local residents and other interested parties will be allowed to attend the hearing or inquiry and, at the discretion of the Inspector, give their views.

Public notices for a hearing or inquiry

PEDW will provide NRW with a hearing or inquiry notice to be advertised no less than 3 weeks before the hearing or inquiry. NRW must publish notice of a hearing or inquiry in such a manner that will be the most effective for notifying the public.

The notice will provide members of the public a brief summary of the appeal details as well as the hearing or inquiry arrangements should they wish to attend.

PEDW would hope that the public notice is published in a local newspaper that circulates the nearby area and is published on NRW's website.

If appropriate, the public notice will also be published on the Welsh Government's Agriculture, Food and Marine Department's web pages on www.gov.wales, as they become available.

Proofs of Evidence – inquiry only

In addition to the written representation timetable parties should submit a proof of evidence no later than 4 weeks before an inquiry. A proof of evidence is the evidence a person wishes to present at an inquiry. This evidence should focus on the matters that are in dispute rather than rehearsing all of the evidence previously submitted.

If a proof of evidence is longer than 1,500 words the appellant/NRW must supply a written summary which they will present at the inquiry rather than reading out the whole proof of evidence. The summary should be proportionate to the main proof of evidence but should not exceed 1,500 words. The summary should be

provided at the same time as the main proof of evidence is submitted. Please note, however, that witnesses will be open to cross-examination on the whole of the main proof of evidence.

PEDW will send a copy of each proof of evidence received to the other parties ahead of the inquiry.

Statement of agreed facts - inquiry only

A statement of agreed facts is a written statement containing factual information about the proposal which is the subject of the appeal that the appellant reasonably considers will not be disputed by NRW.

A statement of agreed facts is essential to ensure that the evidence considered at an inquiry focuses on the material differences between the appellant and NRW. It will provide a commonly understood basis for the appellant and NRW and provide context to inform the statements of case and the subsequent production of proofs of evidence.

NRW must ensure that a signed copy of the statement is received no later than 4 weeks before the inquiry date.

Concurrent or combined inquiries

As well as the Marine Licence, in some circumstances developers may also require additional consents such as Planning Permission or a Harbour Revision Order.

Where there are related issues between the cases that require investigation and are being dealt with by way of an inquiry, PEDW may decide to consider the cases together.

National Security – inquiry only

If PEDW thinks that an inquiry, or the attendance at an inquiry of specific people, is not in the interests of Nation Security, PEDW may prevent the inquiry from being held or those people from attending.