



Department  
of Energy &  
Climate Change



Llywodraeth Cymru  
Welsh Government



The Scottish  
Government



**DOE**

Department of  
the Environment  
[www.doeni.gov.uk](http://www.doeni.gov.uk)

# EU Emissions Trading System – Appeals Guidance

Appeals guidance for EU ETS Installations and  
Aviation (reporting year 2013 onwards)

April 2015

© Crown copyright 2015

URN: 11D/944

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Any enquiries regarding this publication should be sent to Simon Squire, Area 1A, 3 Whitehall Place, London SW1A 2AW, or email [simon.squire@decc.gsi.gov.uk](mailto:simon.squire@decc.gsi.gov.uk)

# Contents

When an appeal can be made.....	5
Before making an appeal.....	6
Who decides your appeal? .....	6
<a href="#">How to make an appeal against a decision of the Environment Agency, Natural Resources Wales or Offshore Oil &amp; Gas Environment and Decommissioning.....</a>	<a href="#">7</a>
Introduction.....	7
How to make an appeal.....	7
After you appeal .....	8
How your case will be handled .....	9
Oral hearing .....	9
The appeal decision .....	9
Cost.....	10
Withdrawal of appeals .....	11
<a href="#">How to make an appeal against a decision of the Scottish Environment Protection Agency ...</a>	<a href="#">12</a>
Introduction.....	12
How to make an appeal.....	12
After you appeal .....	13
How your case will be handled .....	14
Oral hearing .....	14
The appeal decision .....	15
Costs .....	16
Withdrawal of appeals .....	17
<a href="#">Annex A – Contact details for appeal bodies .....</a>	<a href="#">18</a>
Appeals against the EA, NRW, or OGED – First-tier Tribunal .....	18
Appeals against SEPA – Scottish Ministers.....	18
Appeals against the Chief Inspector (Northern Ireland) – Planning Appeals Commission..	18

## Introduction

1. This document outlines the appeals process under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (SI 2012/3038) (“the Regulations”)<sup>1</sup>. References in this document to numbered regulations or schedules refer to the relevant part of the Regulations, unless otherwise indicated. This appeals process will apply for any appeals relating to the 2013 reporting year onwards. The appeals process for the 2012 reporting year and all preceding reporting years are set out in appeals guidance published in February 2012<sup>2</sup>. The grounds of appeal set out in paragraph 4 apply throughout the UK, however the appeals procedure set out under the heading “When an appeal can be made” and the following information applies only to England, Scotland, Wales and offshore installations. Appeals in Northern Ireland are determined by the Planning Appeals Commission (PAC) for which a separate procedure is in place. Contact details for the appeal bodies, including the PAC, are provided at the end of the document.
2. The framework of the appeal procedure is set out in the Regulations. From the reporting year 2013 the appeal body for appeals against decisions of the Environment Agency (EA), Natural Resources Wales (NRW), or Offshore Oil & Gas Environment Decommissioning (OGED) is the First-tier Tribunal (General Regulatory Chamber). The appeal body for appeals against decisions of the Scottish Environment Protection Agency (SEPA) is the Scottish Ministers, and the appeal body for appeals against decisions of the Chief Inspector under regulation 8(3) of the Northern Ireland Regulations<sup>3</sup> is the PAC (see above on the scope of this Guidance). At times the appeal body has discretion to exercise in conducting the appeal – either because the discretion is expressly allowed by the relevant rules, or concerns a matter that is not expressly covered by them. The appeal body will also be able to depart from this guidance, either generally or in a specific case. Procedures that are set out in the Regulations cannot be waived or modified.
3. **For the purposes of this document all references to days include non-working days such as Saturday, Sunday, and Bank Holidays.**

---

<sup>1</sup> The Regulations were amended by S.I. 2013/755, 2013/1037, 2013/3135 and 2014/3125. An unofficial consolidated version of the Regulations can be found here [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380357/Unofficial\\_consolidated\\_UK\\_Greenhouse\\_Gas\\_Emissions\\_Trading\\_Scheme\\_Regulations\\_2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380357/Unofficial_consolidated_UK_Greenhouse_Gas_Emissions_Trading_Scheme_Regulations_2012.pdf)

<sup>2</sup> *Appeals guidance – Aviation: EU Emissions Trading System (EU ETS)* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/48278/4352-4351-appeals-guidance-aviation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48278/4352-4351-appeals-guidance-aviation.pdf)

<sup>3</sup> *The Pollution Prevention and Control Regulations (Northern Ireland) 2003* [http://www.legislation.gov.uk/nisr/2003/46/pdfs/nisr\\_20030046\\_en.pdf](http://www.legislation.gov.uk/nisr/2003/46/pdfs/nisr_20030046_en.pdf)

## When an appeal can be made

4. Under Part 8 of the Regulations appeals may be made in the following circumstances:
  - Where a regulator makes any decision (including a deemed refusal) in respect of any application made under the Regulations;
  - Where a regulator varies a permit under Regulation 11(2), 3(b) or (4);
  - Where a regulator revokes a permit under Regulation 14(1), including where the operator has failed to pay a fee or has failed to comply with a requirement to surrender the permit;
  - Where a regulator serves a notice on the owner of an aircraft under Regulation 26(2);
  - Where a regulator serves a notice varying an emissions plan under Regulation 37(1), 2(b) or (3);
  - Where a regulator serves an enforcement notice under Regulation 43(1) in respect of contravention (or likely contravention) of any provision of the Regulations, the Monitoring and Reporting Regulation<sup>4</sup>, a permit, or an aviation emissions plan;
  - Where a regulator serves a notice determining emissions under Regulation 44(4);
  - Where an authority, the Secretary of State, the registry administrator, the Kyoto Protocol (KP) registry administrator or a regulator serves a notice requiring the provision of information under Regulation 45(2)<sup>5</sup>;
  - Where a regulator serves a civil penalty notice under Regulation 50(1) or 50(3);
  - Where a regulator serves a notice under paragraph 8(1) or (4) of Schedule 5 that an excluded installation has exceeded the maximum amount of annual reportable emissions or has ceased to primarily provide services to a hospital;
  - Where a regulator serves a notice under paragraphs 6(7)(a), 7(11)(a) or 8(11)(a) of Schedule 6 in relation to a request to the registry administrator to withhold the allocation of allowances;
  - Where a regulator serves a notice under paragraph 7(11)(b) of Schedule 6 that the allocations will be permanently reduced;
  - Where a regulator serves a notice under paragraph 11(2) of Schedule 6 requiring the return of allowances;
  - Where a regulator serves a notice under paragraph 10(2) of Schedule 7 requiring the return of aviation allowances; or
  - Where (as provided in Regulation 74(2)) the registry administrator or KP registry administrator makes a decision under certain provisions of the Registries Regulation 2013<sup>6</sup>.
5. The ability to make an appeal is restricted to persons subject to the relevant notice or decision (including a deemed refusal). Third parties without such direct interest are not

---

<sup>4</sup> [Commission Regulation \(EU\) No 601/2012 of 21 June 2012](#)

<sup>5</sup> Appeals against a notice by the Secretary of State, Welsh Ministers, Scottish Ministers, or NI Department of Environment are determined by the First-Tier Tribunal (see paragraph 7)

<sup>6</sup> Article 20(3); Article 22(6); Article 23(3); Article 30(5); and Article 31(6) of [Commission Regulation \(EU\) No 389/2013 of 2 May 2013](#)

eligible to appeal under the Regulations. However, once an appeal is brought other persons may be able to participate in the proceedings if their interests are sufficiently affected (see paragraphs 27 and 57 below).

## Before making an appeal

6. Prospective appellants are advised to try to resolve any difficulties or disagreements with their regulator before commencing the appeals process. However, an appeal must be received by the appeal body within the requisite time period, as detailed in paragraphs 12 and 54.

## Who decides your appeal?

7. The appeal body will depend on which regulator or body was responsible for the notice or decision being appealed. Where an appeal is made against:
  - The Scottish Environment Protection Agency (SEPA), the appeal body is the Scottish Ministers.
  - The Chief Inspector under regulation 8(3) of the Northern Ireland Regulations<sup>3</sup>, the appeal body is the Planning Appeals Commission.
  - The Environment Agency (EA), Natural Resources Wales (NRW), Offshore Oil & Gas Environment Decommissioning (OGED), or any other decision under the Regulations, including where the Secretary of State, Welsh Ministers, Scottish Ministers, or the Northern Ireland Department of Environment serves a notice requiring the provision of information under Regulation 45(2), the appeal body is the First-Tier Tribunal (General Regulatory Chamber).
8. The appeal body in Scotland may delegate the function of determining the appeal to an Appointed Person. The Appointed Person will then have the same powers and duties as the appeal body, and references in this Guidance to the “appeal body” will generally also apply to such an Appointed Person. The appeal body in Scotland may also appoint a person to deal with specific matters or questions in the appeal.
9. Where the appeal body in Scotland does not delegate its function of determining an appeal, it may appoint a person to hold a hearing for the purposes of the appeal and make a report (“the Hearing Report”) to the appeal body.

# How to make an appeal against a decision of the Environment Agency, Natural Resources Wales or Offshore Oil & Gas Environment and Decommissioning

## Introduction

10. This section outlines the process for installations and operators in England, Wales and offshore installations making an appeal to the First-Tier Tribunal<sup>7</sup> (“the Tribunal”) against a decision of the EA, NRW, or OGED for one or more of the reasons outlined in paragraph 4. All time limits stated in this section can be varied by the Tribunal on application.

## How to make an appeal

11. The appellant must deliver a notice of appeal to the Tribunal<sup>8</sup>. The notice of appeal must include:

- The name and address of the appellant;
- The name and address of the appellant’s representative (if any);
- An address where documents for the appellant may be sent or delivered;
- The name and address of any respondent;
- Details of the decision or act, or failure to decide or act, to which the proceedings relate;
- The result the appellant is seeking;
- The grounds on which the appellant relies (“Statement”); and
- Any further information or documents required by a practice direction<sup>9</sup>.

---

<sup>7</sup> The rules governing appeals to the Tribunal are set out in the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Tribunal Rules”). A consolidated version of the Tribunal Rules can be found here [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367600/tribunal-procedure-rules-general-regulatory-chamber.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367600/tribunal-procedure-rules-general-regulatory-chamber.pdf) and further guidance on the First-Tier Tribunal is available here <https://www.gov.uk/general-regulatory-chamber-tribunal-hearings-and-decisions>

<sup>8</sup> A template for the FTT’s notice of appeal, as well as further guidance on how to complete the notice of appeal can be found at [http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court\\_leaflets\\_id=2597](http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=2597)

<sup>9</sup> A ‘practice direction’ refers to a direction given under section 23 of the Tribunals, Courts and Enforcement Act 2007 <http://www.legislation.gov.uk/ukpga/2007/15/section/23>

12. The notice of appeal is to be given to the Tribunal by the appellant so that it is received no later than **28 days** after the date on which notice of the decision was sent to the appellant.
13. The Tribunal may extend or shorten the timeframe for sending the notice of appeal, so long as such extension or shortening does not conflict with any other time limits in the appeal process.
14. If the appellant provides the notice of appeal to the Tribunal later than the timeframe stated above, the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time.
15. The Tribunal will send a copy of the notice of appeal and any accompanying documents to each respondent.

## After you appeal

16. Once an appeal has been made, the regulator has **28 days** from the receipt of the notice of appeal to respond and send the appellant a copy of their response. The appellant can reply to the Tribunal with more evidence or arguments within the following **14 days** after receiving the response from the respondent or the Tribunal, sending a copy to the regulator.
17. With the exception of the notices mentioned in paragraphs 18-22, the operation of any notice that has been appealed against will be suspended from the date that the appeal is submitted to the Tribunal, pending the determination of the appeal.
18. An appeal does not suspend the effect of a regulator's decision refusing an application (or a deemed refusal) or of the following notifications:
  - Variation of a permit;
  - Variation of an emissions plan;
  - Enforcement notices where a person has contravened, is contravening, or is likely to contravene a relevant provision in the Regulations, the Monitoring and Reporting Regulations, a permit or an aviation emissions plan;
  - Termination of an excluded installation emissions permit;
  - Withholding allocation of allowances.
19. Where (following an application for a permit or for the transfer of a permit) a permit has been granted or varied, the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.
20. Where an aviation emissions plan has been issued, the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.
21. The bringing of an appeal against a determination of emissions under Regulation 44(4) of the Regulations suspends the effect of the decision only for the purpose of assessing whether there has been compliance with surrender of allowances.
22. The bringing of an appeal against the decision of the registry administrator does not suspend the effect of the decision pending the final determination or withdrawal of the appeal.



### How your case will be handled

23. The Tribunal will ask how the appellant would like the appeal to be decided, either:
- Using the documents in the case, without a hearing; or
  - At an oral hearing – where the appellant will have the opportunity to put its case in person
24. An oral hearing is not always necessary. If all parties consent that a hearing need not be held and the Tribunal is satisfied that it can properly determine the issues without a hearing, then the appeal can be decided without a hearing, using the documents in the case.

### Oral hearing

25. The Tribunal will try to hold the hearing in the appellant's local area, but this may not always be possible. The hearing will be attended by:
- A judge – sometimes with two other tribunal members – who will decide the case;
  - A representative from the regulator; and
  - The appellant and their representative (if applicable).
26. The Tribunal must give each person entitled, permitted or requested to attend a hearing (including any adjourned or postponed hearing) at least **14 days'** notice of the time and place of the hearing and any changes to the time and place of the hearing. The Tribunal may give shorter notice with the parties' consent or in urgent or exceptional circumstances.
27. The Tribunal may give a direction permitting or requesting any person to attend and take part in a hearing or make written submissions in relation to a particular issue.
28. If a party fails to attend a hearing the Tribunal may proceed with the hearing if it is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and considers that it is in the interests of justice to proceed with the hearing.

### The appeal decision

29. After the conclusion of the hearing, the Tribunal may, as the case may be, affirm, quash or vary the decision under appeal, and may also include directions to the regulator as to the exercise of the regulator's functions under the regulations. The Tribunal may, in the case of a deemed refusal by the regulator, substitute its own decision for that of the regulator. The Tribunal will usually publish the appeal determination on its website.
30. The Tribunal will give the relevant parties its decision as soon as it can after the hearing – and it may be able to tell them on the day. Relevant parties will usually get a copy of the full written decision within **28 days** of the hearing.
31. If a party disagrees with the Tribunal's decision, it can appeal to the Upper Tribunal. A party can only appeal on a point of law, for example if the Tribunal:
- Did not apply the law correctly;

- Made a mistake in the way it reached its decision; or
  - Did not give good reasons for its decision.
32. A party must first ask the Tribunal for permission to appeal the Tribunal's decision, which will require it to fill in an application for permission to appeal form, no later than **28 days** after the latest of the dates that Tribunal sends to the person making the application the following:
- Written reasons for the decisions;
  - Notification of amended reasons for, or correction of, the decision following a review; or
  - Notification that an application for the decision to be set aside has been unsuccessful.
33. On receiving an application for permission to appeal, the Tribunal must consider whether to review the decision, taking into account the Tribunal Rules' overriding objective of enabling the Tribunal to deal with cases fairly and justly<sup>10</sup>. The Tribunal may only undertake a review of a decision where it is satisfied that there was an error of law in the decision.
34. The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.
35. If the Tribunal refuses permission to appeal it must send the party a statement of its reasons for such refusal; and notify the party of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application can be made.
36. If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notification of the outcome of the review referred to in paragraph 34 must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.
37. If the Tribunal decides not to review the decision pursuant to paragraph 33, or decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.
38. The Tribunal must send a record of its decision to the parties as soon as practicable.

## Cost

39. The Tribunal may make an order in respect of costs if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. The Tribunal may make an order on an application or on its own initiative.
40. A person making an application for an order must send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made, and send or deliver a schedule of the costs or expenses claimed with the application.

---

<sup>10</sup> [Regulation 2 of the Tribunal Procedure \(First-tier Tribunal\) \(General Regulatory Chamber\) Rules 2009](#)  
['Overriding objective and parties' obligation to co-operate with the tribunal'](#)

41. An application for an order may be made at any time during the proceedings but no later than **14 days** after the date on which the Tribunal sends the decision notice which finally disposes of all issues in the proceedings to the person making the original application, or **14 days** after the notice of withdrawal which ends the proceedings takes effect.
42. The Tribunal may not allow an order against a person without first giving that person an opportunity to make representations, and considering that person's financial means if they are an individual.
43. The amount of costs or expenses to be paid under an order may be ascertained by summary assessment by the Tribunal, or agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses, or assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.
44. Following an order a party may apply to the County Court for a detailed assessment of costs.

## Withdrawal of appeals

45. A party may give notice of the withdrawal of its case, or any part of it at any time before a hearing by sending or delivering to the Tribunal a written notice of withdrawal, by giving notice orally at a hearing, or after a hearing but before a decision has been given. Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.
46. A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated. An application to have a case reinstated must be made in writing and be received by the Tribunal within **28 days** after the date on which notice of withdrawal was received by the Tribunal.
47. The Tribunal must notify each party in writing of a withdrawal under this rule.

# How to make an appeal against a decision of the Scottish Environment Protection Agency

## Introduction

48. This section outlines the process for installations and operators in Scotland making an appeal to the Scottish Ministers against a decision of SEPA for one or more of the reasons outlined in paragraph 4.

## How to make an appeal

49. In Scotland, the appellant must submit written notice of its appeal (“Notification”) together with the following documents, within the time limit set out in paragraph 54 to the appeal body:

- Statement of the grounds of appeal (“Statement”);
- Copy of any relevant application;
- Copy of any relevant benchmarking or emissions plan;
- Copy of any relevant monitoring plan, aviation emissions plan, or benchmarking plan (as defined by Regulation 20)
- Copy of any relevant correspondence between the appellant and the regulator;
- Copy of any decision or notice which is the subject matter of the appeal;
- Indication of whether the appellant wishes there to be a hearing (see paragraph 70).

50. The appellant is requested to provide electronic versions of these documents, so that they can be transmitted more effectively to regulators and any interested parties.

51. The Statement should include full details of the appellant’s case, along with any supporting documentation they wish to provide. Appellants are advised to send their Notification and Statement by email, or by hard copy via a service which provides proof of delivery. Appellants should provide a contact address and email address for appeal-related correspondence.

52. As mentioned above, appellants must indicate with their Notification whether they wish the appeal to be in the form of an oral hearing or on the basis of written representations. Further details about these procedures can be found in paragraphs 64-69 for the written procedure and paragraphs 70-76 for the oral hearing procedure. The appeal body may decide to hold a hearing even where one is not requested. A hearing may be appropriate where there are disputed questions of fact, but has the disadvantage of increased legal and resource costs to the parties (see paragraph 84).

53. Appellants should advise in their Notification whether any of the information submitted is commercially confidential or has national security implications and, if so, why. This will be taken into consideration in the handling of the appeal for example whether to allow public hearings.

54. The Notification, Statement, and all other documents listed in paragraph 49 are to be given to the appeal body no later than **24 days** from the date on which the notice is issued, or decision or deemed decision takes effect.

## After you appeal

55. The appeal body has discretion to accept an appeal given to it outside the 24 day appeal period, but only where it is satisfied that there is good reason that the appeal was not submitted in time. The appeal body will inform the appellant in writing whether or not the submission of the appeal has been accepted, and will give reasons for the decision to the appellant (and the regulator if it has been accepted).

56. When notice of the appeal is given within the 24 day period, or accepted outside the time limit, the appeal body will provide an email acknowledgement as soon as is reasonably practicable. This acknowledgement will contain an appeal reference number; the issuing of which indicates the start of the appeal determination process. The appeal body will also provide details to the appellant and regulator of any Appointed Person, or if known at this stage, of any person appointed for the purposes of holding a hearing. The appeal body will also copy the reference number to the relevant regulator, and the other appeal bodies, as soon as is reasonably practicable. The Notification and Statement will also be copied for information to the other appeal bodies in cases where the appeal is rejected as out of time.

57. As noted in paragraph 50, the regulator will have been sent notice of the appeal by the appellant. The regulator will have **16 days** from the date of receipt of the notice of appeal from the appellant to give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal. To prevent delay, appellants should therefore ensure that the notice is communicated promptly and effectively, and to the appropriate address (these are listed at Annex A). The notice from the regulator to interested third parties must contain the following information:

- Statement that notice of appeal has been given;
- The name of the appellant;
- Description of the decision or notice to which the appeal relates;
- Statement that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing;
- Statement that an affected person may request to be heard at a hearing.

58. After sending the notice of appeal to an interested party, the regulator must, within the following **8 days** notify the appeal body of the persons who have been sent the notice and the date on which it was sent. The regulator is not required to notify the appeal body where no such person has been identified.

59. An interested party may request that the regulator provide a copy of the documents listed under paragraph 57 for the purposes of the appeal only. Where such a request is made, the regulator must provide the documents as soon as is reasonably practicable. The regulator may choose to provide only electronic copies of these documents.

60. An interested party may make representations with respect to the appeal to the appeal body in writing within **16 days** of the date of the notice sent by the regulator under paragraph 57. These representations must also state whether or not its civil rights will

be determined in the appeal, and if so, which civil rights<sup>11</sup> will be determined. They should also state whether the interested party requests a hearing. The appeal body must copy these representations to the appellant and regulator.

61. Once the appeal body has received representations from an interested party it must determine whether that person is to be regarded as an “affected party” for the purposes of the appeal. An affected party is defined as an interested party whose representations that its civil rights will be determined in the appeal have been accepted by the appeal body.
62. With the exception of the notices mentioned in paragraph 63, the operation of any notice that has been appealed against will be suspended from the date that the appeal is submitted to the appeal body, pending the determination of the appeal.
63. An appeal does not suspend the operation of a regulator’s notice (or deemed decision) of refusal.

### How your case will be handled

64. The written representation procedure commences with the submission of the required documents to the appeal body and the regulator, as detailed in paragraphs 49-54.
65. If the regulator has not requested a hearing, it must submit any written representations to the appeal body within **24 days** of receiving the Notification and Statement of appeal from the appellant. The appellant must make any further representation by way of reply to any representations from the regulator within **16 days** of the date of submission of those representations (note that this is the date of submission and not the date of receipt, of the representations).
66. Any representations made by the appellant or regulator must bear the date on which they are submitted to the appeal body. When the appellant or regulator submits any representations to the appeal body, it must at the same time send a copy of them to the other party.
67. When the appeal body copies representations made by interested parties to the appellant and regulator as set out in paragraph 60, it must allow the appellant and regulator a period no fewer than **16 days** in which to make representations on them.
68. The appeal body may however, in a particular case, set earlier or later time limits than those mentioned above. The appeal body may also require or permit further exchanges of representations in addition to those mentioned.
69. The written representation procedure is usually the quickest, simplest and most cost effective way of deciding an appeal. Before deciding whether to request a hearing, a party should therefore check carefully whether the particular circumstances of the case merit the time and expense of doing so (see paragraph 84). It is also recommended to discuss the matter with the appeal body.

### Oral hearing

70. A request for an oral hearing may be made by the appellant, the regulator, or any affected party (see paragraphs 49 and 60). Although such a request cannot be

---

<sup>11</sup> A ‘civil right’ is a right enjoyed by a private person such as a property right or a right to carry on a commercial or professional activity.



refused, the relevant party should consider carefully before exercising this right to have a hearing. Although their decision to do so cannot in any way prejudice the final outcome of the appeal, it may have a bearing on any eventual order for costs that is made. The appeal body has the power to order a party to pay the costs the body has incurred in relation to the hearing, and to order a party to pay another party's costs. If a request has been made for a hearing that is judged to have been unnecessary, this may be reflected in the orders that are made.

71. Where requested by the appellant, the regulator or an affected party, or where considered appropriate to the specific case by the appeal body, a hearing will be held as part of the appeal process. Where the function of determining the appeal has been delegated to an Appointed Person, the hearing will be held by that Appointed Person. Otherwise the appeal body will appoint a person specifically to hold the hearing and make a Hearing Report to the appeal body.
72. If such a hearing has been requested, the procedure for it (including the submission of any further written representations by the parties) will be under the control of the person holding the hearing. The appeal body will inform the appellant and regulator, plus any interested parties that the appeal will proceed to a hearing after the time limit described in paragraph 60 has expired.
73. The form of the hearing will be at the discretion of the person holding it. This discretion includes deciding whether the hearing should be held wholly or partially in private, requesting additional information to be provided in advance of, or at, the hearing and the form that this should take.
74. The appeal body must (unless they agree otherwise) give the appellant, regulator and any affected party at least **24 days'** notice of the date, time and place of the hearing. If the hearing is to be held wholly or partially in public, the appeal body must at least **24 days** before the date of the hearing publish a copy of the notice of the hearing in an appropriate national or international publication.<sup>12</sup> The appeal body must send a copy of that notice to any interested party who has made written representations to the appeal body (see paragraph 61).
75. The appeal body may vary the time and place of a hearing and is required only to give such notice as appears to the appeal body to be reasonable of such changes. However, where the date fixed for the hearing is varied, the notice requirements described in paragraph 74 once again apply.
76. The appellant, regulator and any affected party are entitled to be heard at a hearing. The person holding the hearing may also permit other persons to be heard at the hearing. A representative from the appeal body may also attend to observe.

## The appeal decision

77. Where a hearing is held, after the conclusion of the hearing the person holding the hearing must, within a reasonable time, make a written Hearing Report to the appeal body. Such a written Hearing Report will include that person's conclusions and recommendations, or decision not to make any recommendation, and in all cases the reasons supporting the Report.

---

<sup>12</sup> Schedule 11 of SI 2012/3038 – "in a newspaper circulating in the locality in which the installation is operated, or (as the case may be) in an appropriate international aviation publication "

78. However, if the appeal body has delegated its function of determining an appeal to the Appointed Person then there will not be any Hearing Report as described in paragraph 77, since the Appointed Person will be solely responsible for the appeal determination.
79. If the appeal body has retained its function of determining an appeal, then as soon as reasonably practicable after receiving the Hearing Report, or the conclusion of the exchange of written representations, the appeal body will determine the appeal. Where appeals are related to the submission of tonne-kilometre data or applications to the special reserve the appeal body will prioritise determining these appeals to ensure the deadlines set in the Directive<sup>13</sup> can be met.
80. The appeal body must give notice of its determination to the appellant, and at the same time send a copy to the regulator, to any interested parties who made representations, and to any other person who made representations at a hearing. The appeal body will also send a copy of the Hearing Report to the appellant and the regulator only.
81. The appeal determination will, as the case may be, affirm, quash or vary the decision under appeal, and may also include directions to the regulator in relation to the subject-matter of the appeal. The appeal body may, in the case of a deemed refusal by the regulator, substitute its own decision for that of the regulator. The appeal determination is final and once made cannot be re-opened.
82. The appeal body will usually publish the appeal determination on its website, unless there is a special reason for not doing so for example commercial confidentiality or national security implications. When providing notice of the appeal determination, the appeal body will state the location and timing of any such publication. Any information relating to the appeal that is not published may still be subject to Freedom of Information<sup>14</sup> requests.

## Costs

83. There are no charges to pay on lodging an appeal. Any party will normally be responsible for its own costs in respect of the appeal. However, the appeal body may award the regulator its reasonable costs if, at any point during the appeal process, the appeal body has notified the appellant in writing that it considers the appeal to be frivolous, vexatious or otherwise has no reasonable prospects of success, or that it considers that the appeal is being conducted in an unreasonable or vexatious manner.
84. The appeal body may also award costs to other parties where a party insists on a hearing taking place, despite being advised by the appeal body that a hearing is unnecessary and/or inappropriate. The appeal body can issue such notification regardless of the fact that it has allowed the appeal to proceed, as information regarding the nature of the appeal may emerge at any point throughout the appeal. In such cases the appellant (or other party as appropriate) will be liable for these costs, the level of which will be agreed between the parties to the appeal, or in the absence of such agreement, by the appeal body<sup>15</sup>.

---

<sup>13</sup> [Directive 2008/101/EC amending Directive 2003/87/EC](#) so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community

<sup>14</sup> Further information can be found at <http://www.ico.gov.uk/>. Appellants and regulators will be informed of any such request and will be consulted with before any release of information.

<sup>15</sup> In Scotland the Auditor of the Court of Session will fix costs where the parties cannot agree.



## Withdrawal of appeals

85. An appellant may withdraw an appeal at any time by notifying the relevant appeal body in writing. The appeal body will send a copy of the notification withdrawing the appeal to the regulator as soon as reasonably practicable and any interested parties, if relevant. Where an appeal is withdrawn at a late stage and other parties have already incurred costs in preparing for the appeal, the appellant may be liable for those costs.

# Annex A – Contact details for appeal bodies

## Appeals against the EA, NRW, or OGED – First-tier Tribunal

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Post: General Regulatory Chamber, HMCTS, PO Box 9300, Leicester, LE1 8DJ

Website: <http://www.justice.gov.uk/tribunals>

Form: [http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=2800](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2800)

## Appeals against SEPA – Scottish Ministers

Email: [DPEA@Scotland.gsi.gov.uk](mailto:DPEA@Scotland.gsi.gov.uk)

Post: Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, FALKIRK, FK1 1XR

Web: <http://www.scotland.gov.uk/Topics/Environment/Appeals>

## Appeals against the Chief Inspector (Northern Ireland) – Planning Appeals Commission

E-mail: [info@pacni.gov.uk](mailto:info@pacni.gov.uk)

Post: Planning Appeals Commission, Park House, 87/91 Great Victoria Street, BELFAST, BT2 7AG

Telephone: (028) 9024 4710.

Web: [www.pacni.gov.uk](http://www.pacni.gov.uk)

© Crown copyright [2015]

Department of Energy & Climate Change

3 Whitehall Place

London SW1A 2AW

[www.gov.uk/decc](http://www.gov.uk/decc)

URN: 11D/944