

## **Updating the Environment Agency's regulatory appeals process**

### **External engagement**

### **July 2024**

#### **Purpose of this briefing note**

We are seeking feedback from external stakeholders on the Environment Agency's proposed update to our regulatory appeals process. Included as part of this briefing pack is:

- A summary of the proposed changes
- The draft internal instruction which is to be used by Environment Agency staff when undertaking regulatory appeals
- A feedback form – responses due by 9am on Wednesday 14<sup>th</sup> August

The updated regulatory appeals internal instruction is currently draft. We will use the comments and feedback gathered through this engagement exercise to help inform potential changes to our draft process before it is finalised. We want to gather views from as many and as wide a range of interested stakeholders as possible.

#### **Background**

In 2023 there was a court judgement in relation to the R (Suez Recycling and Recovery UK Ltd) v Environment Agency [\[2023\] EWHC 3012 \(Admin\)](#). Following this judgement, the Environment Agency committed to reviewing our regulatory complaints and appeals processes.

Our existing complaints process will be retained, and we are proposing some updates to our regulatory appeals process.

More details on our complaints process can be found at [Complaints procedure - Environment Agency - GOV.UK \(www.gov.uk\)](#).

In relation to appeals against regulatory decisions that the Environment Agency makes, the relevant paragraphs from the Regulators' Code 2014 (the Regulators' Code) are as follows:

- Clearly explain what the non-compliant item or activity is, the advice being given, actions required, or decisions taken, and the reasons for these (para 2.2);

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- Provide an opportunity for dialogue in relation to the advice, requirements or decisions (para 2.2), and
- Provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with the Regulators' Code (para 2.3).

The regulatory appeals process is separate from any statutory rights of appeal that might be in place. Any statutory right of appeal remains unchanged and is not part of this work. The Regulators' Code appeal process can be used alongside or instead of any statutory appeal.

The appeal under the Regulators' Code can be used for a regulatory decision or where we have failed to act in accordance with the Regulators' Code. A regulatory decision is not defined under the Regulators' Code. However, the *Suez v Environment Agency 2023* judicial review judgement provided the following definition - 'a decision, in the exercise of a regulatory function, which is adverse to a regulated party'. We are using this definition as the basis for our regulatory appeals process.

It is also important to understand what is not a regulatory decision. The judgement set out that a regulatory decision is not 'action', 'guidance' or a communication that we are 'proposing to or minded to take a decision'.

## **What are we proposing**

We are proposing a two-stage process for regulatory appeals. An overview of this process is provided below, with further information available in the draft internal instruction included within this briefing pack.

### **Stage 1 - Pre-regulatory appeal discussion**

Within 14 calendar days of being notified of a regulatory decision or not acting in accordance with the Regulators' Code, the regulated customer should contact the person who made the decision or the action. This could be in writing or verbally. This stage is an opportunity for quick corrections to be made or misunderstandings to be resolved - it should not require much time and resource from either the regulated customer or the Environment Agency. The decision maker may discuss the issues raised within their team or department, for example with their team leader or a senior officer.

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In most situations the regulated customer will get a response within 14 calendar days. If the regulated customer remains dissatisfied, the written response to them will explain the next steps they can take for a regulatory appeal (Stage 2 as outlined below)

## **QUESTION 1.**

**Do you agree with the proposals for ‘Stage 1 - Pre-regulatory appeal discussion’?  
Please provide any comments relating to this response.**

### **Stage 2 - Regulatory appeal**

Within 21 calendar days of the Stage 1 pre-regulatory appeal discussion decision, if the regulated customer remains dissatisfied, they can make a request for a regulatory appeal. The regulated customer will submit this request via a form available on GOV.UK.

When submitting the regulatory appeal request (Stage 2), the regulated customer will be asked to:

- explain why they believe the regulatory decision is wrong or how the Environment Agency has not acted in accordance with the Regulators’ Code.
- provide any information and/or evidence related to the appeal.

### ***Initial screening***

We will undertake an initial screening of the regulatory appeal (Stage 2) submission to ensure that the subject of the challenge meets the definition of a regulatory decision as set out above and is made within the required timescales. If it does not, we will inform the regulated customer.

### ***Allocation of regulatory appeal***

After the initial screening the regulatory appeal will be allocated to an impartial person, the regulatory appeal decision maker. The regulatory appeal decision maker will not have been involved in the original decision.

### ***Information that is reviewed during the regulatory appeal***

The original decision maker will provide a handover note detailing all relevant documents relating to their decision. This will include any decision documents, records such as pocket notebook entries and any other pertinent information such as permits or management systems, or written internal procedures used in the decision-making process.

The regulatory appeal decision maker will, so far as practicable, stand in the shoes of the original decision maker and consider afresh the relevant facts and any relevant law, policy or guidance.

# BRIEFING PACK



The regulatory appeal decision maker may, at their discretion, request further information from the original decision maker or the regulated customer. They also may seek expert views from within the Environment Agency on the matter being appealed. Any expert views must also be from someone impartial to the original decision and records kept of any advice they give to the regulatory appeal decision maker.

The regulatory appeal decision maker will consider all the information provided by the regulated customer, original decision maker and expert (where relevant) and will assess whether the decision made was lawful, fair and reasonable, and in line with all relevant guidance.

### ***Regulatory Appeal outcome***

Once the regulatory appeal decision maker has finalised their decision, they will inform the regulated customer and the original decision maker. We will aim to undertake the regulatory appeal within 21 calendar days. If any changes are required following the regulatory appeal outcome, the regulatory appeal decision maker will ensure these are undertaken.

### **QUESTION 2.**

**Do you agree with the proposals for ‘Stage 2 – Regulatory Appeal’?**

**Please provide any comments relating to this response.**

### **How will a regulated customer know about this process?**

We will be updating the GOV.UK pages on Complaints and Appeals ([Complaints procedure - Environment Agency - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/complaints-procedure-environment-agency)) so that it is clear to all regulated customers the process to follow for regulatory appeals.

### **QUESTION 3**

**Do you consider that this process meets the requirements of the Regulators’ Code?**

**Please provide any comments relating to this response.**

### **QUESTION 4**

**Do you have any other comments to make regarding the regulatory appeal process?**

**Please provide any comments relating to this response.**

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## **How to respond**

Please use the feedback form provided to respond to the four questions. This should be sent to [Regulatory.cycle@environment-agency.gov.uk](mailto:Regulatory.cycle@environment-agency.gov.uk)

The deadline for submitting any comments in relation to this external engagement is **Wednesday 14th August 2024 at 09:00.**

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