

DRAFT – Dealing with an appeal of a regulatory decision

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Description

This document provides guidance on how we deal with regulatory appeals under the Regulators’ Code.

Who does this apply to:

All Environment Agency staff.

Authors:

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Why must I follow this procedure?

The Regulators' Code is a statutory code of practice that the Environment Agency must have regard to when determining any general policy or principles by which it exercises regulatory functions. The Code includes a requirement that "Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code".

When to use this procedure

You must use this procedure if a regulated customer wants to submit a regulatory appeal about a recent regulatory decision(s) we have made, or a failure to act in accordance with the Regulators' Code.

If the appeal is made by an interested party, rather than the regulated customer, follow the [How to handle complaints instruction](#).

This process does not replace existing statutory rights to appeal, referrals to an Ombudsman, or requests for a judicial review. It is an additional appeal route we provide in order to comply with the Regulators' Code and provides those we regulate with a quick and easy way to challenge regulatory decisions they disagree with.

Requesting a regulatory appeal does not have the effect of suspending the regulatory decision unless specifically stated in writing. If you are considering writing to the regulated customer to suspend the regulatory decision whilst the appeal is reviewed please contact legal services. It may not always be possible to suspend a regulatory decision.

!Important

Asking us to review a regulatory decision will not stop the clock as far as the time in which any statutory appeal has to be made. You may need to make this clear to those appealing a decision.

What is a regulatory decision?

A regulatory decision is a decision taken in the exercise of a regulatory function, which is adverse to a regulated person.

This can include taking a step that removes an operator from the regulated community, such as revoking a permit or removing an operator from a register of

exemptions. It also includes, setting a charge for a site, which is payable under a charging scheme and decisions on regulatory report forms.

A regulatory decision is not:

- advice and guidance
- a notice of intent
- where we are informing the regulated customer that we are proposing to or minded to do something,
- existing policy and procedure (unless it is because we aren't following our policy/procedure)

For decisions to prosecute, the Code for Crown Prosecutors, under which these decisions are made, requires a continuing process of review to be applied to all cases. We therefore do not accept regulatory appeals in relation to decisions to prosecute.

The decision to reject an enforcement undertaking offer is a regulatory decision. However, we will not review a decision to reject where we receive the request within 28 days of a prosecution court hearing due to insufficient time being available and the risk of interference with the court process.

We do not consider that we make a regulatory decision where legislation says we must impose a penalty and gives us no discretion about imposing the penalty. Similarly, we do not consider we are making a regulatory decision where the legislation sets out the amount of a penalty, unless we are given discretion over the amount.

When a regulated customer is dissatisfied with the conduct of the regulator, for example the behaviour of our staff, this would be dealt with as a complaint and not a regulatory appeal.

For any complaint which relates to something that is not a regulatory decision please refer to our [LIT 11241 How to handle complaints guidance](#).

What is the purpose of the time limit?

A request for a regulatory appeal to ask us to reconsider a regulatory decision should be made promptly. This is so that there is certainty about the requirements regulated customers should operate under. It is not appropriate for customers to use this process in respect of regulatory decisions taken beyond the timescales set out in this procedure. These are designed to ensure that regulatory appeals are made and dealt with promptly.

See overview and further guidance below for timescales on the process.

What to do if it is both a complaint and a regulatory appeal?

A regulated customer may raise issues where there is both a complaint and a regulatory appeal, for example, where there is a complaint about a member of staff as well as the decision we have made.

The regulatory appeal and the complaint must be managed separately. Where there are multiple issues being raised this should be discussed at the initial discussion stage (link to below) to explain the different processes to the customer and if they want to continue with both processes.

Overview of process

The table below provides an overview of the appeal process.

Stage 1	
1. Pre-regulatory appeal discussion	The regulated customer has 14 calendar days from the date of the regulatory decision to raise concerns with original decision maker
2. Response	Aim to respond within 14 calendar days. Write to regulated customer and give timeframe if not possible. If situation remains unresolved regulated customer can choose to move to Stage 2.
Stage 2	
3. Regulatory appeal submitted	Regulated customer must submit the regulatory appeal within 21 calendar days of Stage 1 decision.
4. Logging	Regulatory appeal is logged on tracker system
5. Screening	Regulatory appeal is screened to ensure that the subject of the challenge meets the definition of a regulatory decision and the appeal is made within the timescales set out above. If appeal is rejected, a letter is sent explaining why and tracking system updated.
6. Regulatory appeal allocated	Handover note is requested from original decision maker.

	<p>Regulatory appeal is allocated to appeal decision maker.</p> <p>Regulated customer updated with the details of the appeal decision maker and a copy of the handover document.</p>
7. Information passed to appeal decision-maker	Appeal decision-maker receives information submitted by the regulated customer and the handover document from the original decision maker.
8. Review of information	Appeal decision maker checks all documents and requests more or seeks clarification if the appeal decision maker deems it necessary. This could include talking to subject matter experts.
9. Appeal outcome	<p>Aim to respond within 21 calendar days.</p> <p>Appeal decision maker completes decision document.</p> <p>Letter sent to regulated customer explaining outcome and next steps.</p> <p>Original decision maker informed and any documents updated as necessary</p>
10. Tracker	Tracking system is updated with outcome.

Appeals process

Stage 1 – Pre-regulatory appeal discussion and response

The regulated customer should raise their concerns with the original decision maker. This must be done within 14 calendar days of the original decision. This could be via phone, email or letter. If made verbally, a record must be made of the discussion.

This stage is an opportunity for quick corrections to be made or misunderstandings to be resolved. We aim to respond in 14 calendar days but will write to the regulated customer and give a timeframe for response if not possible.

The original decision maker may discuss the issue within their team/department, for example team leader or senior officer, to review the points raised by the customer and find a quick resolution.

When responding, you must use the template to explain your decision and what the next stage is, if the issue remains unresolved and the customer wants to submit a regulatory appeal. This template will explain to the customer what a regulatory decision is and what they need to do to submit an appeal. Any correspondence must be saved.

Stage 2 – Regulatory appeal

Regulatory appeal submitted

Regulatory appeals must be submitted within 21 calendar days of the Stage 1 pre-regulatory appeal discussion decision.

Regulatory appeals must be submitted by the regulated customer using the template available on GOV.UK. The template requires the regulated customer to be clear what decision they are appealing, why the decision has been adverse to them and evidence why they consider our decision is wrong.

For digitally excluded customers a hard copy of the form can be sent out in the post to a requested address.

Regulatory appeals must be logged on the tracking system at this stage [by a central team – tbc].

Screening of regulatory appeals

Once a regulatory appeal has been submitted, the [central team] will check that it is an appeal against a regulatory decision, has been made by the right person, and that the appeal has been made within the correct timescale. If the appeal is rejected, the customer is informed by the [central team], using the template.

Appeal is updated on the tracking system by the [central team].

Allocation of the regulatory appeal

The appeal should be allocated to an impartial person by the [central team]. This means someone who was not involved in the original decision.

The appeal decision maker should be a minimum of a Grade 5 but not lower than the grade of the original decision maker. The central team will advise the original decision maker who the appeal has been allocated to and will request the handover note. This will be in the form of a template with attachments that will include all relevant information such as decision documents. The [central team] will inform the regulated customer who is undertaking the appeal, what happens next, and will also provide them with a copy of the handover note.

The [central team] will send the handover note and the documentation from the regulated customer to the appeal decision maker.

Appeal allocation is updated on the tracking system by the central team.

What does the appeal decision-maker do?

When a regulatory appeal is made against a regulatory decision, the 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. In some cases, it will not be practicable for the appeal decision-maker to stand completely in the shoes of the original decision-maker because the original decision involved observing a state of affairs at a particular point in time that cannot be recreated (for example, noise or odour conditions). In such cases, the appeal decision-maker should still consider afresh the information available about the state of affairs at that point in time and decide whether the original decision should stand.

The appeal decision-maker is not confined to the information which was before the original decision-maker and may have regard to fresh information, new relevant considerations that have arisen since the original decision was made, as well as submissions made on behalf of the appellant. The appeal decision-maker may endorse and uphold the original decision or substitute their own decision. They should keep in mind that decisions made by them may be scrutinised by interested third parties as well as the regulated customer.

The appeal decision maker will complete a decision document. The length and detail of the decision document should be proportionate to the subject matter of the appeal but should summarise what information has been used during the review, the reasons to explain their decision on the regulatory appeal and what will happen as a result of the outcome and the timescales, for example notice withdrawn or reissued.

After the decision

We aim to respond in 21 calendar days but the appeal decision maker will write to the regulated customer and give a timeframe for response if not possible.

The regulated customer is informed of the outcome of the regulatory appeal and what the next steps are using the template.

The original decision maker is informed of the outcome and what steps they need to take.

If the appeal identifies any immediate changes that are needed to guidance or training, the appeal decision maker should inform who needs to make these changes.

The outcome of the regulatory appeal is updated on the tracking system by the [central team].

Reviews of regulatory appeals submitted

We will undertake a periodic review of all appeals submitted and the outcomes. This will allow us to identify and share any lessons learnt, update any guidance and training.

Time recording

To monitor the time used to complete regulatory appeals all people involved must record their time using the regulatory appeal timecode. There is a time recording code for both stage 1 and stage 2 of the process.

Related documents

Links to templates and other relevant guidance
