

WATER APPEALS COMMISSION

The Water Appeals Commission is an appellate body independent of any Government Department. It was established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973 (as amended) and its proceedings are governed by Article 8 of that Order.

Appeals to the Water Appeals Commission: Notes for Appellants

1.0 Appeals must be submitted to:

Water Appeals Commission
Park House
87-91 Great Victoria Street
BELFAST
BT2 7AG
Telephone: 028 9024 4710
Fax: 028 9031 2536
E-mail: info@pacni.gov.uk

Please note the Commission gives the same careful consideration to all appeals irrespective of which procedure is followed.

2.0 Appellants must submit:-

- * Form WAC 1 –notice of appeal;

A copy of this form may be obtained from the Commission.

Appellants should also submit:-

- * copies of the application details submitted to the Department and
- * a copy of the newspaper advertisement (if any) published at the time of the application - state name of newspaper and date the advertisement appeared; and
- * a copy of the decision notice.

3.0 Procedures for Deciding Appeals

There are four procedures for collecting information to decide appeals:-

- an exchange of written representations;
- an exchange of written representations and a site visit conducted by a Commissioner;
- an informal hearing; and
- a hearing.

You **must** state your preferred procedure on the appeal form.

Written Representations

- 3.1** The aim of the written representations procedure is to enable appellants to pursue their appeals without incurring the expense and/or delays associated with hearings. If both you and the Department agree to have the appeal determined on the basis of written representations and the Commission is satisfied that the procedure is appropriate in the circumstances of the case, you and the other parties will normally be advised of this within 5 weeks of the receipt of the appeal.

3.2 Please take particular note of the following points:

- The time limits set out in Stages 1 and 2 (below) for the submission of representations **will be applied strictly** and will only be extended in exceptional circumstances.
- If a party fails to submit representations within the specified periods, the appeal will proceed to determination on the basis of the information available to the Commission.
- At any stage in the process the Commission may, if it considers it necessary, seek further information by requesting additional written submissions from the parties or arrange a hearing to clarify issues which could not be appropriately covered by written representations.

- 3.3** When the Commission decides to process an appeal on the basis of **written representations (without a site visit)** the following stages will be followed:-

Stage 1 –Submission of representations: All parties, that is the Department, the appellant and third parties (if any) will be required to submit their representations within 4 weeks. Any party not submitting representations by the end of that period will not participate in the next stage.

Stage 2 – Exchange of documents: All documents submitted by the parties will be exchanged and 2 weeks will be allowed for the submission of comments.

Stage 3 –Case referred to a Water Appeals Commissioner: The Commissioner will consider the documents submitted, will carry out an unaccompanied site visit and will normally issue the Commission decision within 2 weeks.

If the decision on the appeal has to be made by the Commission, the Commissioner will report to the Commission, the Commission will consider the report and issue its decision within a further 2 weeks.

3.4 When the Commission decides to process an appeal on the basis of **written representations with a site visit** the following stages will be followed:-

Stage 1 –Submission of representations and notification of site visit: All parties, that is the Department, the appellant and third parties (if any) will be notified of the date, time and place of the site visit and will be required to submit their representations within 4 weeks. Any party not submitting representations by the end of that period will not participate in the next stage and while they may attend the site visit, they may not take part unless requested to do so by the Commissioner.

Stage 2 – Exchange of documents: All documents submitted by the parties will be exchanged and 2 weeks will be allowed for the submission of comments.

Stage 3 –Case referred to a Water Appeals Commissioner: The Commissioner will consider the documents submitted; will conduct the site visit and will normally issue the Commission decision within 2 weeks.

If the decision on the appeal has to be made by the Commission, the Commissioner will report to the Commission, the Commission will consider the report and issue its decision within a further 2 weeks.

3.5 Please note that:-

- (i) the site visit will be conducted by the Commissioner who will raise the site specific issues he/she wishes to have explained and may occasionally seek clarification of other matters. The Commissioner will have identified these matters from the documents submitted. However, the site visit is not an open air hearing;
- (ii) the Commissioner may question any party present at the site visit;
- (iii) the parties may not use the site visit to raise new issues, to present new evidence or to question the evidence of others. They must do this in their written representations;
- (iv) all parties will be given notice of the site visit. The arrangements cannot be changed except in the most compelling circumstances.

Hearings

3.6 *You may represent yourself at an appeal hearing or you may wish to be represented by an agent.*

3.7 **Statements of Case:** Statements of Case **must** be exchanged before the hearing within the specified timetable. The exchange will take place on a reciprocal basis and extension of the period for the submission of Statements of Case will only be granted in the most exceptional circumstances. In the absence of such circumstances, postponement of the hearing will **not** be granted to permit Statements of Case outside the timetable but participation in proceedings will be permitted.

The Commission has prepared a Guidance Note on the preparation of Statements of Case and this can be provided on request.

3.8 These procedures apply to Informal Hearings:-

Pre-Hearing

Stage 1 The Commission will normally give the parties 8 weeks notice of the hearing date and will set out arrangements for submission and exchange of Statements of Case between relevant parties.

Stage 2 At least 2 weeks before the hearing parties must submit their Statements of Case. These will be circulated by the Commission to be read by all in preparation for the hearing.

Hearing

Stage 3 The Commissioner will set out the main issues for discussion and will generally ask the Department to open. All parties will be given the opportunity to participate and may ask questions although there will be no formal cross-examination. After the hearing the Commissioner will visit the site (usually unaccompanied).

Post-Hearing

Stage 4 Following the site visit the Commissioner will present his/her report normally within 4 weeks from the date of the hearing. If the decision on the appeal has to be made by the Commission, the Commissioner will report to the Commission, the Commission will consider the report and issue its decision within a further 2 weeks.

3.9 These procedures apply to Formal Hearings:-

Pre-Hearing

Stage 1 The Commission will normally give the parties 12 weeks notice of the hearing date and will set out arrangements for submission and exchange of Statements of Case between relevant parties. Where there is a significant number of participating parties the Commission may, as an alternative, arrange a Pre-hearing Meeting 3 weeks before the date of the hearing to facilitate the exchange of Statements of Case.

Hearing

Stage 2 At least 3 weeks before the hearing parties must submit their Statements of Case. These will be circulated by the Commission to be read by all in preparation for the hearing.

Stage 3 Department A representative or representatives of the Department may summarise the case and respond to the cases of the other parties. The representative(s) may be questioned by the appellant and other parties present.

Stage 4 Third Party Objectors (if present) may summarise their case and respond to the cases of the other parties. Other parties may ask questions

Stage 5 The Appellant or Agent (if appropriate) may summarise their case and respond to the cases of the other parties. The appellant and witnesses (if present) may be questioned by the Department and third party objectors.

Stage 6 Third Party Supporters (if present) may summarise their case and respond to the cases of the other parties. The Department and third party objectors may ask questions

Post-Hearing

Stage 7 The Commission After the hearing the Commissioner will visit the site (usually unaccompanied) and normally issue the Commission decision within 5 weeks. If the decision on the appeal has to be made by the Commission, the Commissioner will report to the Commission, the Commission will consider the report and issue its decision within a further 2 weeks.

3.10 Please take note of the following points:-

- (i) The Commissioner will often put questions to some or all of the parties during the course of the hearing.
- (ii) If you choose to present your appeal without professional assistance the Commissioner will be as helpful as possible and will often adjust the usual procedure to make it less formal.

Note: These hearing procedures will also apply, appropriately modified, in respect of “third” party appeals by the Fisheries Conservancy Board (FCB) and the Foyle, Carlingford and Irish Lights Commission (FCILC) against discharge consents issued under the Water Order. In essence, applicants for consent will have the opportunity to present their case last.

4.0 Advertising of Appeals

The Water (Northern Ireland) Order 1999, which came into operation on 24 August 2001 requires the Commission to advertise certain appeals in one or more newspapers circulating in the local area and to recover the expenses of the advertisement from the appellant. The appeals that have to be advertised are those related to the following statutory provisions:-

- (a) Section 11A(4)(b) of the Fisheries Act (Northern Ireland) 1966 (fish culture licences);
- (b) Article 11(4) of the Water and Sewerage Services (Northern Ireland) Order 1973 (acquisition of water rights);
- (c) Article 6 of the Water (Northern Ireland) Order 1999 (water quality objectives); and
- (d) Article 13(1)(a), (b), (c), (d), (f) and (g) of the Water (Northern Ireland) Order 1999 (appeals in relation to consents).

4.1 The bill for advertising will be sent to the appellant and **must** be paid before the Commission processes the appeal.

5.0 Checklist

Before sending your appeal to the Commission, please **make sure** you have fully completed and signed form WAC 1.

You should also enclose:-

- * copies of the application details;
- * a copy of the newspaper advertisement (if any) published at the time of the application - state name of newspaper and date the advertisement appeared; and
- * a copy of the decision notice.

6.0 Further Information

If you require further information about appeals to the Water Appeals Commission, please contact the Commission staff at:

*Park House
87-91 Great Victoria Street
Belfast, BT2 7AG
Tel: 028 9024 4710
Fax: 028 9031 2536
E-mail: info@pacni.gov.uk*

The Commission staff will also be happy to answer any further queries you may have about the procedures.