



Department
of Energy &
Climate Change



Llywodraeth Cymru
Welsh Government



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DOE

Department of
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CRC Energy Efficiency Scheme – Appeals Guidance

Guidance on CRC appeals process for phase one,
and for the second phase and beyond

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Introduction

What are the main changes?

Following the simplification of the CRC, the appeals process has been updated for the second and subsequent phases.

Any appeals in relation to the first phase will be heard under the existing procedure set out in the 2010 CRC Order. The second part of this document sets out what the new process is and who is responsible for hearing the appeal under the 2013 Order, applying to second and subsequent phases.

Main change points for participants are:

- Appeals from the second phase onwards, in England and Wales, are heard by the First-Tier Tribunal.
- Northern Ireland appeals will be heard by the Planning Appeals Commission.
- Scotland will continue to have appeals heard by the Scottish Minister.
- All days in the appeal process, for the second phase onwards, are now calendar days rather than working days.
- Where the appeal is lodged within the UK, will determine the number of days in which to appeal.

This guidance is intended to supplement the appeals processes under the 2010 and 2013 Orders, but if there is any inconsistency between this guidance and the relevant legislation, the legislative position is intended to prevail.

Appeals under the CRC Energy Efficiency Order 2010 - First phase of the scheme

Introduction

1. This section outlines the appeals process under the CRC Energy Efficiency Scheme Order 2010 (SI 2010 No 768) ('the 2010 Order').
2. This part of the guidance is intended to supplement the appeals process under the 2010 Order. However, where the appeal body considers it necessary, and in accordance with legislation, it has the discretion to modify any of the procedures set out in the guidance. In these circumstances, it would be helpful for the appeal body to notify the appellant and administrator of any such modifications.

Appeals (General)

3. The ability to raise an appeal is restricted to those parties subject to a relevant determination, enforcement notice or civil penalty, as set out in paragraph 5 below. Third parties without such direct interest are not eligible to raise an appeal under the CRC Scheme.
4. Under the 2010 Order appeals may be made in the following circumstances:
 - A public body or undertaking notified of a determination under article 74(1) of the 2010 Order may appeal against that determination.
 - A person served with an enforcement notice may appeal against that notice.
 - A public body or undertaking given notice that they are liable to a civil penalty may appeal against the imposition of that penalty.

Phase One - Grounds for appeal

5. Possible grounds for appeal against a determination, enforcement notice or penalty could be,
 - that it was based on an error of fact;
 - that it was wrong in law; or
 - that it was unreasonable.

Phase One - Before making an appeal

6. Prospective appellants are advised to try to resolve any difficulties or disagreements with their administrator before commencing the appeals process. However, the appeal body should receive an appeal within the time set out as detailed in paragraph 15 (see below).

Who decides your appeal?

7. The appeal body will depend on which administrator made the determination or issued the enforcement notice or civil penalty being appealed. Where the determination, notice or penalty is made or given by:
 - The Environment Agency, the appeal body is the Secretary of State.
 - Natural Resources Body for Wales, the appeal body is the Welsh Ministers.
 - The Scottish Environment Protection Agency, the appeal body is the Scottish Ministers.
 - The Chief Inspector, the appeal body is the relevant Northern Ireland Department.
8. The conduct of an appeal may be delegated by the relevant appeal body, to a delegated person. This person will hear the appeal and make recommendations to the relevant appeal body. However, the relevant appeal body will make the final determination of each appeal.
9. Where an appeal is by an administrator against either the Secretary of State, or a relevant Minister, in which case an independent person will be appointed will both hear and determine the appeal.
10. If no person is appointed in respect of an appeal, the appeal body will undertake the hearing of the appeal.

How to make an appeal

11. An appellant must submit written notification of their appeal ('Notification'), together with a statement of the grounds of their appeal ('Statement'), within the time limit set out in paragraph 15 below, to the relevant appeal body. The Statement should include full details of the appellant's case, along with any supporting documentation they wish to provide. Contact details for each appeal body for the first phase of the CRC scheme are listed in Annex A.
12. Appellants are advised to send their Notification and Statement by email or hardcopy via a service that provides proof of delivery. Appellants may decide to use the appeal form that combines the Notification and Statement in one document, or submit them separately in a format of their choice. Appellants are also required to provide a contact address and email address for appeal-related correspondence.
13. Appellants should indicate their preference for an oral hearing or for the determination to be on written representations. Further details about these procedures can be found in paragraphs 17 to 36. Either the appellant or the administrator may request the oral hearing procedure. Where either party requests an oral hearing, the appeal body will review the representations provided by both parties, and decide whether the case would be suitably dealt with by way of a written representation or whether to proceed via the oral hearing procedure.
14. 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 does not guarantee that this type of information will not be published. The determination of any appeal may be made public by the appeal body (including on the appeal body website) as the appeal body considers appropriate.

Timescales for making an appeal

15. The Notification and Statement are to be received by the relevant appeal body no later than 40 working days after the date of determination, service of enforcement notice or imposition of the civil penalty.
16. The appeal body has discretion whether to accept an appeal received later than 40 working days. Where an appeal is not allowed, the appeal body will write to inform the appellant the reason why the appeal was not allowed.

After you appeal

17. When the appeal is received within the 40 working day appeal period, the appeal body will log the appeal and send an email acknowledgement to the appellant as soon as is reasonably practicable. The appeal body may decide an appeal received late.
18. This acknowledgement will contain an appeal reference number; the issuing of which indicates the start of the appeal determination process. The appeal body must, as soon as reasonably practicable after receiving the Notification and Statement, send these on to the relevant administrator.
19. The administrator will have 40 working days from the date of receipt of the appeal reference number in which to prepare and submit their representation ('Administrator's Statement') in respect of the appellant's Statement to the appeal body, unless a longer time is reasonably required and agreed with the appeal body. The Administrator's Statement must contain full details of the administrator's case, along with any supporting documentation they wish to provide. They will also be given the opportunity to comment on the appellant's choice of procedure.
20. It will be the responsibility of the appeal body hearing the appeal to determine the procedure. In determining the procedure, the appeal body will take into account the preferences of the appellant and the administrator.
21. The appeal body hearing the appeal will notify the appellant, administrator and appeal bodies of the selected procedure and relevant arrangements in respect of each appeal.

The effect of making an appeal

22. The bringing of an appeal except where the appeal body has given the appellant notice under paragraph 15 of Schedule 10 (2010 Order), suspends an enforcement notice, financial penalty or publication taking effect ;
23. However it should be noted that under paragraph 15 of Schedule 10 the bringing of an appeal does not suspend a determination or a civil penalty from taking effect.
24. An appeal does not suspend a determination or any civil penalty that is not the subject of an appeal.
25. As explained below, the appeal procedure can be carried out through written representation or an oral hearing. The written representation procedure is usually the quickest, simplest and most cost effective way of deciding an appeal.

Written representation

26. The written representation process commences with the Notification, Statement and Administrator's Statement.
27. After the administrator has submitted its Administrator's Statement to the appeal body, the person hearing the appeal will provide a copy of it to the appellant. The appellant then has 15 working days to provide comment on the Administrator's Statement (the appellant's 'Further Statement') to the appeal body. The person hearing the appeal will then consider the appellant's Statement and Further Statement (if one has been made), the Administrator's Statement, along with supporting documents (of either party), once all documentation has been received the appeal body hearing the appeal will decide if the appeal will be undertaken by way of a written representation. **NB:** If a request for an oral hearing has been made, it will be at this stage after reviewing the documentation the appeal body will decide whether to proceed with the appeal by written representation or by an oral hearing.
28. Once the appeal body has all the documents, and a written hearing has been undertaken, they will make a determination on the appeal. If the relevant appeal body has appointed a delegated person to hear the appeal, the delegated person will make a recommendation on the outcome of the appeal to the relevant appeal body who will make the final determination. This shall be done within 30 working days of having received the Further Statement, or 45 working days of having provided a copy of the Administrator's Statement to the appellant if no Further Statement is provided, and shall (where a person has been appointed to hear the appeal) include reasoning for its recommendations.

Oral Hearing

29. Where requested by an appellant or the administrator and approved by the appeal body if they consider it appropriate, an oral hearing will be held as part of the appeal determination process.
30. Once the appeal body hearing the appeal has provided the appellant with a copy of the Administrator's Statement, and following any Further Statement or any request for further information from the appeal body hearing the appeal they will notify the appellant if the appeal is going to be conducted by way of an oral hearing.
31. The form of the hearing will be at the discretion of the appeal body hearing the appeal. This discretion will extend to requesting additional information to be provided in advance of, or at, the hearing and the form that this should take, if the appeal body hearing the appeal considers that appropriate. Any such request will be provided with the notification that the appeal is to be considered by way of an oral hearing. If the appeal body hearing the appeal makes such a request, it will notify both the appellant and administrator of this, and will provide a copy of any additional information provided to it, to whichever party was not required to submit the information.
32. After it has been decided that an appeal will be conducted by way of an oral hearing, the appeal body hearing the appeal will notify the appellant, the administrator and the other appeal bodies, of the time and date along with the location of the hearing. If there is a substantive reason why either the appellant or the administrator is unable to attend a hearing on that date, the appeal body hearing the appeal may at their discretion, agree another date with both parties. The hearing will take place in a location within the geographic location of the administrator and will be publicised on the website of the relevant appeal body, where appropriate.

33. Representation at the hearing will be permitted by the appellant and relevant administrator. A representative from any of the appeal bodies may also attend to observe.
34. Third parties may be allowed to make representations at the hearing in person at the discretion of the appeal body hearing the appeal. Any third party wishing to make a representation must notify the appeal body of this within 15 working days of any hearing being advertised on the website of the relevant appeal body.
35. The hearing will be conducted in public unless the appeal body hearing the appeal considers that the subject of the appeal is commercially confidential or has national security implications. In such cases, the appeal body hearing the appeal will make arrangements for part or all of the hearing to be held in private as appropriate.
36. If a person has been appointed to hear an appeal on behalf of an appeal body, once it has heard the appeal they shall make its recommendations to the appeal body taking into consideration the submissions and evidence and provide it to the appeal body, along with reasoning for its recommendations, as soon as reasonably practicable after the hearing.

The appeal decision

37. As soon as reasonably practicable after the appeal is heard, the appeal body will determine the appeal taking into consideration the evidence made available to the appeal body by the parties or the appointed person as applicable. Where an Independent Person is appointed, to hear appeals brought by the administrator against Ministers, then the Independent Person will both hear and determine the appeal.
38. The appeal body will inform the appellant, administrator and other appeal bodies of the appeal determination and reasoning after the determination. Similar notification will be provided to any third parties who provided representation at the hearing.
39. Where an appeal is allowed the appeal body's determination will state whether the subject of the appeal is affirmed, cancelled or modified, and if modified, how, including the date by which any modified enforcement notice must be complied with, and when any modified financial penalty is due.
40. The appeal body will consider as appropriate to publish the outcome of any appeals. These will usually appear on the appeal body's website and/or on the Government website.

Costs

41. There are no charges to pay on lodging an appeal. Both the appellant and the administrator will be responsible for their own costs in respect of the appeal.
42. 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, then the appeal body may, on request of the administrator, award the administrator its reasonable costs.
43. 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 will be liable for these costs, the level of which will be determined between the parties to the appeal, or in the absence

of such agreement, by the appeal body. If unpaid, the costs are recoverable as a civil debt by the relevant administrator under the 2010 Order (Schedule 10, paragraph 16(b)).

Withdrawal of appeals

44. An appellant may withdraw an appeal at any time by notifying the relevant appeal body in writing or by email. The appeal body will send a copy of the notification retracting the appeal to the administrator as soon as is reasonably practicable, and may wish to provide notice to the other administrators and any third parties scheduled to provide representation at any oral hearing arranged.

Appeals under the CRC Energy Efficiency Order 2013 – Second Phase onwards

Introduction

45. This section outlines the appeals process under the CRC Energy Efficiency Scheme Order 2013 (SI 2013 No 1119) (“the 2013 Order”).
46. The changes to the appeals process follows simplification of the CRC, and was consulted on in 2012. The Government response can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68946/Consultation_on_Simplifying_the_CRC_Energy_Efficiency_Scheme_-_Government_Response.pdf
47. This part of the guidance is intended to supplement the appeals process under the 2013 Order. However, where the appeal body considers it necessary, and in accordance with legislation, it has the discretion to modify any of the procedures set out in the guidance. In these circumstances, it would be helpful for the appeal body to notify the appellant and administrator of any such modifications.

Appeals (General)

48. The ability to raise an appeal is restricted to those bodies subject to a relevant determination, enforcement notice or civil penalty. Third parties without such direct interest are not eligible to raise an appeal under the CRC Scheme.
49. Under the 2013 Order appeals may be made in the following circumstances:
 - A public body or undertaking notified of a determination under article 57(1) of the 2013 Order may appeal against that determination.
 - A person served with an enforcement notice may appeal against that notice.
 - A public body or undertaking given notice that they are liable to a civil penalty may appeal against the imposition of that penalty.

Grounds for appeal

50. The grounds on which a determination, notice or penalty may be appealed are:
 - that it was based on an error of fact;
 - that it was wrong in law; or
 - that it was unreasonable.

Before making an appeal

51. Prospective appellants are advised to try to resolve any difficulties or disagreements with their administrator before commencing the appeals process. However, an appeal should be received by the appeal body within the requisite time period, as detailed in paragraph 57 to 59 below for phase two.

Who decides your appeal?

Appeals by scheme participants

52. The appeal body will depend on which administrator made the determination or issued the enforcement notice or civil penalty being appealed. Where the determination, notice or penalty is made or given by:
- The Environment Agency, the appeal body is the First-tier Tribunal.
 - Natural Resources Body for Wales, the appeal body is the First-tier Tribunal.
 - The Scottish Environment Protection Agency, the appeal body is the Scottish Ministers.
 - The chief inspector, the appeal body is the Planning Appeals Commission.

Appeals by the scheme administrators

53. Where the appellant is the Environment Agency, the appeal body is the First-tier Tribunal.
54. Where the appellant is or includes the Natural Resources Body for Wales or Scottish Environment Protection Agency, the appeal body is an independent person, pursuant to paragraphs 2 & 3 of article 89 (2013 Order), which the Welsh or Scottish Ministers appoint in writing.
- An “independent person” means a person who has no individual interest in the matter subject to the appeal and is independent of the parties to the appeal.
55. When an appeal is made by the chief inspector, the appeal body is the Planning Appeals Commission.

How to make an appeal

56. Appellants under the second phase should submit written notice of the appeal together with a statement of the grounds of appeal, within the time limit set out in paragraph 57 to 59 below, in line with relevant requirements to the relevant appeal body. The notification should include details of the appellant’s case, along with any supporting documentation they wish to provide. Contact details for each appeal body for the second phase are listed in Annex B.

Timescales for making an appeal

57. England and Wales participants, the appeal is to be received by the First-Tier Tribunal no later than **28 calendar days** after the date of determination, service of enforcement notice or imposition of the civil penalty under the second phase.
- For appeals made by Natural Resources Wales, the appeal would be to the Minister, who would then appoint the independent person. The **28 calendar days** would be the time to lodge the appeal to the Minister not to the independent person who would be appointed afterwards.

58. Northern Ireland participants- The appeal is to be received by the Planning Appeals Commission (PAC) within **47 calendar days** beginning with the date of determination, service of enforcement notice or imposition of the civil penalty under the second phase. **NB:** for participants filling in the online form and pressing send - the appeal receipt date is **NOT** the date of the e-mail / on line application is received by the PAC. PAC will not mark the appeal as received until they receive payment.
59. Scotland participants - The appeal is to be received by the Scottish Ministers, no later than **40 calendar days** after the date of determination, service of enforcement notice or imposition of the civil penalty under the second phase.
- For appeals by Scottish Environment Protection Agency against the Minister, the appeal would be sent to the Minister. The Minister would then appoint an independent person. The **40 calendar days** would be the time to lodge the appeal with the Minister, and not the Independent Person who would be appointed afterwards.

Action on receipt of an appeal - Scotland

60. When the appeal, is received within the **40 calendar day** appeal period, the appeal body will log the appeal and provide an email acknowledgement to the appellant 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 copy the Notification, Statement and reference number to the relevant administrator, as soon as is reasonably practicable.
61. The administrator will have **40 calendar days** from the date of receipt of the appeal reference number in which to prepare and submit their representation ('Administrator's Statement') in respect of the appellant's Statement to the appeal body, unless a longer time is reasonably required and agreed with the appeal body. The Administrator's Statement must contain full details of the administrator's case, along with any supporting documentation they wish to provide. They will also be given the opportunity to comment on the appellant's choice of procedure (written or hearing) and to state their preference.
62. It will be the responsibility of the person hearing the appeal to notify the appellant, administrator of the selected procedure, and of the relevant arrangements in respect of each appeal.

Action on receipt of an appeal - England, Northern Ireland and Wales

63. For England, Wales and Northern Ireland the actions on receipt of an appeal is set out on the relevant appeal body website.
- England and Wales
 - <http://www.justice.gov.uk/tribunals/general-regulatory-chamber/hearings-and-decisions>
 - Northern Ireland
 - http://www.pacni.gov.uk/procedures_for_planning_and_water_appeals.pdf

The effect of making an appeal – second phase

64. Any enforcement notice, financial penalty or publication subject to the appeal will be suspended from the date that the appeal is submitted to the appeal body pending the

determination of the appeal. An appeal does not suspend a determination or any civil penalty that is not the subject of an appeal.

Number of days to make an appeal

65. Scotland retained the previous method of handling appeals, as is set out above (see paragraphs 7 to 36) as for phase one. The main difference is in the days counted under the second phase, the number of days is now calendar days rather than working days.
66. Processes for appeals in **England and Wales (28 calendar days)**, **Northern Ireland (47 calendar days)** are set out on the relevant appeal body websites, see hyperlinks in Annex B.

Decisions on appeals

67. Procedures for deciding appeals in Scotland is set out above as for phase one.
68. England, Wales and Northern Ireland are set out on the relevant appeals body website (see Annex B).
69. The relevant appeal body may decide to publish the outcome of the appeal where it considers it appropriate.

Withdrawal of appeals

70. Process for the withdrawal of appeals in England, Wales and Northern Ireland are set out on the relevant appeals body website (see Annex B). In Scotland, an appellant may withdraw an appeal by notifying the appeal body in writing or by email, the appeal body must as soon as is reasonably practicable notify the administrator of the withdrawal.

Annex A – contact details for appeal bodies under phase one

Secretary of State

Email: CRC@decc.gsi.gov.uk

Post: CRC Appeals, Department of Energy and Climate Change, Area 1A, 3 Whitehall Place, London, SW1A 2AW

Welsh Ministers

Email: RPPmailbox@wales.gsi.gov.uk

Post: CRC Appeals, Radioactivity and Pollution Prevention Branch, People and Environment Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ

Scottish Ministers

Email: dpea@scotland.gsi.gov.uk

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

Northern Ireland Department

Email: climate.change@doeni.gsi.gov.uk

Post: CRC Appeals, Department of the Environment Northern Ireland, 6th Floor (50), Goodwood House, 44-58 May Street, Belfast, BT1 4NN

Annex B – contact details for appeal bodies under phase two

England and Wales - First-tier Tribunal

Email: 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

In Wales where the appellant is Natural Resources Wales:

Email: rppmailbox@wales.gsi.gov.uk

Post: CRC Appeals, Radioactivity and Pollution Prevention Branch, People and Environment Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ

Northern Ireland - Planning Appeals Commission

Appeals can be made over the internet using the web address www.pacni.gov.uk

Alternatively, appeals may be posted or delivered by hand to the Commission's office.

The address for posting is Planning Appeals Commission, Park House, 87/91 Great Victoria Street, BELFAST, BT2 7AG.

E-mail info@pacni.gov.uk Telephone: (028) 9024 4710.

For information, a fee of £126 must accompany all CRC appeals to the Planning Appeals Commission. At present, there is no facility at PAC to pay the fee electronically and it will have to be posted to PAC or delivered by hand.

Scotland - Scottish Ministers

Email: dpea@scotland.gsi.gov.uk

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

Appeals by a Scottish Government department will be handled by an independent person but should initially be submitted to the relevant contact above.

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