

# Guidance on appeals relating to notices issued under the Specified Animal Pathogens Order

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Department  
for Environment  
Food & Rural Affairs



The Scottish  
Government  
Riaghaltas na h-Alba



Llywodraeth Cymru  
Welsh Government

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## **Guidance on appeals relating to notices issued under the Specified Animal Pathogens Order (SAPO)**

### **Introduction**

1. This guidance is intended to assist the Appellant when lodging an appeal under the Specified Animal Pathogens Order (SAPO), the Appropriate Person when responding to an appeal and the Appointed Person when making recommendations on an appeal. The advice should be followed as closely as possible.

2. Article 9 of the SAPO 2008 (SI No.944), the Specified Animal Pathogens (Wales) Order 2008 (WSI No.129) and the Specified Animal Pathogens (Scotland) Order 2009 (SSI No.95), collectively known as (“the Order”), states that a person may appeal against an improvement or prohibition notice served upon them under the Order (“the Appellant”).

3. The Appellant must appeal within 21 days of the notice being served. As this period is in the Order it cannot be extended. Under the Order the appeal is to be made to either the Secretary of State for the Department of the Environment, Food and Rural Affairs (Defra) (for England) or the Scottish ministers (for Scotland) or Welsh ministers (for Wales) (“the Appropriate Person”) depending on the location of the licence holder in receipt of the notice. The Appropriate Person will then appoint a person to consider the appeal and recommend a course of action (“the Appointed Person”). The relevant policy team of the Appropriate Person will be served with the appeal and will be responsible for the administration of the appeal.

4. Annex 1 provides an explanation of terms used in this guidance. Any terms that are not explained in the Annex have the same meaning as in the Order. Annex 2 provides a summary of the appeal process and timescales and Annex 3 sets out details to be included in the letter of appointment for the Appointed Person.

### **Before making an appeal**

5. Before making an appeal, prospective Appellants should be aware that in coming to the enforcement action in question, a common and transparent procedure will have been undertaken by the Enforcing Authority (in this instance, the Health & Safety Executive referred to in this guidance as HSE) in considering, preparing and serving the notice. In determining compliance with the licence conditions, HSE may

rely on desk-based assessments, inspection/investigation visits and requests for additional information from licence holders in order to assess the licence holder's actual standards. These standards are then compared to those required under the licence condition and set out in relevant guidance (e.g. [Guidance for licence holders on containment and control for specified animal pathogens](http://www.hse.gov.uk/pubns/books/hsg280.htm)) [www.hse.gov.uk/pubns/books/hsg280.htm](http://www.hse.gov.uk/pubns/books/hsg280.htm)

6. In deciding if it is necessary to serve an improvement or prohibition notice, HSE ensures that its decisions are based on all relevant information. HSE utilises specialist inspectors (microbiologists and molecular biologists) to undertake SAPO related inspections/investigations and can call upon other technical specialists where necessary.

7. Prospective Appellants are encouraged to try and resolve any difficulties or disagreements regarding the notice or the measures required within the notice with HSE before commencing an appeal. In some cases, difficulties and disagreements in relation to HSE's decisions may be resolved by engaging in a dialogue with HSE.

8. However, prospective Appellants should note that an appeal must be received by the Appropriate Person within the 21 day deadline. This period includes weekends. Preliminary discussions are not in themselves a full and formal review of the decision which is the subject of the appeal. The intention of any preliminary discussions is to reach timely and practical solutions to issues raised.

9. There is no charge to the Appellant in making an appeal but the Appellant will have to pay their own costs, including those of any professional advisers who assist them (e.g. legal advice/representation).

10. Prospective Appellants should also be aware that if it is their intention to make a complaint against HSE, as opposed to appeal an enforcement decision made by HSE under the Order, the appeals process under the Order and this guidance is not the correct forum for making such a complaint. Complaints should be directed to HSE as set out on the HSE website [www.hse.gov.uk/contact/complain-about-hse.htm](http://www.hse.gov.uk/contact/complain-about-hse.htm)

### **The effect of making an appeal**

11. Where an appeal is made under the Order, the notice issued under the Order is not suspended pending the final determination of the appeal. However, Appellants

can write to HSE requesting that the compliance date of the improvement notice is suspended pending the outcome of the appeal.

12. The time period between the date on which an appeal is lodged and the date on which an appeal is determined will depend on the individual circumstances of the notice and the appeal. A summary of the timescales is available in Annex 2.

### **Timescales**

13. The 21 day deadline is a strict one as set out in SAPO (Article 9 (1)) and the Appropriate Person does not have discretion to accept an appeal submitted outside of the 21 day period.

14. The timescales following submission of the appeal are not specified in SAPO but are included in this guidance to achieve a timely resolution. However, subject to agreement of all parties, the Appointed Person may alter the timescales (eg depending on the complexity of the issues). Timescales are set out in relevant paragraphs throughout this guidance, for ease of reference they are also summarised in Annex 2.

### **How to make an appeal**

15. The Appellant must submit a written notice of their appeal and supporting documents to the policy team of the Appropriate Person. It should be sent to:

in England – Exotic Disease Policy Team  
Department for Environment, Food and Rural Affairs  
Exotic Disease Programme  
Nobel House  
17 Smith Square  
London  
SW1P 2JR  
**Email:** [Mark.Cunningham@defra.gsi.gov.uk](mailto:Mark.Cunningham@defra.gsi.gov.uk)

in Scotland – Endemic Diseases Team  
Animal Health and Welfare Division  
The Scottish Government  
Spur P  
Saughton House  
Broomhouse Drive  
Edinburgh

EH11 3XD

**Email:** [animal.health@scotland.gsi.gov.uk](mailto:animal.health@scotland.gsi.gov.uk)

in Wales -

Exotic Animal Diseases

Office of the Chief Veterinary Officer

Crown Buildings

Cathays Park

Cardiff

CF10 3NQ

**Email:** [animaldiseaseslivestock@wales.gsi.gov.uk](mailto:animaldiseaseslivestock@wales.gsi.gov.uk)

16. The written notice of appeal must be received by the Appropriate Person within 21 days, starting from the date of the notice.

17. The policy team of the Appropriate Person which is responsible for the administration of the appeal will ensure that the appeal is not handled by anyone who was involved in making or advising on the original decision. Safeguards will be put in place to ensure that information and decisions relating to the handling of the appeal are not disclosed or discussed outside of those handling the appeal.

18. The appeal process is primarily dealt with by electronic means and documents should be provided in electronic form wherever possible. There may be some circumstances where the Appellant may not be able to submit all the necessary information electronically (e.g. security issues) in which case the Appellant should contact Defra, the Scottish government or the Welsh government respectively to discuss practical arrangements for submission of their appeal.

19. The Appellant's notice of appeal should be accompanied by:

- the Appellant's name, address and relevant contact details;
- a copy of the notice which is the subject matter of the appeal;
- a statement of the grounds of appeal, including detailed reasons as to why the decision is not accepted and which points are in dispute;
- copies of relevant correspondence between the Appellant and the Enforcing Authority;
- any other documents the Appellant deems necessary to their appeal;
- details of any documents the Appellant requires from the Enforcing Authority to assist their appeal; and

- an indication of whether the Appellant wishes the appeal to be in the form of a hearing or on the basis of written representations (see below).

### **Who can appeal?**

20. The ability to make an appeal is restricted to the licence holder on whom the improvement or prohibition notice has been served under the Order. Third parties not subject to the notice are not eligible to appeal under the Order.

### **Once an appeal is received**

21. The policy team of the Appropriate Person will send an email to the Appellant within 5 working days of receiving the Appellant's notice of appeal to acknowledge that it has been received and forwarded to HSE.

22. Within 21 days of receiving the Appellant's notice of appeal, HSE should provide a written response to the Appellant, stating whether it opposes the appeal, the reasons, and any documents on which it intends to rely. HSE should also aim to comply with any reasonable requests for documents as set out in the Appellant's notice of appeal.

23. The Appellant then has 7 days to comment on HSE's reasons and evidence for upholding the notice.

24. HSE may decide, as a result of receiving the appeal, to revoke the notice that is the subject matter of the appeal. HSE may make this decision at any time during the course of the appeal process.

25. All correspondence should be copied to the policy team of the Appropriate Person. If the appeal stands the Appropriate Person will then appoint the person to consider it and make a recommendation.

### **Withdrawing the appeal**

26. The Appellant may withdraw an appeal at any time by writing to the Appropriate Person, or if appointed, the Appointed Person. If the Appellant withdraws their appeal a fresh appeal cannot be brought in relation to the disputed decision.

### **Appointed Person**

27. The Appropriate Person will appoint an Appointed Person to consider the appeal and to make a recommendation for the course of action.

28. The Appropriate Person will appoint an Appointed Person who is suitably qualified and independent from operational activities. It could be someone with a legal background and from outside government. If the appeal raises technical and scientific issues, the Appropriate Person may consider it necessary to appoint a technical or scientific expert from outside Government to act as the Appointed Person, or a technical or scientific expert **and** someone with a legal background to determine the appeal.

29. The Appointed Person must also be able to commit to completing the appeal process and delivering the required decision no later than three months from the date of their appointment. However, should the process exceed three months the Appointed Person's decision will still be valid.

30. The Appointed Person must be independent and retain their independence for the duration of their appointment. They must confirm that they have no conflict of interest which prevents them from considering the appeal. If there is a conflict of interest or if there is a concern that there may be one, the Appointed Person should make a declaration and seek advice on whether to decline to act, or step down if the conflict comes to light later on during the appeal process.

### **The Appeal**

31. Unless otherwise stated in the Order or indicated in this guidance, the procedure and form of the appeal (including the submission of any further written representations by the parties) will be under the control and discretion of the Appointed Person.

32. Once the Appointed Person has been appointed, they will ensure that the appeal process is reasonable, transparent, accessible, independent and impartial, and will operate according to principles of natural justice. The Appellant and HSE are entitled to be heard at any hearing. The Appellant and HSE may, if they wish, have legal representation. Anything which a party wishes to be considered by the Appointed Person should be seen by the other party.

33. Before the Appointed Person makes their recommendation on the appeal, they must consider all of the evidence. They can ask for further information from the

parties, if they think it is necessary. The Appointed Person will determine the appeal on the basis of whether HSE's decision was reasonable in all the circumstances.

34. The Appointed Person may make a recommendation to the Appropriate Person to confirm, confirm with modifications or cancel the notice.

## **Hearing**

35. Appeals can be dealt with on the basis of either written submissions or a hearing. The decision is at the discretion of the Appointed Person who should take into account the nature and circumstances of the appeal and consult the Appellant and HSE. Although the written submissions procedure is usually the quickest, simplest and most cost effective way of deciding an appeal, a hearing may be appropriate where there are complex issues or disputed questions of fact or law.

36. The procedure to be adopted at any hearing will be determined by the Appointed Person (Annex 2 provides guidance as to an appropriate procedure). In determining the procedure and form of the hearing, the Appointed Person will take into account any views offered by the Appellant and HSE. At any time leading up to the hearing the Appellant or HSE may apply to the Appointed Person for further procedural directions.

37. After it has been decided that an appeal will be conducted by way of a hearing, and after consultation with the Appellant and HSE, the Appointed Person will notify the Appellant and HSE of the date, time and location of the hearing. The hearing should take place within 28 days of either the appointment of the Appointed Person or receipt of HSE's response to the Appellant's notice of appeal, whichever is the later. Where this is not practicable, it should take place as soon as possible after the relevant event. The Appointed Person may vary the time and place of a hearing and is only required to give such notice as appears to be reasonable in the circumstances.

38. The hearing can take place where all parties are present in person or by teleconference or video conference. It will be informal and held in private. The Appellant and HSE will notify the Appointed Person who their representatives will be. This should be limited to as few people as possible who can provide further information or explanation of the issues in dispute and is subject to the discretion of the Appointed Person.

39. Failure by a party to attend a hearing or be represented at it will not prevent the Appointed Person from proceeding in the absence of that party provided that the absent party has been given notice of the hearing. If either of the parties at a hearing has any concerns or questions about the procedure, they must be raised with the Appointed Person either before the hearing or at the time of the hearing rather than afterwards.

### **The Appointed Person's recommendation**

40. The Appointed Person should send their recommendation to the Appropriate Person as promptly as possible, taking the circumstances of the case into account. The Appointed Person should aim to send the recommendation within 21 days of the hearing or 28 days of the appointment of the Appointed Person if decided on the basis of written submissions. If the Appointed Person is unable to send their recommendation within the above timescale, they should contact the Appropriate Person to advise when the recommendation will be sent. However, the Appellant should normally be informed of the Appointed Person's recommendation within 3 months of the appointment of the Appointed Person.

41. The Appellant and HSE will be sent a draft of the Appointed Person's recommendation and have an opportunity to make factual written comments (e.g. to correct misunderstandings) to the Appointed Person. The comments are to be copied to all parties, and the Appointed Person is to consider them before finalising their recommendation. This process should not take more than 28 days unless there are good reasons for any delay.

42. The Appointed Person will ensure their recommendation is easily comprehensible so that the parties can understand the basis on which the recommendation was made. The recommendation must contain a written summary of relevant factors that were raised by the parties and considered by the Appointed Person. The recommendation must give clear reasons for the decision, including how, and why, any issues of fact or law were decided by the Appointed Person.

43. The final written recommendation must be submitted to the Appropriate Person, along with any indicated course of action. The Appropriate Person may then either cancel the notice or confirm it, with or without modifications. The Appropriate Person must notify the Appellant and HSE at the same time.

44. The final decision is confidential between the Appropriate Person, the Appointed Person, the Appellant and HSE. If a copy of the decision is requested by a

third party, or either the Appellant or HSE request that the decision is published, this will be considered by the Appropriate Person. Any such request will be dealt with in accordance with the Appropriate Person's FOI/EIR policies.

45. There is no separate right of appeal against the final decision but it can be challenged through an application for a judicial review. An Appellant considering bringing a judicial review is advised to obtain legal advice at the earliest opportunity.

**Explanation of terms used in this guidance**

1. “The Appellant” means the person on whom an improvement or prohibition notice has been served by an inspector under the Order, and who is appealing HSE’s decision.
2. “The Appointed Person” means the person or persons appointed by the Appropriate Person to consider the appeal and to report in writing, with a recommended course of action to the Appropriate Person.
3. “The Appropriate Person” means the Secretary of State for the Environment, Food and Rural Affairs for notices served in England **or** the Scottish ministers for notices served in Scotland **or** the Welsh ministers for notices served in Wales.
4. “The Enforcing Authority” means the Health and Safety Executive acting on behalf of the Secretary of State for the Environment Food and Rural Affairs for England; Scottish ministers for Scotland and Welsh ministers for Wales.

**Appeals Procedure and Timescales**

1. Improvement or prohibition notice issued by HSE.
2. Engagement between licence holder and HSE to try and resolve issues.
3. If unresolved, Appellant to appeal within 21 days of the date of the notice being served (this timeframe includes weekends). (Note: this is a strict deadline as set out in SAPO (Article 9 (1)) and the Appropriate Person does not have discretion to accept an appeal submitted outside of the 21 day period).
4. The Appellant to send the appeal and supporting documents to the policy team of the Appropriate Person.
5. Policy team of Appropriate Person to email Appellant within 5 working days to acknowledge receipt of Appellants notice and to confirm it has been forwarded to HSE.
6. Within 21 days HSE to decide whether to uphold the notice and oppose the appeal, and write to appellant with supporting documents, copied to policy team of Appropriate Person, with reasons.
7. Appellant to decide within seven days whether to continue with appeal and comment on HSE's reasons and evidence for upholding the notice. Response to be sent to HSE, copied to policy team of Appropriate Person.
8. Within 21 days of receipt of Appellants notice HSE to provide a written response to Appellant;
9. Appellant to comment on HSE's response within 7 days.

The Hearing

10. If appeal to go ahead, Appropriate Person to identify Appointed Person to sort out and agree the appeal process with the parties, consider evidence, and make written recommendations.

11. Hearing to take place within 28 days of either the appointment of the Appointed Person or receipt of HSE's response to the Appellants notice of appeal, whichever is the latest (Note – if this is not practicable it should take place as soon as possible after the relevant event).
12. Appointed Person to notify the Appellant and HSE of the date, time and location of hearing.
13. Appellant or HSE can apply to the Appointed Person any time before the hearing, for further procedural directions.
14. Appellant and HSE to notify Appointed Person who their representatives will be.
15. The Appropriate Person retains the power to make representations to the Appointed Person.
16. In considering the evidence the Appointed Person may request further information from the parties, if necessary.
17. Appointed Person to send their recommendation to the Appropriate Person promptly depending on circumstances of case. If decided by a hearing, the Appointed Person to send recommendation within 21 days of hearing. If decided on basis of written submissions, Appointed Person to send recommendation within 28 days of appointment of Appointed Person. Appellant to normally be informed of recommendation within 3 months of appointment of Appointed Person.
18. Upon receipt of Appointed Person's recommendation, the Appellant and HSE to make factual written comments to Appointed Person who will consider them and finalise the recommendation. Comments to be copied to all parties. This part of the process to take no more than 28 days unless compelling reasons prevent this.
19. Within 3 months of the appointment of the Appointed Person final written recommendation to be submitted to the Appropriate person, the Appellant and HSE (to happen at the same time).

**Appointment letter for the Appointed Person**

The appointment letter should enclose a copy of the notice, the licence and licensing process and contact details for the parties concerned. It should request that within 21 days the Appointed Person sets out the terms of reference (ToR) and broad procedures for the appeal. They should be based on consultation, and ideally agreement, with the parties. They are likely to cover:

- a response to the notice of appeal;
- a list of issues for consideration by the appointed person;
- where appropriate mutual disclosure of relevant documents;
- disclosure of all representations to all parties, including the policy team of the Appropriate Person;
- a common indexed and paginated bundle of evidence;
- witness statements and replies on new points;
- skeleton arguments and authorities to be relied on;
- that government can make representations to the appointed person;
- and
- that the consideration is expected to be on written representations but with an option of a meeting/hearing if considered necessary or appropriate in exceptional cases.

The appointment letter and any enclosures should be copied to all parties.

The policy team of the Appropriate Person will manage the project in line with the appointment letter and any other instructions to ensure delivery of a transparent approach and independence for the Appointed Person. This approach also allows the policy team, in appropriate instances, to make representations on behalf of the respective minister.

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