

Public Health and Protection Appeal Procedure 2014

Scope

This appeal procedure allows businesses and individuals to challenge a regulatory decision made by enforcement officers in Public Health and Protection. . This encompasses the work of Environmental Health, Licensing and Trading Standards. Regulatory decisions include advice that is provided, the actions required to be taken by the business or individual and the enforcement related -decisions taken by officers.

However this appeal procedure only applies if there are no other relevant mechanisms or controls within the legislative process. Therefore this procedure applies in circumstances when the legislation that is being enforced does not contain an appeal mechanism that covers the particular action taken by the officer. Examples of these appeal mechanisms are listed in the appendix to this procedure.

In particular, this appeal procedure does not allow a business or individual to appeal against a decision to prosecute them or to offer them the opportunity to accept a simple caution. This is because the activities of the UK Courts are fully compliant with Human Rights legislation and the system has a comprehensive system of checks and balances in place, including various mechanisms for appeals to higher courts.

Procedure

Businesses and individuals can appeal against an enforcement decision or action taken by an officer of Public Health and Protection. It may be the case that the business or individual is quite willing to admit to having committed a breach of the law, but wishes to request that a less severe form of enforcement action be taken. On some occasions it may be the case that the business or individual may simply be seeking to understand better the reasoning behind a decision. Alternatively the business or individual may want to check that the decision is consistent with other judgements being made by the enforcer in similar circumstances. It should be stressed that an appeal against an action taken is quite distinct from making a complaint about the department in general, which would be covered by the Council's Complaints Policy. Any allegation of misconduct or rudeness made against an officer will need to be investigated under the Council's Complaints Procedure.

An appeal against an enforcement action taken may be requested for any reason, but it is anticipated that in the majority of cases, one of the following reasons will apply:

- Allegations relating to misuse of power;
- Lack of reasonable discretion;
- Poor professional judgement or conduct;
- Disputes over points of fact;
- Disputes over points of law;
- Allegations of non-compliance with the Regulators Code 2013;
- Allegations of a breach of legislative procedures;

A business or individual who is seeking an appeal against any enforcement action taken by an officer of Rhondda Cynon Taff Council's Public Health and Protection department should make their request in writing to:

Service Director, Public Health and Protection, Public Health and Protection, Ty Elai, Dinas Isaf East, Williamstown, Tonypany CF40 1NY.

This should be done within 10 working days of the enforcement action taking place. The business or individual may make comments on the action and support their case with other records such as business records, letters, witness statements and references. The request

does not have to be in any particular format but it should cover all the points that the business or individual would like the Service Director or representative to consider.

The Service Director or a nominated substitute from the Senior Management Team will be responsible for reviewing the case. He or she will examine the evidence, documents and records maintained by the investigating officers and carry out any necessary interviews with officers or other persons.

Appeals will be carried out as quickly as possible. The decision reached will be conveyed in writing to the business or individual within 15 working days of the appeal being requested. In cases where the appeal has failed to overturn the original decision the letter will convey the reason for the decision reached, to ensure that the recipient understands why the decision has been made.

Any decision reached by the Service Director Public Health and Protection will be considered as final although, where relevant, the business or individual still has the right to use the Council's Complaints' Procedure or to seek legal advice about any other courses of action that are available. If the applicable legislation includes an appeal procedure the business or individual will be informed of this right.

Appendix

Examples of appeal mechanisms in legislation enforced by Public Health and Protection

Legislation being enforced	Activity	Section granting right of appeal
Beef and Veal labelling Regulations 2010	Issuing of relabeling notices	Regulation 5
Buildings Act 1984	Issuing of demolition notices	Section 81
Buildings Act 1984	Issuing of notices regarding drainage, use of soil pipes, sanitary conveniences, food storage accommodation, fire escapes, defective state abatement, dangerous structures and ruinous & dilapidated condition	Section 86
Charities Act 2006	Issuing of charity collection permits	Section 62
Clean Air Act 1993	Approvals for furnaces	Section 9
Clean Air Act 1993	Notices requiring information about air pollution	Section 37
Construction Products Regulations 2013	Detention of products Issuing of suspension notices	Regulation 19 Part 2 of Schedule 2
Control of Horses (Wales) Act 2014	Costs for local authority seizing horses Distribution of proceeds from disposal of horses	Section 7
Consumer Rights Bill 2013	Detention of goods or documents following seizure	Paragraph 38 of Schedule 5
Consumer Protection Act 1987	Issuing of suspension notices	Section 15
Consumer Protection Act 1987	Detention of goods or documents following seizure	Section 33
Control of Pollution Act 1974	Issuing of noise abatement notices	Section 74
Cosmetic Products Enforcement Regulations 2013	Issuing of notices	Regulation 14
Eggs and Chicks (Wales) Regulations 2010	Issuing of compliance notices	Regulation 23
Environmental Protection Act 1990	Authorisations and issuing of variation, enforcement and prohibition notices	Section 15
Environmental Protection Act 1990	Issuing of licences	Section 43
Environmental Protection Act 1990	Issuing of remediation notices and prohibition notices	Section 78L
Environmental Protection Act 1990	Issuing of litter cleaning notices	Section 92B
Feed (Hygiene and Enforcement) (Wales)	Suspension or revocation of registration/ approval of feed	Regulation 13

Regulations 2005	business establishments Issuing of feed business improvement notices Issuing of feed detention notices	Regulation 18 Regulation 25
Food Hygiene Rating (Wales) Act 2013	Issuing of food hygiene rating	Section 5
Food Hygiene (Wales) Regulations 2006	Issuing of hygiene improvement notices or remedial action notices	Regulation 20
Food Safety Act 1990	Issuing of improvement notices Issuing of certificates of satisfaction regarding prohibition notices Issuing of licences and registration for food premises	Section 37
General Product Safety Regulations 2005	Detention of products Issuing of safety notices	Regulation 17 Regulation 25
Health and Safety at Work Etc. Act 1974	Issuing of improvement notices or prohibition notices	Section 24
Health and Safety at Work Etc. Act 1974	Issuing of licences	Section 44
Housing Act 1985	Issuing of demolition orders	Section 269
Housing Act 1996	Issuing of enforcement notices, penalty notices or compensation notices to registered social landlord	Section 50E Section 50N Section 50V
Housing Act 2004	Issuing of improvement notices	Schedule 1
Housing Act 2004	Issuing of prohibition notices	Schedule 2
Housing Act 2004	Issuing of emergency remedial action notices	Section 41
Housing Act 2004	Issuing of licences	Schedule 5
Housing Act 2004	Issuing of management orders	Schedule 6
Housing Act 2004	Issuing of overcrowding notices	Section 143
Licensing Act 2003	Issuing, variation and review of premise licences	Schedule 5 Part 1
Licensing Act 2003	Issuing of temporary event notices	Schedule 5 Part 3
Local Government Miscellaneous provisions Act 1976	Issuing of notices for buildings causing a danger to public health	Section 31
Local Government Miscellaneous Provisions Act 1976	Issuing of notices for provision of sanitary appliances at places of entertainment	Section 21
Local Government Miscellaneous Provisions Act 1976	Issuing of hackney carriage and private hire drivers licences	Section 52
Official Feed and Food Controls (Wales) Regulations	Approval of establishments Issuing of notices regarding	Regulation 12 Regulation 33

2009	imports from third counties	
Petroleum (Consolidation) act 1928	Issuing of petroleum licences	Section 3
Safety of Sports Ground Act 1976	Issuing of safety certificates	Section 5
Safety of Sports Ground Act 1976	Issuing of prohibition notices	Section 10A
Scotch Whisky Regulations 2009	Issuing of improvement notices	Regulation 23
Spirit Drink Regulations 2008	Issuing of improvement notices	Regulation 14
Vehicles (Crime) Act 2001	Registration of motor salvage operators	Section 6

