



APPEAL TO SCOTTISH MINISTERS: NOTES FOR APPELLANTS SUBMITTING A TREE REPLACEMENT ENFORCEMENT NOTICE APPEAL (FORM TENA)

These notes relate to appeals to the Scottish Ministers under:

- Section 169 of the Town and Country Planning (Scotland) Act 1997 [*the “Planning Act”*]; in conjunction with
- The Town and Country Planning (Appeals) (Scotland) Regulations 2013 [*the “Appeals Regulations”*]

in respect of tree replacement enforcement notices served by planning authorities under section 168 of the Planning Act relating to alleged breaches of tree preservation orders.

If you want to appeal to Scottish Ministers against a tree replacement enforcement notice served on you by a planning authority, you should use form TENA.

COMPLETING THE APPEAL FORM

The notes below are intended to help you complete the appeal form. This form is mandatory and should be carefully completed to ensure your appeal is valid.

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Appellant(s)	This section should be fully completed with the name, address and contact details of the appellant. The Appeals Regulations require that the appellant’s name and address <u>must</u> be supplied.
Agent	<p>This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect, friend). The Appeals Regulations require that, where an agent is appointed, the agent’s name and address <u>must</u> be supplied.</p> <p>You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided.</p>
E-mail communications	We seek to use electronic communications wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.
Planning authority	This will be the name of the council (or national park authority) who served the enforcement notice.

Reference number	If the planning authority has provided you with a reference number associated with the enforcement notice, please provide this on the appeal form.
Site address	To help us identify the location of the land subject of the enforcement notice and appeal, you should provide the postal address or site name.
OS map grid reference or post code	To ensure we have properly identified the location, you should provide either the ordnance survey national grid reference or the site's post code.
Date on which notice is to take effect	<p>The enforcement notice served by the planning authority will specify a date on which the notice is to take effect. Please note this date in this part of the appeal form.</p> <p>Note: Your appeal <u>must</u> be received by Planning and Environmental Appeals (DPEA) <u>before</u> that date. The Scottish Ministers have no scope or discretion to accept a late appeal.</p>
Ownership of the land	A tree replacement enforcement notice is served on the owner of the land, and only the owner has a right of appeal. Please mark the box at the foot of the first page to confirm that you are the owner.

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Grounds of appeal	Section 169(1)(a)-(e) of the Planning Act sets out the grounds on which you can base an appeal against a tree replacement enforcement notice. These are provided on the form. You must base your appeal on at least one of these grounds, by marking the appropriate box(es).
Statement of appeal	<p>The appeal process is designed to ensure all matters to be considered in an appeal are raised at the earliest possible stage, to allow the Scottish Government to reach decisions quickly, avoiding protracted processes. For this reason, the Appeals Regulations require that you must provide a statement setting out full particulars of your appeal, including a note of all matters you think ought to be taken into account.</p> <p>You will want to ensure that the matters you raise relate to the specific grounds of appeal you have pleaded.</p> <p>The Appeal Regulations provide for the raising of additional matters or submission of further documents only in very limited circumstances. You will however be given an opportunity to provide comments on any matters which the planning authority might raise in its response to your appeal.</p>

List of documents/evidence

As well as providing a full statement of your appeal at the outset, the Appeals Regulations require that all documents, materials and evidence that you intend to rely on in support of your appeal must be provided alongside your appeal form. To ensure we have received all of this information from you, please provide a full list of all supporting documents etc. in this text box.

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Appeal procedure

The appeal process will be managed by the person appointed by the Scottish Ministers to consider and decide your appeal. If, having received your appeal and the planning authority's response, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole), before reaching a final decision. There are several methods available to the appointed person to obtain this information:

Inspection of the site

The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit wherever possible. If an accompanied site inspection is necessary, there will be no scope to discuss the merits of the appeal with the appointed person.

Further written submissions

Parties will be invited to provide information on a specific issue in writing – and each of these parties will then be entitled to respond to the written submissions provided by others.

Hearing session

This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross-examination of hearing participants is not allowed.

Inquiry session

Where a more formal inquiry structure is needed, this session can be held to examine the specific matters identified by the appointed person. Cross-examination of witnesses is likely to occur in inquiry sessions.

If the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed to consider a specific matter, both you and the planning authority

	<p>will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.</p> <p>While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and the planning authority are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.</p> <p>Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.</p>
Site inspection	This section of the form seeks your assistance and opinion in relation to the accessibility of the site subject of your appeal, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.
Bio-security	Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be aware of before they carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide on a separate sheet.

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Other appeals	If you have any other planning (or related) appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide the details on this part of the form.
Checklist	<p>The appeal form is structured to guide you in making a full and valid appeal which will comply with the terms of the Planning Act and the Appeals Regulations.</p> <p>The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.</p>
Declaration	To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date – your e-mail address will act as an electronic signature.

What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to Planning and Environmental Appeals (DPEA), either by e-mail, post or fax. The contact details are at the end of the form.

The Appeals Regulations also require that, at the same time as you send the appeal to us, you must send to the planning authority:

- a copy of the notice of appeal (*the form*);
- your statement of appeal (*page 2 of the form or in a separate document*); and
- a copy of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (as listed on page 2 of the form).

Further information

For further information about the planning appeals process, please see the Scottish Government's Planning Circular 4/2013: *Planning Appeals*. This is available on the Government's website at <http://www.gov.scot/Topics/built-environment/planning>, or can be obtained in hard copy by contacting the Scottish Government's Central Enquiry Unit on 0300 244 4000.

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) on 0300 244 6668. Written queries can be sent to us at either the e-mail or the postal address on the appeal form.

Scottish Government
Planning and Environmental Appeals (DPEA)

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