

**Appeals Procedure under the Petroleum (Consolidation) Act (Northern Ireland) 1929
against a decision by a petroleum licensing authority in respect of a petroleum licence.**

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Introduction

Petrol and its hazards

Petrol and other motor fuels are inherently hazardous. At ambient temperatures petrol gives off flammable vapours which, when mixed with air in appropriate proportions, will burn with explosive force if ignited. If released into the environment, it is injurious to aquatic life and presents a risk to the environment, particularly to potable water supplies. Short-term and long-term contact can have harmful health effects for humans if incorrectly handled.

The safety of people and protection of the environment are major concerns. There is potential for accidents at all sites where petroleum fuel is stored and dispensed. The risks are significantly increased at petrol stations to which the general public has unrestricted access and the need for properly designed and constructed facilities, correctly operated and maintained, is of paramount importance.

The Petroleum (Consolidation) Act (Northern Ireland) 1929 [PCA NI 29] prohibits the storage of petroleum without a licence and it is a matter for the discretion of the individual licensing authorities to enforce the prohibition.

Purpose of Guidance

Appeal decision-making process

The purpose of this guidance is to enable the implementation of a uniform, fair and open decision making process regarding the processing of appeals made against (a) a refusal to grant a licence to store petroleum-spirit or (b) a condition attached to a licence.

The guidelines are based on the requirements of section 3 of the [PCA NI 29] as amended by the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 N.I. 18 and will also enable technical and socio-economic factors to be adequately considered while giving petrol filling station operators or persons storing petrol a fair hearing and at the same time ensuring the high level of safety and environmental protection to which the public is entitled.

Level of Risk

It must be recognised, however, that absolute safety is not possible. There is always some element of risk present and a balance between safety, operational requirements, convenience and economics must be the aim. There is generally a point beyond which the cost of additional safety measures significantly outweighs the added protection they provide.

The Refusal

Legislative requirements

PCA NI 29, section 1, prohibits the keeping of petrol without a license. To ensure public safety and protection from risk of injury it allows local council licensing authority discretion

to refuse to grant the licence or grant a licence with conditions with which the applicant is dissatisfied. The PCA NI 29 is supported by guidance documents which includes, inter alia, the Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations (the Blue Book) and the HSE Approved Code of Practice L133 “Unloading petrol from Road Tankers”.

Planning considerations

The question as to whether a petrol or petrol store station is located in any particular area is a matter that is dealt with by the Planning Service of the Department of the Environment in accordance with the relevant planning legislation. This aspect regarding the storage of petrol does not come within the remit of the Health and Safety Executive (NI) notwithstanding its’ general responsibility for health and safety at work and it’s enforcement functions under the relevant statutory provisions.

Reasons for refusals

A licensing authority may, on application for a licence, refuse to grant the licence, or grant the licence on conditions with which the applicant is dissatisfied. Section 3 (1) of PCA NI 29 requires the licensing authority to provide a certificate setting out the grounds on which the decision to refuse a licence or to attach conditions has been made.

The Appeal

Legislative requirements

In cases where a petrol station operator or owner of stored petrol is dissatisfied with the decision of the licensing authority section 3 of the PCA NI 29 allows an appeal to the Health and Safety Executive (NI) , which can be made either against the refusal to grant a licence or against a condition attached to it.

Appeal deadlines

An appeal must be made in writing within 10 days after receiving the certificate stating the grounds for the licensing authority’s decision. The Executive has power (section 3(1)) to extend the period in which an appeal may be lodged. The appeal must set out the appellant’s claim and be accompanied by the certificate from the licensing authority.

Legislative requirements

In considering an appeal regard must be had to the requirements of the PCA NI 29, relevant statutory provisions ⁽¹⁾ and guidance which includes the Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations (the Blue Book) and the HSE Approved Code of Practice L133 “Unloading petrol from Road Tankers”.

Section 3 (2) and section 3 (3) of the Act permit the Executive to consider the appeal and /or cause an inquiry to be held, it’s circumstances, make site visits and to issue a licence if the licensing authority is not prepared to do so.

Appellant's claim

Section 3(2) makes provisions in relation to appeals to the Executive. Submissions should give arguments intended to counter the reasons stated by the licensing authority for making its' decision. Health and safety law places the onus of proof on the appellant to demonstrate that they have complied with the guidance, the approved code of practice, or have taken other steps which may be regarded as equal to or of higher standard than those set out in guidance.

The Executive will consider the appellants claim in the context of the legislation and relevant guidance. It may also cause an inquiry to be held in accordance with section 3(3) of PCA NI 29.

Site visit

Consideration of an appeal will include at least one site visit. Where as a consequence of any issues arising from the site visit further information is sought from the appellant, this will be requested in writing.

Other matters

The Executive has a duty to take positive action where patent discrepancies become evident as a consequence of the inquiry, which may not have been stated as a reason for refusing the licence. In cases where HSENI finds a breach of any of the relevant statutory provisions it will draw the attention of the licensing authority to that breach.

Conclusions

Allowing the appeal

Where a conclusion is reached that the appeal against a decision to refuse a licence to store petroleum-spirit be allowed this will be supported by independent assessment of the relevant issues and be clearly documented in the appeal report.

Similarly where the conclusion reached recommends that the licensing authority be directed to modify an original condition or attach a new condition to a licence this will also be supported by independent assessment of the relevant issues and be clearly documented in the appeal report

Confirmation of Refusal Decision

Where a conclusion is reached that the decision to refuse a licence to store petroleum-spirit be upheld this will be supported by independent assessment of the relevant issues and be clearly documented in the appeal report.

Notification of the Appeal Decision

Decision Certificate

A certificate stating the decision of the Executive will be prepared for issue to the appellant. This certificate will be headed with the section of the Petroleum (Consolidation) Act (Northern Ireland) 1929 as amended under which the appeal is made and incorporate the following –

- a statement that the appeal was made, in accordance with the provisions of section 3 of the Petroleum (Consolidation) Act (Northern Ireland) 1929 as amended by Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 N.I. 18
- the name and address of the appellant;
- the name and address of the petrol storage location;
- a statement outlining the nature of the decision taken by the licensing authority regarding the issue of a licence under section 3 of the Petroleum (Consolidation) Act (Northern Ireland) 1929 to store petroleum-spirit whether to-
 - a) grant a licence, or
 - b) grant a licence with conditions, or
 - c) refuse to grant a licence;
- a statement that the licensing authority is a proper licensing authority, as defined under section 2 of the Petroleum (Consolidation) Act (Northern Ireland) 1929;
- the Name and Address of the licensing authority;
- a statement that the Health and Safety Executive (NI) has considered the appeal in accordance with the provisions of section 3 of the Petroleum (Consolidation) Act (Northern Ireland) 1929 as amended by the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 N.I. 18 and relevant guidance material;
- a statement outlining the determination made by the Executive following its consideration of the appeal;
- the certificate must be signed on behalf of the Health and Safety Executive (NI) by an officer authorised in that regard.

Advice letter

An advice letter should accompany the issue of the Decision Certificate to the appellant. In cases where the site is owned by a retail company but operated by a franchisee it may be appropriate to advise the company and the site operator separately.

Where the decision of the Executive is to refuse the appeal or to vary the conditions of a licence the letter should indicate the nature and consequences of the decision. In particular where an appeal is refused an assurance should be sought that either measures will be taken to comply with the statutory requirements and obtain a licence or else that the storage of petroleum-spirit will cease forthwith

