

Guidance Booklet: Making an Application under the Land Drainage Act 1991

This guidance document is also available in Welsh. Please contact the tribunal for a Welsh version of this document.



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It is important that you read the following guidance before completing any application form.

Please note that this booklet is intended to provide general guidance only. It is not in any way a substitute for the legislation governing applications to the Agricultural Land Tribunal for Wales, or for professional advice given in the light of personal circumstances.

It is essential for anyone applying to the Agricultural Land Tribunal or involved in Agricultural Land Tribunal proceedings to familiarise themselves with the relevant legislation, or to seek professional advice.

You should contact the ALT if you have any questions about how to make an application or if anything is unclear about the process. We cannot however give legal advice or help with making or responding to an application.

What is the Agricultural Land Tribunal for Wales

The Agricultural Land Tribunal for Wales (ALT Wales) plays an important role in determining disputes relating to the drainage of agricultural land under the Land Drainage Act 1991.

The ALT Wales also determines disputes and other issues between agricultural landlords and tenants, arising from tenancy agreements held under the Agricultural Holdings Act 1986. Please see Guidance-01: Making an Application under the Agricultural Holdings Act 1986.

The ALT Wales is an independent statutory body with jurisdiction for the geographical area of Wales.

Tribunal Membership

The Lord Chancellor is responsible for the appointment and re-appointment of the Chairman, Deputy Chairman and Lay Members. Appointments are made following the advertisement of vacancies and competitive interview by the Judicial Appointments Commission.

Chairman	The Chairman has responsibility for the overall judicial administration of the Tribunal.
Lay Members	Lay Members have a wide range of relevant knowledge and experience which they bring to each Hearing. They sit on the Land Drainage, Farmer or Landowner Panels.
Secretary	The day-to-day administration is largely delegated to the Secretary who deals with all the preliminary paperwork and the processing of applications to the Tribunal. The Secretary consults the Chairman on any legal points arising during the preliminary pre-hearing stages of the proceedings and passes on the Chairman's rulings and Directions in writing to the parties. The Secretary acts as a point of contact for the Chairman, Members and parties and attends all Hearings in order to ensure that proceedings run smoothly.

Making an Application: General

When can I make an application to the Tribunal?

An application under the Land Drainage Act 1991 can be made to the Tribunal at any time.

How do I make an application to the Tribunal?

To make an application you must complete and send the relevant application form to the Agricultural Land Tribunal for Wales. Applications can be sent to us by post, fax or email. Contact details can be found on the front of this guidance booklet.

Application forms and guidance booklets can be downloaded from the website for the Tribunal, or please contact the Tribunal's office if you would like us to send you an application form or guidance booklet.

What do I need to tell you/send to the Tribunal?

- 2 copies of the application form
- 2 copies of a map (where possible, this should be on a scale of 1/10,000 or larger)

The Chairman of the Tribunal has power in all cases to dispense with maps, etc. (e.g. if they are already in the possession of the Tribunal). A request for a direction on this subject should be made in writing before or at the time of sending the application.

The specific guidance sections in this booklet describe the additional documents and information applicants should supply with their application. Failure to include such documents and information can hold up proceedings. If you have information or evidence which supports your application, you should include it when you send in your application.

Do I have to pay a fee to the Tribunal?

There are no fees for making an application to the Tribunal. Parties must meet their own costs incurred in making an application e.g. travelling costs to attend the Hearing

Language Preference

The ALT welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the ALT in Welsh or English.

What happens once the Tribunal receives my application?

The Tribunal will acknowledge your application. The Tribunal will register your case within 10 working days or write to you to request further information. On registration, a copy of the Application will be sent to the party named as the Respondent.

What if I have any additional needs?

Please make sure that you give details of any additional needs when you send us your application. For example, you should say if you need a signer or an interpreter at the hearing, or need any additional arrangements to be made so you can come to the hearing.

Can I send an application to the Tribunal by email?

The Agricultural Land Tribunal for Wales does accept applications and correspondence by email.

Do I have to send original documents with the application?

You do not have to send original documents. In the first instance please provide photocopies. If there is a Hearing you may be asked to produce the originals.

Can my representative send and receive documents on my behalf?

Your representative can send in the application and any information on your behalf. If the application form is signed by any person other than the applicant, that person should state in what capacity or by what authority they sign. A copy of the written authority should be included with the application.

Can the Tribunal recommend any representatives to assist me with my application?

As a Judicial Body the Tribunal cannot make recommendations about representatives or provide advice about applications.

What happens if I wish to withdraw my application?

The applicant or their representative can withdraw an application at any stage. The Tribunal should be informed in writing.

What will the Respondent do about my application?

Once your application is served on the party named as the Respondent, they will be given a set amount of time to respond. A copy of any responses received will be sent to you.

Unless the application is withdrawn or resolved through an agreement, then the matter will proceed to a Hearing for the Tribunal to decide.

Are there time-limits for responding to the Tribunal?

You will be advised of any time-limits for responding to the Tribunal. The time-limits may be extended but only if the Tribunal Chairman considers there are good reasons for doing so. The Agricultural Land Tribunals (Rules) Order 2007 explains the consequences of failure to apply to an application within the time allowed by the rules.

Is my application kept confidential?

Information provided to the Tribunal in connection with an application will only be disclosed to those involved in the case. However, Hearings take place in public. When a case goes to formal Hearing, all information provided by any party becomes public information unless there are exceptional reasons that make it desirable for any of the proceedings to take place in private.

How will documents be sent to me?

All procedural documents will be sent by Royal Mail Recorded or Special Delivery.

Can the Tribunal provide advice?

The Tribunal is an independent Judicial Body and must therefore remain impartial when dealing with disputes. The Tribunal secretariat can provide advice about Tribunal procedures; the Tribunal cannot though provide legal advice or guidance about how to present a case.

What if my land falls partly within Wales and partly within England?

Where land falls partly within Wales and partly within England, then the Tribunal for the area in which the greater part is situated, will consider the application.

How long does it take from when the Tribunal receives an application to when it issues a Decision?

The timescale will vary depending on the type of case but the Tribunal always endeavours to deal promptly with applications.

The Tribunal Hearing

Will there be a Hearing?

An application to the Agricultural Land Tribunal for Wales does not necessarily result in a Hearing. Many cases are settled between the parties and do not require a Hearing.

When will you tell me about the date of the Hearing?

The Tribunal will advise parties of the date, time and location of the Hearing. The Tribunal will notify parties at least 14 days before the Hearing.

Where will the Hearing be held?

Hearings are arranged to take place in a suitable venue close to the land in question.

When will the Hearing be held?

The Hearing will be held on a date that is convenient for all parties and the Tribunal.

What time does a Hearing start and how long will it last?

Hearings usually start at 10:00 am. They usually take all day but do not normally continue after 5:00 pm. You will be advised by the Tribunal how many days your Hearing has been listed for.

Who will be at the Hearing?

Hearings are open to the Public but normally only the Parties, the Tribunal and its Clerk are present. The Tribunal may direct the personal attendance of any maker of a witness statement, affidavit or expert report.

What happens at the Hearing?

The Tribunal will explain the procedure on the day but both parties will be given adequate opportunity to put their case to the Tribunal and to ask questions. The Tribunal Members will also ask questions so they can reach a Decision.

Do I have to come to the Hearing?

It is in your interests to attend the Hearing so that the Tribunal hears what you have to say about the application. The Tribunal may have some questions they want to ask you. You may also want to ask questions.

Do I need to have legal representation?

You do not need to have legal representation.

Where parties are not represented, the Chairman will explain the issues in the case and the Tribunal procedures. The Tribunal can not however, advise parties as to the merits of their case, or how to proceed.

Can I bring someone with me to the Hearing?

Tribunal hearings are open to the public therefore anyone can attend. Witnesses are not allowed to give evidence in a case unless the Tribunal has been formally notified and a witness statement has been provided.

Can I bring someone to speak on my behalf?

You need to write to the Tribunal informing them of your intention and providing the name and address of the person who will be attending to speak on your behalf. The Tribunal will inform the other parties of your intention.

What if I need more time before the Hearing to submit evidence?

The Tribunal may in certain circumstances agree a postponement. However the Tribunal will need to be convinced that it is justified. You will need to make a written application to the Tribunal setting out your request for a postponement and the reasons why.

Why do I have to complete an attendance form?

All parties must inform the Tribunal whether or not they intend to be present or represented at the Hearing. Parties must also advise whether they intend to bring any witnesses.

If you make any changes to the people listed on your attendance form you should let the Tribunal know immediately.

Can I claim expenses?

The Tribunal is unable to pay expenses.

Can I/my representative/witnesses give evidence in Welsh?

Equality is given to both the Welsh and English languages and evidence can be given in either language.

If you/your representative/witnesses wish to give evidence in Welsh, please advise the Tribunal before the Hearing so arrangements can be made for translation.

Will the Hearing be held in private?

All Hearings are held in public unless there are exceptional reasons for the Hearing to be held in private. If you wish for the Hearing to be held in private, you must write to the Tribunal with full reasons for your request.

How is evidence given at a hearing?

Evidence is normally given on oath or affirmation. Parties may; give evidence, call witnesses, question witnesses and address the Tribunal.

What is a site visit?

A site visit is an inspection of the land to which the application relates. The Tribunal may inspect the buildings, land and any livestock, equipment and produce.

Can I say anything to the Tribunal panel at the site visit?

Both parties can draw attention to any physical aspect of the property that they wish the Tribunal to see. However parties may not make any representation during the inspection. Representations can only be made at the hearing orally or in writing.

What are the types of cases that require the Tribunal to complete an inspection of the site?

Almost all cases will require the Tribunal to carry out an inspection.

How much notice will the Tribunal give before carrying out an inspection?

The Tribunal will give at least 24 hours (or 7 days in drainage cases) notice of any site visit.

When will the site visit be carried out?

The Tribunal will advise parties at the Hearing when the site visit will be carried out. Site visits usually take place before evidence is given.

What bio-security will be followed at the site visit?

The Tribunal follows bio-security as advised by the Welsh Government. All attendees are expected to disinfect their footwear.

The Tribunal Decision

How does the Tribunal make its decision?

The Tribunal will make its decision by considering all of the evidence. This includes the documents all parties send before the Hearing and also what is said at the Hearing.

How long does it usually take the Tribunal to issue its decision?

The Tribunal will issue its decision normally within 30 working days of the Hearing.

Can I request a review of the Tribunal's decision?

If you think there is a technical problem with the decision and how it was made, you can ask the Tribunal to review the decision. The Tribunal will not review its decision simply because you are not happy.

What if there are administrative errors in my decision?

The Tribunal has the power to issue correction certificates to rectify any clerical or accidental error or omission in a decision. You will need to make a written application to the Tribunal setting your request.

What if I disagree with the Tribunal's decision?

You can appeal to the Upper Tribunal on a point of law. Permission for leave to appeal must first be sought from the Agricultural Land Tribunal for Wales. It is important to read the guidance booklet for information about deadlines.

Can I view past decisions?

Yes. Decisions made by the Tribunal will be made available at the Tribunal's office or on the website.

How long does the Respondent have to carry out a Tribunal Order?

The Tribunal Order will state when the Order must be carried out by.

Statutory Provisions

The Land Drainage Act 1991, Section 28-31, provides a remedy for owners and occupiers of land, which has suffered injury or is prevented from being improved by drainage, through a neighbour's neglect of his/her ditches

Where it is alleged that land is being injured, or where its drainage cannot be improved because a neighbour or other person neglects their ditches, the owner or the occupier of the land affected may ask the Agricultural Land Tribunal for Wales to make an Order specifying the drainage work which should be carried out.

An owner or occupier may also seek an order from an Agricultural Land Tribunal authorising him/her, or a contractor employed by him/her, to undertake ditching work on adjoining land occupied by another person.

The Tribunal is unable to make an Order if the ditch is a watercourse vested in or under the control of a drainage body; such watercourses are outside the jurisdiction of the Agricultural Land Tribunal.

Tribunal Order

After taking account of the views of all concerned the Tribunal may, with or without a formal hearing (depending on the measure of agreement obtained to any recommendation in the report), make an Order for specified remedial works to be carried out. The Order will name the person or persons who must do the work and will give any necessary powers of entry for the purpose.

Who can be named in the Order?

An owner or occupier of land through which the ditch passes, or which abuts on the ditch, or any other person with a right to carry out work on it. If the Tribunal finds that more than one person has such a right, it can make one order for them to carry the work out jointly, and can say what work each party shall do, and what proportion of the cost each shall bear. Alternatively, separate orders might be made.

Entry onto a neighbour's land to carry out drainage work

A person authorised by the Tribunal to enter land to do work on ditches must give at least 7 days notice. If necessary, he/she may take other persons and equipment with him/her. He/she is responsible for any injury arising from his/her entry and where the amount of compensation cannot be agreed, the Tribunal will decide it. If the land entered is unoccupied, the person entering must see that, when he/she leaves, it is as safe against trespassers as when he/she came.

Failure to adhere to a Tribunal Order

If any work ordered by the Tribunal has not been carried out within three months or any longer period allowed by the Tribunal, the Welsh Government may arrange for it to be done. The costs are recovered from the person named in the Order as responsible for the work.

If the Welsh Government arranges for the work to be carried out in this way, then any grant for which the works might otherwise be eligible will not be payable.

Please contact the Tribunal for the Welsh Government's contact details.

Membership and power of the Tribunal

Where the Tribunal examines applications under these provisions they will include a person experienced in land drainage. The Tribunal has the power to authorise their members or other persons to enter and inspect land which is the subject of an application.