

EU Agricultural Subsidy Schemes

Appeals Guidance



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Introduction

This edition updates details of the schemes covered by the EU agricultural subsidies appeals procedure following Common Agricultural Policy Reform. We have also updated some general points and added guidance on use of the procedure based on experience.

Important

The appeals procedure makes sure that farmers who feel that we did not reach the correct decision on a subsidy or grant claim have access to a fair and independent appeals procedure. The procedure reviews the decision to check that we were objective and applied the law correctly. An appeals panel:

- **must work within the law**
- **cannot change or amend EU regulations**
- **cannot come to an arbitrary decision**
- **cannot award compensation.**

Please be aware of this when sending in your appeal.

We hope you find the booklet helpful. Please contact us if you are unclear about any aspect of the procedure – our address is shown on page 18.

What schemes are covered?

The following current Integrated Administration and Control System (IACS), agri-environment and forestry schemes are covered:

- Single Farm Payment Scheme (SFPS)
- Scottish Beef Calf Scheme (SBCS)
- Energy Crops Scheme (ECS)
- Protein Crop Premium (PCP)
- Less Favoured Areas Support Scheme (LFASS)
- Land Management Contract Menu Scheme (LMCMS)
- Organic Aid Scheme (OAS)
- Rural Stewardship Scheme (RSS)
- Environmentally Sensitive Areas (ESA)
- Countryside Premium Scheme (CPS)
- Habitats Scheme (HS)
- Scottish Forestry Grant Scheme (SFGS)
- Farm Woodland Premium Scheme (FWPS)
- Farm Woodland Scheme (FWS)

The procedure also covers the following old schemes which CAP Reform replaced:

- Arable Area Payments Scheme (AAPS)
- Beef Special Premium Scheme (BSPS)
- Extensification Payment Scheme (EPS)
- Grain Legumes Scheme (GLS)
- Sheep Annual Premium Scheme (SAPS)
- Slaughter Premium Scheme (SPS)
- Suckler Cow Premium Scheme (SCPS)

What decisions are covered?

You can appeal against decisions to **refuse, reduce** or **recover** subsidy or grant payments.

Examples of decisions you may not appeal against are:

- the payment rates set for schemes
- adjustments to applications for schemes not listed here
- adjustments to applications administered by other organisations or
- refusal of an application to join an agri environment or forestry scheme.

When we send you a letter with a decision that you can appeal against, we will tell you about your rights of appeal.

Things to consider before submitting an appeal

We understand that you may be concerned at our decision. But please consider the following before you make your appeal.

If you are not sure why you have been penalised or do not fully understand the contents of our letter, first ask your local Area Office for a fuller explanation. This may allow the matter to be resolved without the need for a formal appeal. **By law, you only have 60 days from the date of your decision letter to appeal and so you should speak to your Area Office as soon as possible.**

If you have extra information which you think may have changed the decision, speak to your local Area Office as soon as possible.

If you still want to appeal, please make sure that you have a valid case to make and can support your argument. Many penalties for breaching scheme rules are set down in law, and we do not have the discretion to waive these or to consider the impact of a decision on your business finances.

The appeals procedure

The appeals procedure looks at the established facts and legislation (European and domestic) to consider whether we made the correct decision on your claim. There are three stages, which together provide a fair and independent right of appeal. The staged approach is intended to provide an accessible and affordable system that allows many appeals to be resolved without the need for expensive court costs.

The three stages are:

- **Stage 1** internal SEERAD review. Officials who were not involved in the original decision will carry out the review.
- **Stage 2** review. A panel consisting of two external members and a SEERAD representative will make a recommendation to the Minister for Environment and Rural Development. The Minister will then make a decision on your appeal.
- **Stage 3** appeal to the Scottish Land Court.

The internal review will take place at Pentland House in Edinburgh, since our officials are based there. The external panel will meet at venues across the country, normally in your local Area Office. The Scottish Land Court will normally sit in Edinburgh.

The appeals procedure

1. Internal and external panel reviews

At the first two stages, you may choose a written or oral review.

A written review means that the panel will consider the paperwork produced and will discuss the appeal without you there. Before the review the paperwork which the panel will be considering will be sent to you. You will be notified of the panel's decision afterwards.

An oral review means that you will be copied the paperwork before the review and attend for part of the proceedings. You will have the opportunity to present your case to the panel and to respond to any questions. If you prefer, this part of the review may be held in Gaelic – you must tell us this on the appeals form so that we have time to make arrangements for translators.

You may bring someone with you to the oral review, or choose to be represented by someone. Please note that you do not require legal representation at this stage. Please do not feel anxious about presenting your case – the panel will do their best to put you at your ease and will not be confrontational when asking for information. When you have finished presenting your case and the panel has finished asking its questions, you will leave the review.

The panel will then continue its considerations. We will notify you of the outcome of your appeal in writing.

The appeals procedure

2. Scottish Land Court

The Scottish Land Court is a formal court of law. It will decide whether cases should be handled by written submissions or oral review. In oral cases, you will either have to present your case yourself or ask someone to represent you. Involvement of a solicitor or counsel in presenting the case is advisable. Proceedings will be held in English.

The appeals procedure

Costs

There is no charge for an internal SEERAD review.

If you request a review by the external panel, you must pay a **deposit of £100**. We will return this deposit if your appeal is successful. If not, we will retain the deposit to cover some of the panel's administrative costs. But if a later Scottish Land Court appeal is successful, we will refund that deposit.

The Scottish Land Court will charge for an appeal in line with their usual rates. **The fees are currently £100 per application plus £120 per day of oral hearing.**

For appeals made to the Scottish Land Court, be prepared to bear the costs of your agent's/legal representative's travel costs and so on. You may be eligible to apply for Legal Aid. The Scottish Land Court is a judicial court and is able to award expenses against either party. It has no power to award interest or compensation.

What happens once my appeal has been considered?

The outcome of an appeal at each stage will either confirm that our initial decision was correct, or that we change either all or part of the decision. We would then act on the revised decision – for example, this might involve adjustments to payments or recoveries.

After hearing your appeal at Stage 3, the Scottish Land Court will inform you whether your appeal was successful. It is also likely to make a judgement on any costs either side must pay. It may also refer your case to the European Court of Justice if appropriate.

If your appeal is successful at any stage, this may result in payment of the grant or subsidy concerned (or part of it) but not interest or compensation.

How do I submit an appeal?

Check that you are eligible to appeal. You have **60 calendar days** from the date of the **decision letter** (not later contact with the Area Office) in which to appeal. By law we cannot accept any appeals after this period.

Use form (AP1) to appeal, you can obtain this from your local Area Office or the Appeals Secretariat. You can also find a copy of the form on the Scottish Executive website

<http://www.scotland.gov.uk/Topics/Agriculture/grants/Standardsservices/Appeals/Appeals>

Filling in the form

First, write your details on the form to allow us to identify your claim and to check that you are eligible to appeal. Then complete the most important section – Grounds of Appeal. This asks for your reasons for appealing and the change sought to the decision. **Make sure that you give full and relevant information and that you write clearly.** Attach any supporting evidence you want the panel to consider. If you wish to attend the review you must tell us on the form – and whether you wish Gaelic to be used during an oral review.

Sign the form and take a copy for your own records. Send the completed form and any supporting information by post, to the Appeals Secretariat at Pentland House (see Useful Addresses section). We will acknowledge receipt of your appeal form.

Stage 1 appeal – internal SEERAD review

This stage involves an internal review by three SEERAD officials who were not involved in the original decision. They will have a range of scheme, agricultural and policy knowledge. Their role is to determine whether the original decision was correct or whether we should change it.

When we receive your appeal we will register it and acknowledge receipt with a reference number which you should use whenever you contact us about your appeal. The Appeals Secretariat will then ask your Area Office to prepare a report responding to your grounds of appeal. This will set out a summary of the case including details of all relevant correspondence and the reasons for making the decision. The Scheme Management section will then provide details of regulations.

Once these reports are ready, the Secretariat will arrange the panel meeting. We will tell you the date, time and location and send you the paperwork. We will try to handle your appeal as quickly as possible, but our ability to do this depends on volumes and complexity. Please be aware that there may be a time delay after you submit your appeal before it is heard.

If you have told us that you want an oral review, the panel will first meet to look at the appeal grounds and the information provided and decide which questions it wants to ask you.

Stage 1 appeal – internal SEERAD review

You will then be invited to join the review to present your case and answer any questions. After you leave the review, the panel will consider the issues and reach a decision.

We will normally tell you the outcome by writing to you within a day or two of the review. However, the panel may find some issues it needs to check before reaching its decision and this could cause a delay. We will then send you, by recorded delivery, the panel's detailed report of its findings as soon as possible. We also send this report to SEERAD officials so they know what action, if any, they need to take.

Stage 2 – external panel review

When you receive the internal panel's report, you should consider it carefully. If it has rejected all or part of your appeal you can ask for it to be considered by an external panel. By law, you must do this within **60 calendar days** of the date on the covering Stage 1 decision letter which you receive with **the report** (not the initial notification letter).

Complete the Stage 2 appeal form (AP2) which you will receive with the internal review decision letter. You can revise your reasons for making the appeal and the change sought to the decision, after considering the outcome of the internal review. You can also attach any new information that you want the external panel to consider.

Send this form and any new information (retaining a copy for your own records) to the Appeals Secretariat **enclosing a deposit of £100**. Make your cheque payable to **Scottish Executive**.

We will acknowledge receipt of your appeal. If you have changed your reasons for appealing the Secretariat will ask for supplementary reports from the local Area Office and Scheme Management section. The appeal will be arranged locally wherever possible (probably at your local Area Office).

There are a number of external people who can consider appeals. They are listed on page 20 and were recruited in line with public appointment procedures.

Stage 2 – external panel review

The panel will include two external people plus the SEERAD scheme manager or deputy. One of the external members will normally chair the review. The SEERAD representative will not have been involved in the internal panel review or the original decision.

We will set a review date as early as possible but the timing will depend on how many cases are waiting to be heard. We will tell you the date, time and location of the review. If you later decide not to attend an oral review, please contact the Secretariat as soon as possible so that they can tell the panel.

The format for an oral review at this stage is the same as for an internal review. The panel will consider:

- your appeal and any new information you have provided
- the reports
- the findings of the Stage 1 panel.

The panel will review the relevant European and UK legislation and the facts of the case.

The panel will have access to legal advice from Scottish Executive solicitors if required. The panel's role is to review SEERAD's decision and make a **recommendation** to the Minister for Environment and Rural Development. The recommendation may be unanimous or a majority view. The Minister will then decide on the appeal outcome.

Stage 2 – external panel review

The Secretariat will send you the Minister's decision by recorded delivery, and will enclose a note of the review, which will be in the same format as that for Stage 1. The decision will be sent to SEERAD officials for any follow-up action.

Stage 3 – Scottish Land Court

If the Minister has rejected all or part of your appeal at Stage 2, you can appeal the decision on any fact or law to the Scottish Land Court. By law you must do this within **60 calendar days** from the date on the letter notifying you of the Minister's decision.

Ask the Scottish Land Court (see Useful Addresses section) for a copy of the form to use (Form 39) and their explanatory leaflet.

The form will ask you to set out what findings of fact you disagree with, and details of the information you intend to use to support your argument, or any additional findings you want the court to consider. Depending on the nature of the appeal, the Scottish Land Court may require a full hearing or decide to proceed using written submissions. You should contact the court to clarify any aspect of its procedure.

The form and appropriate court fee (currently £100) should be filled in and sent directly to the **Scottish Land Court** at the address shown on the form (not to SEERAD). Make the cheque payable to **The Scottish Land Court**.

When the Scottish Land Court receives your appeal it will ask SEERAD to provide a response to the grounds of the appeal you have submitted.

Stage 3 – Scottish Land Court

The Scottish Land Court will consider the appeal in the light of the legislation. **This is a formal judicial procedure similar to normal court proceedings.**

It will be much more formal than the earlier appeal stages. If an oral hearing is required, you will either have to attend yourself or be represented. **Involvement of a solicitor or counsel in presenting the case is advisable.**

If the Scottish Land Court decides that SEERAD's original decision was correct it may award expenses against you. If it finds that SEERAD's decision was wrong then it may decide to award expenses to you. The Court's decision is binding on SEERAD.

If the court agrees that the case be referred to the European Court of Justice, the SEERAD decision will apply, until an outcome is reached.

Useful addresses

If you are not sure about the procedure, or require any further information, contact the Appeals Secretariat at:

SEERAD

Appeals Secretariat

Room 028

Pentland House

47 Robb's Loan

Edinburgh

EH14 1TY

Enquiry tel no: 0131-244 3544

Email address: Appealssecretariat@scotland.gsi.gov.uk

Fax no: 0131-244 5656

If you wish to contact the Scottish Land Court, their address is:

Principal Clerk

Scottish Land Court

1 Grosvenor Crescent

Edinburgh

EH12 5ER

Tel no: 0131-225 3595

Fax no: 0131-226 4812

Complaints about standards of service

The appeals procedure does not deal with complaints about standards of service. Our complaints procedure is described in leaflet CF1 2004, available from your local SEERAD office, the Central Complaints Team or from our website www.scotland.gov.uk

Briefly, if you have a complaint you should first discuss the matter with your local office or the appropriate policy branch in Pentland House, Edinburgh. If you are not satisfied with their response, you should contact:

SEERAD
Central Complaints Team
Room 028
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY
(seeradcapm1@scotland.gsi.gov.uk)
Enquiry tel no: 0131-244 3544
Fax no: 0131-244 5656.

Stage 2 – external panel members

Colin Atkinson (former SEERAD Principal Agricultural Officer)

John Baillie (Vet)

Disney Barlow (Farmer)

Archie Bell (Scottish Industrial Tribunal Panel Member)

Watson Bell (Agricultural Adviser)

Michael Blanche (Surveyor)

Matthew Currie (Agricultural Adviser)

David Dalling (Farm Business Consultant)

Caroline Daniel (Agricultural Economist)

Marina Dennis (Crofter)

Alexander Eccles (Retired Sheriff)

Robin Forrest (Farmer)

Louise Gardiner (Solicitor)

George Gourlay (Agricultural Adviser)

Sandy Inverarity (Farmer)

Robert Lamont (Farmer)

George Lawrie (Farmer)

Graham Manchester (Crofter/Magistrate)

Kathleen Matheson (Farmer/Councillor)

Ian Duncan Millar (Farmer)

Iain Maclean (Advocate)

Angus McHattie (Crofter)

John McLaren (Farmer)

John Muir (former SEERAD Asst. Chief Agricultural Officer)

David Nelson (Rural Business Consultant)

Andrew Veitch (Solicitor)

A Thomson Wilson (Farmer)

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