



Research Paper

August 2007

SINGLE FARM PAYMENTS – REVIEW OF THE DECISIONS (APPEAL) PROCEDURE

Kendrew Colhoun

This briefing provides a short introduction to the Single Farm Payment (SFP) system, introduced as part of the 2003 package of Common Agricultural Policy reforms. It goes on to outline the key differences between the system for SFP appeals introduced in Northern Ireland, England, Scotland, and Wales.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

SUMMARY OF KEY POINTS

- Single Farm Payments were introduced as part of the CAP reform agreement concluded in June 2003; they were introduced in Northern Ireland, England, Scotland and Wales from 2005
- The Appeals procedure is established to ensure that farmers who are dissatisfied with their Single Farm Payment have access to a fair and independent appeals procedure
- Appeals can be made against decisions to **refuse, reduce or recover** subsidy or grant payments
- Appeals **cannot be made on the basis of levels or amounts of subsidy**
- A two- or three-stage Appeals process operates in Scotland, England, Wales and N Ireland
- The three-stage Appeals process is unique to Scotland and Northern Ireland; in the case of the former the final stage is dealt with by the Scottish Land Court
- In Scotland and England the proportions of Appeals going to Stage 2 (from Stage 1) was 6.3% (Scotland), 36% (England) and upheld at Stage 2 was 8.9% (Scotland), 9% (England)¹
- A review of the Appeals process is likely to take place in Wales later in 2007 and the SNP suggested that this was an important issue in their 2006 manifesto

¹ NOTE that the proportions are based on different datasets – Scotland Nov 2000 to May 2007; England 2005-2007 (to 24/08/07)

INTRODUCTION

Traditionally, EU-support mechanisms for the farming industry were production-linked and came in the form of subsidies under the Europe-wide Common Agricultural Policy (CAP). The 2003 CAP reform saw the introduction of a Single Payment Scheme (SPS) or Single Farm Payment (SFP)² which allowed support which was independent of production ('decoupled').

Single Farm Payments are issued to eligible farmers once per year if several conditions are met. While farmers do not necessarily need to have their land in production to receive their SFP, they do have to maintain their land in good agricultural and environmental condition and respect of other cross compliance conditions:

- Good agricultural and environmental condition – farmers claiming direct payments, whether or not they actually produce from their land, must abide by standards to be established by the Member States
- Statutory management requirements – other cross-compliance standards (called statutory management requirements set up in accordance with 19 EU Directives and Regulations³) relating to the protection of environment; public animal and plant health, and animal welfare.

Failure by farmers to respect these conditions can result in deductions from, or complete cancellation of direct payments. The following section reviews the procedure for appealing SFP decisions in the UK devolved administrations.

SINGLE FARM PAYMENTS SYSTEMS IN THE UK

The UK Government and its devolved administrations decided at an early stage that Single Farm Payments would be implemented at a regional level, i.e. separately in England, Scotland, Wales and Northern Ireland.

The European Commission has produced a table that provides a brief [Overview of the implementation of direct payments under the CAP in Member States](#) (European Commission 2007). This covers the Single Farm Payment schemes adopted by the EU15 countries and the related simplified Single Area Payment scheme adopted by the newest Member States of the EU.

The devolved administrations introduced an Appeals process giving farmers the right of appeal where they did not agree with government decisions to refuse, reduce or recover subsidy or grant payments. This paper briefly reviews the processes for SFP Appeals in the UK administrations.

³ Listed in Annex II of Regulation 1782/2003.

SINGLE FARM PAYMENT APPEALS - NORTHERN IRELAND

Single Farm Payments were introduced in Northern Ireland on 1 January 2005. Administration of the SFP is made by the Single Farm Payment Branch (Head of Branch: Ms Bregeen Glendinning) The Rural Payments and Inspection Division (RPID) of DARD.

The appeals process has three stages, the first two of which are dealt with at by the Rural Payments and Inspection Division, Orchard House.

- Single Farm Payments were introduced in Northern Ireland on 1 January 2005
- Potential appellants can request an Appeal Stage 1 form and proceed to a Stage 2 Appeal if necessary
- A third Stage, dealt with in Belfast, involves an Independent Panel to review cases

STAGE 1

Rural Payments & Inspection
Division

STAGE 2

Rural Payments & Inspection
Division

STAGE 3

Independent Panel

COMPARISON OF SINGLE FARM PAYMENT APPEALS PROCEDURES IN THE UK DEVOLVED ADMINISTRATIONS

ENGLAND

- Single Farm Payments were introduced in England on 1 January 2005
- Legislative Instrument: *The Common Agricultural Policy Single Payment and Support Schemes (Appeals) (England) Regulations 2004*⁴
- The Explanatory Memorandum states that:
“the procedure may involve the consideration of the appeal by up to three persons appointed by the Secretary of State with a view to their making a recommendation to her about how the appeal should finally be determined. The Regulations give the Secretary of State the power to pay reasonable remuneration and expenses to appointed persons. They also enable the Secretary of State to charge appellants a fee not exceeding £100 in respect of appeal costs.”
- At a pre-appeal (representation) stage the potential appellant writes to the caseworker
- At Stage 1 Appeal, documents are submitted to the Rural Payments Agency of DEFRA
- The results of this Appeal are supplied to the appellant and they have the option of taking their case to Stage 2 Appeal
- Stage 2 comprises an oral or written hearing to an Independent Panel appointed by the Minister – their recommendation is forwarded to the Minister
- On all cases for the period 2005-2007, 6 of the 86 cases heard have been successful at appeal stage (9%; Table 1)
- RPA aim to respond to all Stage 1 appeals within 90 days of receipt and submit the Panel’s recommendation to the Minister within 60 days of receiving the Stage 2 appeal (but precise timing dependent on volume of appeals⁵)

STAGE 1

Customer Relations Unit (Rural Payments Agency, DEFRA)

STAGE 2

Independent Panel

⁴ <http://www.opsi.gov.uk/si/si2004/20042689.htm>

⁵ Information supplied by Official from the RPA by e-mail 03/09/07

Table 1. Appeal statistics for Appeal Stage 1 and 2, Rural Payments Agency DEFRA.

	15/6/07	13/07/07	17/08/07	24/08/07
Stats for period ending 24/08/2007				
Number of appeals for 2005	644	666	684	687
Number of appeals for 2006	90	115	133	138
Number of appeals for 2007	1	1	1	5
Total Number of Appeals	735	782	818	830
Cases under review, awaiting case history.	123	109	88	81
Cases under review by the CRU.	54 (**9)	73 (**26)	86 (**45)	93 (**44)
Successful cases letter sent out (including partially successful cases)	192	214	234	238
Unsuccessful Stage 2 Submitted	123	142	154	155
Unsuccessful and in time to Submit a Stage 2	60	63	38	43
Unsuccessful and out of time for Stage 2	165	162	194	196
Withdrawn cases	18	19	24	24

SCOTLAND

- Single Farm Payments were introduced in Scotland on 1 January 2005
- Legislative Instrument: *Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005*⁶
- A three-stage Appeals process⁷:

STAGE 1

Scottish Executive Rural Affairs
Department (SEERAD)

STAGE 2

Appeals Panel Review
(2 external panel members
(appointed) and Senior
SEERAD Official)

STAGE 3

Scottish Land Court
(Lord Mc Ghie or other Land
Court judge)

- Stage 1 is dealt with when an appellant lodges an AP1 with an Area Office & Policy Section
- If dissatisfied at this pre-appeal stage the Appeal Process proper commences
- Oral or written hearing within 60 days of issue of Report from AP1 stage
- Appellant submits an AP2 – Panel Review who make a recommendation to the Cabinet Secretary
- Approximately 10% of Appeals at Stage 1 move onto Stage 2
- 5-10% of Stage 2 Appeals go onto Stage 3
- The time taken to deal with appeals has varied, primarily as a function of the volume of appeals (peaking in 2005), but also depending on the complexity of the case in question (data for the period 2000 – 2007 is shown in Table 2)
- The 2006 Scottish National Party manifesto stated:

“We will support a review of the enforcement of subsidy regulations. The SNP recognises that farmers who commit innocent errors in their paperwork are made to feel like criminals and that the resulting penalties imposed are often

⁶ Available at: http://www.oqps.gov.uk/legislation/ssi/ssi2005/ssi_20050143_en_2

⁷ At Stage 1 the SEERAD review group comprises 3 departmental officials with no prior involvement in the case; at Stage 2 the 2 externally-appointed panel members are appointed from a pool of 14 and the Senior SEERAD official has had no prior involvement in the case

disproportionate to the offence. The SNP will raise the system's lack of flexibility at European Union level. At home, we will introduce a truly independent appeals panel in response to the existing system's shortcomings. SERAD officials should not sit in judgement on decisions made by colleagues⁸"

Table 2. Appeal statistics for Scotland, Nov 2000 – May 2007. Source: Appeals Secretariat, Edinburgh.

Appeal Stage	No. Appeals	Upheld (%)	Pending
1	1,154	73 (6.3%)	34
2	168	15 (8.9%)	19
3	7	3 (42.8%)	11

⁸ Available at: <http://www.snp.org/policies/our-manifesto/2007-04-12.0866446519/download>

WALES

- Single Farm Payments (Single Payment Scheme) were introduced in Wales on 1 January 2005
- Legislative Instrument: *The Agricultural Subsidy and Grants Schemes (Appeals) (Wales) Regulations 2006*⁹
- The Explanatory Memorandum states:

“These Regulations enable the National Assembly for Wales (“the National Assembly”) to establish an appeals procedure for farmers who dispute decisions taken by it in connection with the funding of certain elements of the common agricultural policy and schemes related to it.

Regulation 2 contains interpretation provisions and, in particular, sets out the relevant Community legislation in relation to which the appeals procedures may apply.

Regulation 3 empowers the Assembly to establish one or more appeals procedures. It provides that: any appeal procedure so established may take the form of oral or written submission to persons appointed by the National Assembly with a view to such persons making a recommendation to the National Assembly as to how the matter should be finally determined; and that the Assembly may pay remuneration and allowances to any such persons appointed and to charge a fee (not exceeding £100), in respect of the costs of the procedure.”

- A two-stage Appeals process (previously 3 stage¹⁰) following restructuring:

STAGE 1

Rural Payments Division (Appeals and Compensation Unit)

STAGE 2

Appeals Panel

- Three factors probably contribute to the effectiveness of the process (the vast majority of recommendations at stage 2 being upheld):
 - Single set of desk instructions
 - Standard list of legislation
 - Minimal changes in staffing ensuring experience accumulated and retained

⁹ <http://www.opsi.gov.uk/legislation/wales/wsi2006/20063342e.htm>

¹⁰ Stage 1 – Rural Payments Division Operational staff; Stage 2 – Policy & Appeals Unit; Stage 3 – Appeals Panel. The removal of Stage 2 was due to insufficient staffing. Subsequent restructuring brought this to a Two stage process

- These systems ensure that many potential appeals are dealt with at pre-appeal stage
- The Independent Panel make a recommendation
- All panel members are appointed under the Public Appointments Procedure and there are 5 'Chairs' one of whom must sit on each Panel. Individual panel composition is selected on the basis of geographical location, availability, language requirements and area of expertise
- The time taken between receipt of appeals and hearing being held varies widely (32 – 230 days) owing to a number of variables (e.g. requests for additional information; panel and applicant availability; request for hearing in Welsh language; need to arrange several hearings in one location/area). The average lead-in time is 3 months¹¹
- Planned review of the Appeals Process at the end of 2007

Table 3. Appeals statistics Wales 2005 - 2007. Data supplied by Countryside Policy Division, Appeals Unit

Stage 1 Appeals

	2005				2006				2007			
	Rec'd	Under review	Unsucc	Succ*	Rec'd	Under review	Unsucc	Succ*	Rec'd	Under review	Unsucc	Succ*
1. ALL CASES												
Caernarfon	59	26	24	9	41	32	9	0	13	13	0	0
Carmarthen	47	10	35	2	40	15	22	3	8	8	3	0
Llandrindod	53	10	37	6	61	22	29	10	11	8	3	0
Wales	159	46	96	17	142	69	60	13	35	29	6	0

2. CASES BY CATEGORY		2005	2006	2007
SPS (1a)	GAEC	1	5	-
SPS (1b)	SMR (inspections) issues	41	36	2
SPS (2)	Transfer/ lease	2	2	-
SPS (3)	Late/ non-return of SAF	39	39	7
SPS (4)	Under/ over declarations	28	33	1
SPS (5)	Usage rules	11	3	1
SPS (6)	Other	37	20	4
SPS (7a/b)	Energy/ Protein Crops	-	-	-
Tir Mynydd		-	1	12
Tir Cynnal		-	2	1
Tir Gofal		-	-	6
Habitat		-	-	1
OFS		-	1	-
Total		159	142	35

Cases are recorded against the three Divisional Offices in Wales.

¹¹ Information provided from Official (Countryside Policy Division, Appeals Unit) via e-mail 30-08-07

The SPS categories were determined in advance of the appeal process - one difficulty has been the use of 'Other' as an 'easy' option as well as a catch-all for any appeal covering more than one category.

	Received	Hearings held	Successful	Unsuccessful	Withdrawn	Outstanding	Completed
Caernarfon	3	1	0	0	2	1	2
Carmarthen	4	1	0	1	0	3	1
Llandrindod	17	11	0	5	0	12	5
WALES	24	13	0	6	2	16	8