



Llywodraeth Cymru
Welsh Government

GUIDANCE, DOCUMENT

Rural Grants and Payments appeals: guidance

Explains how to appeal a rural subsidy or grant decision.

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1. Introduction

This booklet provides a guide to the Welsh Government's Independent Appeals Process for Rural Grants and Payments. The process considers appeals against decisions taken by officials relating to the subsidies and grants detailed in Section 2.

1.1 Appeals and complaints

Appeals concern decisions affecting the subsidy or grant schemes listed at Section 2. The Welsh Ministers are bound by statute to comply with European Union (EU) and domestic rules and regulations – therefore an appellant must demonstrate how they have met the scheme requirements to be successful.

Complaints are considered under the Welsh Government's policy on dealing with complaints. While the policy refers to a number of separate types of complaint, essentially all refer to an action, or lack of action, by officials. 'Officials' may be specific individuals, groups, departments or divisions within the Welsh Government.

The complaint procedure cannot be used to overturn a decision that is legally correct – funds can only be used to pay subsidy where the regulations have been observed.

For example, if a customer alleges a failure by an official caused a subsidy application to be in breach of European and or domestic rules, the case would be considered under the complaint procedure.

1.2 Purpose of the appeal process

The process is intended to ensure customers who consider officials did not reach the correct decision concerning their subsidy or grant application, have access to an appeal procedure which is fair, simple and affordable. Decisions will be reconsidered to ensure officials have been objective and have applied the rules correctly in reaching their decision.

The process consists of two stages:

- review by officials within the group responsible for administering the scheme and agreed by a senior official
- review by the Independent Appeals Panel ('the Panel') which makes recommendations to the Welsh Ministers, who in turn take the final decision which concludes the process.

A review by officials (Stage 1) must take place before consideration by an Independent Appeals Panel (Stage 2).

At each Stage, the facts of the case, the evidence presented and the applicable European and domestic legislation will be reviewed.

2. Schemes covered by the appeals process

The process will consider appeals against decisions taken by officials. It applies to the following schemes:

Basic Payment Scheme (BPS)
Cross Compliance

Rural investment schemes

Habitat Wales Scheme
Organic Conversion Scheme
Organic Support
Small Grants – Environment
Growing for the Environment
Small Grants – Efficiency
Small Grants – Yard Coverings
Nutrient Management Investment Scheme
Horticulture Development Scheme
Small Grants Horticulture – Start Up
Agricultural Diversification Scheme
Food Business Accelerator Scheme
Woodland Creation Planning Scheme
Woodland Creation Grant
Small Grants – Woodland Creation
Woodland Restoration Scheme
Woodland Creation Maintenance (WCM)
Woodland Creation Premium (WCP)
Integrated Natural Resources Scheme

Rural Development Woodland Creation schemes

Glastir Woodland Creation Premium (GWCP)
Glastir Creation Maintenance (GCM)
Glastir Creation Premium (GCP)

Closed EU Rural Development Programme 2014-2020 schemes

Glastir Entry / Advanced
Glastir Commons
Glastir Organic
Glastir Woodland Creation (GWC)
Glastir Woodland Restoration (GWR)
Glastir Small Grants (GSG)
Improved Land Premium (ILP)
Farm Woodland Premium Scheme (FWPS)
Farm Woodland Scheme (FWS)
Farm Business Grant (FBG)
Farm Business Grant (FBG) Yard Coverings
Timber Business Investment Scheme (TBIS)
Co-operative Forest Planning Scheme (CFPS)
Co-operation & Supply Chain Development Scheme (CSCD)
Food Business Investment Scheme (FBIS).
Leader
Rural Business Investment Scheme (RBIS)
Rural Communities Development Fund (RCDF)
Sustainable Management Scheme (SMS)
Sustainable Production Grant (SPG)

If appropriate, new schemes introduced in the future may be added to this list.

Please contact the RPW Customer Contact Centre, (details in Section 8), for advice if an appeal concerns any other grant or subsidy.

The process is governed by domestic legislation, The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006 [SI 2006/3342 (W.303) as amended]. It applies to the listed schemes from the date that they were introduced by the relevant European and replacement domestic regulation.

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3. Decisions covered by the appeals process

EU and UK regulations provide for fixed and sliding scale penalties for non-compliance with various scheme / contract and livestock requirements and breaches of cross-compliance (Statutory Management Requirements and Good Agricultural and Environmental Conditions). Under the Government of Wales Act 2006, the Welsh Government has a statutory duty to administer Common Agricultural Policy (CAP) schemes and grants and CAP replacements schemes and grants in accordance with the appropriate EU and domestic rules and regulations.

Examples of the types of decision which may be appealed against are:

- financial penalties which reduce the subsidy, grant or compensation payment received by an individual or business
- 'warning' notices which may result in a financial penalty if a breach is repeated
- penalties which have resulted in the exclusion of a claimant from a scheme
- rejection of an entitlement transfer / lease application
- early termination of an agri-environment agreement
- failure to comply with the TB testing regime.

Examples of the types of decision which may not be appealed against are:

- adjustments to applications administered by other organisations
- non-selection or approval of an application or expression of interest
- adjustments to applications under schemes not listed above at Section 2
- the rates of subsidy determined for EU schemes or domestic schemes.

4. Obtaining more information about a decision

If the reason for the application of a penalty is not clear, or the contents of a letter are not fully understood, first contact the RPW Customer Contact Centre.

5. Stage 1 – review by officials

Submitting a Stage 1 appeal application

To ensure cases are dealt with as quickly as possible, you must provide:

- details of the decision you wish to be reviewed.
- the reasons why you believe the decision should be reviewed.
- any documentary or photographic evidence in support of your case.

Please complete the online application form found on the homepage of RPW Online.

Appeal applications, including the grounds for appeal and any supporting evidence, must be received by the Welsh Government within 60 days of the date of the letter detailing the decision to be reviewed using the online application form. There is no provision for the application of force majeure / exceptional circumstance: where an appeal and supporting evidence is received after the deadline, it will be rejected.

Appeals will be acknowledged upon receipt. If an acknowledgement is not received within seven working days, please contact the RPW Customer Contact Centre.

Officials will undertake an internal review and a senior official will consider

whether the initial decision was arrived at correctly, taking into account the applicable legislation, the facts of the case and any supporting documentation.

A full response will be issued in writing, advising whether the appeal has been successful or unsuccessful and the reasons for the decision.

Customers may receive multiple decision letters, (for example inspection findings letters and payment statements), regarding a claim. The 60-day deadline will therefore effectively commence from the date of the final letter, (usually this will be the final scheme payment).

6. Stage 2 – review by the Independent Appeals Panel

6.1 Submitting a Stage 2 appeal

Appeal applications must be received by the Welsh Government within 60 days of the date of the Stage 1 response letter and must detail the decision to be reviewed. There is no provision for the application of force majeure / exceptional circumstances: where an appeal and / or supporting evidence is received after the deadline it will be rejected.

The application should be submitted using the online application form.

Appellants have the choice of whether they wish to have their Stage 2 Appeal considered by the Independent Appeals Panel at an oral hearing or in writing.

6.2 Completing the Online Application Form

Cases must be considered under Stage 1 of the process before an application

for a review by the Panel can be accepted:

- applicants should complete all sections
- if a third party is appointed as an agent / representative, authorisation must be received.
- refer to the How to complete guidance for further information found on RPW Online.

The Panel cannot make recommendations concerning complaint issues and these will be referred to the appropriate operational team for consideration under the Welsh Government policy on complaints.

The grounds for the appeal should be as comprehensive as possible. Please attach all supporting evidence to be considered – e.g. photographs and / or documents.

Applicants are advised to take a copy for their own records.

Appeal fees should be made by BACS to the following account details

Full Company Name: Welsh Government

Bank Name: National Westminster

Bank Account Number: 10003061

Sort Code: 60-70-80

(£100 for an oral hearing or £50 for a written hearing).

An email should be sent to the SharedServiceHelpdesk@gov.wales and IndependentAppealsSecretariat@gov.wales confirming a BACS payment has been made and should also include your CRN and Trading title

If the appeal is successful, in whole or in part, this fee will be repaid in full.

Your appeal and supporting evidence must be received within 60 days of the date on the Stage 1 decision letter.

6.3 Legal Framework for the Independent Appeals Panel

This section provides general information on the legal background to the appeals process and what appellants can expect from it. It is not a legally binding document and the procedures may not operate precisely as detailed.

The independent element of the current process was established under regulation 3 of The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006 [Wales SI 2006/3342 (W.303)].

Independent Appeals Panels comprise a maximum of three members, who are selected from a group appointed under the rules governing Public Appointments.

The role of the Panel members is to:

- sit on the Independent Appeals Panel when required
- hear the facts of a case and consider representations from the Appellant along with any relevant evidence
- make a report of their conclusions in relation to appeals submitted to them
- make recommendations to the Welsh Ministers concerning those appeals.

The Panel is bound by the relevant scheme rules and applicable Community legislation. The meaning of “Community legislation” for these purposes is defined in the 2006 Regulations referred to above.

An appeal hearing is therefore an opportunity to explain to the Panel how the requirements of a scheme have been met and why the initial decision made by officials should be changed. The Panel cannot make recommendations on

issues relating to the alleged actions of officials and such matters will be referred for consideration under the Welsh Government complaints policy.

6.4 Before the Panel hearing

Appeal applications will be registered with the Independent Appeals Secretariat ('the Secretariat') and an acknowledgement will be issued. The hearing will be arranged at a local Welsh Government Office wherever possible.

All Stage 2 appeal applications are subject to scrutiny by Appeals Unit officials prior to a Panel hearing. The investigation will attempt to identify any factors, which might allow the case to be resolved without recourse to a hearing.

The Secretariat will prepare an 'Appeal Pack' containing all the relevant information in relation to an appeal. This Pack, together with the representations made, will form the basis of the Panel's consideration of the appeal and, accordingly, their report and recommendations.

The Appeal Pack will contain:

- details of the Stage 1 appeal application and outcome
- details of the relevant rules and regulations on which the rejection of the Stage 1 appeal was based
- Welsh Government documents relating to the case and
- documents submitted in support of the appeal application.

Copies of the Pack will be sent to each of the Panel members and to the appellant and / or their representative.

The Secretariat will write to confirm the date and location of the hearing. Please contact the Secretariat straight away if there is any problem with attendance so alternative arrangements can be considered.

If a written hearing is requested, the Panel will consider the appeal on the basis of the information contained in the Appeal Pack.

6.5 Attendance at the reviews

Stage 1 of the appeal review process entails an internal review of the written information provided by officials. The appellant will not be invited to attend this review.

At Stage 2, appellants may choose whether to put their case forward in writing or to attend in person and present their case to the Panel:

- a written appeal means the Panel consider the Appeal Pack documents and discuss the case without the appellant being present. The appellant will subsequently be sent copies of the relevant documentation and notified of the outcome along with the reasoning behind the Panel's recommendation
- at an oral appeal the appellant will be invited to attend for part of the hearing. The appellant (and / or their representative) will be given the opportunity to present their case to the Panel and to ask and respond to any questions.

The appellant should specify the language they wish the hearing to be conducted in on their application form at Section 3.

The appellant may bring someone with them to an oral review or choose to be represented by another party. The process is intended to be as informal as possible and, although it is unlikely legal representation will be necessary, the appellant has that option. Appellants are requested to notify the Secretariat if they intend to appoint a representative as this may affect which officials should attend and the length of the hearing.

6.6 Costs

There is no fee for a Stage 1 appeal.

For a Stage 2 appeal, a fee of £100 is required if the case is to be presented orally or £50 if the case is put forward for written consideration. This fee will be refunded if the appeal is wholly or partially successful.

6.7 The Panel hearing

Hearings are conducted in an informal atmosphere and follow the general structure below:

- introduction by Panel Chair
- Welsh Government official sets out details of the decision
- appellant (or representative) presents appeal case to the Panel and answers any questions from the Panel
- any further questions from the Panel for Welsh Government officials
- Panel Chair summary and closing remarks.

Officials from the Welsh Government and appellants are both present throughout the hearing, but leave prior to the Panel members' deliberations after the hearing. As a matter of course, a member of the Secretariat will make a note of the main points of the hearing, but takes no part in the hearing itself. Copies of the note will be distributed to all those present for comment and agreement before they are submitted to the Welsh Ministers.

The Panel will consider the appeal, taking into account the supporting information provided and officials' reports. The Panel will review the relevant European and domestic legislation and the facts of the case before considering whether the decision being appealed is consistent with the applicable rules and

legislation.

6.8 General points

- The Panel are appointed to make recommendations to the Welsh Ministers who take the final decision.
- The Panel are bound by the relevant scheme rules and applicable legislation and cannot make recommendations to the Welsh Ministers, which are not in accordance with them.
- The hearing is not an opportunity for appellants to raise detailed issues directly with officials, or to question them about the handling or substance of the case. (Any queries should be raised with the Secretariat prior to the hearing so a reply can be provided in advance of the hearing. This will avoid the need to adjourn a hearing for complex queries to be considered).
- All comments or information provided as part of the procedure must be addressed to the Panel Chair.
- The Chair will ensure the procedure (above at Section 6.7) is followed and that each party has the opportunity to make their case without interruption.
- The Chair will ensure the hearing is carried out efficiently and may impose time limits if necessary.
- The Panel will not give any indication of the likely conclusions of its report or recommendations.

6.9 After the hearing

A copy of the notes taken at the hearing will be sent to all parties for information – usually within 20 working days of the hearing. Please note: these are not comprehensive minutes, but simply a record of the main issues discussed at the hearing.

The Panel findings and recommendations will be reported to the Welsh

Ministers, who take the final decision. The Welsh Ministers' decision concludes the appeal process.

The Welsh Ministers will advise the appellant of the final decision in writing and a copy of the full notes of the hearing, including the Panel recommendation, will then be sent to the appellant (and any representative).

6.10 General Data Protection Regulation: Privacy Notice

1 General Data Protection Regulation: Privacy Notice

1.1 This notice informs you about the Welsh Government's use of the information provided in your application for a review under the 'Independent Appeals Process for Rural Grants and Payments'. It also explains the Welsh Government's processing and use of your personal data and your rights under the General Data Protection Regulation. The data controller for the information is the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

The data protection officer for the same information is the Data Protection Officer,

Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

E-mail: DataProtectionOfficer@gov.wales

1.2 The information will be processed and managed by the Welsh Government in accordance with its obligations and duties under the European Regulations (as retained by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) and Regulations (UK) 2020/90 & 2020/91)

The information will primarily be used for the purposes of investigating your appeal. However, the Welsh Government may also make use of the information

supplied for other purposes, which will include those connected with its functions and duties under the UK Direct payment and European Union Common Agricultural Policy and with its statutory environmental obligations.

1.3 The lawful basis for the processing is that it is necessary for the performance of a task carried out in the exercise of official authority vested in the Welsh Government.

1.4 The Welsh Government collects personal data to identify your location and your farm business(es). The Welsh Government does not collect any special category data.

1.5 Your information will be stored in accordance with the Commission Implementing Regulation (EU) No 908/2014, 'Conservation of Accounting Information'.

2 Reasons for sharing personal data

2.1 In reviewing your appeal application the Welsh Government may share information with:

- Independent Appeals Panel members
- Natural Resources Wales
- Animal and Plant Health Agency
- Veterinary Medicine Directorate
- Welsh Local Authorities
- Food Standards Agency Wales
- DEFRA
- Other UK Government Agriculture Offices
- Regulatory authorities, such as HM Revenue and Customs, Local Authorities, Health and Safety Executive and the Police.

2.2 The information may be used for the following:

- investigation of appeal applications and preparation of relevant documents for consideration by appointed Independent Appeals Panel members
- cross-compliance and cross checking between Governmental organisations to prevent breaches of the Common Agricultural Policy schemes
- informing decisions relating to policy changes and funding including research studies conducted on behalf of the Welsh Government to inform Monitoring and Evaluation of Rural Development Schemes
- publication of statistical information from which individuals cannot be identified and responding to requests for information.

3. Rights under the General Data Protection Regulation (GDPR)

3.1 The GDPR gives individuals rights in respect of the personal data held on them. These rights include:

- the right to be informed (this notice)
- the right to ask for and receive copies of the personal data that the Welsh Government holds about them, although the Welsh Government can sometimes withhold some data or not provide copies
- the right, in some circumstances, to prevent or restrict the Welsh Government processing personal data
- the right, in some circumstances, to have wrong data rectified
- the right, in some circumstances, to have data erased (to be forgotten).

If you wish to exercise any of your rights under the GDPR, you should contact the Welsh Government at the address provided at the beginning of this notice.

3.2 Individuals also have the right to ask the Information Commissioner, who enforces and oversees the GDPR, to assess whether or not the processing of their personal data is likely to comply with the GDPR. The Information

Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545745 or 0303 123 1113

Website: www.ico.gov.uk

7. Complaints

The Welsh Government has a complaints policy which sets out the arrangements for handling complaints. There is no charge for this service: access to the complaints' process is free. Full copies of the policy and a standard complaint form are available at: www.gov.wales/complain-about-welsh-government

or from the Complaints Advice Team

Tel: 0300 025 1378

E-mail: complaints@gov.wales

The complaint procedure cannot be used to review an appeal that has been properly dealt with.

If the matter cannot be resolved to the complainant's satisfaction, then the complainant may choose to refer the matter to:

The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Website: www.ombudsman-wales.org.uk

Tel: 0300 790 0203

E-mail: ask@ombudsman-wales.org.uk

A complaint may be made to the Ombudsman at any stage. The Ombudsman may choose to investigate directly but, in most cases, the matter will be referred to the Welsh Government in the first instance.

8. Contacts

Rural Payments Wales
Customer Contact Centre

Tel: 0300 062 5004

Rural Payments Wales (postal address)
RPW
P.O. Box 251
Caernarfon
LL55 9DA

Independent Appeals Secretariat
Welsh Government
County Hall
Spa Road East

Llandrindod Wells
LD1 5LG

E-mail: IndependentAppealsSecretariat@gov.wales

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