

Date: Wednesday 15 May 2002

PROGRESS REPORT ON THE INDEPENDENT APPEALS MECHANISM

Purpose

1. Proposals for an Independent Appeals Mechanism for Farmers in Wales were debated in Plenary on 22 May 2001. The mechanism became fully operational on 31 October 2001. This is an initial progress report.

Summary

2. This paper provides a statistical and policy summary of the first six months of the appeals procedure in Wales.

Timing

3. This paper reviews the period between 31 October 2001 and 19 April 2002.

Background

- At its meeting on the 24 January 2001 the ARD Committee considered the responses to the consultation document setting out proposals for an independent appeals mechanism for farmers in Wales issued in October 2000. Members noted that the farming industry had generally welcomed the proposals and it was agreed that the process should be put in place for the IACS 2001 scheme year for farmers in Wales.
- Proposals for the independent appeals mechanism were debated in Plenary on 22 May 2001.
- The Regulations underpinning the appeals procedure were debated in Plenary on 10 July 2001 and came into force on 1 August 2001.
- The 16 Independent Panel members were appointed in August 2001.
- The appeals mechanism became fully operational on 31 October 2001 – achieving a Government Partnership target.

- The procedure consists of 3 stages culminating in a review by an independent panel of 3.
- The stages are:

stage 1 - appeals addressed to the local Divisional Executive Officer for a review of the initial decision

stage 2 - if appellants are dissatisfied with the decision taken at stage 1, they can apply to CAP Management Division's Appeals Unit for review

stage 3 - if appellants are dissatisfied with the decision taken at stage 2, they can apply to the Agriculture Department's Appeals secretariat for a final review by the independent panel. Appellants are asked to pay a deposit of £50 for a written hearing and £100 for an oral hearing which is fully refundable if the appeal is successful in whole or in part. The Panel advises the Minister who then makes the final decision.

- The schemes currently eligible for review from 2001 IACS scheme year onwards are:
 - Sheep Annual Premium Scheme (SAPS)
 - Sheep Annual Premium Scheme Less Favoured Area (LFA) Supplement
 - Beef Special Premium Scheme (BSPPS)
 - Suckler Cow Premium Scheme (SCPS)
 - Extensification Payments Scheme (EPS)
 - Arable Area Aid (AAPS)
 - Tir Mynydd.

4. Decisions taken in relation to both sheep and cattle quota will also be eligible for review under the mechanism.

5. Pre 2001 cases can be reviewed under stages 1 and 2 but are not eligible for review by the independent panel.

6. Appeals/ Complaints literature and stage 2/3 application forms can be obtained from Divisional Offices. Stage 1 applicants can write directly with their appeal/ complaint to their local Divisional Executive Officer.

Statistics

Stage 1

7. Between 31 October 2001 and 19 April 2002, 203 appeals have been registered under stage 1. Of these, 125 reviews have been completed (15 successful, 110 unsuccessful).

Stage 2

8. Of the 110 unsuccessful stage 1 appeals, 44 have applied to the Appeals Unit under stage 2. Of these, 16 reviews have been completed (2 successful, 11 unsuccessful, 1 ex-gratia payment offer because of maladministration and 2 withdrawn on the basis that there was no financial loss to the farmer.) Of the 28 stage 2 reviews yet to be completed, 3 are under consideration for ex-gratia payments.

9. Of the 11 unsuccessful stage 2 appeals, 2 are ineligible for review by the independent panel as they are pre 2001 cases. Of the remaining 9 cases, 2 applications have been made for review by the independent panel.

Stage 3

10. One panel has been convened and a recommendation made to the Minister to reject the appeal.

One outstanding stage 3 case is awaiting additional information from the appellant.

Consideration

11. 203 stage 1 appeals have been made in the first six months of establishing the procedure. This is in a year where inspections have been delayed as a result of FMD, so it is likely that these numbers will increase in due course. There are already more cases in the Welsh system than the Scottish system which was established a year previously.

12. Forty percent of unsuccessful stage 1 appeals have translated into stage 2 appeals. Stage 2 appeals can be extremely time-consuming as each case is examined both for possible maladministration and whether further options can

be pursued following analysis of the relevant scheme rules. For example, the UK accepted "obvious error" criteria were expanded as a direct result of a recent stage 2 appeal here in Wales.

13. Each appellant is provided with a full case paper that sets out the arguments for accepting or rejecting their appeal. An example of a stage 2 case paper is at **annex 1**.

14. The farming industry has indicated that they like the process and are pleased with the way individual case papers now clearly explain the reasons behind decisions taken by officials.

15. It is too soon to evaluate stage 3 – review by the independent panel – as only 2 cases have come forward for review (1.0% of the appeals made at stage 1).

Many farmers appear to be satisfied with the explanations provided at stage 2.

16. A preliminary analysis on the types of cases considered under stages 1 and 2 indicates that 25% of stage 1 appeals relate to the Suckler Cow Premium Scheme. A third of these relate to cattle which have been identified as ineligible for payment for a variety of reasons.

17. At stage 2, the spread of cases is more even with no obvious pattern.

18. The procedure in Wales has proved to be robust and transparent. Officials search for any avenue which might assist the farmer, though this can take time as consultation with lawyers and other UK territories is often necessary.

Cross-cutting Themes

19. All UK Agriculture Departments have now established staged IACS appeals mechanisms for farmers. There are some differences in approach and the number of stages available to appellants also varies between the territories

(the Scots have a Land Court final stage). The mechanism in Northern Ireland also accepts cases in relation to the 2001 scheme year and onwards, whereas in England, cases from the 2002 scheme year only will be considered.

20. Since the abolition of the Intervention Board (IB) in October 2001, the Rural Paying Agency (RPA) have operated a number of former IB schemes across the UK. It has therefore been agreed, in principle, that the RPA will administer an UK-wide appeals procedure for the non – IACS schemes they manage (for example Private Storage Aid). The details are currently being negotiated, but it is understood that this procedure will most likely consist of 2 stages culminating in a panel hearing. Panel members may be drawn from the current IACS appeals panel membership from all four UK territories.

Compliance

21. The legislation underpinning the IACS Appeals Mechanism is contained in the National Assembly for Wales SI 2001 number 2537 (W.212) The Agricultural Subsidies (Appeals) (Wales) Regulations 2001. There are no issues of regularity or propriety for the Assembly. Costs associated with the appeals mechanism are met within the CAPM budget.

Action for Agriculture and Rural Affairs Committee

22. To note the good progress made during the first 6 months of the appeals procedure and to agree the timing of the next report.

Contact Point

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ANNEX 1

A0xxx

Name and address of appellant

Holding number

Appeal against the application of penalties on the Suckler Cow Premium Scheme 2001 claim.

Legislation

The rules of the Suckler Cow Premium Scheme are contained in Council Regulations (EEC) No.3508/92, 1254/99 and Commission Regulations (EEC) No. 3887/92 as amended, 2342/99. The Suckler Cow Premium Regulations (SI 2001 No.1370) and the Integrated Administration and Control System Regulations (SI 1993 No.1317 as amended).

The Appeal (summary)

The NFU have appealed on behalf of their members' Messrs X against the National Assembly's decision to apply a penalty to their 2001 Suckler Cow Premium Scheme claim. The appeal is made on the basis that Messrs X had used their old herd number instead of their new numeric herd number. In each case the individual identification number of the animals was correct. All the animals were home bred and had not left their holding.

Sequence of Events:

Messrs X submitted their Suckler Cow 2001 claim for 42 cows and 10 heifers on 1 October 2001. On 9 October 2001 Messrs X were asked to check all the ear tag numbers on their claim and to inform their Divisional Office of any errors. No response was received to that request.

Prior to payment all ear tags on claims have to be validated against the Central Ear Tag Database (CETD). Six of the ear tags, included on Messrs X's claim, were identified as invalid.

The Divisional Office wrote to Messrs X on 5 November 2001, enclosing a list of the ear tags which had failed validation. Messrs X were asked to check the details against their records and confirm the correct information.

From the information provided by Messrs X on the 12 November 2001, the Divisional Office accepted two of the errors as being within the tolerance for error provisions. As four of the ear tags had fallen outside of the tolerance, Messrs X were informed that a penalty would be applied to their Suckler Cow Premium Scheme 2001.

The ear tags that were considered as invalid and outside the acceptable tolerance were:

Claimed ear tag numbers	Corrected ear tag number
UK M814x 200002	UK 700000 200002
UK M814x 200016	UK 700000 200016
UK M814x 400018	UK 700000 400018
UK M814x 100001	UK 700000 100001

A stage 1 appeal was made by the NFU on behalf of Messrs X on 19 November 2001. They considered the penalty to be harsh, as they considered that the error was genuine and it only involved part of the ear tag number.

The stage 1 appeal was rejected on 28 November 2001, as it was not considered that the errors fell within the acceptable tolerance level.

Messrs X' AM telephoned the Appeals Unit in Cardiff about this case and was advised that a second appeal should be submitted.

Appeals Unit Action

UK Agriculture Departments have negotiated specific instances where a mistake can be recognised as an obvious error. The Divisional Office were unable to accept the errors on Messrs X's claim under those provisions.

The Appeals Unit were concerned that the format of UK alpha-numeric herd number ear tags should always be followed by a five-digit individual animal number. In this case the format of the ear tag submitted for premium was incorrect, as it was a six-digit individual animal number that was recorded

on the claim form.

Consequently, negotiations were undertaken with the other UK territories to consider expanding the obvious error criteria. It has now been agreed that the obvious error criteria should include transposition of the UK alpha- numeric herd number and the UK numeric herd number. However, the individual animal identification number must always be correct and the animal must be home reared.

Head of CAPM Decision:

The guiding principle that I must apply in all ear tag error cases is that the department must be convinced that the producer concerned acted in good faith and that there is no risk of fraud.

I consider that the stage 1 appeal was properly rejected by the Divisional Office as the error was outside the agreed criteria for obvious errors at the time that decision was taken.

In view of the negotiations outlined above, which now expand the recognised criteria for obvious error, I am pleased to be able to accept your Stage 2 appeal.

As your appeal has been successful the four animals will be reinstated and no penalty will apply to your Suckler Cow Premium 2001 claim.

Head of CAP M

Date