

# Breaches and penalties

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For recent changes to this guidance, please see the [bottom of the page](#) .

## Table of Contents

[Introduction](#)

[Capital items – over-declaration of expenditure](#)

[Capital items - under-declaration of expenditure](#)

[Capital items – rectifying a breach](#)

[Cross Compliance](#)

[Grant recoveries](#)

[Recent changes](#)

[Previous versions](#)

[Download guidance](#)

## Introduction

If you do not follow your contract terms and conditions we will call this a breach.

A breach may be identified through the automatic checking we carry out against your application, claim, land or allowances, through an inspection or following a check of any supporting documentation relating to a claim.

It is your responsibility to ensure that all contract conditions are fulfilled and that all information in your application and claim is accurate.

If you have breached your agreement, future grant payments may be reduced or withheld and sums previously paid may be recovered.

The scheme is subject to different provisions in the European Union regulations depending on whether your contract has annual management / maintenance or capital items as described below.

**These items are covered by Article 63 of Commission Regulation (EU) No. 809/2014 and Article 35 of Commission**

**Delegated Regulation (EU) No. 640/2014**

Under Article 63, once we receive your capital claim we will establish:

- (a) the amount that you are due based on what you have claimed, and
- (b) what you are due after an examination of the eligibility of the expenditure of your claim and supporting documentation

## Capital items – over-declaration of expenditure

[This is often referred to as an overclaim breach]

If what you have claimed exceeds what you are due after the examination of your claim by more than 10 per cent, an administrative penalty equal to the difference between the two amounts will be applied to the amount that you are eligible to be paid.

For example:

- you claim for 7.64 hectares of woodland creation
- our inspector finds that the area of the woodland creation boundary is only 6.82 hectares
- the difference between the two is 0.82 hectares which equates to 10.7 per cent

- we initially restrict our payment to pay on the area found – 6.82 hectares but as the difference is greater than 10 per cent, we reduce this found area by the penalty of the difference – 0.82 hectares
- which means you would get paid 6.00 hectares
- your future woodland creation annual maintenance payments would be varied to 6.82 hectares

## Capital items - under-declaration of expenditure

You must only ever claim the actual quantities you have carried out on the site. If, prior to or during the works activity you realise you over-estimated your contracted quantities, you should contact your local FCS Conservancy with a variation request.

This should be done if the difference in quantity is going to be less than the approved quantity by a 10% difference or more.

If you claim a capital item from your schedule of works that we find is less than the quantity you received an approved contract to undertake, we will check with you that no further claims are yet to be submitted for that schedule of work's entry and that the objectives of the original contract will still be met.

If this difference in quantity claimed is less than the contract approved quantity by a 10% difference or more, we will apply an under-declaration penalty. This administrative penalty will be equal to the difference between the two amounts and will be applied to the amount that you are eligible to be paid.

Example (i):

- you have a schedule of works entry in your approved contract for Deer Fence at 2,800 metres
- you carry out the fencing but find that you over-estimated the fence line length and it actually measured 2,678 metres
- you claim for 2,678 metres and we check that the remaining 122 m is not outstanding and that the original contract objectives are still being met
- the difference between the two is 122 metres which equates to 4.4 per cent
- no variation is needed and we pay you the amount for 2,678 metres and 'zero' that entry in the schedule of works so as to remove any potential outstanding amounts from our budgeted commitments
- no breach or penalty (because difference amount is less than 10%)

Example (ii):

- you have a schedule of works entry in your approved contract for Deer Fence at 2,800 metres
- you carry out the fencing but find that you over-estimated the fence line length and it actually measured 2,501 metres
- you claim for 2,501 metres and we check that the remaining 299 m is not outstanding and that the original contract objectives are still being met
- the difference between the two is 299 metres which equates to 10.7 per cent
- in this case, a variation should have been requested prior to completing the works and submitting the capital claim, thus enabling FCS to reallocate funds back into our budget for available new commitments
- as you claimed without requesting a variation, a breach has been committed and a penalty will be administered. You claimed for 2,501m and we take the difference of 299m and deduct that, as the penalty, from the amount that we found eligible for payment
- which means you would get paid for 2,202m (2,501m less under-declaration amount of 299m)

## Capital items – rectifying a breach

In some breaches, where the standard of work or end result is not meeting with the minimum standards **and** where this can be rectified with remedial activity, we can request that you put this breach right within a set given time.

In most cases we will withhold the grant payments until the works are rectified. Where we judge the issue to be of low severity, we can release your grant payment on the condition that it will be put right by a certain date. When we re-inspect such cases, we would want to see the rectified work. If the work has not been rectified by this re-inspection, we will recover the grants already paid.

## Cross Compliance

Any breach of Cross Compliance rules anywhere on your holding may result in a penalty being applied. In most cases, this penalty will be applied to all area-based payments being claimed.

You can find out more about Cross Compliance using the link below.

[Cross Compliance](#)

## Grant recoveries

If we seek to recover payments from you, we will write to you explaining why, with the amount due which will also include interest. Interest will begin to accrue from 60 days from the date of our letter and will continue to accrue until the time of repayment.

The letter will also give advice on how to appeal our decision. You will have 60 days from the date of this decision letter to either repay or to seek a review of the decision. If you do neither by the 60 day deadline, we will offset your debt from future payments from any Scottish Rural Development Programme scheme within three calendar years following the calendar year of the finding of the scheme breach.

More information on appeals can be found in the appeals section.

[Appeals](#)

## Recent changes

Section	Change
<a href="#">Introduction</a>	Information relating to Article 63 moved to introduction section
<a href="#">Capital items - under-declaration of expenditure</a>	New section

## Previous versions

[Previous versions of this page](#)

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