

# Breaches and penalties

**This is an old version of the page**

**Date published: 10 March, 2016**

**Date superseded: 7 March, 2017**

## Table of Contents

[Introduction](#)

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

[Capital items – rectifying a breach](#)

[Cross Compliance](#)

[Grant recoveries](#)

[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.

## Capital items – over-declaration of expenditure

[This is often referred to as an overclaim breach]

**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

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 – 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](#)

## Download guidance

Click 'Download this page' to create a printer-friendly version of this guidance that you can save or print out.