

Penalties

How penalties affect the English Woodland Grant Scheme from January 2007

Why is the Forestry Commission (FC) introducing penalties?

- FC did not identify any penalties until 2010 and had no process in place.
- Rural Payments Agency made it clear that without a penalty process being in place and operating the FC was in danger of disallowance under EU rules.
- FC staff can no longer amend claims once processing begins and any attempts to do so will be identified during audit.
- Errors will happen so the RPA and EU expect the FC to find some faults and apply the appropriate penalty.

Which Forestry Commission grant schemes are affected by the change in policy?

The change only applies to the English Woodland Grant Scheme (EWGS) contracts that:

- Have been approved post 1st January 2007;

and

- Have the relevant Terms & Conditions attached (Para. 29 Penalties).

Which grant types are affected?

All grant types within the English Woodland Grant Scheme (EWGS).

When can penalties be applied?

- Firstly when a claim is being processed for payment.
- Secondly after a payment when an error is discovered - which may be years later depending on the length of the agreement.

Are all errors treated the same?

No - our process will determine whether:

- The error is an **'Obvious Error'** where no financial penalty is applied; or
- The error is to be treated as a **'Penalty'** where there is a financial penalty applied (the level of penalty is covered later on).

What is an 'Obvious Error'?

An obvious error is:

1. Where there is a mistake in the contract which is spotted by the owner, agent, or Forestry Commission:
 - Either **before** a claim is processed for payment;
 - Or **before** the Forestry Commission contacts the owner or agent to set up a site inspection.
2. Where there is a mistake in the claim which is spotted by the owner, agent, or Forestry Commission:
 - Either **before** the FC starts processing the payment;
 - Or **before** the FC contacts the owner or agent to set up a site inspection.



What is a 'Penalty'?

A penalty is applied where a fault is directly attributed to an owner or agent.

Faults are:

- Either a **genuine mistake**,
- or **deliberate** (fraudulent).

A few examples where penalties would apply:

- Claiming work not completed to the agreed standards;
- Claiming a complete road line when only a part is done;
- Not completing all the work in a financial year but claiming it anyhow;
- Grazing land receiving payments for loss of agriculture income (Farm Woodland Payment);
- Accepting payments for annual work without having done it (Woodland Management Grant); and
- Failing to tell the FC about a 'real world' change, such as a new road or development on the agreement area.

Will reclaims always attract a 'Penalty'?

Where the error is not clearly the agreement holder's fault a reclaim without penalty may be appropriate.

Examples are:

- Reduction of an area due to Rural Land Registry map changes (known as a 'drift').
- Where an inspection by the FC showed no errors, then failure occurred since the inspection and this was notified to the FC by the owner or agent before further payments were claimed or received.

If I did not intend to make an error what 'Penalty' can I expect?

Mistakes do happen so where the error is:

1. Valued at **less than 3%** of the claim
the penalty equals the value of the over claim;
2. Valued **between 3% and 20%** of the claim
the penalty is twice the value of the over claim;
3. Valued at **greater than 20%** of the claim
the penalty is the entire value of all claims in the current year.

What is the worst 'Penalty' likely to apply?

Where the Forestry Commission discovers an intentional (fraudulent) over claim, the Forestry Commission can decide to:

- **withhold** any further payments;

and

- **reclaim** all payments in the year with interest;

and

- **refuse** to pay further claims on any EWGS scheme approved since 1st January 2007;

and

- **recover** all payments made under EWGS schemes approved since 1st January 2007 with interest.

If I can not do anything to stop the fault occurring will I still be penalised?

Only in exceptional cases can the Forestry Commission use its discretion not to reclaim, impose a penalty and where appropriate continue to pay grants.

- This is where failures are due to 'Force Majeure'.
Which is an extraordinary event or circumstance beyond the control of the parties, which prevents one or both parties from fulfilling their obligations under the contract.
- If claiming 'Force Majeure' you must notify the Forestry Commission within 10 working days of the failure occurring.



Who decides whether a case is a penalty?

Unless clearly an '**Obvious Error**' all outcomes from errors are decided by National Office, Bristol.

What is the process?

1. The local team will refer details to National Office.
2. National Office:
 - Confirms where a penalty applies;
 - Sets the level of that penalty; and
 - Informs the main contact in writing.

Is there a right of appeal?

YES - There is a right of appeal.

All appeals **MUST** be:

1. within 28 days of original dated letter to the main contact;
2. in writing; and
3. addressed to the Head of Grants and Regulations (Andrew Smith) at Bristol

The Forestry Commission will usually withhold issuing a penalty until the appeal period is over.

A penalty will be processed by National Office, unless a reclaim is involved, which will be done by the Regional Team.

Is 'Cross Compliance' ever likely to affect a Forestry Commission grant agreement?

YES – penalties can apply, however only to English Woodland Grant Scheme contracts approved from 1st February 2007 and where:

1. The owners are:

- registered with RPA; and
- their land is registered on the RLR; and

2. The agreement is for:

- **Farm Woodland Payment (FWP)**, or **Woodland Management Grant (WMG)**.

How are 'Cross Compliance' penalties applied?

1. Penalties are imposed by the Rural Payments Agency:
 - across all holdings under the same SBI number; and
 - to all grants across those holdings - including Single Farm Payment, Entry Level Stewardship and Higher Level Stewardship.
2. The Forestry Commission is advised by RPA where penalties may apply and the FC checks whether it must then be applied to a FWP or WMG.
3. To date penalties have applied under **Statutory Management Requirements (SMR)** and **Good Agricultural and Environmental Condition (GAEC)** for tagging, animal welfare and soil damage offences.

- Any discovery of a breach to a **SMR*** or **GAEC*** may be referred to the Rural Payments Agency (e.g. pollution in woodland due to runoff from farming activities). **(*refer bottom of slide 16)**
- The Forestry Commission has a clear responsibility to advise the RPA where breaches relate to:
 - Tree felling - where no licence is in place;
 - Non compliance with agreed licence conditions;
 - Non compliance with Environmental Impact Regulations relevant to Forestry; and
 - Non compliance with Tree Preservation Orders.
- FC National Office team will notify the agreement holder where a penalty advised by Rural Payment Agency applies to a FWP or WMG.
- No 'de minimis' write off is allowed so a penalty is applied whatever the value and will be imposed on the next annual payment due.

Any questions about this presentation please contact your local Forestry Commission office.

Contact details are available from:

<http://www.forestry.gov.uk/england-regions>

Or,

Contact Bristol on 0117 9066000 and talk to Steve Hunt

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