

EU Audit of Agri-environment Schemes

OVERVIEW

1. The European Commission has conducted an audit of some of England's agri-environment schemes which looked at whether England is complying with EU rules introduced in 2007. These rules have a bearing on how and when payments are made to farmers.
2. The Commission's main aim was to ensure robust control of expenditure and the uniform application of EU rules across Member States. We believe that our schemes are robust and provide effective financial control. However, the Commission did not believe that we were compliant with EU rules, and we have made changes to our agri-environment schemes to comply with the Commission's view of the EU rules.
3. We did operate a rolling system of agri-environment agreements starting during each month of the year, with payments made on a 6-monthly basis. However, the Commission require that:
 - there should be a more rigid annual cycle for payment controls which affects payment timings, once implemented ;
 - each year, a single administrative cross check of all agreements must be carried out before any revenue payments are made;
 - additionally, no annual revenue payments should be made until all inspections have been started, for the entire year's population of agreements;
 - for **new** agreements only those with a start date up to and including 1 June in any calendar year will receive a payment in that calendar year.
4. Overall, the changes affect when we are able to pay some farmers. **The size of payments, and the total amount farmers are due to receive for their agreements, is unaffected. Payments for capital works and Farm Environment Plans (FEPs), if applicable, are unaffected.**
5. The Commission has the power to levy financial penalties (disallowance) on Member States, which is why we have had to amend the payment process. Defra has made every effort to persuade the Commission to adopt a flexible approach and to minimise the potential impacts on agreement holders. However, in order to comply with the Commission's view of the EU rules, we have introduced additional checks that need to be completed before we can make payments to farmers.
6. The timing of these checks means that, from 2011, we have moved to a fixed annual cycle for payments. This will affect the timing of some payments to farmers. This change was implemented on 1st July 2011
7. The new payment timings apply to Environmental Stewardship agreements starting on 1 February 2007 or later. Agreements starting before this date will continue to receive payments every six months as previously.

8. Natural England has written to all farmers with Environmental Stewardship agreements to inform them in more detail about these changes. Defra and Natural England have also held meetings with our stakeholders and representatives of the farming industry, to discuss the implications of these changes. Please see Natural England website at: <http://www.naturalengland.org.uk/ourwork/farming/funding/euaudit.aspx>

9. *The key messages for farmers are:*

- As a result of an EU audit, Defra has made changes to when farmers are paid for protecting the environment.
- To minimise the impact on farmers, Defra decided to delay implementation of these changes until after 30 June 2011. All farmers holding ES agreements prior to that point received one payment in 2011 under the old system. However, there will be some delay to payments due from 1 July 2011 onwards.
- There will be a fixed annual cycle for payments but the amount of money paid out for an agreement will remain the same.
- We are not moving to a single annual payment. Farmers will continue to receive two payments each year, a partial payment and an annual payment.
- Agreements which began before 1 February 2007 are unaffected.
- Capital works and FEPs (if applicable) are unaffected.

EU audit of agri-environment schemes in England

Q&A

1. What changes have been made?

To comply with the Commission's view of the EU rules, we need to introduce additional checks before we can make payments to farmers. The introduction of these checks means that, from 1 July 2011, we have moved to a fixed annual payment cycle.

2. Will ES payment rates change as a result of the EU audit?

No. The discussions with the Commission have focussed on how we make our payments, not on the level of these payments. In other words, the timing of some payments will change, but not the actual amounts.

3. Will this change what I have to do under my agreement?

No. This does not involve the management we pay you for or the scheme options available.

4. What will the new payment cycle look like?

Moving to the new payment cycle will involve a one-off payment delay for the majority of agreements with a start date of 1 February 2007 or later. Thereafter, payments will be received twice a year. Partial payments will be issued in the period September to December each year and end of agreement year payments will be issued in the period April to June each year, as set out in the table below.

Agreements with a start date after 1 February 2007:

My agreement starts	My partial (previously mid-year) payment will be	My next annual payment will be received	My subsequent partial payments will be received	My subsequent annual payments will be received
July	January 2011	by April 2012	by December 2012	by April 2013
August	February 2011	by April 2012	by December 2012	by April 2013
September	March 2011	by April 2012	by December 2012	by April 2013
October	April 2011	by April 2012	by December 2012	by April 2013
November	May 2011	by April 2012	by December 2012	by April 2013
December	June 2011	by April 2012	by December 2012	by April 2013
January	received by December 2011	by April 2012	by December 2012	by April 2013
February	received by	by April 2012	by December	by April 2013

	December 2011		2012	
March	received by December 2011	by April 2012	by December 2012	by April 2013
April	received by December 2011	in April 2012	by December 2012	in April 2013
May	received by December 2011	in May 2012	by December 2012	in May 2013
June	In December 2011	in June 2012	in December 2012	in June 2013

5. Would agreements starting in July-November suffer the longest one-off delay in payments?

Yes. Inevitably, moving from a rolling system of applications and payments to a fixed annual cycle will involve payment delays for some agreement holders. The extent of the delay will be dependent on the agreement's monthly start date.

6. Will the payment be in proportion to the time waited?

No, each payment will still be half the total annual agreement value (excluding HLS capital items), for both the partial and annual payments.

7. So what exactly are the Commission concerned about?

The Commission's questions relate to our interpretation of the EU regulations, particularly in relation to the requirement for a 15 May claim date and the timing of payments to farmers.

The Commission believe that no individual agreement holder can be paid until all administrative checks for all farmers have been completed; and until inspections for all agreement holders have been started. We have previously operated this system on a monthly basis – however, the Commission pressed for a single annual cycle for administrative checks, inspections, and payments.

We believe that our systems are basically robust, and provide a good level of financial control. However, we have had to make changes to Environmental Stewardship to comply with the Commission's interpretation of the legal requirements.

8. Why do we need to make changes?

We have a responsibility to ensure that our schemes are delivered in accordance with EU law. This is also set out in the Environmental Stewardship Handbooks, which state that *"Very rarely, it may be necessary ... to vary your agreement in line with changes to European law and in other exceptional circumstances"*.

The Commission told us that they did not believe that we were delivering

Environmental Stewardship in line with their interpretation of EU law. The Commission has the power to levy financial penalties (disallowance) on Member States and we therefore needed to take action to address this disallowance risk.

9. Will this change involve a penalty for England (disallowance)?

The Commission has not yet confirmed the level of disallowance they will levy against England. By making these changes now, we hope to limit any further disallowance costs for England.

10. Why not just take the Commission to court?

Any court case would take some time to resolve, possibly a few years. In the meantime, the disallowance faced by the UK would continue to escalate.

11. Should farmers still apply for Environmental Stewardship?

Yes. Farmers are strongly encouraged to continue to apply for new or renewed agreements. The changes have affected the timing of payments but will not affect the level of payments under Environmental Stewardship or the value of the environmental management farmers can sign up for. Any delay in renewing an expiring agreement will result in a funding gap between agreements.

12. So what is the new annual cycle for applications and agreement start dates?

Applications can continue to be made throughout the year and agreements will start on the first day of any month, as at present.

Before Natural England can make any payments each year we must now carry out an annual cross check of all agreements in place by the 1 June each year. Therefore for new agreement holders when their agreement starts affects how soon they will get their first payment. ***Please use the Payment Timing tool.*** For ELS applications there is no change to our aim to process any application within three months of receipt. For example, if a customer wants an ELS agreement to start on 1 May, the application should have been received by Natural England by 1 February and so on.

New or renewed agreements with a start date of 1 June or earlier fall into that year's annual population and will receive their first payment by December of that year. New agreements with a start date of 1 July or later will fall into the next year's annual population, so the first payments for these agreements will be received by December of the following year.

13. What is the deadline for payment claims?

EU Regulations require that claims for payment must be submitted annually, by 15 May. However, you do not have to fill in a claim form each year as we will 'deem' a claim to have been submitted by that date, as permitted by the Regulations. A deemed claim will be based on the information as set out in your agreement. If your agreement has been amended it will be based on the amended agreement. If any discrepancies are subsequently discovered in a

deemed claim following administrative and inspection checks, you may be liable to recoveries, reductions and penalties.

This is why it is very important that you continue to tell us about proposed changes to your agreement, e.g. if you wish to add or remove land, or if you wish to make changes to your current options, prior to making those changes.

14. Does an agreement holder still need to submit a final claim form in the last year of an agreement?

No, we have removed the need for a final claim form in the last year of an agreement. However we still require, depending on which options have been selected, additional declarations and information, such as an organic registration certificate. The current wording in relevant paragraphs of the Environmental Stewardship handbooks says that you will need to submit a claim in the final year of your agreement but we have now amended this wording to reflect the new arrangements.

15. If an agreement ends on 30th September when will the final payment be received?

An agreement which ends on 30th September will receive a partial payment by the December of the year in which it expires. This payment will be for agreement period to September 1st of the year before the expiry year to March 31st of the expiry year. The final payment of the agreement will be received by April of the following year. This payment is for agreement period April 1st to September 30th of the expiry year

16. What is the impact on HLS capital and other payments?

There is no impact on how you currently claim for HLS capital works, so please continue to claim for these in the normal way. The FEP payment will be made when we have reached a decision on your application, which could be in advance of your start date. Please note with the introduction of the 3 Tier approach for HLS applications, Natural England staff will carry out any FEP survey work required for “fast track” cases and thus there will be no FEP payment for these cases.

17. Can land transfers and increasing the area of land under agreement take place at any time?

Land transfers and land increases can continue to be made throughout the year, as at present, as can amendments to agreements in exceptional cases at Natural England’s discretion. To ensure you receive the correct payment you should tell us about these changes as soon as possible.

18. Can I just terminate my agreement without paying back the money received?

No. The EU rules require agreement holders to repay all the money received if you terminate your agreement early, except in very specific and limited circumstances (e.g. if there is a change to cross-compliance requirements). These circumstances do not apply here, and therefore we are under a legal obligation to recover the money from the agreement holder.

19. What does this mean if I am thinking of applying for an HLS Agreement?

Natural England will continue to seek applications, just as before, for HLS agreements that provide the maximum environmental outcomes and value for money. We will work proactively with farmers and land managers in priority locations with the aim of securing HLS applications.

20. When can applicants expect their potential HLS agreements to start?

To minimise the impact on potential HLS agreements, Natural England will continue to accept HLS applications for monthly start dates throughout the year. Applicants can choose their preferred start date. Although agreement start dates of 1 April, 1 May or 1 June may be preferred, you are encouraged to submit your application as soon as it is ready to avoid disappointment, as HLS is a competitive scheme with limited budget for each year. Natural England aims to process HLS applications within 4-months of receiving them. As part of our commitment to improved customer services we intend to process applications more quickly in the majority of cases.

21. Can an existing HLS agreement holder terminate their HLS agreement and re-apply to get a better payments cycle?

Existing HLS agreement holders will not be able to close their agreement early to come into a new HLS agreement (unless under specific circumstances).

22. Can an existing HLS agreement holder use the 5 year break clause to terminate their HLS agreement and re-apply for a new HLS agreement to get a better payment cycle?

All HLS agreement holders have the right to exercise their 5 year break clause when they get to it. If an agreement holder does this and decides to re-apply for a different start date to improve their payment cycle they need to bear in mind the following:

- They will have to submit a new application including undertaking a new FEP if required
- They will have to compete against other applications.
- Natural England will not guarantee their re-entry into the scheme as they may no longer be a priority or we may not have sufficient budget.

It is the agreement holder's decision entirely whether they wish to take this risk.

23. How will Agreement holders with an expiring classic scheme (CSS/ ESA/ WES/ SWES/ CES) agreement in 2011 or 2012 be affected in applying for ELS, Uplands ELS or HLS?

Agreement holders currently in an existing classic scheme agreement (CSS/ ESA/ WES/ SWES/ CES) due to expire in 2011 or 2012 will not be able to close their agreement early to come into ES (ELS / Uplands ELS or HLS) unless formally requested to do so by Natural England. Natural England Advisers will make contact and advise them of their options well in advance of the expiry date of their classic agreement. This will include, where applicable, the appropriate timing for submitting an Environmental Stewardship application.

24. Will application activity be concentrated around the spring - the same time of year as SPS? This could cause difficulties for farmers and their agents?

We do not expect Environmental Stewardship application preparation activity by farmers/agents to coincide with SPS claims work. Given preferential start dates of April to June, Environmental Stewardship application work for applicants and agents is expected to peak over the period October to March. Remember, applications can be made at anytime and applicants can specify the start date they want.

25. Will this affect the Campaign for the Farmed Environment?

The Government is fully committed to the success of the Campaign for the Farmed Environment. Farmers not applying for ELS are likely to have a bigger impact on the delivery of CFE targets – so we strongly encourage farmers to continue to apply or renew their existing agreements. Progress on delivering CFE targets is being kept under close review to assess any potential impact of these changes.