

New Rural Payments Appeals System

By Robert Sutherland, Advocate

A new appeals system for agricultural subsidy payments and other rural payments comes into force on 20 November 2009¹. The new system follows from the Report of a Review Group which was published in November 2008². The new procedures differ from the recommendations in the Report, but they are intended to strengthen the appeals system by bringing more independence to the appeals procedures. Although the appeals procedures to date have tended not to involve lawyers (and if they have then often quite late on in the process), it would be sensible under the new appeals system to take legal advice at an early stage.

Under the new procedures an applicant for a payment or a grant may apply for a review of a relevant decision within 30 days of the date of the decision letter. The application for review must be in writing and it must specify the name and address of the applicant and any representative, the applicable scheme, and the decision and the date of the decision which is to be reviewed, the change in the decision which the applicant is looking for, and the reasons why the change should be changed. Scottish Ministers are required to review the decision, with a review hearing to take place within 60 days of the receipt of the application. The review hearing may take the form of a meeting or by way of telephone or video conferencing. Once the Scottish Ministers have made their decision they must issue a written report which setting out the decision made, the requirements of the relevant scheme, the facts relied upon, and any facts or matters of law still in dispute. The report must be sent by recorded delivery post within 60 days of the date of the review hearing.

The applicant can appeal against the review decision to the Scottish Land Court. Appeals

can be on any issue of fact or law. An applicant can also appeal to the Land Court if a decision is not received within 60 days of the date of the review hearing. An appeal must be made within 30 days of receipt of the review decision, or within 30 days of the expiry of the time limit for the issuing a review decision. An appeal should, in so far as possible, set out the grounds of appeal, any finding of the Scottish Ministers which is being challenged, the facts which the applicant relies on, the arguments in support of the appeal and brief details of any legislation or judicial authorities being relied on. The appeal must also be accompanied by a copy of the decision letter, the application for review, the review report (or if there has been no review report, evidence of the date of the review meeting instead).

The Land Court has the power to relieve the appellant of any failure to comply with any of the requirements concerning the contents of the appeal once an appeal has been lodged with the Court. Although the Land Court determines how matters are to proceed, it will also have the power to require the Scottish Ministers to submit a written report containing its decision where none has been made to date, and it may also require either side to provide additional information or submissions as it considers appropriate. The Land Court can decide to confirm the decision of the Scottish Ministers, amend or alter that decision, or substitute any decision of its own as it considers appropriate. Decisions of the Land Court can be appealed to the Court of Session, but only on a question of law.

Although the procedures are drafted with a view to making them as straightforward as possible, the Regulations concerning grant and subsidy payments can be complicated and involve difficult legal arguments. Sometimes it is necessary to make sure that certain facts are clearly established before a particular outcome can be asked for. The requirement to identify important relevant facts early on in the review process, and to produce details of the

arguments to be advanced in support of an appeal together with details of the legislative provisions or judicial authorities being founded upon, show why in any dispute it would be sensible to obtain legal advice on the issues involved sooner rather than later. Another reason for seeking early advice is that the new Appeals Regulations provide that in considering any award of expenses, the Land Court may have regard to the conduct of a party during the review process as a whole. This could mean that an ultimately successful party might still find themselves having to pay some or all of the expenses of the appeal if the Land Court believes that they should have presented relevant factual or legal material at an earlier stage of the proceedings.

The new appeals system will apply to any relevant decision made after on or after 20 November 2009. It applies to various decisions made by the Scottish Ministers, including those concerning agricultural support (IACS) payments under the Common Agricultural Policy, grants under the Farm Woodland Scheme, payments under the Environmentally Sensitive Area Orders, grants under the Habitats Regulations, the Countryside Premium Scheme, the Rural Stewardship Scheme, SFGS Farmland Premium Scheme, Land Management Contracts Regulations, Rural Development Contracts Regulations, the Crofting Counties Agricultural Grants Scheme, and the Leader Grants Regulations. The existing appeals procedures will continue to apply to decisions made before 20 November 2009.

¹ The Rural Payments (Appeals) (Scotland) Regulations 2009 (S.S.I. 2009/376).

² *A review of the European Union Agricultural Subsidy Appeals Procedure in Scotland*. The review was chaired by John Kinnaird, and arose from concerns as to how the whole system of claims for agricultural support payments was being administered in Scotland. The Report made recommendations concerning a number of aspects relating to the systems and procedures relating to claims for agricultural subsidies and other forms of rural payments, including the system of appeals. The main recommendations concerning appeals were the abolition of the existing system and its replacement by an independent Appeals Agency chaired by a legally qualified Director and with access to a panel of experienced lay members to assist in appropriate cases, with a right of appeal to the Scottish Land Court only be on a point of law. It also suggested that cases only involving a point of law could be fast-tracked to the Scottish Land Court. Copies of the Report are available at <http://www.scotland.gov.uk/Publications/2008/11/07113233/11>.