

## Appendix A – Analysis of Late Payment Penalties

### Pillar 1 Late Payment Penalties

#### Background information

The EU regulations require Member states to achieve at least 95% of the total payments due for each **Pillar 1 scheme** to be paid out by 30th June . Where expenditure, after this deadline, is less than 5% of the payments made by this date then no late payment penalties will apply.

However, the SG successfully negotiated a derogation with the EC to extend until 15<sup>th</sup> October 2016 the date by which the whole of the UK may make Pillar 1 payments without incurring any penalties. So there are **no late payment penalties payable for the period 1<sup>st</sup> July to 15<sup>th</sup> October 2016**.

The Commission will make a determination if there are any late payment penalties for the periods after 15<sup>th</sup> October 2016 as follows;:-

- a) 16<sup>th</sup> October 2016 to 31 July 2017-will ‘normally’ be determined in November 2017
- b) 31 July 2017 to 15<sup>th</sup> October 2017 will be determined as part of the accounts clearance process – which can vary but the earliest would be June 2018.

#### Financial Exposure

The following are **estimates** of the Pillar 1 payments still to be made by the Scottish Government as at 15<sup>th</sup> October 2016 - which **will be subject to late payment penalties**.

#### Scottish Government outstanding payments at 15<sup>th</sup> October 2016

Pillar 1 Scheme	£m
BPS	0.2
Greening	0.1
Voluntary Coupled Support	0.7
<b>Total</b>	<b>1.0</b>

This **excludes** appeals and subsequent adjustments which may result in further payments being made – **this is normal practice**. The appeals process has still to commence and it can be a lengthy process with final decisions made in the courts.

However, it is not possible to say what late payment penalties might arise until all of these processes are completed especially as late payment penalties are determined for the whole of UK (as a member state).

Under a historical Memorandum of Understanding penalties were previously apportioned between those UK administration which do not meet the UK target at 30 June 2016.

Whilst detailed estimates of outstanding liabilities across the 4 Paying Agencies have not yet been provided it is clear that Scotland did not meet the June target and **it is highly likely that**

**England did not either.** A meeting between officials from each of the Paying Agencies is planned for later this month to assess the position. Advice from Wales and Northern Ireland are the amounts outstanding are relatively small.

### Range of exposure

If we **assume any further payments and the appeals** process for Scottish producers will **not** generate liabilities **in excess of €3m** then we **estimate** the range of late payment penalties the SG may be liable for is between **€4m and €6m**.

1) Where Scotland is the **only one Paying Agency** not to meet the June target and picks up other late payments (possible but **unlikely**)

**Upper Limit                    €6m (subject to appeals)**

This includes a sum of €2m for late payments from other paying Agencies.

2) Where Scotland and England are the **only two Paying Agencies** not to meet the June target and share the late payment penalties of the other paying agencies (**most likely**).

**Upper Limit                    €4m (subject to appeals)**

This includes a sum of €0.2m for late payments in Wales and Northern Ireland.

### Conclusion

These estimates are very dependent on both appeals and any further payments and the actual late payment penalties will be determined by the Commission based on the performance across the UK.

**HEAD OF FINANCE, AFRC  
11 JAN 2017**



## Late Payment Penalties

- Our current public position is that we are estimating late payment penalties of around £5m for the 2015 CAP scheme year and between £0.5-0.7m for 2016, but that in both cases final totals are still to be determined through relevant UK and EC processes. There have been some recent developments that are currently not in the public domain, but could arise in due course.
- **[OUT OF SCOPE]**
- **2016** -The latest Commission figures for **2016 penalties** suggest our estimates could be lowered to around £0.35m.
- **2017** - Estimates of **2017 penalties** will depend on performance in making remaining Pillar 1 payments by end-June. Current estimates are that all other parts of the UK have achieved 95.24% or more, which would mean that Scotland will be liable for all late payment penalties ultimately incurred by the UK as a whole. George Eustice MP has written to Mr Ewing to highlight this point. This is a dynamic position, but as noted elsewhere we have reasonable delivery confidence in meeting or coming close to the 95% target this year. Strong performance by other UK paying agencies, particularly RPA, has a positive impact on the overall penalty free cover available between 1 July and 15 October and we are tracking their performance closely.

**MAY 2018**

## **Appendix B – Correspondence between Fergus Ewing and Scottish Government Officials**

**From:** On Behalf Of Cabinet Secretary for the Rural Economy and Connectivity

**Sent:** 22 November 2017 15:19

**To:** Watson AA (Andrew)

**Cc:** DG Economy; Mitchell E (Elinor); Higgins K (Kate); Communications Rural Economy & Environment;

[REDACTED] Turpie A (Annabel); Barnes D (David); Cabinet Secretary for the Rural Economy and Connectivity

**Subject:** RE: CAP Pillar 1 Late Payment Penalties – update

Mr Ewing has noted without comment.

Many thanks

[REDACTED]

**From:** Watson AA (Andrew)

**Sent:** 20 November 2017 13:19

**To:** Cabinet Secretary for the Rural Economy and Connectivity

**Cc:** DG Economy; Mitchell E (Elinor); Higgins K (Kate); Communications Rural Economy & Environment;

[REDACTED]; Turpie A (Annabel); Barnes D (David)

**Subject:** CAP Pillar 1 Late Payment Penalties – update

OFFICIAL SENSITIVE

Cabinet Secretary for Rural Economy and Connectivity

### **LATE PAYMENT PENALTIES – UPDATE**

1. We have in the past received enquiries from Parliament, Audit Scotland and the media about the position on CAP late payment penalties. Our current public position is that we are estimating late payment penalties of around £5m for the 2015 scheme year and between £0.5-0.7m for 2016, but that in both cases final totals are still to be determined through relevant UK and EC processes.

[REDACTED]

### **Communications**

9. Given the ongoing processes described above, I recommend that communications on penalties should remain reactive. I will ensure you have up to date briefing for your RECC appearance on 29 November, although that session should focus on Brexit rather than current operational issues.

10. In the event that we do receive any media or other enquiries about penalties over coming weeks, I suggest our response would be along the lines of:

“Total late payment penalties for both the 2015 and 2016 CAP scheme years are still being finalised. The Scottish Government has previously indicated that our assessment is that 2015 penalties might amount to around £5 million and that 2016 penalties might amount to around £0.5m. Final amounts are dependent on the conclusion of relevant UK and EU financial reporting processes, but these remain our central estimates at this time.”

### **Conclusion**

**11. I would be happy to provide further information if that would be helpful.**

**ANDREW WATSON**

20 November 2017

**From:** [REDACTED] **On Behalf Of** Cabinet Secretary for the Rural Economy and Connectivity  
**Sent:** 26 June 2018 15:15  
**To:** [REDACTED]; Cabinet Secretary for the Rural Economy and Connectivity  
<[CabSecREC@gov.scot](mailto:CabSecREC@gov.scot)>  
**Cc:** Communications Rural Economy & Environment  
<[CommunicationsRuralEconomy&Environment@gov.scot](mailto:CommunicationsRuralEconomy&Environment@gov.scot)>; [REDACTED]; Turpie A (Annabel) [Annabel.Turpie@gov.scot](mailto:Annabel.Turpie@gov.scot); Watson AA (Andrew) [Andrew.Watson@gov.scot](mailto:Andrew.Watson@gov.scot); [REDACTED]; Mitchell E (Elinor) [Elinor.Mitchell@gov.scot](mailto:Elinor.Mitchell@gov.scot); Higgins K (Kate) [Kate.Higgins@gov.scot](mailto:Kate.Higgins@gov.scot); News Desk <[Newsdesk@gov.scot](mailto:Newsdesk@gov.scot)>  
**Subject:** RE: Lines for clearance - CAP payments – 1530

Luke

Mr Ewing is content.

Thanks

Private Secretary  
Cabinet Secretary for the Rural Economy and Connectivity  
2N.11  
St Andrews House

**All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.**

**Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)**

**From:** [REDACTED]  
**Sent:** 26 June 2018 13:30  
**To:** Cabinet Secretary for the Rural Economy and Connectivity  
**Cc:** Communications Rural Economy & Environment; [REDACTED]; [Engage.are@gov.scot](mailto:Engage.are@gov.scot); [REDACTED]; Turpie A (Annabel); Watson AA (Andrew); [REDACTED]; Mitchell E (Elinor); Higgins K (Kate); News Desk  
**Subject:** Lines for clearance - CAP payments – 1530

[REDACTED],

The Daily Mail have come in on the back of this morning's release asking whether we could confirm the number of payments from 2017, which have not yet been made, and the value of these. Officials, SpAds and comms are content with the below. Grateful if we could get clearance on the below by 1530, if possible.

Thanks

[REDACTED]

SG said:

"We have paid 17,151 out of an expected eligible 17,850 BPS, Greening and Young Farmer payments. This means more than £387.8 million has now been paid to farmers and crofters out of an expected £400 million. Our focus remains on ensuring that the remaining payments under CAP are made as swiftly as possible."

## Background

As in any year, the number of eligible claims may fluctuate slightly as new information is received and processing is completed.

There are often a number of complex cases that take longer than anticipated to be resolve, which may require additional confirmation from the farmer or crofter. We aim to resolve these more complex cases as quickly as possible.

**[REDACTED] | Comms Greener**

Scottish Government, St Andrew's House

**[REDACTED]**

**From:** [REDACTED] **Sent:** 25 June 2018 14:44

**To:** Higgins K (Kate)

**Cc:** Communications Rural Economy & Environment; [REDACTED]; Turpie A (Annabel); Watson AA (Andrew); [REDACTED]

**Subject:** SPAD VIEW - NR - CAP deadline - 1630

Kate,

Draft NR for the CAP payment deadline below. This has been agreed with officials with the intention that this issues tomorrow. Grateful for your thoughts by 1630, so this can then go to Mr Ewing for clearance, if possible.

Thanks in anticipation,

[REDACTED]

### **CAP Update**

#### **Payment deadline met.**

More than 95.24% of Common Agriculture Policy Pillar 1 payments have now been made. Rural Economy Secretary Fergus Ewing has confirmed.

This represents more than £432 million of Pillar 1 payments across 5 schemes for the 2017 scheme year being successfully paid to around 17,150 eligible farmers and crofters ahead of the payment deadline.

Eligible farmers and crofters receiving their payment, had already received up to 90% of their entitlement through the government's loan scheme offered in early November.

Welcoming the progress, Mr Ewing said:

"I am pleased that we have delivered over £387 million for Basic Payment Support, Greening and Young Farmer payments for the 2017 scheme year to over 96% of our customers. This means we have achieved the payment target of 95.24% for Basic Payment Support, Greening and Young Farmer payments for the 2017 scheme.

"The fact that these payments have been made on time and in full, clearly demonstrates the progress we are making in delivering CAP payments, which support jobs and investment across the rural economy during what is the most challenging time for a generation due to Brexit.

"Having spoken with farmers and crofters, I am sure that this milestone will be welcomed by those across the rural economy as my focus now moves onto ensuring that the remaining payments under CAP are made as swiftly as possible."

[REDACTED] | Comms Greener

Scottish Government, St Andrew's House

[REDACTED]