

Area-based Schemes

Review of Decisions Procedure

For reviews of an Area-based Scheme Application decision, in relation to the following Schemes:

Single Farm Payment (SFP)

Basic Payment Scheme (BPS)

Greening Payment

Young Farmers' Payment

Forestry Grant Scheme

Areas of Natural Constraint Scheme (ANC)

Less Favoured Areas Compensatory Allowance Scheme (LFACA)

Environmental Farming Scheme (EFS)

Agri Environment Schemes

A living, working, active landscape valued by everyone.



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk



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- Paper Copy
- Large Print
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- Other languages

To get a copy of this document in another format contact:

Area-based Schemes Delivery Support Branch
Orchard House
40 Foyle Street
Derry/Londonderry
BT48 6AT

Tel: 0300 200 7848

Email: DAERA.Area-basedSchemesDeliverySupportBranch@daera-ni.gov.uk

If required you can print off a copy of the online booklet. If you are not able to do this, any DAERA Direct office will print off a copy for you.

THIS BOOKLET IS EFFECTIVE FROM MAY 2019.

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1. Introduction

In May 2019 we implemented change to the new Review of Decision procedure by reinstating the option to seek an Independent Panel Assessment. This information booklet is designed as a guide to the Department of Agriculture, Environment and Rural Affairs' (DAERA) Review of Decisions Procedure.

The procedure covers decision letters issued in relation to the following Area-based schemes:

- Single Farm Payment (SFP)
- Basic Payment Scheme (BPS)
- Greening Payment
- Young Farmers' Payment (YFP)
- Forestry Grant Scheme (FGS)
- Less Favoured Areas Compensatory Allowance Scheme (LFACA)
- Areas of Natural Constraint Scheme (ANC)
- Environmental Farming Scheme (EFS)
- Agri Environment Schemes (NICMS)

For area-based schemes the procedure is intended to provide applicants with a fair, impartial and transparent assessment of our decision against the framework of EU and national regulations and scheme rules in an efficient manner. The aim of the procedure is to ensure that the decision made is correct and in line with the EU and national regulations and scheme rules. DAERA has no scope to make decisions that do not comply with the rules of the schemes.

Applicants who feel that we did not reach the correct decision in respect of their area-based scheme application have access to a review procedure. This procedure is an opportunity for applicants to explain and demonstrate how they feel they have met the requirements of the relevant scheme and why the Department's initial decision should be changed. The initial **Case Officer Review** is conducted by a specialist multi-disciplinary team of officials within the Area-based Schemes Payment Branch who were not involved in making the decision in question.

Should the applicant remain unsatisfied at the conclusion of this stage they may then apply for an **Independent Panel Assessment** to review their case. The cost of applying for an Independent Panel Assessment is £200. The Independent Panel will only have scope to make a recommendation based on the evidence already provided at the Case Officer Stage. Only in cases of Force Majeure / Exceptional Circumstances will additional evidence be accepted for Independent Panel Assessment. **No** new evidence can be presented on the day of the assessment to the Panel. Additional evidence must be submitted with your request for an Independent Panel Assessment and will be considered for inclusion under Force Majeure / Exceptional Circumstances. You will be notified if the additional evidence has been permitted prior to the Panel hearing. The recommendation made by the

Panel is not binding on the Department as the final decision remains with the Department.

Details of DAERA's Review of Decisions procedure are also available on the Department's website at:

www.daera-ni.gov.uk/publications/area-based-schemes-review-decisions-procedure

2. Your right to have a decision reviewed

If you consider that our decision regarding your Area-based Scheme application is incorrect you have the right to request a review.

We recommend that before requesting a formal review, you contact the scheme staff to discuss your case (see Section 13 for details). The scheme staff will be able to provide a fuller explanation either over the telephone, in person or in writing, which may allow the matter to be resolved without the need to request a formal review.

Using this option does not affect your right to proceed with a formal review but the deadlines for return of the application for a review will not be extended.

3. Decisions covered under the Review of Decisions procedure

Examples of the types of decisions that may be reviewed include:

- Penalties applied that result in a reduction or non-payment;
- Ineligibility of land or other works found during an inspection;
- Cross Compliance breaches identified at inspection;
- Admissibility of your application;
- Recoveries, in whole or part, of any payments already made.

This list is not exhaustive. Your decision letter will confirm whether you have the right to have the decision reviewed.

4. Decisions not covered by the Review of Decisions procedure

Decisions that cannot be reviewed using this procedure include:

- Decisions on the exchange rates used to calculate your payment;

- Policy decisions relating to schemes;
- The standard of service you receive from us, see section 11;
- Interest being charged on outstanding debts

5. Case Officer Review Process

The review will be carried out by a specialist multi-disciplinary team of officials within the Area-based Schemes Payment Branch who were not involved in making the decision in question.

To request a review you must contact the Review of Decisions Section on Tel: 0300 200 7848, email reviewofdecisions@daera-ni.gov.uk, or by writing to Review of Decision Section, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT and ask for a Review of Decision application form (AP). You must tell the staff which decision(s) you wish to have reviewed.

Your completed application form must be received by the Department **no later than 60 calendar days** from the date on our decision letter. We will write the deadline date on the front of the application form.

Please return your completed application to the Review of Decisions Section, Area-based Schemes Payment Branch, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT.

You can also deliver your application in person to your local DAERA Direct Office. A list of the DAERA Direct Offices can be found at Section 14. Further details can be found on line at:

<https://www.daera-ni.gov.uk/publications/daera-direct-regional-offices>

We will give you an acknowledgement letter at the time. You should retain this as proof that your application has been received on time.

If your application is received after the deadline it will not be accepted for any reason. We are not responsible for forms being lost or delayed in the post. It is important that you ensure the correct postage has been paid. Proof of postage is not proof of receipt. Force Majeure/Exceptional Circumstances will not be considered.

You will receive an acknowledgement of your review application from the Review of Decisions Section. If you have not received an acknowledgement within 10 days of having posted it, you should contact the Review of Decisions Section immediately.

When you complete your Review of Decisions application you must:

- (i) Clearly state why, in your opinion, the decision is incorrect.
- (ii) Provide all documentation in support of your case. Please ensure that any photographs you supply are dated and clearly labelled (e.g. with relevant field identifier and location of ineligible area marked).
- (iii) Refer to the relevant EU or national regulations or scheme rules, where applicable.

Please note that Freedom of Information and Environmental Information Regulation requests should be sent separately to the following e-mail address euasd.foi@daera-ni.gov.uk.

Or by post to:

EUASD Business Support Branch
Ballykelly House
111 Ballykelly Road
Drummond
Ballykelly
Limavady
BT49 9HP

On your review application you should explain why you consider the initial decision to be incorrect. If you submit a review request that does not contain this information we will contact you to give you the opportunity to provide details as to why you believe the decision is incorrect. If you fail to provide details why you believe the initial decision is incorrect by the set deadline given by the Review of Decision Team your review application will be rejected.

The Review of Decisions Case Officer will contact you when they start your case. The Case Officer will review the reasons you believe the initial decision was incorrect and the evidence you have supplied and will then telephone you to discuss your review. The discussion will give you the opportunity to provide clarification on the evidence submitted to date and consider other evidence or detail that could be provided. If required the Case Officer will advise you of the deadline for submitting any additional evidence on your case and will follow this up with an e-mail or letter stating the deadline. Evidence will not be accepted after this deadline and your review will be assess based on the evidence provided. Please note that additional evidence can only be submitted for consideration at this point in the process. Evidence will not be accepted after the deadline you have been given.

The Case Officer will consider all information you provide and review the decision against the framework of EU and national regulations and scheme rules. When the

review is complete the decision, and a copy of the Case Officer's report, will be sent to you by Royal Mail recorded delivery to the registered trading address recorded on the Department's database.

If requested it may also be copied to the person who completed the review application if they are an authorised agent/legal representative/political representative.

6. Independent Panel Assessment

The Independent Panel Assessment is a review by an external panel with DAERA making the final decision.

You can only apply for an Independent Panel Assessment after the Case Officer Review has been completed.

By attending the Independent Panel Assessment you can answer any questions the panel may have to clarify the information you have already provided at the Case Officer Review stage. The panel will see the same information that was presented to the Case Officer who carried out the initial review. The oral part of the hearing usually lasts 30 minutes. This option costs £200. You may bring a representative with you or nominate a representative to act on your behalf.

With your Case Officer Review decision letter you will receive an Independent Panel Assessment application form (IPA). If you choose to apply for an Independent Panel Assessment you have 60 days from the date of the Case Officer Review decision letter to return your application form. The deadline will have been written on the front of the Independent Panel Assessment application form.

You should return the completed application form to Review of Decisions Section, Area-based Schemes Payment Branch, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT. You must also enclose a cheque for £200. Cheques should be made payable to the DAERA Corporate Account and crossed "A/C payee only". **Applications that do not have payment attached will not be considered.**

You can also deliver your application form in person to your local DAERA Direct Office (see Section 14 for details). We will give you an acknowledgement letter at the time, which you should retain as proof that your application has been received on time.

If your application is received after the deadline it will not be accepted. We are not responsible for forms being lost or delayed in the post. It is important that you ensure the correct postage has been paid. Proof of postage is not proof of receipt. Force Majeure/Exceptional Circumstances will not be considered.

You will receive an acknowledgement of your review application from the Review of Decisions Section. If you have not received an acknowledgement within 10 days of posting you should contact the Review of Decisions Section immediately.

No additional information or evidence will be accepted at this stage – unless there are Force Majeure/Exceptional Circumstances. If you feel that Force Majeure/Exceptional Circumstances apply you must provide the information or evidence along with your application for Independent Panel Assessment and explain why exceptional circumstances or force majeure prevented you from supplying this at Case Officer Review Stage. The Department will then inform you if your additional evidence is being accepted. This will happen prior to your Independent Panel Assessment.

Please note that you are not permitted to present new information to the panel and they will not accept any additional information should you try to present it at the assessment.

7. How the Independent Panel operates

The Independent Panel is made up of two members. Panel members are appointed by DAERA from a pool of people who have been formally selected to act as panel members. Before considering a case, panel members are required to declare any conflict of interest that may arise, for example if they have a personal interest in the case under consideration or if they are known to the applicant. In such situations a panel member will be excluded from that particular case.

The panel's role is to consider the representations made by you, but they are bound by the EU and national regulations. The panel has no discretion to operate outside the rules of the schemes. The panel do not have the authority to make recommendations in respect of legal matters; for example ownership of land or rights/access to land or disputes between two people. Only a court can make such decisions.

On the day of the assessment the panel chairperson will make introductions and will open the hearing by asking you if there is anything you wish to highlight in relation to the papers in the case file. The panel may have questions to ask you to clarify facts. **Again, please note that no additional information or evidence will be accepted by the panel on the day of the assessment.**

The panel will consider all the information, including your submissions at assessment, and make a recommendation based on their findings.

The panel's recommendation is not binding on the Department as the final decision in relation to your case rests with the Department.

8. What happens after the Panel Assessment?

The Panel will provide the Department with a written copy of their findings and recommendation. This will be considered in conjunction with the facts of your case.

The Department must act within EU and national regulations and has no discretion to do otherwise. Their role is to ensure that all options within the EU and national regulations have been considered by the relevant scheme, Case Officer and the Panel. The Department is not obliged to accept the panel's recommendation but will take into account their findings before making the final decision.

When the final decision has been made a letter setting out the Department's final decision along with the Panel's findings and recommendation will be sent to you by Royal Mail recorded delivery to the business address and, if requested, any nominated representative provided on the application for Independent Panel Assessment.

The Independent Panel Assessment concludes the Department's review procedures. There are no other review procedures within the Department.

9. General Information

Please note that normal processing of your EU Area-based Schemes applications will continue while your review is ongoing, e.g. debt recovery in the form of interceptions from available payments will not be suspended, interest will continue to accrue on outstanding debts and any penalties resulting from inspections or administrative checks will continue to be applied.

If you are successful at review then any necessary reimbursements or adjustments to your claims will be made following the successful outcome of the review.

10. Outcome of the Review of Decisions Procedures

The possible outcome of the Case Officer Review or Independent Panel Assessment will be;

- our decision is changed in full or in part (i.e. your case is upheld or upheld in part); or
- our decision is not changed (i.e. your case is not upheld).

If you proceed to an Independent Panel Assessment and the Department changes its decision in full or in part we will refund your fee. If the Department does not change its decision we will not refund your fee.

11. Standard of Service

If you do not receive the standard of service you expect, you have the right to complain. We will treat your complaint seriously and deal with it as quickly as possible. A standard of service complaint cannot be used to overturn a legally correct decision.

Your complaint will be dealt with in accordance with our Complaints Procedure. You can obtain a copy of this procedure by contacting us at:

Corporate Support Section
Room 427
Dundonald House
Upper Newtownards Road
Ballymiscaw
Belfast BT4 3SB

Help Line No: 0300 200 7852

Text Phone No: 18002 0300 200 7852

(Can only be dialed from another text phone)

E-mail: Corporate.supportsection@daera-ni.gov.uk

Or visit our website:

<https://www.daera-ni.gov.uk/publications/how-do-i-make-complaint-if-i-am-unhappy-quality-service-i-received>

12. Your options after the DAERA Review Process

Once you have completed the Review of Decisions process, there is no further scope for a Departmental review of your case.

Judicial Review

If you wish to challenge the final decision on a point of law, you may seek a judicial review through the High Court. Applications for judicial review should normally be made to the High Court within 3 months of you receiving our final decision. If you consider this option is appropriate you should discuss the matter with your legal advisers.

Office of the Northern Ireland Public Services Ombudsman (NIPSO)

If you consider that the procedures have not been followed correctly, you can take your complaint directly to the Office of the Northern Ireland Public Services Ombudsman. Complaints should normally be raised within 6 months of receiving our final decision. Where there is recourse to a review procedure the Ombudsman's role is to be satisfied that the individual has had access to the review procedure and they were treated fairly and consistently within that system.

You can contact the Office of the Northern Ireland Public Services Ombudsman as follows:

In Writing: Northern Ireland Public Services Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN

Freepost: Freepost NIPSO

Telephone: 028 9023 3821 E-mail: nipso@nipso.org.uk
Freephone: 0800 343424 Website: www.nipso.org.uk
Text Phone: 028 9089 7789

Please note that if you complain to the Office of the Northern Ireland Public Services Ombudsman they will seek confirmation that the complainant has been fully considered by the Department under our review procedures and that we have issued a final response to you. In effect this means that the Ombudsman will not consider your case unless you have first exhausted all the Departmental procedures.

13. Contact Details

Prior to submitting a Review of Decisions request, if you wish to discuss your Basic Payment Scheme, Greening Payment, Young Farmers' Payment, or Areas of Natural Constraint Scheme application you should contact:

Department of Agriculture, Environment and Rural Affairs
Area-based Scheme Payment Branch
Orchard House
40 Foyle Street
Derry/Londonderry
BT48 6AT

E-mail address: areabasedschemes@daera-ni.gov.uk
DAERA Helpline: Tel: 0300 200 7848 or
E-mail: daera.helpline@daera-ni.gov.uk

Prior to submitting a Review of Decisions request, if you wish to discuss your Environmental Farming Scheme or Northern Ireland Countryside Management Scheme application you should contact:

**Department of Agriculture, Environment and Rural Affairs
- Countryside Management**

2nd Floor
Molesworth Place
Molesworth Street
Cookstown
BT80 8NX
Tel: 02887657645

Email Address: efs@daera-ni.gov.uk

Further information on the Forestry Grant Scheme Review of Decisions can be obtained from:

**Department of Agriculture, Environment and Rural Affairs
Forest Service
Grants and Regulations Branch**

Inishkeen House
Killyhevlin
Enniskillen
BT74 4EJ Tel: 028 66 343019

E-mail: grants.forests@daera-ni.gov.uk

14. Contact details of Local DAERA Direct Offices

<u>Armagh</u> A:Tek Building Edenaveys Industrial Estate Newry Road Edenaveys ARMAGH BT60 1NF	<u>Dungannon</u> Crown Buildings Thomas Street Drumcoo DUNGANNON BT70 1HR	<u>Mallusk</u> Castleton House 15 Trench Road Grange of Mallusk Mallusk NEWTOWNABBEY BT36 4TY
<u>Ballymena</u> Academy House 121a Broughshane Street Town Parks BALLYMENA BT43 6HY	<u>Enniskillen</u> Inishkeen House Killyhevlin Industrial Estate Killyhevlin ENNISKILLEN BT74 4EJ	<u>Newry</u> Glenree House Unit 2 Springhill Road Carnbane Industrial Estate Carnbane NEWRY BT35 6EF
<u>Coleraine</u> Crown Buildings Artillery Road Millburn COLERAINE BT52 2AJ	<u>Strabane</u> Government Offices 18 Urney Road STRABANE BT82 9BX	<u>Newtownards</u> Sketrick House 16 Jubilee Road NEWTOWNARDS BT23 4YH
<u>Downpatrick</u> Rathkeltair House Market Street Demesne of Down Acre DOWNPATRICK BT30 6LZ	<u>Magherafelt</u> Units 36-38 Meadowlane Shopping Centre Moneymore Road Townparks of Magherafelt MAGHERAFELT BT45 6PR	<u>Omagh</u> Sperrin House Sedan Avenue Lisnamallard OMAGH BT79 7AQ

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