

Report on the outcome of the Consultation on Proposed changes to the Area-based Scheme Review of Decisions Panel 2021

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 - Currently while farm businesses can provide additional evidence to the Case Officer as their case is reviewed, they can only submit additional evidence to the Panel in cases of Force Majeure or Exceptional Circumstances. What are your views on the submission of new evidence to the Panel?
 - Should the Department (DAERA) be represented on / have an advisory role on the Review of Decisions Panel?
 - What are your views on the make-up and legal or agricultural expertise of the panel, including size and remuneration, time spent reviewing the case/decisions and ability to review a case taking into account the legislation under which the Department can make decisions?
 - Do you have any other comments you wish to make on the Review of Decisions panel and role therein? If yes, provide your comments
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Annex A – List of Respondents

Further copies of this report can be obtained as follows:

By writing to:-

Area-based Schemes Review of Decisions Panel
Department of Agriculture, Environment and Rural Affairs
Area-based Schemes Division
Ballykelly House,
111 Ballykelly Road,

Ballykelly
BT49 9HP

By Telephone: 028 77 445157

By E-mail: reviewofdecisionsconsultation@daera-ni.gov.uk

This document can also be accessed through the Department's website at:
<https://www.daera-ni.gov.uk/consultations/daera-consultation-proposed-changesarea-based-scheme-review-decisions-panel>

1. Introduction

In July 2021 the Department issued a consultation document seeking views on the proposal to amend the powers of the Area-based Scheme Review of Decisions Panel from 2022.

In line with national and retained European Union legislative requirements, the Department undertakes controls to ensure that applicants to an Area-based Scheme meet the eligibility criteria for a Scheme, for which they have made a claim. If conditions of a Scheme(s) are not met or there is a breach of the Northern Ireland Cross-Compliance standards, applicants may incur penalties which could result in a reduction to their payment(s) or their application may be rejected. The Department will issue a notification letter to explain the penalty or reduction to advise the applicant of its decision.

The current Review of Decision Process

The Department introduced a statutory based review process in November 2001.

The current process is under the Common Agricultural Policy (Review of Decisions) Regulations (Northern Ireland) 2015.

Where an applicant is dissatisfied with a decision taken by the Department in relation to an Area-based Scheme, they may submit a review application. Applications must be submitted within 60 days of the decision. The case is initially considered by an investigating Case Officer.

The Case Officer Stage provides for a robust consideration of the case, involving significant interaction with the applicant and providing them with a clear explanation of the review decision reached. The investigating Case Officer can access technical and policy advice as necessary and engages directly with the applicant to seek any further information required as the case progresses. A preliminary case report, issued to the applicant prior to the final case report, offers a further opportunity to identify and provide any other evidence which might influence the final decision.

Where the Case Officer Stage review has determined that the Department's original decision was correct and the applicant remains dissatisfied, they may apply for an independent panel assessment of their case upon payment of the £200 fee. The Independent Panel hears the case and makes a recommendation to the Minister, who makes the final decision.

The Current Panel

Cases are currently heard by two Panel members who are drawn from a pool. Members are not required to have a legal or agricultural background. Their current suitability is based on a number of factors including previous experience in public

appointments, their suitability to a range of behaviours, academic and professional qualifications and any work/voluntary experience.

The tenure of the current pool of Panel members ends at the end of January 2022.

Sustainability for the Future – DAERA’s Plan to 2050

Sustainability for Our Future - DAERA’s Plan to 2050 frames the strategic priorities for the next 3 decades.

The four strategic priorities are:

- Economic Growth - To enhance our food, forestry, fishery and farming sectors using efficient and environmentally sustainable models which support economic growth;
- Natural Environment - To protect and enhance our natural environment now and for future generations whilst advocating its value to and wellbeing for all;
- Rural Communities – To champion thriving rural communities that contribute to prosperity and wellbeing; and
- Exemplar Organisation – to be an exemplar, people focused organisation, committed to making a difference for the people we serve.

A key part of meeting our strategic priorities is through continuing to support our farming communities in continuing their role as custodians of our land and enhance the vital role they play in maintaining the long term health of our countryside. Having the right level of funding, in the right place at the right time will be vital to ensuring that the Department achieves its purpose.

Within that context, the Review of Decision process has to be fit for purpose, making sure that applicants receive the payments they are entitled to, while protecting public money by ensuring that payments comply with the requirements that govern the schemes.

Minister Poots has instructed the Department to review the Review of Decision making procedure and to introduce legislation to give the Independent Panel the final decision making powers in cases that they hear.

2. Consultation

The programme for the Review of Decisions consultation on the proposed new powers began on 22 June 2021 to obtain views and fully understand impacts and the mitigating actions that may be appropriate. This closed on 17 August 2021 at 17:00. The consultation was launched by the Minister and advertised on DAERA’s website, via email and hard copies where requested. All stakeholders were given the opportunity to provide their views.

The results of the consultation have been analysed and collated in this final document to inform the decision to amend the powers of the independent panel from January 2022. This report is being published on DAERA's internet site and will be made available in other formats on request.

In accordance with Equality Commission guidelines, the Department took care to ensure that all organisations who wanted to respond had time to do so.

3. Engagement with stakeholders

The Department ensured key industry stakeholders were aware of the consultation and had adequate time to collate and respond with their views. Information on the consultation and links to the consultation paper were provided to the normal statutory consultees and relevant stakeholders. The consultation was also advertised on the Department's website.

4. Responses to consultation

The consultation paper sought views on the proposal to amend the powers of the Areabased Scheme Review of Decisions Panel from 2022.

The paper presented four questions as the basis for gathering views and formal responses. The open style of the questions in the consultation allowed consultees to express their views on additional aspects they considered important to ensure a fair and impartial review process.

A total of five responses were received. The following sections provide an overview of the main comments contained in the responses and the Department's reply to these comments. It provides a summary of the key issues raised by consultees.

A. Submission of new evidence to the Review of Decisions Panel

All of the responses were in favour of extra evidence being allowed, in addition to exceptional circumstances and Force Majeure. The following were also noted

- Due to the high percentage of farmers without qualifications literary and numeracy barriers exist. This should be noted and workarounds provided, ensuring the process is easily followed and understood;
- Each circumstance should be awarded more time to provide evidence. External factors can slow down the supply and provision of evidence and this should be accommodated;
- Extra resources should be provided by DAERA to ensure each complex, different case is given the correct time and attention;

- Legislation should be amended to accommodate all of the above.

DAERA RESPONSE

The Department has considered the responses and accepts this viewpoint.

New legislation has been drafted which will allow the Panel to accept additional evidence from the applicant which supports their original grounds for review.

The Department will provide clear guidance to the Review process which will be issued to applicants at the start of the process. The Department will also provide contact telephone numbers for any queries that may arise.

The Department is committed to ensuring the process is easily followed, open and transparent, and that each Review is resolved as early as possible.

B. Representation of DAERA on the Review of Decisions Panel

The five responses received indicated that DAERA should not be present in an 'independent' panel. One response however noted that perhaps they can be present in an 'advisory' capacity without right to voice an opinion.

DAERA RESPONSE

The Department acknowledges the importance of the independence of the Panel, and that the presence of DAERA staff on the Panel could be perceived as prejudicing that independence.

The Department will not be represented on the Panel.

The Department will, however, provide a Secretariat to the Panel.

Under the draft legislation, the Department must accept the decision of the Panel as final, unless the decision is based on an error of law. If the Department believes that a decision is based on an error in law, the Department will refer the decision back to the Panel to reconsider.

C. Composition of the panel, including desirable experience, remuneration for panel members.

All the feedback received suggested that the new independent panel should include people with agricultural and legal expertise and perhaps medical given the toll that the Review process can take on an individual farmer. Comments were made on the length of time it takes for a Review process to be heard and concluded.

DAERA RESPONSE

The Department welcomes the comments and acknowledges the need to have a pool of panel members who are suitably experienced to deal with all the issues which will be raised. As the Panel will be responsible for decisions affecting the payment of public money, it is of vital importance that they understand the relevant regulations.

The Department will seek to recruit a pool of panellists with appropriate legal and / or agricultural knowledge and experience.

D. Other comments

Comments included

- Being aware of the mental health impact of the process can have on individual farmers and the barriers to understanding complex legislation;
- Following best practice from other appeal panels
- The proposed reassessment of historic cases

DAERA RESPONSE

The guidance provided by the Department will signpost applicants to the free confidential support line service provided by Rural Support, a charity part funded by the Department.

The Department acknowledges the need to make the process simplified and easily understood by each individual farmer. The Department will work with applicants to help ensure that they understand the reasons for the decisions it has taken. The Department will provide contact telephone numbers for any queries that applicants may have.

The Department is taking time to consider best practice across other Departments.

The Department does not intend to re-open historic cases. Cases were heard and decided under the legislation in place at that time, and the applicants had the opportunity to seek a Judicial Review if they believed the decision was wrong in law.

5. Decision and Next Steps

The Department wishes to thank all of those who took time to respond to the consultation process. The Department has carefully considered all comments received.

New legislation has been drafted under which the Department must accept the decision of the Panel as final, unless the decision is based on an error of law.

Work is underway to recruit a pool suitably qualified and experienced panellists to be in post by 01 February 2022.

The Department will also take time to ensure that guidance issued to the applicant is clear and unambiguous. Easily followed procedures will ensure that the farmer does not feel as daunted by the procedure.

Annex A – List of Respondents

Sinn Féin

Rosemary Barton MLA

Northern Ireland Agricultural Producers Association

Ulster Farmers Union

Agricultural Consultants Association (David Rankin)