

Review of Decisions Procedure CAP Reform Area-based Schemes

For decisions relating to the 2015 and 2016 Scheme Years, in the following Schemes:

- Basic Payment Scheme
- Greening Payment
- Young Farmers' Payment
- Forestry Grant Scheme
- Areas of Natural Constraint Scheme



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

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

Area-Based Schemes Transformation Management Branch
Orchard House
40 Foyle Street
Derry/Londonderry
BT 48 6AT

Tel: 0300 200 7848

Email: EUASD.transformation.team@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 FEBRUARY 2017.

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1. Introduction

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 decisions relating to 2015 and 2016 scheme years for;

- Basic Payment Scheme (BPS)
- Greening Payment
- Young Farmers' Payment
- Forestry Grant Scheme
- Areas of Natural Constraint Scheme (ANC)

This booklet does not apply to schemes which were operational under the previous Rural Development Programme. For instance if you are seeking a review of a decision relating to 2014 Single Farm Payment you should refer to booklet *Review of Decisions Procedure Area-based Schemes 2005-2014*.

DAERA implements a Stage One and Stage Two Review of Decisions process for new non area based schemes, which commenced in 2015. Details are available within individual scheme literature.

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. 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. The Department 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 two stage procedure. This procedure is an opportunity for applicants to explain and demonstrate how they have met the requirements of the relevant scheme and why the Department's initial decision should be changed.

The Stage One review of the decision is conducted by officials in the scheme processing branch who were not involved in making the decision in question. You cannot proceed to Stage Two until the Stage One review is complete. Details of the Stage One procedure are set out at Section 5.

If you decide to proceed to Stage Two, there is now an option to enter a FAST TRACK Stage Two process. The benefit of the FAST TRACK process is that you will obtain your final decision more quickly. Alternatively, if you are not concerned by the time taken to obtain your final decision, you may wish your case to be dealt with under the original Stage Two process. This will entail a hearing by an External Panel, which only makes a recommendation to the Head of DAERA Paying Agency. Because of the steps involved in the original process, it takes much longer to complete cases in this way. Details of the original and the FAST TRACK Stage Two processes are set out at Section 6.

Details of the Stage Two procedure are set out at Sections 6 to 9.

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

<https://www.daera-ni.gov.uk/publications/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 10 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.

5. Stage One Review

Stage One is an internal review. It will be carried out by the following teams depending on the scheme.

For Basic Payment Scheme, Greening Payment, Young Farmers' Payment, and Areas of Natural Constraint Scheme, the Stage One review will be completed by the Stage One Review of Decisions Section in Orchard House.

For Forestry Grant Schemes, Forest Service in Inishkeen House, Enniskillen will carry out the Stage One Review.

To request a Stage One review you must contact the Stage One Review of Decisions Section relevant to the scheme (see Section 10 for details) and ask for a Review of Decisions Stage One application form (AP1). 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 42 calendar days** from the date on our decision letter. We will write the deadline date on the front of the application form.

For BPS, Greening Payment, Young Farmers' Payment, and ANC related reviews, please return your completed application to the Stage One Review of Decisions Section, Area Based Schemes Payment Branch, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT.

For Forestry Grant Scheme related reviews please return your completed application to the Grants & Regulations Branch, Forest Service, Inishkeen House, Killyhevlin, Enniskillen, BT74 4EJ.

You can also deliver your application in person to your local DAERA Direct Office. A list of the DAERA Direct Offices is included in Section 11. 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. 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 Stage One Review of Decisions Section. If you have not received an acknowledgement within 10 days of having posted it, you should contact the relevant review section immediately (see Section 10 for details).

When you complete your Stage One 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.
- (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 relevant business area.

It is not enough for you to state that the Department's decision is incorrect. It is for you to demonstrate how you consider the initial decision is incorrect. It is important that you provide as much information and evidence as possible with your application.

Failure to provide clear information and documentation will delay the processing of your application.

The Stage One Case Officer will contact you when they start your case. If required they will advise you of the deadline for submitting any additional evidence on your case. Evidence will not be accepted after this deadline.

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. Stage Two Review

When you receive your Stage One decision letter, you will also be provided with a Stage Two Review of Decisions application form, if the Department's original decision has not been changed or has been changed in part. The decision letter will advise you of the deadline for submitting a Stage Two review application. The deadline date will also be written on the front of the application form. You should note that you have **42 days from the date of the Stage One decision letter** to submit your completed Stage Two application form.

You can only apply to Stage Two after the Stage One Review has been completed.

You should return the completed application form to Stage Two Review of Decisions Section, Room 548, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB. You can also deliver your form in person to your local DAERA Direct Office (see Section 11 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 Stage Two Review section. If you have not received an acknowledgement within 10 days of posting you should contact the Stage Two section immediately (see Section 10 for details).

When you complete your Stage Two Review of Decisions application you must:

- (i) 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 Regulations where applicable.

Please note that Freedom of Information and Environmental Information Regulation requests should be sent separately to the relevant business area.

It is not enough for you to state that the Department's decision is incorrect. It is for you to demonstrate how the initial decision is incorrect.

It is important that you provide as much information and evidence as possible with your application. Failure to provide clear information and evidence will delay the processing of your application. **It is important that you provide all information and evidence with your application.**

Stage Two Review Options

The introduction of CAP Reform Area Based Schemes in 2015 has led to an unprecedented increase in the number of Review of Decisions applications received. This has impacted on the time taken to complete Stage 2 Reviews under the original process, which is already known to be a slow process.

In order to address this issue the Department has introduced a FAST TRACK Stage Two process option for applicants. You will have to indicate on your Stage Two application form which Stage Two process you wish your case to be considered under.

Applicants are reminded that the responsibility to make final decisions in all cases rests with the Head of DAERA Paying Agency regardless of which option you choose.

The External Panel can only make a recommendation to the Head of DAERA Paying Agency. This is not binding on the Department, and the External Panel has no discretion to make a recommendation which is outside the EU legislation or scheme rules.

Option A – FAST TRACK Stage Two Process

If you select the FAST TRACK option, the Department will aim to issue a final decision within three months of your Stage Two case being started.

There is no cost to you for this option.

The FAST TRACK option is a review by a Stage Two Case Officer who has not been involved in the operational delivery of the schemes or the original decision and is therefore independent from previous decisions on your application.

The Case Officer will contact you when they start your case. The Case Officer will then undertake a full review of your case and you will be offered the opportunity to engage with them directly.

The Case Officer will look at the details of your case in a fair, impartial and transparent manner taking into account all information provided by you in support of your case. The Case Officer will produce a report of the facts of your case, which will be sent to you for your comments. You must study the case file carefully. If you consider that the file is incomplete you must notify your Case Officer immediately so that the matter can be rectified.

You will have two weeks from the date of the letter enclosing the Stage Two Report to comment. This will be your final opportunity to comment on your case before a decision is made by Head of DAERA Paying Agency. Your comments will be included in the final case report. **Comments received after the deadline will not be considered. There will be no exceptions.**

The Case Officer will finalise your report and provide it to the Head of DAERA Paying Agency for consideration. The report will include the facts of your case, subsequent comments made by you and the Department's position in relation to your case.

The Head of DAERA Paying Agency must act within the EU and National regulations and has no discretion to do otherwise. The Head of Paying Agency's role is to ensure that all options within the EU and national regulations have been considered by us and to ensure the facts of your case have been given full consideration.

When the final decision has been made, a letter setting out the Head of DAERA Paying Agency's final decision and explaining the Department's position will be sent to you by Royal Mail recorded delivery to the registered trading address recorded on the Department's database.

When the Head of DAERA Paying Agency makes their decision this decision is final and concludes the Department's review procedures. There are no other review procedures available within the Department.

Option B: Original Stage Two Process (Panel Review)

If you select Option B, your case will be heard by an External panel. The panel consider your case and make a recommendation to the Head of DAERA Paying Agency. However, the recommendation is not binding on the Department and the panel has no discretion to make a recommendation which is outside the EU legislation or scheme rules. The Head of DAERA Paying Agency makes the final decision.

If you choose this option you have the choice of one of the following reviews:

- **A written review:** If you choose this option, you will not be able to attend the hearing and the review will be based on the documentation provided. This option costs £50.

Or

- **An oral review:** If you choose this option, you can be present at the hearing to answer any questions the panel may have or to add to the information you have already provided. The oral part of the hearing usually lasts 30 minutes. You may bring a representative with you or nominate a representative to act on your behalf. This option costs £100.

You should be aware

Option B is our original review procedure. It has proven to be a lengthy process due to the steps involved, therefore we cannot provide a time frame within which you might expect a final decision on your Stage Two case.

Under the Panel Review process, a Stage Two Case Officer will contact you when they start your case. The Case Officer is available to discuss your case and may contact you for clarification and additional evidence if necessary. He/she will review the decision and provide a written report to the panel. The written report sets out the Department's position on your case.

Six weeks before the hearing we will notify you of the date and time of your hearing and provide you with a copy of the case file that has been prepared for the panel.

If you have opted for an Oral review, you may bring somebody with you to the hearing.

You will have two weeks from the notification of the panel hearing to provide any additional evidence or information you have. Your invitation letter will tell you the deadline for receipt of additional information and evidence.

No additional information or evidence will be accepted after this deadline – except in exceptional circumstances. If exceptional circumstances apply you must notify the Department by the deadline in the letter that you will be providing additional information at the panel hearing. Failure to notify may result in the non admission of this additional information.

You must study the case file carefully. If you consider that the file is incomplete you must notify the Stage Two team immediately (see Section 10 for details) so that the matter can be rectified.

We will not accept any additional information or evidence after the hearing.

If you rely on information or evidence at the panel hearing which you have not previously provided to us, you will be asked to explain why you did not provide this at the earliest opportunity. The Department reserves the right not to admit information or evidence provided at the panel hearing.

Should additional information or evidence be provided and is accepted, the Department reserves the right to review this before making a final decision on your case. You should note there is a possibility that the Department might identify other information in its possession that relates to the late evidence presented (by you) to the panel. If this is the case you will be provided with a copy of such evidence and will be given an opportunity to comment on this before the final decision is taken on your case.

How the External Panel operates

The External 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 scheme. The panel cannot make recommendations on policy or regulatory interpretation. The panel do not have 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 hearing the panel chairperson will make introductions and will open the hearing by asking you to clarify your grounds for review. The panel may have questions to ask you to clarify facts and will consider the evidence provided in the case.

A Departmental official will be present to take a note of the hearing. The record is not a verbatim record and documents only the mains points of the hearing. This member of staff has no capacity other than to record the proceedings. A copy of the hearing note will be provided to you on request. The record is not a verbatim record and documents only the mains points of the hearing. .

The panel will consider your case and all information available at the hearing and make a recommendation based on their findings.

The panel's recommendation is not binding on the Department and the final decision in relation to your case rests with the Head of DAERA Paying Agency.

What happens after the Panel?

When the Department receives the panel's recommendation, a Departmental official will consider the panel's findings and recommendation and provide a report to the Head of DAERA Paying Agency. This report will include the facts of your case, a copy of the panel's findings and recommendation and the Department's position in relation to your case

The Head of DAERA Paying Agency must act within the EU and national regulations and has no discretion to do otherwise. The Head of DAERA Paying Agency's role is to ensure that all options within the EU and national regulations have been considered by us and the panel. The Head of DAERA Paying Agency 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 Head of DAERA Paying Agency's final decision, the panel's findings and recommendation and the Department's position will be sent to you by Royal Mail recorded delivery to the registered trading address recorded on the Department's database.

When the Head of DAERA Paying Agency makes their decision this decision is final and concludes the Department's review procedures. There are no other review procedures available within the Department.

7. Outcome of the Review of Decisions Procedures

The outcome of either a Stage One or Stage Two Review (regardless of which Stage Two option you choose) will either 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 have chosen the original Stage Two Review process (that is, Option B) and the Department changes its decision in full or in part we will refund your fee. If the Department does not change its decision, your fee will not be refunded.

This does not apply to the FAST TRACK Stage Two process as the Department does not charge a fee for this option.

8. 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:

Department of Agriculture, Environment and Rural Affairs
Headquarters
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 dialled from another text phone)

E-mail: daera.helpline@daera-ni.gov.uk

Or visit our website:

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

9. Your options after the Stage Two Review

Once you have completed both stages of 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 (NIPSO). 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

11. Contact Details

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

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.forestservice@daera-ni.gov.uk

Further Information on Stage Two Review of Decisions process can be obtained from

Department of Agriculture, Environment and Rural Affairs

Stage Two Review of Decisions Section

Room 548

Dundonald House

Upper Newtownards Road

Ballymiscaw

BELFAST

BT4 3SB

Tel: 0300 200 7848

E-mail address: ReviewDecisions.Stage2@daera-ni.gov.uk

Contact details of Local DAERA Direct Offices

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

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