



Department of

**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk

CONSULTATION
ON PROPOSED CHANGES TO

DAERA
AREA BASED SCHEMES REVIEW OF
DECISIONS PROCESS
2017

1.1 Introduction

The reform of the EU Common Agricultural Policy (CAP) has resulted in changes to area-based schemes from 2015. It is important that applicants meet all the eligibility requirements for any schemes which are applied for and in line with EU requirements, the Department undertakes controls to ensure this is the case.

Administrative checks are carried out on all claims received. The Department may also supplement administrative checks with rapid field checks if necessary.

In addition, the Department is obliged to carry out on the spot checks (OTSC) on at least 5% of claims to ensure that eligibility conditions of schemes on which claims have been made, have been met.

Cross-compliance conditions are designed to promote sustainable agricultural practices in Europe and reflect a number of environmental and other objectives. All European Union Member States have to implement Cross-compliance. All farmers claiming area based schemes must meet the Northern Ireland Cross-compliance conditions as they relate to the agricultural activities and land associated with the applicant's holding (land being farmed / claimed).

If applicants fail to meet the eligibility criteria for a Scheme, for which they have made a claim, or breach the NI Cross-compliance standards, they 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 the Department's decision.

The Department recognises the importance of providing a process to farmers, who believe the Department did not reach the correct decision in respect of their claim, with an opportunity to explain and demonstrate why the Department's initial decision should be changed. This is known as the Review of Decisions process.

As a consequence of concerns over the length of time taken to issue final decisions to applicants under the existing Review of Decisions process, the previous DAERA Minister, Minister McIlveen, commissioned a review of the current approach asking that a more efficient process be put in place to better meet the needs of farmers for the 2017 year onwards. The Department's proposed change to the Review of Decisions process is the focus of this consultation.

1.2 Consultation

The consultation programme for the Review of Decisions consultation has been split into two distinct phases, informal pre-consultation which has helped the Department to develop proposals to enhance the Review of Decisions process to achieve the Minister's objective; and a consultation on the proposed new process, contained in this document to obtain views and fully understand impacts and the mitigating actions that may be appropriate. The results of this consultation will be analysed and collated in the final document to be published in Summer 2017, prior to implementation of the new process for the 2017 scheme year.

1.2.1 Pre-Consultation Programme

The Department undertook a pre-consultation exercise to obtain views and evidence to inform our thinking about the impacts which may be caused by the proposed change to the review of Decisions process. The exercise was undertaken with Agricultural Consultants Association Northern Ireland (ACANI), Ulster Farmer's Union (UFU) and the Northern Ireland Agricultural Producers Association (NIAPA) as main stakeholders and representatives of those most likely to be impacted by the proposed changes.

The stakeholders were provided with background information regarding proposals and then offered the opportunity to meet with DAERA to discuss the key issues. All of the external stakeholder groups approached, availed of the opportunity to meet with the Department to provide their views.

We are grateful to these groups and individuals who took the time to give their views so constructively at this stage. The input received was considered in the completion of this document.

1.2.2 Consultation Programme

In accordance with Equality Commission guidelines, we have planned a period of consultation including active engagement with a number of stakeholder groups through a pre-consultation exercise. We recognise the importance of allowing ample time for responses to the consultation, and for this reason it is proposed that the consultation period will be eight weeks. We will publish the consultation document on the DAERA internet site as well as making it available in other formats on request.

2 Summary table

| | |
|---------------------------------------|---|
| Topic of this consultation | The proposed change to the Department's Area Based Schemes Review of Decisions process |
| Scope of this consultation | For applications received relating to the 2017 Area Based Scheme Year onwards. |
| Geographical scope | These proposals apply to Northern Ireland. |
| To | This is a public consultation and anyone with an interest in the proposals is welcome to respond |
| Body responsible for the consultation | This consultation is being run by the Department of Agriculture, Environment and Rural Affairs (DAERA). |
| Duration | Consultation starts: 9 th June 2017 Consultation ends: 4 th August 2017 |
| Enquiries | During the consultation, if you have any enquiries or wish to receive a copy of the document, please contact. email: paul.brunton@daera-ni.gov.uk Telephone: 028 9052 5547 |
| How to respond | Online using the link on the DAERA consultations website https://www.daera-ni.gov.uk/consultations or by returning Appendix A – Response Form to In writing to: (a) email: paul.brunton@daera-ni.gov.uk (b) post Room 423, Dundonald House, Upper Newtownards Road, Ballymiscaw, BELFAST BT4 3SB |
| After the consultation | At the end of the consultation period we will summarise the responses and place the summary on the DAERA website. Responses received will be analysed and considered by the Department in its proposed change to the Review of Decisions process. The consultation responses will be published. If you do not wish your response to be published, please make this clear in your reply |

3 Freedom of Information Act 2000

The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to the consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below with respect to the confidentiality of consultations, as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:-

- The Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of response please contact:-

Information Commissioner's Office – Northern Ireland

3rd Floor, 14 Cromac Place

Gasworks

Ormeau Road

Belfast

BT7 2JB

Telephone: 02890 278757 / 0303 1231114

Alternatively your request can be sent electronically to ni@ico.org.uk

4 Background

- 4.1 There is no requirement under EU Regulations that compels the Department to operate a process to review decisions made in administering EU Area-based Schemes. However, similar to other UK jurisdictions and in the interest of promoting good governance, the Department has been operating the current two stage Review of Decisions process for EU Area-based Schemes in Northern Ireland, since 2005. This process is intended to provide farmers with a fair, impartial and transparent review of scheme decisions against the framework of EU and National Regulations and Scheme rules.
- 4.2 Although the current Review of Decisions process has been meeting objectives in the past and is largely consistent with the processes operated in other UK jurisdictions, the then Minister, following the establishment of the new Departments in May 2016, Michelle McIlveen, indicated her concern at the length of time taken for farmers to receive final decisions, especially given the unprecedented number of review applications received following the introduction of the new CAP Reform schemes in 2015.
- 4.3 In December 2016, Minister McIlveen directed the Department to streamline, where possible, the process for those with applications relating to the 2015 and 2016 scheme year. Minister McIlveen further directed the Department to review the current process and put in place a provision which would enable applicants to receive their final decision in a more timely manner. The new process is to be operational for review applications which relate to the 2017 scheme year onwards.
- 4.4 Having gathered initial views from stakeholders through a pre-consultation held earlier this year, the Department is now seeking to consult on its proposals, with those this change might affect. Given that the new “Active Farmer” criteria have to be met in order to be eligible to claim area-based schemes, we see that this consultation principally concerns farmers, farming organisations, and agents.

The current Review of Decisions process

- 4.5 There are a number of steps in the end- to-end Review of Decisions process. The first, Stage One, is an internal review carried out by an official within EU Area Based Schemes Delivery unit, who was not involved in the original decision. A farmer who wishes to have an area-based scheme decision reviewed has 42 calendar days from the date on their decision letter to submit a Stage One application form, indicating which decision they wish to have reviewed. When a farmer completes a Stage One Review of Decisions application they must:

- (i) Clearly state why, in their opinion, the decision is incorrect.
- (ii) Provide all documentation in support of their case, ensuring that any photographs, supplied are dated and clearly labelled.
- (iii) Refer to the relevant EU or national regulations or scheme rules, as applicable.

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

- 4.6 The Stage One Case Officer will contact the farmer when they start their case. They will advise them of the deadline for submitting any additional clarifying evidence related to the case. Evidence will not be accepted after this deadline. The Case Officer will consider all information provided and review the decision against the framework of EU and national regulations, and scheme rules. If necessary technical input will also be sought from appropriate colleagues, depending upon the issues raised by the business. When the review is complete, the decision, and a copy of the Case Officer's report will be sent to the farmer by Royal Mail recorded delivery to the registered trading address recorded on the Department's database.
- 4.7 If an applicant remains unsatisfied with the outcome, they will have 42 days in which to submit an application to have a Stage Two review.
- 4.8 The Stage Two team is not involved in the original decision.
- 4.9 At Stage Two a Departmental caseworker prepares a written report for the Panel which sets out the Department's position on an applicant's case. A copy of the case report and case papers are sent to the Panel members and the applicant six weeks before the Panel Hearing. Applicants have the choice of a written or an oral review of their case. If an applicant chooses a written review, they are not able to attend the Panel hearing and the review will be based on the documentation provided. If an applicant chooses an oral review, they can be present at the hearing to answer any questions the panel might have or to provide clarification.
- 4.10 The Panel's role is to consider the representations made by the applicants in the context of the decision but they are bound by EU and national regulations. Following the hearing the Panel make a recommendation to the Head of Paying Agency. The Panel's recommendation is not binding on the Department.
- 4.11 The Department considers the Panel's findings and recommendation against the EU Legislation and scheme rules and provides a report of the Department's position. As

Paying Agency, the Department is required to ensure that all monies paid to farmers are in full compliance with all governing legislation.

- 4.12 The Head of Paying Agency considers a submission that includes the facts of the case, a copy of the Panel's findings and recommendation and the Department's position on the case. The Head of Paying Agency must act within the EU and National Regulations and is not obliged to accept the Panel's recommendation, but will take into account their findings before making the final decision.

5 What causes delays in the current process?

- 5.1 In reviewing the current Review of Decisions process, it has been recognised there are elements of the current process which are outside the control of the Department and these elements can add significantly to the time taken to complete cases. These include;
- the number of applications submitted
 - clustering of applications following inspection periods
 - delays to supporting evidence/information being submitted by the applicant
 - setting up of Panel hearings, to accommodate applicants/ representatives/ and /or panel members;
 - the adjournments of hearings;
 - the submission and verification of additional evidence provided at hearings and taken into account by the Panel.
- 5.2 Over the last few years, the Department recognises an increase in review applications which require technical input, which had not previously been the case. These relate to cases involving Control with Remote Sensing (CwRS), Young Farmer issues, and Cross Compliance matters among others. The competing priorities on the limited technical staff resource, adds to the delay in gathering information to complete reviews.

6 What is the purpose of this consultation?

- 6.1 The Review of Decisions process provides applicants with a mechanism to challenge decisions made by the Department and the process should be both timely for the applicant and fit for purpose.

- 6.2 For some time there has been a backlog of review cases at both Stages of the Review Process. This delay in receiving their final decision creates uncertainty for applicants and may impact on business decisions and add to financial pressures. The Department recognises the delay can also contribute to an increase in an individual's anxiety, when they feel the Department has got it wrong.
- 6.3 Staff numbers have been increased at Stage One and other attempts to bring greater efficiency to the process have delivered some improvement in the number of decisions issued per year. However, the length of time taken to issue final decisions continues to concern the Department and understandably attracts criticism from applicants, industry and political representatives.
- 6.4 The introduction of the new area-based schemes in 2015 has led to an unprecedented increase in the number of Review of Decisions applications received. The Department recognises the existing Review of Decisions process was not designed to cope with this increase in volume and that the consequent impact on time taken to complete reviews is unacceptable for applicants.
- 6.5 Looking at the current process, it is recognised the Panel stage significantly increases the time taken to process cases. As Paying Agency, the Department is required to ensure that all monies paid to farmers are in full compliance with all governing legislation. The Head of Paying Agency must act within the EU and National Regulations and is not obliged to accept the Panel's recommendation, but will take into account their findings before making the decision. There is no flexibility or discretion to step outside of the EU rules and, therefore, it is not possible to accept Panel recommendations if they are inconsistent with the rules.
- 6.6 The Department has undertaken some work to analyse the overall impact of the External Panel. An analysis of 100 Stage Two decisions issued showed that in 83% of cases, the Department's final position was unaffected by the input of the Panel. In a further 7% of cases, the changes applied as a result of the Panel's deliberations did not result in any significant material benefit for the applicants. Therefore, only 10% of Stage Two reviews (2.5% of all Review of Decisions applications) or under 0.03% of annual area based claimants, derive benefit from access to an external Panel.
- 6.7 The purpose of this consultation is to invite views on the proposed changes to the Review of Decisions process to ensure that it is designed to better meet the needs of farmers. Where an applicant feels the Department has made a wrong decision, the Department recognises that providing a mechanism to review this decision is important to our applicants. Similar to other UK jurisdictions, the main objective for

the Department is to provide an efficient, robust and affordable Review of Decisions process for area-based schemes, which also reduces the time taken for final decisions to be issued to applicants.

7 What features are essential in the new process?

7.1 From the Department's perspective and from the views gathered through the pre-consultation exercise with stakeholders, we consider that the essential features the process should include are:

- **Faster** process - to shorten the time taken for applicants to receive final decisions – reducing inconvenience for applicants and improving accuracy for future claims.
- **Affordable** – process needs to be affordable for farmers and the Department whilst providing an effective form of redress for applicants.
- **Applicant contact** – improved contact/engagement with applicant to ensure they understand the issues and are kept informed of the progress of their application.
- **Interactive** – applicants need to be provided with an opportunity to provide evidence to support their position in verbal and written form.
- **Equal and transparent** – process must be open and transparent, and applied equally for all applicants.
- **Accurate** decisions - to ensure accurate decisions are made and maintain compliance with EU Legislation and scheme rules.
- **Proportionate** to the level of reviews initiated.
- **Independence** - to be independent from those taking the original decision.

We propose to include the above factors in the changed Review of Decisions process.

Question 1: Do you think there are other factors that you consider should be included? If so, what are they?

8 General description of the proposed changes

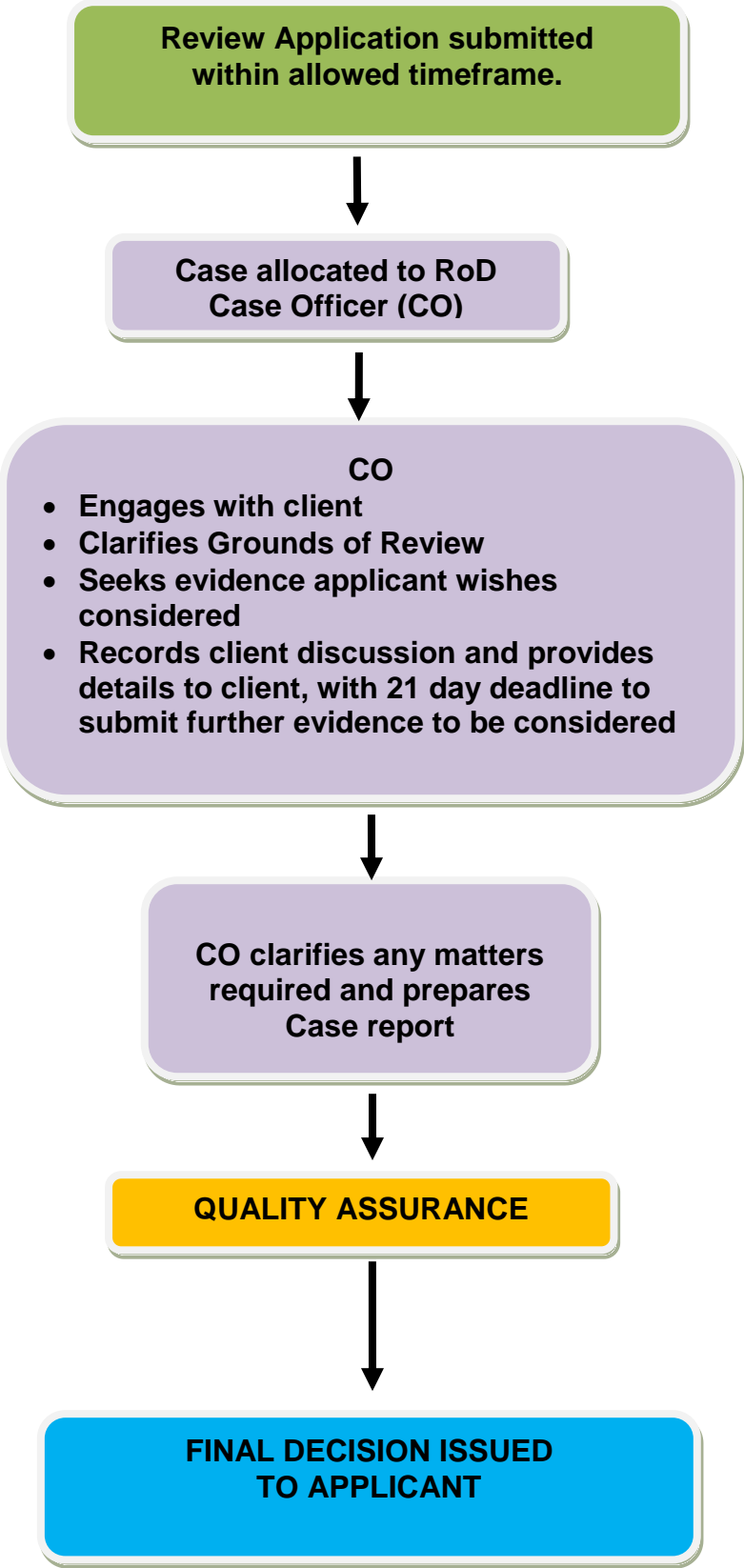
8.1 There is no requirement under EU Regulations that compels the Department to operate a process to review decisions made in administering EU Area-based Schemes. In some EU countries (Germany and France), the process is limited to a check to detect administrative errors. Although UK domestic legislation requires recourse to an “independent and impartial tribunal established by law (Judicial Review)”, in the interest of better governance, all UK jurisdictions have put in place Review of Decisions processes. The relevant statutory rules of Northern Ireland - The Common Agricultural Policy (Review of Decisions) Regulations (NI) 2015 No.318 - provide the basis for the Department’s review process. This legislation is not prescriptive on the procedure to be established other than it should provide for:

- a review of a relevant determination to be carried out on the application of the person to whom it was directed;
- the manner of making any such application; and
- the time within which supporting evidence is to be submitted for the purposes of a review of the relevant determination.

8.2 To ensure compliance with EU Regulations the Department will continue to offer a Review of Decisions process to area-based scheme applicants. However, given the significant increase in review applications and analysis completed, the Department is proposing to reduce the number of steps currently required to go through the various stages and remove the External Panel element from the Review of Decisions process. Without the Panel element, there is little value in continuing to implement a Two Stage process. Therefore, in considering a new process, the Department proposes to replace the current Two Stage process with a new more comprehensive, robust and interactive single stage review process. Under this modified process, the final decision will be made following full investigation of the grounds submitted by the applicant, by Case Officers who were not involved in the original decision. The Department will also introduce an enhanced Management checking regime to ensure consistency and quality of decisions is maintained at a high level.

8.3 The schematic below (Fig 1) outlines the new Review of Decisions process proposed.

Fig 1 Schematic of proposed Single Stage Review of Decisions Process



9 Departments Proposals and Consultation Questions

9.1 We propose to change the Review of Decision process to a single stage process as outlined in the diagram in Fig 1. Whilst there will no longer be an external panel, the role of the Case Officer will change and this will provide a better opportunity to engage with the applicant and to understand why the applicant feels the Department's original decision has not been correct.

Question 2 - Do you agree that a single stage Review of Decisions process, outlined in Fig 1, will provide applicants with a faster review of the Department's decision? If not, please give your reasons.

9.2 We have the ability to charge a nominal fee for a Review of Decision which would be refunded should the Department's original decision be overturned.

Question 3 – Do you agree that the Department should charge a nominal fee to submit an application for a Review of Decision? If not, please give your reasons.

9.3 Currently the Department will accept applications for reviews which are received within 42 days from the date of the Department's decision letter. We are interested to find out if you feel this is sufficient time for applicants to submit their application.

Question 4 - Do you believe that 42 days is sufficient time for applicants to submit their application for a Review of Decision. If not, please tell us what the maximum number of days should be and give your reason.

9.4 We do not propose to change from the current rule to process cases in order of the date they are received by the Department.

Once a case is ready to be started, a Case Officer will be appointed and will contact the applicant. The Case Officer will be available to discuss the grounds for review and will engage with the applicant directly (or his/her nominated representative), throughout the process. The Case Officer will establish the facts of the case and the applicant's grounds for review and will provide a written summary of this to the applicant. The Case Officer **may** ask the applicant to provide additional information or supporting evidence and this will also be detailed in the summary. The applicant will have 21 days to provide this information to the Case Officer, if they wish it to be taken into account, in the consideration of the case.

Question 5 – Do you agree that 21 days from the Case Officer requesting it, is sufficient time, to provide supporting evidence,? If not, please tell us the period you would suggest is appropriate and give your reason.

9.5 Once the 21 days have elapsed, the Case Officer will proceed with reviewing the case on the basis of the information received at that date. The Case Officer will clarify any queries arising with the Competent Control Authority involved in the original decision and may, if required, seek further clarification on the subsequent additional information provided by the applicant. Within the new process, we propose to have available to us improved access to technical staff within the Competent Control Authorities. This will enable quicker clarification of case queries and information and further speed up the Review of Decisions process. When the case work has been concluded, a case report will be prepared, checked, and subsequently will be approved by a Senior Officer, for consistency and quality purposes. Following this, a final decision will be issued to the applicant.

For some time, due to the volume of Review of Decisions applications being received by the Department; and as cases are progressed in strict date based order, applicants within the current process can expect to wait between 9 and 12 months for a Stage One decision and in some cases over two and a half years for a final decision.

Assuming that all evidence is provided in a timely fashion, under the Department's proposed new process we would aim that the timeframe from starting a review case until the applicant receives their final decision will be 3 months.

Question 6 – Do you consider 3 months is a reasonable timeframe to receive a final decision within? If not, please tell us what you think would be a reasonable timeframe and give your reasons.

9.6 Following implementation, the new process will be kept under review to ensure the delivery of benefits for both applicants and the Department. It is anticipated once a sufficient volume of reviews have been completed, these will be assessed to ensure that the final decisions issued are both timely and of high quality. This review work will be undertaken approximately six months after the new process goes live.

10 What happens next?

The closing date for this consultation is **4th August 2017**. Responses received by that date will be analysed and taken into account by the Department in its consideration of the proposals for amending the regulations.

The Department welcomes any views or comments on any aspect of its proposals to change the Review of Decisions process

Please send your views and comments on the proposals set out in this document to the Department by 4th August 2017.

Comments can be made using the Microsoft Word Response form which can be found at: -

<https://www.daera-ni.gov.uk/consultations> and should be emailed to paul.brunton@daera-ni.gov.uk or posted to Paul Brunton, Review of Decisions, Room 423, Dundonald House, Stormont BT4 3SB.

This document may be available in alternative formats. Please contact us to discuss your requirements.

