



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

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**CONSULTATION ON PROPOSED CHANGES TO DAERA AREA  
BASED SCHEMES REVIEW OF DECISIONS PROCESS 2017**

**SYNOPSIS OF RESPONSES**

**January 2018**

**Contents**

1. Introduction
2. Consultation
3. Engagement with stakeholders
4. Summary Responses to consultation (By Issue) and DAERA Response
  - A. Assistance for and Interaction with Farmers / Agents
  - B. Single Stage Process
  - C. Independence of the Review Process
  - D. Time Required to Allow Respondents to Submit a Review Application and Collect Information Required for the Review
  - E. Timeframe to Receive a Final Decision
  - F. Payment for Applications
  - G. General - Line Manager Review of Inspections and Part Payments
5. Decision and Next Steps

Annex A – List of Respondents

Annex B – Schematic of Proposed Single Stage Review of Decisions Process

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## **1. Introduction**

In June 2017, the Department published a consultation paper on proposals for a new Review of Decisions process. This was 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 review of the current approach was commissioned by DAERA's previous Minister, Michelle McIlveen MLA, who asked for a more efficient process to better meet the needs of farmers for the 2017 year onwards.

The consultation programme for the Review of Decisions consultation was split into two distinct phases – (i) informal pre-consultation which helped the Department to develop proposals to enhance the Review of Decisions process to achieve the Minister's objective; and (ii) a consultation period on the proposed new process to obtain views and fully understand impacts and the mitigating actions that may be appropriate.

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. All of the external stakeholder groups approached availed of the opportunity to meet with the Department to provide their views.

The results of the consultation have been analysed and collated in this final document to inform the decision on review process to be adopted from the 2018 scheme year (It had previously been anticipated that the new review process would be implemented for the 2017 scheme year). This report is being published on DAERA internet site and will be made available in other formats on request.

## **2. Consultation**

The Department launched the consultation on 9<sup>th</sup> June 2017 and it ran until 18<sup>th</sup> August 2017. The public consultation was widely advertised in the farming press, on DAERA's website and via e-mail, and gave all stakeholders the opportunity to provide their views on the proposals made by the Department and on the Department's assessment of the impact of a proposed new Review of Decisions process.

In accordance with Equality Commission guidelines, DAERA undertook a period of consultation including active engagement with a number of stakeholder groups

through a pre-consultation exercise, and following the publication of the proposals, DAERA held three public meetings in Cookstown, Coleraine and Antrim. The Department took care to ensure that all organisations who wanted to respond had time to do so.

### **3. Engagement with stakeholders**

The Department engaged with key industry stakeholders during a pre-consultation period to discuss their views on a new process and shape the consultation proposals document. 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 and in the farming press.

### **4. Responses to consultation**

The consultation paper sought views on the proposed new Review of Decisions process. The paper presented six questions as the basis for gathering views but discussion at the three public consultation meetings and the formal responses received to 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 nine 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 is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised by consultees.

#### **A. Assistance for and Interaction with Farmers / Agents**

The overwhelming feedback from the public meetings and individual submissions from respondents was that more assistance, communication and interaction was required between the Department and farmers / agents. This was not only important during the Review of Decisions process but at the pre-review / inspection stage. There was also a view that the proposals outlined in the consultation document would adversely impact older people who may not have ICT skills.

Improvements suggested by respondents included: -

- Better communication between DAERA and the farm business at all stages of an inspection or review, but especially at the initial stages, e.g. problems identified by a DAERA inspector at a land inspection.
- Clearer communications in letters sent to farmers rather than using a standard format. DAERA needs to explain why and how they came to a decision rather than just providing a category for failing to meet requirements, e.g. “2015 Area Based Schemes – Active Farmer requirements not met”.
- More contact and guidance given between the Case Officer and the business or their agent. This would assist in uncovering all possible mitigating evidence at an early stage, i.e. avoiding a drip-feed of information to a Case Officer.
- Going out to the farm and speaking to the farmer directly rather than reviews being dealt with at a desk.
- Prior to a review commencing, the Case Officer should contact the local county DAERA office and speak to a senior DAERA official to establish if there was any communication, verbal or otherwise, between the farm business and DAERA officials at local level regarding their penalty before the review procedure began. If not, this communication at local level should be exhausted prior to entry into the Review of Decisions process.

## **DAERA RESPONSE**

*Improved communication and interaction is a key objective for the Department in moving to a single stage Review of Decisions process.*

*The consultation document outlined that the Department’s proposed process included:*

- **Applicant contact** – *improved, on-going contact/engagement with applicants to ensure they understand the issues and are kept informed of the progress of their application, including written and text alerts and reminders.*
- **Interactive** – *applicants would be provided with an opportunity to provide evidence to support their position in verbal and written form.*
- **Equal and transparent** – *process would be open and transparent, and applied equally for all applicants.*

*To address the concerns raised by respondents, the applicant’s assessment of staff interaction within the new process will be monitored. There will be a percentage of internal management checks which will consider the level of communication and interaction between a Case Officer and the farmer / agent and an independent (to the original decision) technical resource will be on hand to provide support to Case Officers.*

*During the consultation process, views relating to the Review of Decisions process, but not necessarily within the process (e.g. inspections), were raised by respondents. The Department notes the feedback received by respondents that some claims: -: -*

- *Require more informative responses at each stage – i.e. specify the detailed reason rather than a category of failure/penalty for a decision*
- *Need additional information from DARD inspectors / local offices prior to Review procedure*
- *Onsite visits were deemed necessary to review the facts.*

*The Department is committed to improving equality for all and is aware of the potential disadvantages, when it comes to submitting accurate applications for EU subsidy, that older farmers and those without ICT skills/ immediate access to adequate broadband and ICT equipment may face. To mitigate the potential disadvantages, the improved communication and one-to-one interaction with the farmer or agent at the review stage will assist with the gathering of information which can have a positive outcome on a review. DAERA also provides opportunities for farmers to seek guidance, assistance and use the ICT infrastructure available at DAERA local offices.*

## **B. Single Stage Process**

There were conflicting views expressed at the public meetings and from individual submissions on the proposal for a single stage process. Three respondents were opposed to removal of the two stage process, while four suggested that the existing process may not have resulted in as many Stage Two reviews if there was more assistance, communication and interaction between the Department and farmers / agents prior to entering the review process or at Stage One. There was acknowledgement that a single stage process is more likely to work if DAERA deliver on the assistance, communication and interaction proposed.

The key issues that respondents had with the single stage proposal were that: -

- a process internal to DAERA could not be truly independent, and;
- there was a need to ensure complete accuracy with the review of decisions process as the next recourse was to go to the N.I. Ombudsman or a judicial review.

Specific headline views that were noted by respondents included: -

- Farm visits should be undertaken to investigate Head of Holding cases and Case Officer details should be provided to the applicant.

- The Case Officer should be completely independent from the local DAERA regional offices, and re-visits or information gathering should not involve anyone involved in applying the decision which is being reviewed.
- Case Officers would need to be trained on the schemes being reviewed and know the exact rules of the schemes as at review stage, if it becomes evident that the Case Officer is not conversant with the rules of the scheme, all confidence will be lost in the procedure.
- Factual decisions can't rely on a single stage review of decisions process as farmers are an aging population and, like everyone, make mistakes. It will take time for these issues to be rectified, farmers to be trained and skills developed.
- A second stage is still required to ensure transparency, independence, impartiality and fairness, with one respondent noting the absolute necessity for retaining both Stage One and Stage Two parts of the process.
- Evidence shows that the two stage process is resource intensive and that it doesn't have a major impact on the outcome. Experience of other rural programmes has shown that applicants are more concerned about why they have been unsuccessful rather than who takes the decision. Therefore, it is important to have good communication and transparency.
- A single stage process will still need sufficient resources to ensure it operates effectively
- A faster result would satisfy both the farm business and DAERA, especially where the Case Officer has more contact with the appellant. However, the faster system must be fair and look at all the facts. To avoid mistakes, the role of the Case Officer will need to proactively identify and resolve issues as they arise.
- Farm businesses would still have the option of going to the Ombudsman or a Judicial Review, but the expense of this may outweigh the benefits.

## **DAERA RESPONSE**

*The Department acknowledges the concerns expressed over the proposed changes. However, DAERA is of the view that replacing the current Two Stage Review of Decisions process with a new single stage process which has greater engagement with the farmer; is equal and transparent and has controls and monitoring arrangements to ensure the accuracy of decisions, will deliver a quicker outcome for applicants and reduce the frustration and uncertainty they experience.*

*The Department believes implementing the new shorter process will, therefore, better meet the needs of applicants. The Department plans initially to put in place appropriate training, and thereafter ongoing mentoring, to equip staff working on the new process with the knowledge of the scheme rules required, so that they may engage with*

*applicants effectively. We are committed to ensuring our staff members receive the training necessary to perform their roles in the new process and to help customers. In 2015, the Department established a dedicated Training and Development team to provide training and on-going support to staff working on CAP schemes.*

*However, in recognition of the concerns raised that a single stage will be detrimental to the review process, DAERA Review of Decisions Case Officers will be more interactive with the applicant to ensure all information is collected. Communication channels will be improved to meet better the individual needs of farmers, including where appropriate, face-to-face, phone/video calls, local office meetings and onsite visits to ensure as far as possible there is agreement between DAERA and the farmer as to the issues under review and any supporting evidence provided by the applicant. DAERA will ensure the single stage process is sufficiently resourced.*

*To provide confidence and mitigate the risk of errors in a single stage process, the operation will be managed, monitored and quality assured effectively by line management who will be under different direct line management from the original inspecting officer. Staff who have been previously involved in taking the original decision will not be involved in the review process.*

### **C. Independence of the Review Process**

Four of the respondents were supportive of retaining an external panel as a means to providing a truly independent body providing input to the Review of Decisions process. Views highlighted were: -

- Incorrect interpretation by the inspector of the EU regulation on cross compliance,
- An independent person paid and facilitated by DAERA is a contradiction in terms,
- It is difficult to comprehend that a satisfactory degree of independence and impartiality exists in a single stage review.
- DAERA looking at a review tend to favour the original decision made by one of their colleagues. Even after Stage 2 where the panel have recommended in favour of the farmer, DAERA can overturn the result, and
- A one stage process may give a more expedient decision, but one which risks being be less fair, less accurate and with no independent review
- Too many decisions that favoured the farmer have been overturned by DAERA and the failure of DAERA to accept the decisions in a judicial review has left farmers feeling that DAERA is above the law and using its financial muscle to deter farmers.



Two other respondents highlighted the need for a Case Officer to be a non-DAERA employee and the local offices and fully trained on the schemes being reviewed as an officer who was not conversant with the rules of the scheme would quickly lose the confidence of the applicant and wider industry.

### **DAERA RESPONSE**

*As a Government Department, DAERA must be impartial in its operations. As Paying Agency for EU funds, the Department must act within the EU legislation and Scheme rules and has no discretion to step beyond these. Any divergence from the rules would leave the Department open to legal challenge, to criticism from the Northern Ireland Audit Office and to the possibility of disallowance from the EU. Any departure from the completely impartial implementation of EU legislation and Scheme rules would also raise issues of unfairness and inconsistency.*

*To address concerns of independence within the proposed Single Stage Review of Decisions process, DAERA will introduce an additional layer of monitoring and quality assurance by line management which will be independent from the inspection process.*

*DAERA will also mitigate the risk of concerns about independence by using a range of available communication channels and support infrastructure to improve ongoing contact / engagement with applicants to ensure they understand the issues, are kept informed of the progress of their application and that they can sign-off that they are content that all relevant information has been provided.*

*DAERA believe that an equal, transparent and carefully managed single stage process with internal independent checks, will gain the confidence of the farming industry. Recourse to the Ombudsman or a Judicial Review will continue to be available to applicants if, after completing the Department's Review of Decisions process, they feel the Department has not arrived at the correct decision.*

### **D. Time Required to Allow Respondents to Submit a Review Application and Collect Information Required for the Review**

Most respondents to the consultation, and discussion at the public meetings, felt that farmers / agents should be given a minimum of 60 days to submit a review application and a minimum of 42 days to submit information requested by a Case Officer, with one respondent requesting 90 days to submit the requested information.

The main reasons identified for the extended time periods were: -

- The inspection reports are complicated in their layout and sometimes when farmers take these reports to their local DAERA office, officials cannot interpret the findings. It was noted that DAERA has recognised this and is reviewing the 2017 inspection layout,
- The time necessary for agents to compile a response, particularly at busy times,

- The length of time professional and legal services take to respond to requests for information,
- Postal delays in Fermanagh which could be mitigated by the Department using recorded delivery,
- The proposed time limits of 42 days and 21 days respectively would be unfair, unrealistic and would result in deserving cases being unduly penalised due to factors such as busy farming periods

### **DAERA RESPONSE**

*Having considered the comments provided by respondents and at the public meetings, the Department accepts the views put forward and is content to extend the proposed time limits. Therefore, the time allowed to submit a Review will be extended to 60 days and the timeframe to submit evidence required by a Case Officer will be extended to 42 Days. With new improved, interactive, multiple communication channels, the Department expect applicants to meet these extended deadlines.*

### **E. Timeframe to Receive a Final Decision**

The Department proposed a three month target for completing Review of Decision cases under the new proposals, with the timeline commencing from when the Case Officer is allocated the case.

Nearly all the comments received from respondents and the public meetings were of the opinion that the correct decision was the priority for any process. The comments can be summarised as follows: -

- Three respondents were of the view that there should be no timeframe or that the timeframe should not be used to inhibit a fair, impartial and transparent review.
- Two respondents agreed that three months was a reasonable timeframe as long as a fair outcome was achieved.
- One respondent noted the need for a total timeframe taking account of all possible participants within the process

### **DAERA RESPONSE**

*In the consultation document, the Department proposed a three month target (from the point at which a review is allocated to a Case Officer) to complete reviews conducted under the new process. This time was based on applicants having 21 days*

to provide further information requested by a Case Officer. DAERA proposed a timeframe from the perspective of: -

- providing the applicant with clarity on the length of time that a review may take,
- delivering a timely service to the farming community, and
- allowing the Department to set internal management targets to ensure that resources available to the Department are managed efficiently.

DAERA agrees that the overriding priority is to ensure that the timeframe should not inhibit a fair, impartial and transparent review. In light of the increased time being given to submit a Review and the evidence subsequently required by a Case Officer (see above), DAERA will consider and implement appropriate targets in the first year of the revised approach to monitor performance in completing cases and these targets will be kept under review.

## **F. Payment for Applications**

The following comments were received from respondents and at the public meetings in relation to whether or not a nominal fee should be payable by applicants: -

- If a farmer is not consulted then no fee should be payable or the fee refunded.
- A £100 fee could deter small farmers and raises an equality issue.
- A nominal fee is not that important provided the applicant gets value for money, although some may find this difficult to pay. Others would feel if their case is strong then £500 may be 'cheap'.
- There should be no fee for the Review. As it is proposed to remove the independent panel, the resource cost is reduced. The important issue is to have transparent and timely feedback.
- A fully internal single stage process should not require a fee as it is a right.
- Under the present system, Stage 1 charges no fee but Stage 2 does. With the proposed new system, there will be no Stage 2, so why a fee?
- If a farmer has a concern then the farmer should raise that concern. DAERA encourages farmers to do this in its literature - "*Reporting a matter promptly can reduce the potential for financial loss due to inefficiency or flawed processes or procedures*". One method to raise a concern is through the review process, so why should a farm business have to pay for something that DAERA is encouraging?
- If a farm business wins a review, DAERA does not refund that business for the extra time and costs associated with the review procedure and so the business is disadvantaged financially. Even if the farm business loses its review, it has

cost the business financially both in penalties and time and effort spent preparing the review.

- DAERA's current penalties allow it to claw-back double the amount over-claimed, e.g. if the error is 5% DAERA claw back 10% and if the error is 20% or more DAERA claw back the full payment. To pay extra money on top of this would be extortionate.

### **DAERA RESPONSE**

*The Department notes the extensive comments received at the public meetings and from respondents which have been summarised above.*

*DAERA acknowledges the concerns around payment of a fee and the fact that there is no fee for an existing Stage One review. Therefore, the Department will not charge a fee for a single stage process, which will mitigate the risk of inequality for applicants in the new process. However, if necessary, the Department will revisit this decision.*

### **G. General - Line Manager Review of Inspections and Part Payments**

The following additional points were raised at the public meetings and in respondent comments, and although not directly associated with the proposed Review of Decisions process, the Department has taken note of the views expressed: -

- There was a call for inspectors to estimate the penalty applicable for any breach as part of the initial inspection write up. This should be followed up by a Line Management review of the inspections which should be risk based and provided by local officials who are likely to be more aware of the issues pertaining to local farms. DAERA should then allow part payments to be made after the line manager assessment.
- In the absence of the above, one respondent suggested the provision of a facility for a business to draw monies against payments accrued but under inspection process, with that facility being paid down on release of monies being held by the Department once all parties were satisfied. It is the understanding that a similar scheme/facility exists in other jurisdictions.
- Proportionate part payments should be applied in all inspection cases. If the Department decides to progress with fast decisions in the review process, it should apply the same in its inspections and payments processes, e.g. for unvalidated claims.

### **DAERA RESPONSE**

*The Department has taken note of the views expressed in relation to Line Manager review of inspections noted above and will give them due consideration. European*

*Union Regulations do not permit part payments to be issued for inspected businesses before decisions are finalised. Payment can only be made on fully verified claims.*

## 5. Decision and Next Steps

The Department wishes to thank all of those who took part in the public meetings and took time to respond in writing to the consultation process. In reaching conclusions on the detailed processes, authority and management structures to ensure correct decisions are accomplished, the Department has carefully considered all comments received.

***DAERA's Departmental Board has decided to replace the current two stage Review of Decisions process with a new Single Stage process. The new process will be introduced for area based review applications received from 1 April 2018. Whilst giving applicants the opportunity to avail of the current Two Stage process for longer, introduction of the new process at this time will also enable the Department to fully prepare and test processes and staff readiness.***

To address stakeholder concerns and provide confidence to the farming industry, the new single stage Review of Decisions process will include: -

- The delivery of a fair, equal, impartial and transparent Review of Decisions Process
- Sufficient resources to ensure that the Review of Decisions process is effective and timely.
- Appropriate separation of the review team and technical support from the original decision makers to ensure transparent, independent reviews. This will include line management separation of review monitoring and quality assurance functions from the original decision makers.
- Improved and proactive engagement with applicants (using available communication channels) to ensure all information pertaining to a review is collected for consideration.
- Sufficient time allowed for farmers / agents to provide evidence / information.
- Staff training to ensure a robust understanding of the guidelines and legislation.

The Department is committed to completing reviews in a timely fashion and in the first year of the revised approach, will develop a target timeline showing the review process from end to end, providing clarity for applicants and allowing DAERA to measure and monitor how the Review of Decisions process is operating.

The Schematic at Annex B summarises the proposed process.

**Annex A – List of Respondents**

Agricultural Consultants Association (Chairman)

Belfast Hills Partnership

Christie McCauley

Kevin MacAuley

Lisburn & Castlereagh Council

National Beef Association (NI)

Northern Ireland Agricultural Producers Association

Northern Ireland Public Service Alliance

Ulster Farmers Union

**Annex B - Schematic of proposed Single Stage Review of Decisions Process**

