

Basic Payment Scheme Guide

(includes guidance on the Protein Crops Scheme)

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Department of
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2021 Basic Payment Scheme

(includes guidance on the Protein Crops Scheme)

1. Key dates to remember

- 1.1 The Guide to the Basic Payment Scheme is no longer year specific (i.e. where a date falls on a Saturday, Sunday, Public Holiday we have not adjusted the date). You must refer to the DAERA website for further guidance on key dates for 2021.

<https://www.daera-ni.gov.uk/publications/single-application-2021-key-dates>

2. UK exit from the EU (Brexit)

2.1 Legislation

EU direct payment regulations are reapplied in UK law by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and have been amended by secondary legislation made under the Direct Payments to Farmers (Legislative Continuity) Act 2020 and the Agriculture Act 2020.

References in this guidance and on the single application to EU direct payment regulations and legislation are to be taken as references to those provisions, as retained in UK law.

2.2 Greening Requirements

Greening requirements, **with the exception of the ban on ploughing or conversion of Environmentally Sensitive Permanent Grassland (ESPG)**, have been removed from the 2021 scheme. ESPG will now fall under BPS scheme rules.

2.3 Unit value of entitlements

The unit value of entitlements for 2021 has been increased by 43.647186% from their 2020 unit value to account for the removal of the Greening Payment from the 2021 scheme year onwards.

2.4 Exchange rate

From 2021 scheme year onwards, entitlements will be calculated and displayed in Sterling with the exchange rate of €1 = £0.89092 being used for the conversion from Euro values. Entitlement values relating to previous scheme years will continue to be displayed in Euro.

2.5 Adjustments to the gross value of your payment

In Northern Ireland, the BPS payment, excluding YFP, will be capped at **£190,000** from the 2021 scheme year. The change from the previous capping level of €150,000 takes account of the increase in the unit value of entitlements due to the removal of the Greening Payment and the conversion to Sterling.

2.6 Allocation and / or top-up of entitlements from the Regional Reserve as either a new entrant or young farmer

From the 2021 scheme year the maximum number of entitlements that can be allocated and / or topped up from the Regional Reserve or a combination of both will be limited to 90. Further details can be found in the Young Farmers' Payment / Regional Reserve Guide at: <https://www.daera-ni.gov.uk/publications/guide-young-farmers-payment-regional-reserve-2021>

2.7 Young Farmers' Payment/Regional Reserve

From 2022 scheme year, farm businesses and/or young farmers who have previously submitted three applications for the Young Farmers' Payment and/or Regional Reserve which have been rejected will no longer be eligible for this payment or for an allocation from the Regional Reserve.

2.8 Over declaration penalties

From 2021 over declaration penalties will be limited to 100% of the amount due, based on the area determined. This will eliminate the need to apply offset penalties in subsequent years when the over declaration penalty exceeds the payment due.

2.9 Protein Crops Scheme

The Protein Crops Scheme (PCS) is an additional payment to farmers for growing beans, peas and sweet lupins. These crops, which are nitrogen-fixing, provide important environmental benefits and are also a domestically-produced source of protein for animal feed.

You do not have to claim the Basic Payment Scheme (BPS) in order to be eligible, however land used to grow protein crops may be claimed for both BPS and PCS. Dual claims are not permitted, i.e. both schemes cannot be claimed on the same field parcel by different claimants.

Initially this scheme will be piloted in the 2021 and 2022 scheme years and will be reviewed at the end of the 2022 scheme year.

2.10 Land within other parts of the United Kingdom (UK) (previously referred to as cross-border holdings)

If you have land in more than one part of the UK (Northern Ireland, England, Scotland or Wales) this will no longer be treated as a single holding for BPS. You won't need to tell us about land in other parts of the UK on your Single Application,

but you must declare that land on applications you submit to the paying agency in other parts of the UK to claim BPS or other payments (one to each paying agency where you have land you wish to claim on).

3. Flooding event in 2017

- 3.1 The Department is conscious that the consequence of the flooding in 2017 **may** continue to have an impact on some farm businesses during this scheme year. To be able to claim Force Majeure/Exceptional Conditions (FC/EC) in this scheme year the land must be able to be returned to agricultural use or become eligible for BPS. Land which will return to agricultural use within a reasonable time without intervention as a result of natural regeneration, will also be considered under FM/EC. Land that has been permanently removed from agricultural use as a result of the flooding in 2017 is not eligible for FM/EC.
- 3.2 If you still have land that remains part of your holding and is temporarily unavailable for agricultural activity or eligible woodland use during the whole or part of this scheme year as a result of the flooding in 2017, you must:
- (i) include that land on your SA,
 - (ii) submit a paper application for FM/EC (Form FML 1) to Area-based Schemes Payment Branch, Orchard House to be received no later than 15 May, and
 - (iii) provide evidence, where appropriate, of the efforts made/steps taken to return this land to agricultural activity to date together with an indication of when this land will come back into agricultural use for consideration.

Each application will be considered on a case by case basis.

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1. Introduction to the Guide

This Guide explains the rules of the Basic Payment Scheme (BPS) and the Protein Crops Scheme (PCS). You are advised to read it before completing your Single Application (SA).

The booklet '**How to complete your Single Application Online**' will provide you with more detailed information on how to complete your application correctly. There is also an **Area-based Schemes Single Application and Maps – Questions and Answers** booklet available to view or download from the Department of Agriculture, Environment and Rural Affairs (DAERA) website.

There are other guidance booklets which provide information **about the other area-based schemes that you can apply for on the SA** and also information booklets on Cross-Compliance.

The Guidance Booklets are:

1. Environmental Farming Scheme (EFS) General Information and Guidance
2. Guide to the Young Farmers' Payment/Regional Reserve.
3. Forestry Grant Schemes Information Booklet.
4. Guide to Land Eligibility.
5. Guide to Transfer of BPS Entitlements.
6. 2021 Cross-Compliance Verifiable Standards - Summary Version.
7. 2021 Cross-Compliance Verifiable Standards - Full Version.
8. Guide to Business Changes.
9. DAERA Identification numbers for business customers, herds and flocks

These booklets and relevant forms can be downloaded from the DAERA website at:

<https://www.daera-ni.gov.uk/articles/area-based-schemes-2021-guidance-and-forms>

You are strongly advised to read the booklets relevant to your application prior to completing your SA.

The booklets are intended as information guides for farm businesses and should not be regarded as a legal interpretation of the regulations governing the BPS and other schemes.

Applicants are advised to take independent legal advice, as necessary, to ensure their interests are looked after.

2. General Rules of the Basic Payment Scheme

Introduction

The Basic Payment Scheme (BPS) was introduced in Northern Ireland on 1 January 2015 and payment entitlements were allocated to those eligible farm businesses which applied for BPS in 2015.

For most farm businesses access to the BPS will depend on the number of payment entitlements that it holds on or before the closing date of the BPS Scheme. You must activate at least 3 entitlements for payment each year and for each payment entitlement you activate you must have one eligible hectare (ha) of land. Therefore the minimum claim size is 3 ha of eligible land declared to activate BPS entitlements and you must hold at least 3 BPS entitlements. **If the minimum claim size is not met or you hold less than 3 BPS entitlements your application will be rejected.**

To activate your BPS entitlements for payment you must submit a SA on or before the closing date for the scheme which is 15 May each year (except in cases of Force Majeure / Exceptional Circumstances (FM/EC)). If 15 May falls on a Saturday, Sunday or Public Holiday the Department will accept applications on the next working day without penalty. **If the Department does not receive an application from your farm business, it will not issue a reminder.**

It is your responsibility to activate your entitlements by submitting a SA on or before the closing deadline. If you do not activate your entitlements you may lose them. Refer to page 33 - Activating your payment entitlements, confiscation and the 2 year rule.

Farm businesses can also apply to establish new entitlements or increase the value of their existing entitlements if they are eligible to apply to the Regional Reserve (RR). For further information please see the **Guide to the Young Farmers' Payment / Regional Reserve**.

The application closing dates and other important dates, or any major changes to the BPS will be explained in the booklet '**How to complete your Single Application Online**' which can be downloaded from the DAERA website at:

<https://www.daera-ni.gov.uk/articles/area-based-schemes-2021-guidance-and-forms>

Who is eligible to apply for the BPS?

To be eligible to claim payment under the BPS you must meet all of the following conditions –

- You must hold at least 3 BPS entitlements and have 3 ha of eligible agricultural land or are eligible to activate 3 BPS entitlements by applying to the RR.

- You must be farming the land that you are declaring (claiming) to activate entitlements.
- The land on which you claim payment must be at your disposal on 15 May in the year of the claim and remain eligible for the full calendar year.
- Any individual field you declare to activate BPS entitlements must be at least 0.1 ha (except for common land).

Note: By farming it is meant that you have the decision making power, obtain the benefits and take the financial risks in relation to the agricultural activity on the land declared to activate entitlements.

How to apply

You must apply for area-based schemes using the online Single Application and Map Service (see Section 4). **The Department does not accept paper applications.**

No decision made on allocation of BPS entitlements

If you have not received BPS entitlements due to an outstanding decision (including those where a review of decision is in progress) by DAERA relating to previous scheme year application(s), and you wish to activate these entitlements (if subsequently allocated) this year, then you need to complete a SA online, declaring the land you are farming this year to activate BPS entitlements. If you do not submit a SA by the application deadline this year and are subsequently allocated BPS entitlements, it will not be possible to activate these entitlements (see also Section 7 on confiscation of entitlements).

If you are not farming this year, it will not be possible for you to activate BPS entitlements this year even if these are subsequently allocated in respect of previous scheme year applications.

If a decision on the allocation of BPS entitlements is outstanding on 2 May, the closing date for notification of entitlement transfers, it will not be possible for you to transfer entitlements for this scheme year. Transfer applications cannot be submitted in relation to BPS entitlements which do not exist at the date of transfer.

Fields declared on one application only

A field must be declared on only one SA except in very specific circumstances for agri-environment schemes, (see information below).

Only declare and claim the land that you are farming, irrespective of whether or not that land is owned by you, leased in or taken in conacre by you. Land which you own but are not farming because it is leased out/let in conacre to another farmer should not normally be declared on your application. Rather it should be declared on the application of the person who is actually farming it.

Duplicate field cases

Only one claimant is permitted to activate entitlements on each field and in this case where there is any doubt, claimants will be asked to provide evidence demonstrating to the Department's satisfaction that the requirements have been met. Duplicate field cases will be investigated through the preliminary check process and the claimant who is found to enjoy the decision making power, benefits and financial risks in relation to the agricultural activity on land parcels subject to a duplicate application will be the applicant who can claim their BPS entitlements on that land. Financial penalties may be applied to the farm business which has wrongly claimed.

Landowner/tenant issues including dual use claims

In line with the rules on active farmer, dual use claims involving the BPS (including RR) and any other area-based payment i.e. Young Farmers' Payment (YFP) **are not permitted**.

Dual use claims may remain possible under the agri-environment programme (see paragraphs below).

Basic Payment Scheme and Agri-Environment Schemes

Environmental Farming Scheme

The Environmental Farming Scheme (EFS) is a voluntary agri-environment scheme that will support farm businesses and land managers to carry out environmentally beneficial farming practices on agricultural land.

Dual use claims will only be permitted on UK National Site Network or Areas of Special Scientific Interest (ASSI) land, and only where the applicant can demonstrate significant environmental benefit accruing from the arrangement.

If you are considering a dual use claim, you should seek further advice by contacting Area-based Schemes on 0300 200 7848 or areabasedschemes@daera-ni.gov.uk prior to proceeding with your application.

Further information on agri-environment schemes, including the EFS, can be found on the DAERA website:

<https://www.daera-ni.gov.uk/topics/rural-development/environmental-farming-scheme-efs>

How we check your claim

It is important that you meet all the eligibility requirements for the BPS and, in line with legislation, we will be undertaking controls to ensure that you do.

We will carry out administrative checks on all claims we receive. Where there is any doubt about your claim you will be asked to provide further information demonstrating, to

the Department's satisfaction, that the eligibility requirements have been met.

You should provide this information within any timeframes that are stipulated to help avoid delays with your payment.

If you do not provide this information, the Department may process your application on the information available and your application may be rejected.

The Department may also supplement the administrative checks with rapid field visits or follow-up ground checks if necessary.

In addition to administrative checks the Department is also obliged to carry out On-the-Spot Checks (OTSCs) to ensure that the eligibility conditions of the BPS have been met. These will be conducted using Control with Remote Sensing (CwRS) using a satellite image with rapid field visits or follow up checks on the ground by an inspector, if needed, to provide further clarification. **No payment will be made if you, or others acting on your behalf, prevent any of these checks from taking place.** Section 9 provides further information.

In keeping with the Counter Fraud Strategy and, in particular, to combat fraud by false representation, DAERA will adopt a 'check first and pay later' culture.

Penalties for non-compliance with the Regulations

If you fail to meet the eligibility criteria for the BPS you may incur penalties which could result in a reduction to your payment or your application may be rejected. A false declaration made deliberately or recklessly may also lead to criminal prosecution. See Section 9 for further information on penalties.

Under the Regulations we do not have discretion to waive penalties, but in limited circumstances, we may accept that you did not meet the requirements of the BPS because of events outside of your control; this is known as force majeure or exceptional circumstances (FM/EC). Where this is the case, we will not normally apply penalties. See Section 10 for further information on FM/EC.

Payment in Sterling

Payments will automatically be paid in sterling and will be made electronically into your bank, building society or credit union account.

Land in other parts of the United Kingdom (UK)

If you have land in more than one part of the UK (Northern Ireland, Scotland, England or Wales), this will no longer be treated as a single holding for BPS. This means that you should continue to claim BPS for land in Northern Ireland on your SA. You won't need to tell us about land in Scotland, England or Wales.

To claim BPS or other payments on land in England, Scotland or Wales, you will need to declare this land on separate applications you submit to the respective paying agency (one to each paying agency where you have land you wish to claim BPS on). These will now be treated as separate applications and will be subject to the rules governing the schemes in the country concerned. These may differ from those applying in Northern Ireland.

The Paying Agencies in the UK are:

- Northern Ireland - DAERA
- England - Rural Payments Agency
- Scotland - Rural Payments and Services Scotland
- Wales - Rural Payments Wales

The application deadline for all BPS claims is midnight on 15 May in each scheme year **unless the 15 May falls on a Saturday, Sunday or Public Holiday, then it will be the next working day.**

Land in the Republic of Ireland

It is not possible to use land that is situated in the Republic of Ireland (RoI) to establish or activate BPS entitlements in Northern Ireland.

Cross-Compliance

Cross-Compliance (CC) applies to a number of area-based schemes including the BPS.

The CC requirements are designed to promote sustainable agricultural practices and reflect a number of environmental and other objectives. They are good farm management practices and encourage responsible stewardship of land.

In return for payments under the area-based schemes covered by CC you must meet the requirements of a number of Statutory Management Requirements (SMRs) and keep your land in Good Agricultural and Environmental Condition (GAEC).

We will carry out inspections to verify that all the CC requirements are being met. Failure to meet these requirements will lead to financial penalties being applied to your area-based payments.

Details of the CC requirements and information on how CC penalties are calculated can be found at – <https://www.daera-ni.gov.uk/articles/cross-compliance>

All agricultural land within a farm business (irrespective of whether it is used to activate entitlements or claim payment under another aid scheme) must be kept in good agricultural and environmental condition (GAEC).

You should be aware that the land on which you are claiming BPS must be at your disposal on 15 May. You will be responsible for CC obligations relating to that land for the entire calendar year and you must ensure the land remains in a use and condition which is eligible for BPS. These obligations remain with the claimant even if land is transferred.

There is one exception to this rule which is when land is transferred (sold, leased or taken in conacre) from or to someone who has also submitted a SA in that calendar year.

If the transferor submits a SA for other land in that calendar year they will be liable for CC breaches during the period that the land was at their disposal (that is before it was transferred). Similarly, if you claimed on some land which you then transferred out after 15 May, you would remain responsible for ensuring the CC requirements relating to that land were met until the end of the calendar year.

You should carefully consider the terms of any contractual arrangements between you and the transferor or transferee if you are transferring land (either in or out) during the year. This is so you can make sure that your interests are protected and you can produce documentary evidence regarding responsibility for the land if either a CC breach occurs or access to inspectors is prevented before or after the land transfer. Similarly, you should bear in mind the risks of not having contractual arrangements agreed and in place.

In the case of livestock, the keeper of the animals is responsible for ensuring compliance with the animal related CC requirements.

The CC verifiable standards documents can be found on the DAERA website at:

<https://www.daera-ni.gov.uk/articles/cross-compliance>

3. General Rules of the Protein Crops Scheme

DAERA has provided for a coupled payment for particular nitrogen fixing crops, which are also referred to as protein crops. The Protein Crops Scheme (PCS) is an additional payment to farmers for growing beans, peas and sweet lupins. This scheme will be piloted in the 2021 and 2022 scheme years and will be reviewed at the end of 2022.

You do not have to claim the Basic Payment Scheme (BPS) in order to be eligible for PCS, however land used to grow protein crops may be claimed for both BPS and PCS.

Rates of Payment

The payment rate is £330 per hectare (ha). The total area eligible for payment under the pilot scheme will be capped at 1,000 ha. If more than 1,000 ha is determined as eligible, a linear scale back will be applied to the determined area to reduce the total Northern Ireland area paid on to 1,000 ha. Payment will be made on the scaled back area.

Example

Total area determined in Northern Ireland as eligible for the PCS is 1,200 ha. Scale back required to reduce this area to 1,000 ha = $200 / 1,200 = 16.67\%$. A linear scale back of 16.67% would be applied to the determined area of all individual applications. Therefore a determined area of 18ha would be reduced by 16.67% to 15 ha and payment made on 15 ha.

Who is eligible to apply?

To be eligible to claim payment under the PCS you must meet all of the following conditions:

1. You must have a DAERA Category 1 Business ID.
2. You must **not** have an approved Nutrient Action Programme (NAP) Derogation. It is a condition of a NAP derogation that you do not grow leguminous (protein) crops. If you do so, you will be in breach of one of the conditions of your derogation and you could face penalties and be ineligible to apply for a NAP derogation in the following year.
3. You must claim a minimum total area of 0.3 ha; with a minimum area in each field of 0.1 ha.
4. You may only claim on land planted in protein crops as listed in point 7 below. All crops must be sown in line with normal husbandry practices. This means that you must prepare the land and sow seeds in a manner, and at a seed rate, that would be expected to produce a normal marketable crop. You should keep all records including details of seed purchase and sowing as evidence.

5. If you sow protein crops in a mixture with cereals or other crops, they will not be eligible for the scheme. Undersowing with grass is not permitted.
6. Protein crops must not be harvested until **after** 31 July 2021. You must maintain the crops in line with normal agricultural practice until after 31 July each year.
7. Protein crops are defined as:

NF1 Spring Peas*
NF2 Spring Field Beans*
NF3 Winter Field Beans*
NF4 Spring Sweet Lupins*
NF5 Winter Sweet Lupins*

**Please refer to Annex A - Land Use Codes - in the Guide to Land Eligibility (NF1 – NF5 refers) for more detail –*

<https://www.daera-ni.gov.uk/publications/2021-guide-land-eligibility>

Note:

The forage crops clover, alfalfa/lucerne are not eligible for aid under this pilot scheme.

How to apply

You must apply for the PCS using the online Single Application and Map Service using your Government Gateway (GG) or Northern Ireland Civil Service Identity Assurance (NIDA) account details at: www.daera-ni.gov.uk/services/daera-online-services

Submit your Single Application (SA) on or before the closing date for the scheme which is 15 May each year (except in cases of Force Majeure / Exceptional Circumstances (FM/EC)) to avoid any reduction or a delay in payment. **If 15 May falls on a Saturday, Sunday or Public Holiday the Department will accept applications on the next working day without penalty.**

You must select 'Protein Crops Scheme' under scheme selection in your online Single Application, and enter the total area claimed with the appropriate land use code NF1-NF5 on the land details page for each field you are claiming. The minimum area you can claim for each field is 0.1 ha, and the minimum total claim area is 0.3 ha.

If you are claiming PCS only, you must complete the land details page **and** submit Form PCS1. Contact the Single Application Advisory Team on 0300 200 7848 to request a form. Both the single application and Form PCS1 should be submitted before the closing date for the scheme to avoid late claim penalties.

If you select “Protein Crops Scheme” but do not claim for any area under the land use codes NF1 – NF5, you will not receive any payment.

The application closing dates and other important dates will be explained in the booklet ‘**How to complete your Single Application Online**’ which can be downloaded from the DAERA website at:

<https://www.daera-ni.gov.uk/publications/how-complete-your-single-application-online-2021>

Basic Payment Scheme and the Protein Crops Scheme

You can claim both PCS and BPS on the same field parcel, however dual use claims are not permitted, i.e. both schemes cannot be claimed on the same field parcel by different claimants.

How we check your claim

A proportion of claims under the PCS will be selected for inspection to ensure that the eligibility conditions of the scheme have been met. Inspections may be carried out using a combination of an on farm visit by an inspector, and Control with Remote Sensing, which uses detailed satellite imagery to identify crops and ineligible features.

If your crop has failed (or part of your crop), you must notify DAERA within 15 working days of being in a position to do so.

No payment will be made if you, or others acting on your behalf, prevent any of these inspections from taking place.

Penalties for non-compliance with the Regulations

Where the area claimed is over-declared, penalties may be applied.

DIFFERENCE BETWEEN THE NUMBER OF ELIGIBLE HECTARES DETERMINED (FOUND) AND THE NUMBER OF HECTARES DECLARED	LEVEL OF REDUCTION
If the difference does not exceed 3% of the area determined <u>and</u> 2 ha	No penalty applied. Payment is based on the number of eligible ha determined.
If the difference is more than <u>either</u> 3% of the area determined <u>or</u> 2 ha Example 1 below refers	Penalties are calculated on the basis of 1.5 x the difference between the area declared and the area determined. For example an over declaration of 1.4 ha which equates to 4.5% of the area determined would attract a penalty as it is more than 3% of the area determined. To avoid a penalty the over declaration must not exceed both thresholds.

DIFFERENCE BETWEEN THE NUMBER OF ELIGIBLE HECTARES DETERMINED (FOUND) AND THE NUMBER OF HECTARES DECLARED	LEVEL OF REDUCTION
<p>If the difference does not exceed 10% of the area determined the penalty will be reduced by 50%.</p> <p>Example 2 below refers</p>	<p>Penalties are calculated on the basis of 0.75 x the difference between the area declared and the area determined.</p>

Example 1

Declared area – 5 ha
Determined area – 4 ha
Over-declaration – 1 ha
Over-declaration % - $(1 / 4) \times 100 = 25\%$

Area paid on reduced by 1.5 x the difference between area declared and area determined

$1 \text{ ha} \times 1.5 = 1.5 \text{ ha}$ (penalty area)

Payment

$4 \text{ ha} - (1 \text{ ha} \times 1.5) = 2.5 \text{ ha}$
 $2.5 \text{ ha} \times \text{£}330 / \text{ha} = \text{£}825$

Example 2 -

Declared area 20 ha
Determined area 19 ha
Over-declaration 1 ha
Over-declaration % $(1 / 19) \times 100 = 5.3\%$

Area paid on reduced by 0.75 x the difference between area declared and area determined

$1 \text{ ha} \times 0.75 = 0.75 \text{ ha}$ (penalty area)

Payment

$19 \text{ ha} - (1 \text{ ha} \times 0.75) = 18.25 \text{ ha}$
 $18.25 \text{ ha} \times \text{£}330 / \text{ha} = \text{£}6,022.50$

Cross-Compliance – Protein Crops Scheme

To receive PCS payments farmers must comply with the Cross-Compliance (CC) Verifiable Standards.

Details of the CC requirements and information on how CC penalties are calculated can be found at – <https://www.daera-ni.gov.uk/articles/cross-compliance>

Force Majeure/Exceptional Circumstances

If your claim under the PCS is affected by Force Majeure or Exceptional Circumstances (FM/EC) such as crop failure, you must notify DAERA within 15 working days of being in a position to do so. You should keep all records including details of seed purchase and sowing as evidence of FM/EC, otherwise penalties may be applied to your application.

4. Land eligibility and the Basic Payment Scheme

Introduction

To be eligible for the BPS land must be at your disposal on 15 May and must be used for an eligible agricultural activity for the entire calendar year (1 January – 31 December), except in cases of FM/EC.

It is vital that you only claim on eligible land and that you understand clearly that it is in your interests and it is your responsibility to ensure that your maps are up-to-date and all ineligible areas are removed. If you need help, clarification or guidance please contact your local DAERA Direct Office.

Eligible land

Eligible land under the BPS includes any land that is used for permanent grassland, arable land or permanent crops.

Land that no longer meets the usual eligibility rules for BPS due to specific agri-environment prescriptions or management implications relating to designated sites e.g. ASSIs, may be eligible. Evidence to support this will be required.

Full details of eligible land for the BPS can be found in the Guide to Land Eligibility at:

<https://www.daera-ni.gov.uk/publications/2021-guide-land-eligibility>

Minimum Field Size

Any individual field or area within a field that you declare to establish and activate BPS entitlements must have an eligible area of at least 0.1 ha.

There is an exception for common land. Provided the Maximum Eligible Area (MEA) of any field is greater than 0.1 ha graziers can still claim their share of that field, even if their share is less than 0.1 ha.

Declaring land under the BPS

You must declare all land parcels (fields) which you are farming that have eligible agricultural area, plus any other land parcels (fields) eligible for a CAP Scheme (for example, forestry) on the “Your field data” section of your SA. Ensure the Land Type, Field Class, Usage and the BPS Area (ha) you are claiming is recorded accurately.

Land parcels (fields) that **ARE NOT** in agricultural use **DO NOT** need to be declared on the SA. For example, rough land that is not grazed or managed, or a scrap yard next to the farm yard.

Land parcels (fields) which have no eligible agricultural area and are not eligible for any direct payment or CAP schemes do not need to be declared. However if you consider

some land parcels have no eligible area because any agricultural activity is insignificant (e.g. ineligible heather with very small numbers of sheep) or agriculture is not the predominant use (e.g. tree density above 50 trees per ha), you may want to protect your position against any possibility of an under declaration penalty by declaring the land, but not claiming BPS for it. You can do this by declaring the field parcel on the field data section of your SA, insert the land use code as FR1 and enter **zero** in the BPS Area (ha) column.

Claiming on land for BPS

You must claim all the eligible land you are farming this year in the field data section BPS Area (ha) column (area to activate for BPS).

You should make sure it is eligible land when you apply and will remain so throughout the calendar year. You should consider very carefully about claiming areas which do not make a significant contribution to the agricultural activity of your business, as there is a high probability that these areas are ineligible. **If circumstances change or an unforeseen event occurs during the scheme year preventing you from farming all the land you have claimed for, you should contact the Department immediately for advice and guidance.**

Maximum Eligible Area (MEA)

For each of the fields that you declare you must check that the MEA is correct. The MEA is our assessment of the **maximum** area that you can use to claim BPS for each field based on the boundary and ineligible features shown on your map.

To avoid validation errors that may delay the processing of your claim, it is important that the MEA held on our mapping system is correct.

Your latest map will show the MEA for each field and areas that DAERA considers as being ineligible.

Based on the eligibility rules you must make further deductions to your MEA or areas pre-populated on your SA if you consider other areas in your fields do not meet the eligibility criteria. Do not assume that the MEA is correct as things may have changed on the ground since this assessment.

If we later find that you have claimed BPS on ineligible areas we may apply financial penalties to your claim.

The most important things to remember are:

- Do not claim on land if there is doubt about its eligibility.
- Do not assume that you can claim the MEA for your fields. It is possible the Department's assessment of the MEA is incorrect. We want you to correct it where

that is the case. You must check that all ineligible features have been deducted and only claim on eligible land.

- **Do not claim a larger area than the MEA unless you are very sure that this area is wrong and have reported the change to DAERA.** See information below on how to report changes to your map.
- We will carry out cross checks between the MEA and the area you claim. If you claim a larger area we will have to investigate every difference we identify. This will take time and will impact on our ability to process your claim quickly.
- You can claim less than the MEA and you must ensure that you deduct any other ineligible areas from your claim that we have not included on your map.

How to report changes to your map

Important: Requests for map changes should be submitted as soon as possible to ensure that you receive an updated MEA before the SA period closes. This will prevent delays validating your claim.

You can use the following methods to notify us of a map change.

- Using the Single Application and Map Service. The SA online service includes your map which you can view, print and submit changes as you complete your application.
- You can request a paper copy of your map by emailing areabasedschemes@daera-ni.gov.uk or by phone on 0300 200 7848.
- In exceptional cases you can notify us of changes using a LPIS Change Form that is available by emailing LPIS.Management@daera-ni.gov.uk or by phone on 0300 200 7848.

All map changes should be reported as soon as possible but well in advance of the closing date of 15 May for the receipt of completed SAs. This is to ensure that you receive an updated MEA before the SA closes and to avoid delays validating your application. We will not accept any amendments to increase your claimed area on your application after 9 June (except in cases of FM/EC).

For more detailed information read the booklet 'How to complete your Single Application Online' which supplements the SA and is available on the DAERA website.

Common land

Common land can be used to claim the BPS providing the land meets the eligibility requirements.

If the common land is part of a Trust Managed Estate (previously known as a Common Land Trust), the MEA of the shares will be provided to the shareholders by the Trustees. **You should use the information provided to you when completing the SA.**

If you are, by agreement, using an area allocated to another farm business, you must provide evidence of that agreement to Area-based Schemes Payment Branch before the closing date for submission of the SA, i.e. 15 May.

The information on your map and your field data table within the Single Application and Map Service has been taken from our LPIS and reflects all changes applied by November of the previous year. The pre-populated table on your online Single Application **may not** be correct as it may not include the field (s) that are part of a Common that have a share allocation on which you claimed for last year.

If you are farming a share(s) of a common(s) in this scheme year that is not included on your pre-populated SA and you wish to claim BPS for this land you need to add this field(s) to your claim. This can be done using the “Add a Field” functionality on the form side of the SA.

It is important that you check the MEA for the common land is correct. It is your responsibility to check if there are other ineligible areas that we may not have taken into account, particularly for fields with marginal land and temporary ineligible features. Please note that temporary ineligible features and some ineligible areas less than 0.01 ha (but which cumulatively add up to 0.01 ha) need to be deducted from your claim (if not already done).

At your disposal on 15 May

The land that you are claiming must be at your disposal on 15 May **and** must be eligible for the entire calendar year.

The assessment as to whether you enjoy the decision making power, benefits and financial risks in relation to the agricultural activity (active farmer requirement) on each parcel of land you are claiming **is based on all agricultural activity carried out on the land parcel throughout the scheme year.**

Definition of agricultural activity

Agricultural activity is defined as:

- (i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,
- (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission.

Agricultural activity (for example, grazing, cutting or harvesting a crop) must take place on the entire area being claimed on a significant and consistent basis throughout the calendar year. Heather burning should only take place within the permitted period i.e. 31 August to 15 April and not on blanket bog or designated sites. Evidence of this or denied attempts to manage the area appropriately must be available at inspection.

Minimum level of activity

Land is only eligible for the BPS if the vegetation is kept in a state suitable for grazing or cultivation and agricultural activity is carried out over the entire area being claimed on a significant and consistent basis in the calendar year of the claim.

At an OTSC, evidence of at least one of the following agricultural activities being carried out on all of the land being claimed must be available from its appearance:

- grazing, for example paths made by animals, animal droppings;
- growing and harvesting a crop;
- management of the vegetation such as flailing or controlled burning of heather.

Wildfires or burning more than 20% of the heather area is not considered controlled burning and therefore is not agricultural activity. If the fire is due to a reason beyond your control, you may wish to submit a FM/EC application within 15 working days of the event (or being in a position to do so) for consideration (see Section 10).

If evidence of agricultural activity is only present on part of a field then the remainder of the field will be ineligible. Placing small numbers of animals on large areas of bog land or heather is unlikely to make these areas eligible. Similarly, the presence of animals on these areas for a short period is unlikely to make them eligible. Land being claimed must be eligible for the entire calendar year, so action undertaken after an inspection has found the land to be ineligible can only make the land eligible for the next calendar year.

Nutrient Action Programme (NAP) Regulations

From 2015 the eligible land area determined to activate BPS entitlements (your field data) is considered by DAERA to be the agricultural area on your holding. It will therefore be this area that will be notified to the Northern Ireland Environment Agency (NIEA) for the purposes of checking that you have complied with the nitrogen loading limit under the Nutrient Action Programme Regulations. This may result in a Nutrient Action Programme Cross-Compliance inspection.

If you don't use all of your eligible land to activate BPS entitlements for payment, then you may find it difficult to comply with the nitrogen loading limit. Fields which are used by another farmer to claim BPS cannot be used by you in relation to the nitrogen loading limit as by definition they are being farmed by someone else.

Non-agricultural activity on eligible land

To be eligible for BPS land has to be used primarily for an agricultural activity. If agricultural and non-agricultural activities are taking place on the same land the land won't be eligible if the intensity, nature, duration and timing of the non-agricultural activity significantly interferes with agricultural activity.

Some non-agricultural activities and the impact of these on BPS are outlined below.

Category A:

These non-agricultural activities do not significantly interfere with agricultural activity and won't stop you getting paid for the land, as long as it is eligible for BPS. Examples include walking, farm visits, fishing, shooting (game).

Category B:

These non-agricultural activities are allowed, but not for more than 28 days (consecutively or not) in the calendar year. Examples include car parking, country fairs and shows, clay shooting, farm auctions and sales.

Category C:

These non-agricultural activities mean that generally you cannot claim BPS on the land. This category includes situations where the principal purpose of the land is for recreational or other non-agricultural activities, such as golf courses, other permanent sports facilities, gallops, or airstrips/ airfields/airports.

Further information can be found in the Guide to Land Eligibility at: <https://www.daera-ni.gov.uk/publications/2021-guide-land-eligibility>.

Land temporarily out of agricultural use

If some or all of your land is not available to you on 15 May, or is ineligible for the BPS at any time during the year for reasons of FM/EC, you should tell us when you submit your claim, or if you have already submitted your claim, within 15 working days of the date of being in a position to do so as you may still be able to claim on that land.

For further information on FM/EC, see Section 10 of this booklet.

Shared Grazing

Under scheme rules an 'agricultural parcel' (that is, a field) is defined as a continuous area of land, declared by one farmer. A field can only be claimed by the farm business that is undertaking the agricultural activity on it.

Fields cannot be shared

Only fields which are enclosed with recognised boundaries may be claimed. More than one business claiming a field for the same scheme (that is multiple claimants) will not be permitted. If existing fields are being used by more than one farmer then the field will

need to be split by erecting a permanent boundary such as a fence.

The only exception when fields can be shared is in cases where DAERA is satisfied that the eligible land is shared to graze animals by all the businesses involved and it is not practical to fence the land. In these cases we have allocated notional shares by dividing the MEA based on their actual use of the land as agreed with the businesses. These fields have been allocated a 940 field usage code.

Hemp

It is a criminal offence to grow hemp in the UK for any purpose without a licence.

Areas used for the production of hemp shall only be eligible for BPS if the varieties used have a tetrahydrocannabinol content not exceeding 0.2%.

We may penalise you and recover any money you have been paid if you do not meet the conditions of growing hemp.

Official seed labels

For hemp grown on land to claim BPS, certified seed of one of the eligible varieties must be used. The original official seed labels, confirming the variety of hemp grown, must be supplied to Area-based Schemes Payment Branch, Orchard House, by 15 May. These will be receipted by DAERA and returned to you. Where sowing takes place after 15 May, these labels must be submitted no later than 30 June. It is recommended that you send your seed labels by recorded delivery.

Further information on hemp can be found in the Guide to Land Eligibility at:

<https://www.daera-ni.gov.uk/publications/2021-guide-land-eligibility>

Protection of environmentally sensitive permanent grassland (PGS)

The direct payment regulations contain a requirement to designate permanent grassland in areas, including in peat and wetlands, covered by the Wild Birds Directive and/or the Habitats Directive which are environmentally sensitive and which need protection to meet the requirements of these Directives. From 1 January 2015, ploughing or conversion of permanent grassland in areas designated as environmentally sensitive is not permitted.

DAERA identified permanent grassland fields located in these areas and in January 2015 wrote to all relevant farmers concerned.

If you declared one of these fields in your SA last year, they will be denoted by the acronym 'PGS', i.e. Permanent Grassland Sensitive, in the column entitled, 'Field Classification' in the Field Data Section of this year's SA.

Permanent grassland fields, including peat and wetlands, in these areas are classified as PGS if 10% or more of the field area or an area greater than 0.1 ha lies within the

designated areas.

Any permanent grassland field that has been identified as having less than 10% of the field area and not more than 0.1 ha inside the designated area will not be classified as PGS and will not be subject to the ploughing and conversion ban. However, if you have permanent grassland fields that fall into this category, i.e. that are located in the designated areas but which fall below the area thresholds, you must still observe any management requirements imposed by the NIEA for these sites.

Sites designated under the Wild Birds Directive and the Habitats Directive are part of the UK National Site Network, which refers to the suite of Special Protection Areas and Special Areas of Conservation in the UK's territory that were Natura 2000 sites designated before exit day and any European sites designated after the end of the transition period. These sites may also have a national designation status such as Area of Special Scientific Interest (ASSI). You are also subject to the Cross-Compliance requirements for these areas.

Certain fields classified as PGS will only be partly located in the designated areas. In these cases, the ploughing and conversion ban will apply only to the part of the field designated under the Habitats Directive and/or the Wild Birds Directive.

If any of your fields have been classified as PGS, you can find out whether this relates to the entire field or only part of the field by contacting your local DAERA Direct Office or phone the Single Application Advisory Service and ask to speak to a CMU or LPIS advisor regarding any designations within a field.

If a PGS classification relates to only part of a field, you will have the following options:

Option 1: Refrain from ploughing or converting the entire field.

Option 2: Erect a permanent fence along the designated boundary and request a mapping change to split the field.

Option 3: The field is not split but you refrain from ploughing or converting the designated area.

Please note that for option 2 and option 3, it will be crucial that you ascertain the precise area that has been designated as environmentally sensitive.

You can do this by contacting your local DAERA Direct Office or phone the Single Application Advisory Service and ask to speak to a CMU or LPIS advisor regarding any designations within a field. They will be able to advise you on the precise areas within your field(s) that are covered by the Habitats Directive and/or the Wild Birds Directive, the restrictions that apply and the options available to you.

You are advised to be cautious when ploughing close to designated areas and leave a margin to ensure that you do not plough or convert the designated area. DAERA will undertake checks to ensure compliance with these rules. Failure to comply with the above restrictions may result in a penalty being applied to your Basic Payment Scheme. **Note: previously this penalty would have only been applied to the Greening payment.**

If you are farming land this year that you did not farm last year, you are advised to ascertain whether it is classified as PGS via DAERA's online services eMap or by contacting your local DAERA Direct Office, or phoning the Single Application Advisory Service.

Example – Non –compliance with the requirement to protect PGS

A farmer has 2 ha of PSG. At inspection 1 ha was found to have been ploughed. The reduction for non-compliance with the ban on the ploughing or conversion of PGS = 1 ha (i.e. the area found to be non-compliant). No payment will be made in respect of this 1 ha and this will be regarded as an over declaration and penalties may apply resulting in a further deduction in your payment.

5. Active Farmer requirements

Definition of active farmer

Payment under the BPS will only be made to the person having decision making power, benefits and financial risks in relation to the agricultural activity on the land for which activation (payment) of entitlements is requested. This is referred to as the 'active farmer' requirement and is based on all agricultural activity carried out on the land in this scheme year.

All 3 elements - decision making power, benefits and financial risks - must be fulfilled by you.

Land let under conacre and other land tenure arrangements

For the purpose of activating BPS entitlements, the nature of the land tenure arrangement is irrelevant (subject to the claimant having the land at his disposal on 15 May). The key issue is the agricultural activity taking place on the land and what is happening in practice, and in particular, who enjoys the decision making powers, benefits and the financial risk of that agricultural activity.

The active farmer requirements have particular relevance for land let under conacre arrangements. If you are the landowner and you let your land out in conacre, it will generally be the case that it is your conacre tenant who carries out the main agricultural activity on the conacre land and enjoys the decision making power, benefits and financial risks in relation to this agricultural activity. Therefore, the tenant will be able to claim payments this year on that land, not you as the landowner.

If you consider that there are exceptional circumstances which lead you to believe that you can meet the active farmer requirement, even though the land is let out, then it will be up to you as a landowner to demonstrate how you meet the active farmer requirements.

Selling Grass/Silage

You must be able to demonstrate clearly that you enjoy the decision making power, benefits and financial risks in relation to the agricultural activity being carried out on the land over the course of the year. This will be much easier to demonstrate if the agricultural activities on the land throughout the year have been carried out by you alone, or by your employee or an independent contractor engaged by you, and the farmer who eventually purchases the silage has had no involvement in its production or storage.

Example 1

The landowner himself purchases and applies all the inputs required to grow the grass crop. The landowner engages a contractor to harvest the grass as round bale silage when it is ready and the bales are then stored on the landowner's property. After advertising the silage for sale, the landowner sells the round bales to a number of other

farm businesses at the best available market price. No other farming activities have taken place on the land over the course of the year. In this scenario, the landowner would be able to make a strong case that he should receive BPS payments because he took all of the management decisions, obtained the benefits from the agricultural activity, carried the financial risks in relation to that activity and there was no other activity on that land over the course of the year.

Example 2

The landowner agrees that a farmer who has taken the land in conacre in previous years should take the grass from the field this year. The farmer arranges for delivery of the inputs and applies the inputs required to grow the grass. The farmer subsequently harvests the grass and places it in his silo when ready. The landowner pays for the inputs and pays the farmer for harvesting costs. The farmer pays for the grass and the overall financial outcome is similar to conacre rent.

This scenario would appear to have the same practical and financial impact as conacre. The decision making powers, benefits and the financial risks of the agricultural activity appear to reside primarily with the farmer and not the landowner.

Therefore, it would be very difficult for the landowner to demonstrate to the Department that all 3 of these requirements have clearly been met by him in respect of this activity and, hence, very unlikely that the landowner would be paid BPS in this year.

Contract rearing of livestock

Contract rearing agreements can come in many different forms. If you are the farm business under a contract rearing agreement it is likely that you will be eligible to claim BPS on the relevant land used for that enterprise if you can demonstrate that you manage the livestock and associated grassland (i.e. taking the decisions and bearing the costs in relation to husbandry), bear risks in relation to the agricultural activity being carried out (for example you suffer a financial loss if animals don't meet performance targets, etc.) and obtain benefits from this agricultural activity (for example a payment for rearing the animals).

You should be aware that all 3 conditions must be satisfied and the contract rearing enterprise must be linked to the claimed land. A person who had responsibility under a contract rearing agreement simply to check the animals each day and ensure that they had adequate feed and water would be unlikely to meet the requirements to receive BPS allocated entitlements.

Share farming

Under share farming arrangements more than one farm business can be involved in the exercising of agricultural activity on a particular area of land. However BPS can only be paid to the farm business which holds the entitlements.

Winter grazing of sheep

The effect of allowing other farm businesses to winter graze your land with sheep depends on individual circumstances.

For example, a dairy farm business who has the land at his disposal on 15 May, takes 3 cuts of silage from a field plus some aftermath grazing, and then allows another farm business to graze sheep on that field for a month or 2 over the winter, will be able to claim BPS on that field. That is because the dairy farm business (which has the land at its disposal on 15 May) will be able to demonstrate that for the majority of the agricultural activity being carried out in this year he enjoys the decision making power, benefits and financial risks.

However, where a landowner carries out very little or no agricultural activity on the land during the year and then lets the field to another farm business for winter grazing, it will be extremely difficult for the landowner to demonstrate that he meets the requirements to receive payment.

Keeping Land in Good Agricultural and Environmental Condition

There is a requirement for BPS claimants to carry out some activity on the land such as mowing the vegetation, in order to maintain the land in a state suitable for grazing or cultivation. Keeping land in Good Agricultural and Environmental Condition (GAEC) is counted as an agricultural activity. Land on which no agricultural activity is being carried out is not eligible for support.

If you are simply maintaining the land in GAEC and allow another farm business to carry out agricultural activity on this land (for example winter grazing sheep), then that becomes the primary agricultural activity and means that you will not be able to meet the requirements of the scheme. Equally if you carry out agricultural activity other than simply maintaining the land in GAEC then this becomes the primary agricultural activity.

Purchasing fertiliser, cutting hedges and cleaning sheughs

If someone else is using your land for grazing, silage or cropping activities and your activities are confined to purchasing fertiliser, cutting hedges and cleaning sheughs, then it is extremely unlikely that you will be able to demonstrate clearly that you have decision making powers, benefits and the financial risks of the agricultural activity on land.

Provision of Evidence

The Department will carefully assess each application received to consider whether the active farmer requirements have been met. The assessment of whether an applicant meets the active farmer requirements will be based on individual circumstances.

Where there is any doubt as to whether the active farmer requirements have been met, further evidence will be requested. The outcome in each case will depend on the evidence submitted which demonstrates what is happening in practice and not just what

may be recorded in writing.

The onus is on you as applicant to be able to prove that the land declared on your application to activate BPS entitlements is eligible. If you are unable to provide satisfactory evidence when asked to show that you meet the scheme requirements, then the land declared may be deemed ineligible which could result in financial penalties being applied and no payment being made.

The following are examples of evidence that may be required:

- Accounts for the farming business prepared by a qualified accountant
- Receipts relating to output and inputs
- Bank statements showing income/expenditure relating to receipts
- Contract Rearing Agreements
- Share Farming Agreements
- Evidence demonstrating that your agricultural activity has a different practical and financial outcome compared to renting land in conacre
- An explanation of your farming activities, your personal involvement in these and how this can be reconciled with other documentary evidence relating to the farm business

Additional evidence may also be required. It is important that you can demonstrate that you meet the active farmer requirements on all land being used to activate entitlements.

Attempting to claim BPS on land on which you carry out no agricultural activity or where the activity is carried out under the control of another farmer is not allowed, even if you are clearly farming other areas of land which you declare. If crops are being grown on the land, you may need to be able to demonstrate that you are growing and harvesting the crops. Therefore, you should retain all evidence that would allow you to do so.

If you are asked to provide evidence, **it is important that you do so within any deadlines specified by the Department**, otherwise your application may be rejected.

Not Farming this year

If your farm business is not farming in this scheme year you are not eligible to claim BPS or YFP. You should not submit a claim as this may result in over declaration penalties.

If your farm business holds BPS entitlements but is not farming the entitlements may be transferred by lease (temporary transfer) or sale/gift (permanent transfer) to a business that is farming which may proceed to activate the entitlements for payment (see also Section 7 on payment entitlements)

6. Business structure and separately managed businesses

Introduction

DAERA must maintain a record of the identity of anyone who submits an application to receive funding. Each business must be registered with us and have a unique business identification (ID) number.

Business IDs are mainly used to administer and pay farm based subsidies under the SA. The Department has controls in place to ensure that, as far as possible, each business ID is allocated to an independent and separate business both in status and in practice. A test is applied to each application for a business ID based on criteria concerning legal status, economic structure/organisation, commercial arrangements, and operational arrangements.

You should ensure that the information we hold on your farm business is accurate and up-to-date. If there is a change to the farm business you must notify the Department of the change and the reason for it as soon as possible by using the relevant Business Change (BC) Form (see paragraphs below on 'Changes to your business structure').

As with any business it is very important that you ensure that your farm business has a contingency plan in place to enable, where possible, business activities to continue in your absence, or the absence of other key members.

The Department is reviewing businesses which have had no herd or flock activity or have not submitted applications for CAP schemes in recent years. In particular, those businesses that have had no activity for 5 years or more will be closed. Anyone in that business wishing to re-commence farming would be regarded as a new entrant (unless in the 5 year period they belonged to another business) and required to apply for a new business ID. They will need to complete form FB1 and go through the full separateness process. If successful they will then be allocated a new business ID.

Business Registration – application for a DAERA Business ID (Form FB1)

We cannot pay you unless you are registered with us as a farm business and have a business ID. If you are a new farm business and are not registered with the Department, you should contact your local DAERA Direct Office **immediately** to get advice and Form FB1 (Application for DAERA Business Identifier). You can also download this form from our website at:

<https://www.daera-ni.gov.uk/publications/establishing-farm-business-2021>

As the registration process can take time, you are strongly advised to do so as soon as possible. This form must be received by us, where possible, before and no later than the

date you submit your SA. We should receive your SA by 15 May or penalties may apply and your payment reduced.

Business categories

We have 3 categories of business ID:

Category 1:

Subject to meeting scheme conditions, a category 1 business ID enables the business to hold payment entitlements, receive BPS and all other area-based scheme payments.

Category 2:

For projects applying for rural development funding measures, other than those measures where there is a category 1 business ID requirement. If the applicant already holds a category 1 business ID, a separate category 2 business ID will not be provided.

Category 3:

Those farm businesses that hold a small number of animals are given a category 3 business ID. If you hold a category 3 business ID and wish to apply for BPS or other schemes, your farm business will need to be assessed to ensure it meets the separateness requirements for a category 1 business.

If you wish to seek funding under any of the area-based schemes listed on the SA you **must** have a category 1 business ID.

Separately managed businesses

You can send in separate SAs for different farm businesses in which you are involved **only** if you manage them as separate businesses according to certain conditions. It is your responsibility to demonstrate that the businesses are separate. In deciding whether they are separate, we may need to seek further information from you.

Associated businesses

The Department reserves the right to refuse or revoke a business ID where it considers that 2 or more businesses are not separate.

In previous years, as part of the Department's assessment of applications to BPS, it carried out a number of cross checks aimed at ensuring that only those businesses that are genuinely separate were able to access funding under the BPS and other area-based schemes.

The Department will continue to look at farm businesses that are identified as having an association and farm businesses may be asked to demonstrate that each of the associated farm businesses are separate.

Operational separateness relates to the separateness of cropping, stocking, feed, fertiliser, stock housing, machinery, labour, land for grazing, livestock records, farm plans, registration, herd marks, etc. of a business. In particular, any herds / flocks must operate completely independently of any herds / flocks belonging to another business.

It is expected that each farm business ID will normally be able to demonstrate the following:

- Generally a separate farmyard separate housing and handling facilities for animals;
- herds / flocks not mixing with animals belonging to another business ID;
- separate machinery (sharing of machinery that would typically occur between separate farms is acceptable but not to such an extent that one business is highly dependent on another business for machinery or in practice there is one set of machinery for both businesses);
- feedstuffs, silage and other inputs are sourced independently and stored separately from that of another business;
- there are normal commercial trading arrangements for transfer of animals and purchase of inputs and capital equipment including with other farm businesses **and**
- separate legal status (e.g. the business has separate accounts)

Farm businesses that are genuinely separate should be able to demonstrate their separateness with relative ease.

For further information on the rules for allocating a business ID and assessing if a farm business is separate from another farm business you should refer to the DAERA guidance on 'DAERA identification numbers for business customers, herds and flocks' which is available on the Department's website at:

<https://www.daera-ni.gov.uk/publications/daera-identification-numbers-business-customers-herds-and-flocks-2021>

If you consider that your farm business may not meet the requirements to be regarded as a separate business, then you should consider completing form BC3 to merge the associated businesses. This is especially the case if your herd/flock is associated with a herd/flock belonging to another business. Form BC3 can be obtained by accessing

<https://www.daera-ni.gov.uk/publications/business-change-forms-2021>

A merger is unlikely to have any practical impact on the operation of your farm business as it is possible to have more than one herd/flock number under one business ID and payments received from DAERA can be divided among partners as they decide.

If you are thinking about applying for a business ID you need to consider whether you are setting up a separate farm or becoming involved in/taking over an existing farm business. If it is the latter a new business ID will not be allocated and you should become a member of the existing farm business.

Changes to your business structure

There are a number of Business Change (BC) forms and if you have a change in your business details you need to notify us by completing the relevant BC form.

Form BC1 - to notify us of a change to the membership of a business (including trading title and change of address).

Form BC3 – to notify us of a request for a business merger and request that payment entitlements held by those businesses are merged into one farm business.

Form BC4 – to notify us of a request for a business scission and request that payment entitlements held by the original farm business are divided and transferred to the new businesses created as a result of the scission (split).

Further information can be found in the 'Guide to Business Changes' booklet at:

<https://www.daera-ni.gov.uk/publications/2021-guide-business-change-booklet>

What to do if a member of the business dies

If a member of a farm business dies (either a sole trader or a member of a multi-member business) it is important that the Personal Representatives or the Authorised Person (AP) acting on behalf of the farm business, contact us in writing as soon as possible.

In the case of multi-member businesses we will continue to deal with the remaining members and it is for the Executors and remaining members to agree on the management of the business.

In the case of a sole trader we will continue to deal with the Personal Representatives of the business. In order to submit a SA on behalf of the business, the Personal Representative can opt to:

- Engage an AP to submit the SA on behalf of the business.

or

- Register as an AP and submit the SA on behalf of the business. To register as an AP, the Personal Representative will need to obtain a DAERA Customer ID. This can be obtained by contacting their nearest DAERA Direct Office to apply for their Customer ID; on receipt of a DAERA Customer ID they may then contact Online Services and complete the necessary paperwork to apply to become a registered AP.

If you do not notify us of the death of a business member we will not be able to transfer entitlements to the beneficiaries of the estate and any payment that may relate to the entitlements held by the deceased may not be paid.

Beneficiaries must be a registered farm business with us and must hold any inherited entitlements on the 15 May of the given scheme year in order to claim BPS. **If this business is not in place by 15 May you should arrange to have the SA completed online by the AP.**

Transfer of payment entitlements as a result of a business change

Where a BC means a transfer of entitlements from one business to another by gift, sale or lease, you can transfer using the Department's online transfer service at www.daera-ni.gov.uk/services/daera-online-services. You will need to do this on or before the trading deadline which is **2 May in each scheme year unless 2 May falls on a Saturday, Sunday or Public Holiday**, then it will be the next working day.

If you encounter any difficulties using the online services you should contact 0300 200 78748 to request help and guidance.

In the case of inheritance (actual or anticipated), a paper form TE1 **MUST** be completed and received by 2 May. If your application is received after the deadline it will not be accepted unless FM/EC applies. 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. .

Where there is a BC that requires a transfer of entitlements because of a business merger or scission, form BC3 (merger) or BC4 (scission) must be completed to transfer any entitlements as a result of the business merger or scission. These forms are available by accessing www.daera-ni.gov.uk/services/daera-online-services.

If you want the transfer to take effect for this BPS scheme year, the closing date for completion of online transfers or receipt of paper applications using form TE1, together with any supporting documentation, 2 May.

Further advice can be found in the 'Guide to Transfer of BPS Entitlements' and the 'Guide to Business Changes' booklets at:

<https://www.daera-ni.gov.uk/publications/2021-guide-transfer-bps-entitlements>

<https://www.daera-ni.gov.uk/publications/2021-guide-business-change-booklet>

If you have any questions in relation to the inheritance of entitlements and how to notify us of a death, you should telephone 0300 200 7848 and ask to speak to someone in the Area-based Schemes Payment Branch.

7. Payment entitlements

Introduction

You are advised to pay particular attention to this Section to make sure you are aware of the rules on activation and confiscation of payment entitlements.

Payment entitlements form the basis of the BPS and are what farm businesses use to get paid BPS each year. While you own the entitlements, access to the BPS will depend on you activating (using) your payment entitlements and declaring an equivalent number of eligible hectares in order to claim BPS. You must also meet the active farmer requirements which are set out in Section 5 of this Guide.

Additional entitlements can be established under the RR; applications for which open on 1 March each year. To find out more you should refer to the Guide to the Young Farmers' Payment / Regional Reserve.

<https://www.daera-ni.gov.uk/publications/guide-young-farmers-payment-regional-reserve-2021>

It is also possible for you to receive more entitlements by lease or purchase from a farm business which currently holds entitlements and wants to lease or sell them. See 'Transfer of payment entitlements' below for further information.

Activating your payment entitlements, confiscation and the 2 year rule

BPS payment entitlements may be confiscated for non-usage. We no longer rotate entitlements on behalf of farm businesses. It is your responsibility to manage and activate your entitlements for payment.

You must activate all of your entitlements in at least one scheme year over any 2 year period, except in cases of FM/EC.

Any entitlement (or fraction of entitlement) that remains unused for 2 consecutive years is automatically taken off you (confiscated) and returned to the RR.

If you did not activate (claim payment on) all of the entitlements held by your farm business last year you are advised to activate these entitlements this year to avoid losing them.

There may be a number of reasons why you did not activate all of the entitlements held by your business last year. For example:

- You did not submit a SA.

- You were not farming sufficient eligible agricultural land to activate all of your entitlements.
- We identified that some of the land declared on your SA was not eligible for payment.

If, for whatever reason, you did not activate some entitlements for payment last year, and you will not be farming sufficient eligible agricultural land to activate all the entitlements held by your business on 15 May this year, you are at risk of losing some or all of the entitlements not activated for payment this year.

If you have transferred/leased out entitlements to another farm business and that farm business did not activate those entitlements for 2 consecutive years they will be confiscated under the 2 year rule and will not be returned to your farm business. It is in your interests to obtain an assurance from the farm business that you have transferred/leased entitlements to, that all entitlements have been activated at least once every 2 years.

You should also be aware that we no longer rotate entitlements on behalf of farm businesses. In accordance with scheme rules the Department must activate the highest value entitlements held by a farm business. So, if you hold an entitlement of a lower value this will not automatically be activated by us for payment this year just because it was not activated last year. Also, we do not make any distinction between standard and RR entitlements or between those owned by your farm business or leased in from another.

Therefore, if last year you held 'leased in' entitlements which were higher in value than those 'owned' by your farm business, we will have activated the leased in entitlements first and the entitlements 'owned' by your business may be at risk of confiscation this year if they are not activated.

Examples:

1. **No claim made last year.** You held and activated 30 entitlements in previous years but did not submit a SA last year nor transfer your entitlements last year. If no SA is submitted this year and your entitlements are not transferred all 30 entitlements will not have been activated for 2 consecutive years and will be confiscated at the end of this scheme year.
2. **Less land claimed this year and last year.** In previous years you activated 40 entitlements. Last year you declared 35 ha of eligible land and activated 35 entitlements. If you declare 35 ha of eligible land again this year 5 entitlements will not have been claimed in 2 consecutive years and will be confiscated.
3. **Entitlements 'leased in' to the business.** You established 10 entitlements in 2015 @ €200 each. This year you leased in 10 entitlements for 3 years @ €250 each, giving you a total of 20 entitlements. You declare 18 ha of eligible land this year.

The highest value entitlements are activated first so 10 entitlements @ €250 and 8 entitlements @ €200 are activated; 2 entitlements were not activated. If you declare 18 ha of eligible land again next year, 2 entitlements @ €200 will not have been claimed in 2 consecutive years and will be confiscated.

- 4 **Entitlements 'leased out' to another business.** Two years ago you leased out 40 entitlements. Last year the lessee declared 30 ha of eligible land and activated 30 entitlements. If the lessee declares 30 ha of eligible land and activates 30 entitlements this year, 10 entitlements will not have been claimed in 2 consecutive years and will be confiscated at the end of this scheme year.

Transfer of payment entitlements

You may sell or lease your surplus entitlements. If you did not activate your payment entitlements last year, but if they are activated by the buyer/lessee in this scheme year, they will not be confiscated. To do this you should use the online Entitlement Transfer Service. If there are exceptional circumstances which have been agreed by the Single Application Advisory Service you can complete a paper TE1 transfer application.

If you want the transfer to take effect for this BPS scheme year, the closing date for completion of online transfers or receipt of paper applications using form TE1, together with any supporting documentation, is **2 May**.

Note: If your paper application is received after the deadline it will not be accepted unless FM/EC applies. 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.

If your entitlements were not activated last year and you did not meet the transfer deadline this year, then your unused entitlements will automatically be confiscated and the transfer application will be rejected.

Where a farm business leases in or buys entitlements which they did not hold in the previous year, the 2 year usage rule re-starts. In other words, once the entitlement has transferred for this year, it is irrelevant whether the entitlement was activated in the previous year. It is only the entitlement(s) held by the buyer or lessee for 2 years that are to be considered for confiscation.

Entitlements can be transferred:

- by sale or gift;
- by lease;
- through inheritance (actual or anticipated)
- as the result of a merger or scission of a business.

Payment entitlements can only be transferred within the region of origin.

Payment entitlements can only be transferred to a farm business which has land located in Northern Ireland except in the case of actual or anticipated inheritance. In all cases entitlements can only be activated using land located in Northern Ireland.

If you are considering transferring payment entitlements you should read the 'Guide to Transfer of Payment Entitlements'. If you have any problems understanding these rules, please contact the Area-based Schemes Payment Branch.

Adjustments to the gross value of your payment

The payment you receive will be based on the number of BPS entitlements you hold and the value of those entitlements for that scheme year. In Northern Ireland the BPS payment, excluding YFP, will be capped at £190,000 in any given year.

Payments will be subject to other reductions. Payments may have to be reduced to respect financial ceilings linked to the BPS and YFP or because of administrative penalties if scheme conditions have not been met.

The order of reductions is:

- over-declaration penalty (if applicable);
- late claim penalty (if applicable);
- non-declaration penalty (if applicable);
- deductions to respect financial ceilings (if applicable)*;
- Cross-Compliance penalty (if applicable) and
- offset penalties from previous years (if applicable).

*Payments are no longer subject to modulation reductions.

The unit value of entitlements

The unit value of entitlements allocated to you in 2015 moved towards a flat rate in equal annual steps (known as convergence towards a flat rate) from 2015 to 2019. There has been no further convergence of the unit value of entitlements since 2019.

From 2021 the Greening Payment has been incorporated into the BPS entitlement unit values.

Arrangements in relation to convergence for future scheme years will depend on decisions taken by the DAERA Minister and NI Executive.

'Flat rate' means that all ha of land in a region would attract the same level of support, instead of the previous system where many different entitlement rates (€/ha) existed within

the BPS.

Your online entitlement register will show the entitlements you established in 2015, how these were calculated and the unit value of these entitlements from 2015 to date. From 2021 the unit value of your entitlements will be shown in Sterling.

8. Amendments, preliminary checks, corrections or withdrawals of single applications (SAs)

Introduction

To avoid any delay in payment or to avoid being penalised you should ensure you complete your application accurately. If we have already told you about a problem with your application or if we have given notice that an inspection will be carried out and this inspection then reveals an irregularity, you **cannot** withdraw or change the part of the application affected by the irregularity.

Amendments to your Single Application

You can make amendments to your SA online (**up to and including 31 May without penalty**) to increase the area you have claimed. For example, to add fields if you are using them to support a claim for BPS. You can also make changes regarding use and aid scheme **for fields already included in the application.**

If we receive your amendment to increase the area you have claimed between 1 June and 9 June inclusive, we will reduce your payment relating to the fields in question by 1% for each working day the amendments are late. We cannot accept such amendments after 9 June.

For example, if you have declared 20 ha of land and realise you should have declared 25 ha you can amend your application online up to 9 June. You can add the 5 ha to your application up until 31 May and no penalty will be applied. If you do this between 1 June and 9 June inclusive we will treat this as an amendment but a late application penalty will be applied to the additional 5 ha.

Preliminary Checks (if carried out by the Department)

If we find the following issues with your SA, we may be able to write to you and give you the opportunity to correct your SA and avoid potential financial penalties where for example:

- you have claimed a field which is not recognised by us;
- you have claimed an area greater than the MEA;
- *you have claimed a field which has also been claimed by another farm business.

*Note: From 2021 evidence to support that a farm business is actively farming a field in dispute must be returned within the timeframe for preliminary checks. There will be no further notifications after the preliminary check in relation to duplicate fields, unlike previous years.

There may be other checks in addition to those mentioned above.

Legislation states we must notify farm businesses of the outcome of preliminary checks no later than one day after the SA closing date with farm businesses having up to 10 calendar days to allow applications to be amended.

If you receive a letter outlining any of the above issues, you **must** reply by the deadline given. **Modifications received after this date will not be accepted** and will be subject to reductions and penalties as applicable except in cases of FM/EC.

Important

You should be aware that preliminary checks are optional for the Department and can only be carried out if resources permit these to be completed within the very tight timescales required.

Consequently, there should be no expectation that any preliminary checks will be carried out by the Department or that certain errors detected by the Department may be corrected after the application deadline of 31 May without penalty.

The onus remains with you to take the upmost care with your application to ensure that it is accurate otherwise reductions and penalties may be applied to your payment.

Obvious errors

The Department has limited scope to correct claims where there are 'obvious errors', that is where they can be straightforwardly identified during a check of the SA. The scope of 'obvious error' is itself limited under guidance but the Department takes a 'common sense' approach to cases within these limits.

Decisions on whether or not to apply obvious error depend on the overall facts and circumstances of each individual case, and we must be satisfied with the obvious nature of the error involved. We cannot consider such errors in a systematic manner but must examine each and every case individually.

An error is not 'obvious' when, for example, it is 'explained by a farm business or agent'.

We would consider the following list to be obvious errors:

- Mistakes due purely to an inputting error, which are obvious during a simple examination of the claim (such as missing information).
- Incorrect statistical information.
- Mistakes found as a result of conflicting information, which is clear during a more in-depth examination (manual or computerised) of the claim, which compares information, including supporting documentation, such as maps.
- Mistakes in calculations.

- Anomalies involving field numbers or references which we find during cross checking of the claim with databases such as the field identification system.
- Figures reversed (for example, farm survey number 169 instead of 196).

We will not apply penalties for obvious errors if we are satisfied that you have acted in good faith and there is no risk of fraud. You can amend obvious errors at any time but such errors do take time to resolve and can lead to substantial delays to your payment. You should make sure that you complete your application form completely and accurately and avoid errors. Not all mistakes can be described as obvious errors and may result in penalties being applied to your payment.

The Regulations maintain that the farm business is responsible for the claim and is expected to take steps to ensure that the claim is accurate, even where an agent is involved.

Notified errors

After 9 June you may realise that you have made a mistake in your application form but cannot make any amendments online. You can correct your application form at any time as long as you let the Area-based Schemes Payment Branch in Orchard House know, **in writing, before** we tell you about an on-farm inspection and provided we have not already told you about an error in your application.

Generally SAs cannot be amended after 9 June to increase areas claimed. If you notify us of an error after that date, we will correct your application and you will not be penalised but **you cannot receive payment on the adjusted area.**

If we have already told you about a problem with your application, we have given you notice that an OTSC will be carried out or if you have been selected for a Control with Remote Sensing (CwRS) inspection which then reveals an irregularity, you **cannot amend, withdraw or change the part of the application affected by the irregularity.**

Withdrawal of land

You can choose to withdraw all or part of your application for payment from any aid scheme at any time, as long as we have not told you about any mistakes in your application or told you of an inspection which subsequently reveals errors in respect of the withdrawn information. You must make your application to withdraw **in writing** to the Area-based Schemes Payment Branch (see Section 13 Contact Details).

You are still obliged to provide us with details of all the land you farm, even if you are not claiming for that land. If you are withdrawing a field or fields from your application for payment, **you should only withdraw from the aid scheme you no longer wish to claim for.** In other words you should amend the BPS (ha) to zero but not from the previous columns on “your field data” to avoid possible penalties.

9. On-the-spot checks (OTSC) and penalties

OTSCs (inspections)

By submitting a SA you agree to permit the Department to carry out an OTSC with or without prior notice at any reasonable time.

No payment will be made if you, or others acting on your behalf, prevent any of these checks from taking place.

Control with Remote Sensing (CwRS)

Most OTSCs are completed using remote sensing techniques, which involve interpreting ortho-images produced from satellite and / or aerial photographs of fields in relation to a claim. This helps us identify ineligible features such as buildings, laneways and other land that is not eligible to be claimed for BPS. This also includes dense and scattered patches of scrub, whin, bogs and so on.

You will receive no notification in advance that the check is being undertaken. However, in the event of a rapid field visit or follow up ground check being required to confirm details, you may be contacted by DAERA staff regarding the visit.

Inspection report

Every inspection will be the subject of a final report. Where irregularities have been identified you will be given the opportunity to make comments on the inspection findings.

It is not possible for an inspector to advise of the effect on your claim of ineligible areas or non-compliances detected at inspection. If penalties are to be applied to your claim you will be notified by Area- Based Schemes Payment Branch at a later date.

How Single Applications are selected for an OTSC eligibility check

We must carry out OTSCs to check eligibility for BPS. These are selected at random.

Approximately 1% of applicants will also be selected for verification of the CC standards that come under the responsibility of each of the authorities designated to undertake CC inspections.

Examples of how penalties are applied to Single Applications

If you do not meet the eligibility criteria for the BPS you may have a penalty applied to your SA. The following examples explain the circumstances when you may be penalised.

Penalties for late applications (received after 15 May)

If we receive your SA on or between 16 May and 9 June we will reduce your payment **under all the schemes you have claimed on the SA** by 1% per working day, except in cases of FM/EC.

If you are applying for entitlements from the RR this year then the penalty is 4% per working day on payments under the BPS associated with any entitlements allocated from the RR.

No applications will be accepted on or after 9 June except in cases of FM/EC.

Example:

If we receive your application 3 working days late you will lose 3% of the value of aid for each scheme claimed. For entitlements allocated from the RR you will lose 12% (4% x 3) of the value of aid under the BPS associated with these entitlements.

Penalties for amendments to applications (from 1 - 9 June inclusive)

Applications already received by us may be amended to increase the area you have claimed but you will be penalised on the amended fields. We will reduce your payment **under all the schemes you have claimed by 1% per working day from 1 - 9 June.** No amendments will be accepted after this date.

If you are applying for entitlements from the RR then the penalty is 4% per working day from 1 - 9 June on payments under the BPS associated with any entitlements allocated from the RR.

For example:

On 5 June you add 2 ha on “your field data” which will allow you to activate 2 more BPS entitlements. You will lose 5% of the payment due in respect of the added land for the aid schemes the land is used to support.

Important: If you have already been notified of an error in your SA or notified of an inspection which subsequently reveals errors, you cannot rectify the error or amend details of the area of land concerned.

Non-declaration of land

Penalties will apply to your BPS, and YFP (if applicable) if you fail to declare all the agricultural land on your holding.

You must declare all the agricultural land you have on 15 May in the scheme year on “your field data” including forestry and common land even though you are not using some of the land for your claim.

If there is a difference between the total area you declare and the total agricultural land that you should have declared, we will reduce your BPS payment as follows:

Difference	Reduction
Up to 3% or 2 ha	No reduction in payment
More than 3% and not exceeding 20%	1% reduction
More than 20% and not exceeding 50%	2% reduction
More than 50%	3% reduction

For example:

You hold 100 BPS entitlements.

You declare 100 ha on your SA.

We find 125 ha. Therefore, non-declaration is 25% ($25/100 \times 100$).

We will reduce your BPS, and YFP (if applicable) by **2%**. All your entitlements have been activated for the BPS scheme year.

Over-declaration of land

If, as part of our administrative and OTSCs, we find you have claimed on more land than you should have, we will apply over declaration penalties.

Circumstances when we may apply over declaration penalties include:

- If we find you have claimed on ineligible areas.
- If we find you claimed BPS on land on which you do not meet the active farmer requirements or are not undertaking any agricultural activity.
- If you duplicate fields or land areas with another farm business.

You will not be penalised if you declare more eligible land than you need to activate all the entitlements you are claiming and we find the area is equal to or more than the number of payment entitlements you are activating.

For example:

Number of entitlements held = 10

Number of eligible ha declared = 15

Number of ha found = 12

You will be paid on all 10 entitlements because you have sufficient ha available to support your claim.

Penalty thresholds

Lower penalty thresholds for over declaration of land were introduced in 2016.

How the penalty regime works

- Small over declarations that are up to 3% of the area determined and 2 ha are not penalised but the payment is reduced and based on the area determined by us.
- Where the over declaration is more than 3% of the area determined and 2 ha the payment is calculated based on the area determined as eligible by us and reduced by 1.5 times the area of the land that has been over declared. The penalty shall not exceed 100% of the amount payable based on the area declared.
- In cases where the applicant did not previously receive an over declaration penalty for the same scheme and the difference between the area declared and the area determined is less than 10% of the area determined, the administrative penalty is reduced by 50%. This is known as the 'yellow card' penalty. However if it is found that the applicant has an over declaration again the following year, the full penalty will be imposed for both years.

Simplification of the Yellow card for over declarations from 2020

The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020 removed the conditions relating to the first offence and repayment if a subsequent over declaration occurs. Therefore everyone who over declares their land area by no more than 10% will have their penalty reduced by 50% from the 2020 scheme year.

Further simplification of over declaration penalties from 2021

The Direct Payments to Farmers (Simplifications) Regulations (Northern Ireland) 2021 simplified the administration of over-declaration penalties by limiting the penalty to 100% of the amount due based on the area determined. Offset penalties will no longer be applied in subsequent years when the penalty is larger than the payment which would have been due. Offset penalties arising from over declarations in years prior to 2021 will continue to be applied to payments made in 2021 and subsequent years if necessary.

The more favourable system for calculation of retrospective penalties does not apply in respect of either simplification. In other words, the changes only apply from the scheme year in which the change was made – 2020 scheme year for changes to the yellow card and 2021 scheme year in relation to the limit on over declaration penalties.

Example 1

2021 - Over declaration between 3% and 10% or below 3% but exceeding 2ha.

It is identified that the over declaration also applies to **2020, 2019, 2018, 2017** at the same level as 2021, i.e. between 3% and 10% or below 3% but exceeding 2 ha.

- (i) Yellow card should be applied in respect of 2017.
- (ii) 2018 administrative penalty to be based on the difference between the area activated and the area determined multiplied by 1.5.
- (iii) Requirement to recover 50% reduction applied in 2017, as further over declaration incurred in 2018 resulting in an administrative penalty.
- (iv) 2019 the old penalty rules apply, i.e. based on the difference between the area activated and the area determined multiplied by 1.5.
- (v) 2020 administrative penalty to be based on the difference between the area declared and the area determined multiplied by 0.75 (new rule).
- (vi) 2021 administrative penalty to be based on the difference between the area declared and the area determined multiplied by 0.75 (new rule)

Example 2

2019 – Over declaration greater than 10% -

- (i) 2019 administrative penalty to be based on the difference between the area activated and the area determined multiplied by 1.5 (capped at 100% of the area declared).
- (ii) If the penalty is greater than the payment due, the balance can be offset for a period of 3 years

2020 - Over declaration between 3% and 10% or below 3% but exceeding 2 ha.

- (i) Administrative penalty to be based on the difference between the area activated and the area determined multiplied by 0.75 (new rule).
- (ii) Any offset for 2019 to be deducted

2021 Over declaration greater than 10% -

- (i) 2021 administrative penalty to be based on the difference between the area activated and the area determined multiplied by 1.5 (capped at 100% of the area declared)
- (ii) Any offset relating to over declaration in 2019 to be deducted from 2021 payment
- (iii) Any offset for 2021 to be capped at 100% of payment due, eliminating the need for an offset in future years in respect of the over declaration in 2021.

You should take care when completing your SA to ensure that it is accurate and avoid over declaration penalties.

If you appoint an agent to complete your SA it is still your responsibility to ensure the land declared on the SA is correct.

10. Force majeure or exceptional circumstances

Definition of force majeure or exceptional circumstances

FM/EC is defined as 'unusual circumstances, outside the control of the trader, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice'. A farm business may experience a FM/EC incident that impacts on his ability to meet the requirements for the BPS.

Cases of FM/EC are determined against their particular circumstances and on an individual basis.

Late applications

Regulations allow us to consider cases of FM/EC as a reason for not submitting or amending your application on time.

Land taken out of production due to force majeure or exceptional circumstances

You should always notify the Department at the earliest possible opportunity of any FM/EC situation that renders a portion of land out of agricultural use **even if only for a short time**.

So, if for reasons of FM/EC some, or all, of your land is not available to you on 15 May, or is ineligible for BPS or any other area-based scheme, at any time during the year, **you should tell us when you submit your claim or if you have already submitted your claim you should tell us within 15 working days of the date of being in a position to do so**.

If you do not, and we later discover that the land was taken out of production at any time during the year, we may consider that there is an over-declaration of land and apply a penalty to your claim.

For us to consider FM/EC, the land must be unavailable to you on 15 May in the scheme year or ineligible for BPS for at least some part of the calendar year.

The land must be able to be returned to agricultural use or become eligible for BPS. You must provide clear documentation indicating when the land is likely to come back into agricultural use.

If your land is ineligible for BPS for the whole year, and is removed permanently from agricultural use, we will not consider FM/EC. Should this happen you will have to obtain other eligible land to claim payment of BPS in such circumstances.

Land temporarily removed from agriculture

Examples of eligible FM/EC events will be those that temporarily remove the land from the farmer's agricultural business. These may include:

- Land vested by a utility for work where the land is returned to agricultural use after the work is complete, for example, pipe laying.
- Eligible land which has been damaged as the result of an event, for example, gorse wildfire or floods.

FM/EC will be considered if you have signed an agreement, or are similarly committed to permitting work to take place but the consequences of not doing so would be that a vesting order would be applied. You will be required to provide evidence of when you were made aware of the work or the intention to apply for a vesting order.

If your land has been purchased as part of a vesting order we may accept FM/EC in relation to your claim for BPS **for that year only**.

If your land has been burned maliciously then you need to provide evidence that you reported this to the Police Service of Northern Ireland or the Northern Ireland Fire and Rescue Service.

Land permanently removed from agriculture

The payment of BPS in relation to land becoming ineligible is dependent on whether the land is permanently removed from agriculture or whether it will be returned to agricultural use at some point.

If you have land that is permanently removed from agricultural use, for example, land that is actually taken up by a new road, it is possible to pay BPS on this area in the year in which the land is taken out of agricultural use. After this you need to make other arrangements to have eligible land to support activation of your entitlements.

If the land is to be returned to agricultural use it is possible to claim payment using the land during the period it is not in agricultural use.

Such areas would normally be set aside for storage of materials and equipment used in the construction of road works and then returned to you for agricultural use. However, the period of removal from agricultural use would have to be reasonable, for example, 2 years.

Roads Division Guidelines

Roads Division within the Department for Infrastructure has produced guidelines, with the assistance and input from the Ulster Farmers' Union, to inform and advise farm businesses and landowners of the development processes that Roads Division normally

adopts when bringing forward proposals for a major road improvement scheme.

These guidelines can be found at:

<https://www.infrastructure-ni.gov.uk/publications/guidelines-acquisition-landproperty-major-road-development-northern-ireland>

Notifying a force majeure/exceptional circumstances event to DAERA

Should you consider FM/EC applies to your application because of any unforeseen event, you are advised to contact Area-based Schemes Payment Branch immediately for advice. You should be aware that for us to consider a case of FM/EC we need to be told in writing at the same time as **you submit your application online (prior to or on the closing date of 15 May) or if you have already submitted your application you should tell us within 15 working days of the date of being in a position to do so.**

When you tell us of a FM/EC event you will be asked to complete a paper form FML1 application available on the DAERA website and return it to Area-based Schemes Payment Branch. We will look at each request on a case by case basis and where we agree that FM/EC has been demonstrated, we will not normally apply penalties.

You will have to prove that, despite taking all reasonable measures to counteract their effects, the FM/EC event prevented you from meeting your obligations. You must be able to provide information, supported by documentary evidence, of the steps you have taken to prevent or lessen the effect of these circumstances.

It is important that you do not wait until the Review of Decisions stage to notify the Department of FM/EC, as this will normally be considered to be outside the 15 working day notification period.

11. Review of Decisions

Under the Review of Decisions procedure applicants have a right to request a review of a decision made by the Department in relation to their area-based scheme claims. This procedure includes the BPS.

The review process is intended to provide applicants with a fair, impartial and transparent assessment of the Department's decision against the framework of National Regulations and Scheme rules. The aim of the procedure is to ensure that the decision made is correct and in line with the appropriate Regulations and Scheme rules.

The Department introduced a new Review of Decisions process from the 2018 scheme year.

Further details can be obtained on the Department's website:

<https://www.daera-ni.gov.uk/publications/area-based-schemes-review-decisions-procedure>

12. UK / EU Legislation and glossary of terms

UK / EU Regulations Governing BPS Payment Entitlements

1. **Direct Payments to Farmers (Legislative Continuity) Act**
2. **The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020**
3. **The Rules for Direct Payments to Farmers (Amendment) Regulations 2020**
4. **The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020**
5. **The Agriculture Act 2020**
6. **The Direct Payments to Farmers (Simplifications) Regulations (Northern Ireland) 2021**
7. **The Direct Payments to Farmers (Amendment) Regulations (Northern Ireland) 2021**
8. **The Conservation (Natural Habitats, Etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019**
9. **Regulation 1306/2013** on the financing, management and monitoring of the common agricultural policy;
10. **Commission Delegated Regulation 640/2014** supplementing 1306/13 with regard to the IACS and conditions for refusal or withdrawal of payments and administrative penalties to direct payments, rural development support and cross compliance;
11. **Commission Implementing Regulation 809/2014** laying down rules for the application of Regulation 1306/13 with regard to IACS, rural development measures and cross compliance. This Regulation was amended by **Regulations 2333/2015, and 2018/746.**
12. **Regulation 1307/2013** establishing rules for direct payments to farmers under support schemes within the framework of the CAP; as amended by Regulation 2017/2393

13. **Commission Delegated Regulation 639/2014** supplementing Regulation 1307/2013 establishing rules for direct payments;
14. **Commission Implementing Regulation 641/2014** laying down rules for the application of Regulation 1307/13

All references to regulations above refer to the latest version of the regulation i.e. as amended.

You can find the relevant EC Regulations on the European Union website at:
www.eur-lex.europa.eu/en/index.htm

You can find the relevant UK Law at: <http://www.legislation.gov.uk/>

Glossary of terms

AP	Authorised Person
BC	Business Change
BPS	Basic Payment Scheme
CAP	Common Agricultural Policy
CwRS	Control with Remote Sensing
DAERA	Department of Agricultural, Environment and Rural Affairs
EFS	Environmental Farming Scheme
EU	European Union
FDS	Field Data Sheet
GAEC	Good Agricultural and Environmental Condition
ha	Hectares
IACS	Integrated Administration and Control System
LPIS	Land Parcel Identification System
MEA	Maximum Eligible Area
NAP	Nitrates Action Programme
NIEA	Northern Ireland Environment Agency
PC	Permanent Crop
PCS	Protein Crops Scheme
PGS	Permanent Grassland
OTSC	On-the-spot checks
RoI	Republic of Ireland
RR	Regional Reserve
SA	Single Application
YFP	Young Farmers' Payment

13. Contact details

Contact Us:

If you have a specific query you can contact us using the email addresses or telephone number below. If you have a farm business ID please quote it on all correspondence or have it to hand before you call.

Email:

Grants and Funding Helpline: areabasedschemes@daera-ni.gov.uk

Telephone:

You should use the telephone number below for all area-based scheme queries:
Grants and Funding Telephone Number: **0300 200 7848**

Useful Addresses:

If you wish to send your query by post you should send it to:

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

Or you can visit your local DAERA Direct Office as listed overleaf.

DAERA Direct Public office opening hours are 9.00am - 4.00pm each working day.

Armagh	Ballymena	Coleraine
Atek Buildings Edenaveys Industrial Est Newry Road Edenaveys Co Armagh BT60 1NF	Academy House 121A Broughshane St Town Parks Ballymena Co Antrim BT43 6HY	Crown Buildings Artillery Road Millburn Coleraine Co Londonderry BT52 2AJ
Downpatrick	Dungannon	Enniskillen
Rathkeltair House Market Street Demesne of Down Acre Downpatrick Co Down BT30 6LZ	Crown Buildings Thomas Street Drumcoo Dungannon Co Tyrone BT70 1HR	Inishkeen House Killyhevlin Enniskillen Co Fermanagh BT74 4EJ
Mallusk	Magherafelt	Newtownards
Castleton Hs 15 Trench Road Grange of Mallusk Mallusk Newtownabbey Co Antrim BT36 4TY	Units 36-38 Meadowlane Shopping Cntr Moneymore Road Townparks of Magherafelt Magherafelt Co Londonderry BT45 6PR	Sketrick House 16 Jubilee Road Corporation South Newtownards Co Down BT23 4YH
Newry	Omagh	Strabane
Glenree House Unit 2, Springhill Road Carnbane Industrial Est Carnbane, Newry Co Down BT35 6EF	Sperrin House Sedan Avenue Lisnamallard Omagh Co Tyrone BT79 7AQ	Government Offices 18 Urney Road Strabane Co Tyrone BT82 9BX



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