

# 2018

## Guide to the Basic Payment Scheme



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

[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)



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# GUIDE TO THE TRANSFER OF BASIC PAYMENT SCHEME (BPS) ENTITLEMENTS 2018

You are advised to read this Guide before completing a transfer application, paying particular attention to Section 2 - Important points to remember.

You can use the online Entitlement Transfer Service to complete your transfer in most cases. It is easy and quick to complete and you will receive a confirmation email. Go to:

[www.daera-ni.gov.uk/onlineservices](http://www.daera-ni.gov.uk/onlineservices)

The online Entitlement Transfer Service will open on Thursday, 1 March 2018 and close at 11.59 pm on Wednesday, 2 May 2018.

<https://www.daera-ni.gov.uk/articles/area-based-schemes-2018-guidance-and-forms>

Transfers as a result of a **gift, sale or lease** are completed using the online Entitlements Transfer Service.

For transfers involving **business change** or **actual/anticipated inheritance** you **must** complete a paper Form TE1. You cannot use the online Entitlement Transfer Service.

Form TE1 is available to download from the DAERA website at:

<https://www.daera-ni.gov.uk/articles/area-based-schemes-2018-guidance-and-forms>

or by contacting the SAF Advisory Team, Orchard House on:

0300 200 7848.

If you want the transfer to take effect for the 2018 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 **Wednesday, 2 May 2018.**

**Note:** If your paper application is received after the deadline it will not be accepted for any reason. We are not responsible for forms being lost or delayed in the post. It is important that you ensure the correct postage has been paid. Proof of postage is not proof of receipt. Force majeure/exceptional circumstances will not be considered.

**Please note:**

This Guide is not to be taken as an interpretation of the EU Regulations.

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## Section 1 - Introduction

1. This Guide provides information on the arrangements in Northern Ireland for transferring Basic Payment Scheme (BPS) entitlements by gift, sale, lease or inheritance. You are recommended to read it before transferring entitlements.
2. Payment entitlements form the basis of the BPS and access to the BPS will depend on the number of payment entitlements you hold.
3. It is possible for a farm business to obtain more payment entitlements by transfer from another farm business that currently holds entitlements and wants to gift, lease or sell them. Entitlements can also be inherited where a farmer dies or retires (actual or anticipated inheritance).
4. The transfer of entitlements is carried out strictly in accordance with the EU Regulations. Further information can be found in the 2018 Guide to the Basic Payment Scheme at:  
  
<https://www.daera-ni.gov.uk/publications/2018-guide-basic-payment-scheme>
5. Reference in this Guide to '**transferor**' means the farm business transferring the entitlements and '**transferee**' means the farm business receiving the entitlements.
6. Reference in this Guide to '**lessor**' means the farm business transferring entitlements by lease and '**lessee**' means the farm business receiving the entitlements through lease.
7. The 'transferee'/'lessee' must meet the definition of an active farmer before entitlements can be transferred to them. See *Section 4 - Who can transfer / receive entitlements* - Active farmer paragraphs 1-4 for further information.
8. Except in cases of force majeure or exceptional circumstance, a farm business **must** activate (declare for payment of BPS) all of their entitlements at least once in every 2 year period. Any entitlement that remains unused for 2 consecutive years will be confiscated and returned to the Regional Reserve (RR)
9. 2017 was the first year since the introduction of BPS that entitlements could be confiscated for non-usage. For further information on how this impacts on transfers see *Section 7 - Managing and activating your entitlements. Confiscation and the 2 year usage rule.*
10. Any person who makes a false declaration or fails to notify DAERA of a material change to the information given when transferring entitlements is liable to prosecution. A false, inaccurate or incomplete statement or failure to notify DAERA of any material change in the information given in this form may result in loss of entitlement and / or recovery of any payments made.

11. **Both parties should be aware that if, after we finalise a transfer, we discover a problem relating to the original allocation of the entitlements in 2015, or their use prior to the transfer, then the transfer may be ruled null and void. The entitlements will be recovered and returned to the RR and repayment, with interest, of any monies not due to either party will be required.**
12. All transferors and transferees should read and be aware of the DAERA Personal Data Privacy Notice at Section 6 of the form TE1 transfer application which sets out our policy on Data Protection, Freedom of Information and environmental information issues.

## Section 2 – Important points to remember

### Closing date for 2018 transfers

1. **The online Entitlement Transfer Service will close at 11.59pm on Wednesday, 2 May 2018.**
2. Likewise the **closing date for receipt of paper applications (form TE1) is Wednesday, 2 May 2018.** Any paper applications received after this date will not be processed and the transfer will not take place for the 2018 BPS scheme year.
3. The entitlements will remain with you (the transferor) and should be activated for payment on your 2018 Single Application provided you are actively farming the land on which you are claiming the entitlements. They should not be claimed by the transferee for 2018.
4. Paper applications (form TE1) received after 2 May 2018 will 'roll over' to the 2019 BPS scheme year.
5. **NB.** If your paper application is received after the deadline it will not be accepted for any reason. 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. There is no provision under EU Regulations or Northern Ireland legislation that allows for a late transfer application to be considered under force majeure or exceptional circumstances provisions.

### 2017 Entitlement Statement

5. You, as the transferor, should have received an Entitlement Statement showing the number and value of the entitlements you hold. It also shows your unique Entitlement Transfer ID which you will need to use for the online or paper transfer application.
6. If you **have not received** an Entitlement Statement which show the entitlements you wish to transfer, you can get this information by accessing DAERA's Online Services using your Government Gateway or Northern Ireland Civil Service Identity Assurance (NIDA) login and password. Here you can see your Entitlement Register which gives your unique Entitlement Transfer ID and the value of your individual entitlements. **You cannot transfer entitlements in 2018 without this information.** If you have any difficulties you should contact the SAF Advisory Team in Area-based Schemes Payment Branch on 0300 200 7848 for further advice. Please note that your Entitlement Transfer ID cannot be given to you over the phone but it can be posted out to you or if you prefer you can contact your nearest DAERA Direct Office with acceptable photographic ID to obtain this. The closing date for receipt of transfer applications is Wednesday, 2 May 2018.

## How to submit your 2018 transfer application

### (i) Online transfer facility

7. You should use the online entitlement service to transfer entitlements by:  
  
**sale; gift; or lease** from one farm business to another (lessor to lessee), **with no business change or inheritance** involved.
8. To do so, you will need the Business ID and Entitlement Transfer ID of the transferee. There is no paper form to complete and, if approved, the transfer takes place instantly. You will receive an email to confirm the completion of the transfer.
9. Agents must ensure that they have the correct authorisation from the farm business to transfer entitlements online.
10. Online transfers cannot be completed if the transfer involves a business change (merger or scission) or inheritance following the death of a farmer, you must complete a paper application.
11. *See Section 5 - How entitlements can be transferred* for further information.
12. If the transferee is not registered as a farm business, the online transfer will be rejected. The transferee is therefore advised to obtain a Business ID by submitting form FB1 well in advance of using the online service to transfer.
13. To use DAERA online services you will need a Government Gateway ID and password or a NIDA ID and password. If you don't already have either of these, you must set up a new NIDA account. To enable you to do so you must bring 3 acceptable forms of identity and your DAERA Business ID to your local DAERA Direct office. Further information can be found by accessing the link below.

<https://www.daera-ni.gov.uk/how-access-daera-online-services-nidirect-individual-farmer-only>

### (ii) Paper application

14. We recommend, where possible, you use the online Entitlement Transfer Service. Any customer that is eligible can go to their local DAERA Direct Office and receive assistance with completing the online transfer of entitlements.
15. In exceptional circumstances you can submit your transfer application on paper using form TE1 (for gift, sale or lease of entitlements) which is only available from Area-based Schemes Payments Branch in Orchard House.
16. For transfers as a result of **actual or anticipated inheritance** you **must** submit a paper form TE1 application. You cannot use the online transfer facility.



17. Complete form TE1 in CAPITAL LETTERS and use **black** ink. Do not use correction fluid. If you make a mistake, initial and date the change(s). We will acknowledge receipt of your form TE1 in writing within 10 working days. We will not be held responsible for paper form TE1s which are delayed or lost in the postal system and we cannot accept applications after the closing date because of this. You can also hand deliver form TE1 to Area-based Schemes Payments Branch in Orchard House or to your local DAERA Direct Office if you wish. If you believe your application to be lost in the postal system you will need to submit another form TE1 before the closing date for transfer applications.
18. If a transferee is not registered as a farm business, the paper form TE1 application will be rejected. The transferee is therefore advised to obtain a Business ID by submitting form FB1 (application for a DAERA identification number) well in advance of submitting form TE1 (see *Section 4 - Who can transfer / receive entitlements* - New Farm Business paragraphs 14-19).

### **Who owns the payment entitlements?**

19. In the case of a farm business involving partnerships or multi-member farm businesses, the entitlements belong to the farm business and not any individual within that business. A request to transfer entitlements will be a request between 2 businesses.
20. For transfers by gift, sale or lease it is sufficient for any member to complete a transfer application on behalf of the farm business but they will be asked to sign a Declaration stating that the other members of the farm business are in agreement to the transfer.

### **Changes to business structure - mergers and scissions**

21. If you are changing the structure of your business, either by merging with another business or splitting your business into 2 or more farm businesses, you cannot use the online transfer service or complete Form TE1.
22. **You should complete forms BC3 (merger) or BC4 (scission) and send them to the Department.** These forms can be found at the DAERA website using the link

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

### **Transferor:**

23. The transferor can transfer their entitlements online if the transferee provides the transferor with their Business ID and Entitlement Transfer ID and it is a straightforward transfer with no business changes, such as a merger or scission. (This can only happen if the Business and Entitlement IDs match.)

24. The Entitlement Transfer ID is unique to a farm business and by entering this ID online, the Department will accept that the transferee has supplied the transferor with the ID and the entitlements are being transferred with the knowledge and consent of both parties concerned.
25. In exceptional circumstances when it is appropriate to submit a paper application, the transferor (or any member if it is a multi-member business) can complete form TE1 on behalf of both the transferor and the transferee.
26. The onus is on the owner of the entitlements to ensure that the information provided accurately reflects the facts and the intended transfer position, and this includes transfer applications completed by agents and form fillers. The Department has no responsibility for any errors or incorrect information supplied by agents/form fillers.
27. **If you wish to transfer entitlements to more than one person then you will need to complete a separate online transfer or form TE1 in respect of each person to whom you are transferring entitlements.**

#### **Transferee:**

28. If a transferee is receiving BPS entitlements for the first time, it is their responsibility to complete a 2018 Single Application (SA) online, obtaining help and guidance from their local DAERA Direct Office, if appropriate in order to claim BPS.
29. If the transferor and transferee have not received a decision from DAERA prior to the completion of the 2018 Single Application both parties should complete their SA on the basis of what the position would be should the transfer be approved.
30. The closing date for the receipt of the 2018 SA is 15 May 2018.

#### **Withdrawal of transfer applications**

31. A farm business has the option to withdraw a transfer application (even if the approval has been notified) **but not after the effective date of transfer has commenced**. In such cases both the transferor and the transferee need to confirm their decision to withdraw in writing.
32. If no effective date of transfer is given, we will default the date to 15 May 2018 for applications received in time for the 2018 BPS scheme year.
33. If the effective date of transfer has passed, a new transfer application will be required to reverse the transfer of entitlements which has taken place.
34. If you wish to withdraw or amend your paper form TE1 you can do so up to the day before the transfer / lease is due to take place, by contacting Area-based Schemes Payments Branch in writing (see *Section 11 – Contact details*).
35. You will need to provide your farm business ID, the details of the entitlements

being transferred and the amended details, or otherwise clearly state that you wish to withdraw your application.

36. We will need the consent of both the transferor and transferee before we can process the withdrawal or amendment of form TE1.
37. In the case of a partnership, the request should be signed by all the partners in the farm business. If your request is not received until after the effective date of transfer we will not be able to undo the transfer / lease.

### **Agents and form fillers**

38. Where an appointed agent or form filler is transferring entitlements on behalf of a farm business, they **must** enter the Entitlement Transfer ID of the transferor and the transferee which they **must** obtain from the parties concerned. The Department will not supply agents / form fillers with Entitlement Transfer ID numbers on request.
39. **We take no responsibility for mistakes made by other people who complete your online transfer or form TE1 on your behalf.** If you appoint an agent to complete the form, it is still your responsibility to ensure the information on the form TE1 is correct.
40. We will consider the information on the form TE1 to have been provided in accordance with your wishes, but if we have any queries we will contact the agent.
41. For online applications completed by agents, the agent will have to declare on the application that they have been given written consent of the transferor to act on their behalf which will be provided on request to DAERA. If no written consent is provided, the transfer may be rejected or reversed.

### **Executors**

42. Where entitlements are being transferred by inheritance the Executor of the Estate must sign on behalf of the deceased person. Where 2 or more parties fulfil this role all parties must sign the form TE1.
43. Entitlements can only be transferred by inheritance after the completion of probate. Until then a Single Application may be submitted on behalf of the Estate to activate the entitlements each year provided that the land declared on the Single Application is being farmed on behalf of the Estate (not rented out to another farmer).
44. **BPS entitlements can only be activated by active farmers.** If probate has not been cleared the Estate may only claim BPS entitlements if land is being farmed on behalf of the Estate.
45. If a beneficiary believes that they **will not meet the active farmer** requirements

(e.g. the land is being rented to another farmer) then the Department will permit the Executor of the Estate to permanently transfer or lease entitlements to another farm business (who must have a category 1 business ID from DAERA) prior to the clearance of probate provided that the Executor, in the presence of a solicitor, signs an indemnity form indemnifying the Department against any future adverse consequences and submits a form TE1.

46. You should contact the Area-based Schemes Payments Branch in Orchard House and ask for an 'Indemnity on Transferring of Entitlements' form if a beneficiary wants to permanently transfer or lease entitlements to another farm business.
47. In the case of a lease of entitlements, they will revert back to the Estate at the end of the lease and may then be inherited by the beneficiary upon the submission of a form TE1 and the clearance of probate.
48. The completed indemnity form must be returned along with the form TE1 before the closing date of Wednesday, 2 May 2018.

### **Recovery of undue entitlements**

49. If you are acquiring entitlements, whether by purchase, lease or inheritance, you should be aware that if we discover a problem relating to the original allocation of the entitlements or their use prior to the transfer, then we will either recover the entitlements or reduce their value.
50. The transferee will be obliged to surrender entitlements which they have acquired by transfer (purchase, gift, lease, inheritance or anticipated inheritance) if the entitlements concerned should not have been allocated at all and the transferring farm business has not retained sufficient entitlements that can be recovered from him to make good the misallocation. For example the transferor holds 20 entitlements and leases 18 entitlements. It is later found that he should only hold 18 entitlements. The 2 entitlements are recouped from the transferor. Using the example above, if it was found that the transferor should only hold 15 entitlements, then 2 entitlements are recouped from the transferor and 3 entitlements recouped from the transferee.
51. We may reduce the value of entitlements you have acquired by transfer if their value was originally set too high.
52. If, for example, entitlements are transferred that have been allocated, or increased in value from the RR and the RR award is withdrawn because outstanding evidence is not provided by the transferor (the business which made the application to the RR) when requested by DAERA, the entitlements concerned will either be withdrawn or reduced in value.
53. Other examples where entitlements may be withdrawn include where it is discovered that the land declared to establish entitlements in 2015 was ineligible or the business which was allocated entitlements was not farming in 2015. Please note that these are examples and not an exhaustive list of circumstances

when entitlements may be withdrawn or reduced in value.

54. The transferor who has received entitlements through gift, sale, lease or inheritance will also be required to pay back any undue payments received while the entitlements in question were in their possession. Entitlements that are confiscated will be returned to the RR.
55. If you are leasing entitlements to another farm business and that farm business does not activate all these entitlements (declare for payment of BPS) at least once in every 2 year period , we may withdraw the entitlements and they will be lost to the lessor at the end of the lease.
56. **If you are thinking about transferring or leasing entitlements you do so at your own risk. You may wish to take independent legal advice about the best way forward to protect your position.**

### **Succession planning for farmers**

57. By making and regularly updating a Will you decide what happens to your property and possessions after your death. A Will can help provide certainty and clarity regarding the division of your estate and avoid the potential for disputes and delays with subsidy claims.
58. If you choose to make a Will, it must be carefully drafted. It is therefore advisable that you choose a solicitor who understands the specific issues involved in the transfer of a farm business and an Executor (the person who executes your wishes as stated in your Will) with knowledge of your particular business.
59. Further information on Succession Planning is available on the DAERA website on:

<https://www.daera-ni.gov.uk/articles/succession-planning>

### **Minors**

60. We regard a person under the age of 18 as a minor. Where a minor receives entitlements by transfer, only a responsible adult can act for the business until such times as the minor comes of age. In such circumstances the responsible adult undertakes the risks, responsibilities and obligations associated with a business.

### **Transferring entitlements where there are Enforcement of Judgement Office (EJO) Order under the Crown Proceedings Act 1947 is in place**

61. When an EJO Order exists against you, you are advised to make a case in writing to the EJO explaining your intention to transfer your entitlements. This will allow the EJO to contact your creditors to see if they are content for the

transfer of an asset to go ahead.

62. A check will be carried out to confirm with the EJO if the order restricts the transfer of assets including BPS entitlements. If so, then the transfer will be rejected.

### **Other Guides and forms**

63. Before completing any application forms regarding the transfer of entitlements which may also involve business changes or setting up a new farm business, you are advised to read this Guide and the:

- Guide to Business Changes
- Guide for DAERA identification numbers for business customers.
- Guide to the Basic Payment Scheme

**All Guides and relevant forms can be downloaded from the DAERA website at:**

<https://www.daera-ni.gov.uk/publications/2018-guide-business-change>

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

## Section 3 - Completing an application to transfer – online and on paper

### Gift, sale or lease

1. You should use the online Entitlement Transfer Service to transfer entitlements by:

**gift;  
sale, or  
lease**

**where both the transferor and transferee have been allocated an Entitlement Transfer ID and the transfer is a straightforward transfer from one farm business to another, with no business change or inheritance involved.**

2. In exceptional circumstances you can submit a paper application; the transferor (or any member if it is a multi-member business) can complete the paper form TE1 on behalf of both the transferor and the transferee.
3. If you wish to transfer entitlements to more than one person then you will need to complete a separate application in respect of each person to whom you are transferring entitlements.

### **Business change / setting up new farm business**

4. If the transfer involves a business change, or if the transfer means that a new farm business has to be set up, you should ensure you have told us about this by ticking the appropriate boxes.
5. You should ensure that you have completed a form BC1 and submitted a form FB1 as appropriate.
6. You are advised to read the Guide to Business Changes and Guide for DAERA identification numbers for business customers.

### Form TE1 – Actual Inheritance

7. Complete form TE1 - Actual Inheritance if you are an Executor transferring entitlements on behalf of an Estate to the beneficiary(ies) of the entitlements.
8. Where entitlements are being transferred by inheritance the Executor of the Estate must sign on behalf of the deceased person. Where 2 or more parties fulfil this role, all parties must sign the form.
9. Where there is more than one beneficiary the Executor will need to complete a separate form TE1 in respect of each person who is inheriting the entitlements.
10. Failure to submit the necessary documentary evidence in support of an

application to transfer entitlements by actual inheritance may result in your application being rejected.

11. **If all parties have not signed the relevant parts of the form TE1 application on (or before) 2 May 2018, then we will return the application to the Executor, for completion.**
12. In respect of Part 2, section 4 of form TE1, if you do not specify the effective date of transfer, we will use the date of Tuesday, 15 May 2018 so that the transfer takes effect for the 2018 BPS scheme year.
13. If a beneficiary believes that they **will not meet the active farmer** requirements the Department will permit the Executor of the Estate to permanently transfer or lease entitlements to another farm business (who must have a category 1 business ID from DAERA) prior to the clearance of probate provided that the Executor, in the presence of a solicitor, signs an indemnity form **indemnifying the Department against any future adverse consequences and submits a form TE1.**
14. Please be aware of the advice given in *Section 2 - Important points to remember* - 'Executors' at paragraphs 42-48.

#### **Form TE1 - Anticipated Inheritance**

15. Complete form TE1 - Anticipated Inheritance if you are receiving entitlements through anticipated inheritance.
16. This is the transfer of land and the equivalent number of entitlements by gift. Such a transfer can only take place when all the legal transactions in respect of the land are completed.
17. See *Section 5 - How entitlements can be transferred* for further information on anticipated inheritance.



## Section 4 – Who can transfer / receive entitlements

### Active Farmer

1. The transferor **does not** have to be an active farmer in 2018 but must have been an active farmer in the year the entitlements were allocated.
2. The transferee **must** qualify as an active farmer on the effective date of transfer (except in the case of inheritance and anticipated inheritance).
3. This means that the transferee must have the decision making power, benefits and financial risks in relation to the agricultural activity they carry out. This is known as the 'active farmer' requirement.
4. There is an exception in cases where the transferee is inheriting entitlements. *Section 5 – How entitlements can be transferred* for further information.

### Agricultural activity

5. Agricultural activity is defined as:
  - production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,
  - 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.

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

6. Entitlements established in Northern Ireland, Scotland, Wales or any of the 3 English areas can only be used to claim a payment in the region or area in which the entitlements were established. Entitlements established in Northern Ireland can only be activated (that is, used to claim payment) by using land situated in Northern Ireland.
7. 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.
8. Transfers between farm businesses established in different Member States (e.g. the Republic of Ireland) can only take place through inheritance or anticipated inheritance, but the entitlements concerned may only be activated using land located in Northern Ireland.
9. A farmer is defined as a natural or legal person, or group of natural or legal persons (including legally constituted bodies such as a Partnership, Company or Trust) that undertakes an agricultural activity on a holding. Therefore, in the case of a farm business involving partnerships, the entitlements belong to the business and not an individual.

## Business IDs

10. Entitlements can only be transferred to businesses that are registered as a Category 1 farm business and which meet one of the following points below.
  - Business IDs which have activated BPS entitlements or received ANC payment in the 2017 BPS Scheme year;
  - New Business IDs which have been approved as a Category 1 business after 15 May 2017;
  - Business IDs which have cattle on Animal and Public Health Information System (APHIS) in the 3 month period prior to the effective date of transfer or have sheep according to the DAERA register the previous January (or later date);
  - Business IDs which can provide evidence of exercising agricultural activity, if requested by the Department, during the calendar year of the effective date of transfer.
11. In all cases the business must be exercising agricultural activity at the effective date of transfer and evidence of this may be requested.
12. An exception may apply where entitlements are transferred by inheritance or anticipated inheritance.
13. See *Section 5 – How entitlements can be transferred.*

## New Farm Business

14. If the transferee is receiving entitlements for the first time as a new farm business, they must be registered and approved with us as a category 1 business before the transfer application can be approved.
15. If the application by the transferee for a Business ID is rejected, then the transfer of entitlements cannot proceed and they will remain with the transferor.
16. The transferee is therefore advised to obtain a Business ID by submitting form FB1 well in advance of applying to transfer entitlements.
17. Contact your local DAERA Direct office as soon as possible to obtain advice and a New Business application (form FB1). Form FB1 can also be downloaded from the DAERA website at:  
  
<https://www.daera-ni.gov.uk/publications/business-change-forms>
18. All the details relating to an application for a new farm business or a business change may not be known at the time of completing your application. You should complete whatever details are known and make it clear that the farm business concerned is subject to a new business application or the result of a proposed business change.
19. You are asked to confirm on your transfer application the date you submitted the form FB1. This will allow us to process the application as quickly as possible.

## Section 5 – How entitlements can be transferred

1. A request to transfer entitlements will be a request between 2 businesses.
2. For partnerships or multi-member farm businesses, it is sufficient for any member to complete a transfer application on behalf of the farm business but they will be asked to sign a Declaration stating that the other members of the farm business are in agreement to the transfer.
3. A transfer of entitlements involves one or more of the following methods:
  - by gift,
  - by sale,
  - by lease,
  - through actual inheritance,
  - through anticipated inheritance.

### Transfer by sale, gift or anticipated inheritance

4. Transfer by gift is the permanent transfer of entitlements to another business for no purchase price. Anticipated inheritance is the transfer of land and the equivalent number of entitlements by gift.
5. If you are selling entitlements to someone else, or giving them as a gift, use the online Entitlement Transfer Service.
6. There is little difference between transfer by gift and transfer by anticipated inheritance, other than entitlements transferred by anticipated inheritance can be transferred to non-farmers.
7. If you are transferring BPS entitlements because you are retiring from farming, your farm business will be closed.
8. For BPS purposes we consider 'retirement' to be a complete ending of farming activity and a permanent transfer of all entitlements (gift or sale) to a third party. If you have an operational herd, **you will need to contact your local DAERA Direct Office first to ensure that the herd keeper details are amended.**
9. If as transferor, you are closing your farm business and you have an operational herd, you must contact your local DAERA Direct Office regarding the transfer of herd keeper details.

### Transfer by lease

10. If you, as lessor, are leasing entitlements to someone else, use the online Entitlement Transfer Service to do so.
11. You will need to tell us about the period of the lease. If, for example, the lease is

for more than one year, you will only need to transfer the entitlements once and not for each individual year.

### **Termination of a lease of entitlements**

12. You must state the end dates of the lease agreement on your application. At the end of a lease, the leased entitlements automatically return to the lessor.
13. If the person leasing the entitlements to someone else wants to end the lease early or extend the term, they must tell us in writing before the change takes effect.
14. Only the lessor can extend the lease, not the lessee although both may give notice in writing to end the lease early.
15. If you terminate the lease early with the consent of the lessee, then you, the lessor, must let us know by completing another application using form TE1 and submit it to DAERA. We will automatically return the entitlements to you at the end of the lease. You may lease the entitlements out again immediately, provided that you give us adequate notice.

### **Transfer by actual inheritance**

16. You must use paper form TE1 to transfer entitlements by actual inheritance. **You cannot use the online transfer facility.**
17. We consider actual inheritance in the case when a farmer has died and has legally transferred his holding, or part of it, to a beneficiary.
18. In a case of actual inheritance, you may transfer entitlements to a farm business in another United Kingdom region or Member State. You can only use entitlements in the United Kingdom region or Member State where they were established.
19. If payment entitlements have been transferred to you through inheritance, you must provide evidence of the legal transfer of the holding, e.g. documentary evidence, such as grant of probate along with a copy of the Will, letters of administration or other suitable evidence. You should note that we can only approve a transfer application when the Estate has been settled and probate finalised.
20. If you (the beneficiary) are already registered and approved by us as a farm business, then the transfer can be done between the Estate and your business.
21. If you (the beneficiary) are not already approved by us then you will be required to submit a New Farm Business application (form FB1) before the Estate can effectively transfer the entitlements to you.
22. In a multi-member business the entitlements belong to the business and therefore if the deceased has left any part of their share of the business as

entitlements, then the business would have to transfer, or sell the entitlements to fulfil the requirements of the Estate.

23. If entitlements are inherited by more than one person/farm business, then a separate transfer form must be submitted in respect of each person/business.

### **Transfer by anticipated inheritance**

24. You must use paper form TE1 to transfer entitlements by anticipated inheritance. **You cannot use the online transfer facility.**
25. We consider anticipated inheritance in the case where a farmer has transferred all land owned by gift to another person (usually a relative). In that case a number of entitlements up to the area of eligible land in hectares which has been transferred may be transferred by anticipated inheritance.
26. You will need to provide the land deed showing evidence of the land transfer.
27. We consider 'retirement' to be a complete ending of farming activity and a permanent transfer of all entitlements to a third party. In such cases, if the transfer is approved, the transferor's farm business will be closed. If you have an operational herd you need to contact your local DAERA Direct Office first to ensure that the herd keeper details are amended.

### **Transfer by inheritance (actual or anticipated) where the beneficiary is not a farmer**

28. If you are not a farmer, it is possible to permanently transfer or lease out the entitlements to a farm business in Northern Ireland.
29. If you do not wish to be recognised as a farm business then you, as a beneficiary, can request the Executor of the Estate to transfer the entitlements on your behalf. In these circumstances you could only sell the entitlements.
30. Or you may still acquire the entitlements by inheritance but will not be able to activate entitlements unless you commence farming an equivalent area of eligible land.
31. The Department will permit the Executor of the Estate to permanently transfer or lease entitlements to another farm business (who must have a category 1 business ID from DAERA) prior to the clearance of probate provided that the Executor, in the presence of a solicitor, signs an indemnity form **indemnifying the Department against any future adverse consequences and submits a form TE1.**
32. Note: If, as the beneficiary, you are an active farmer, it is possible to transfer entitlements by gift (which is a more straightforward administrative process) rather than using the anticipated inheritance route. Transfers by gift can be completed online.

## Section 6 – Transfers involving probate

The following are examples of how to transfer entitlements in certain circumstances involving probate

	CIRCUMSTANCES	ACTION
1	Probate has <b>not</b> been cleared and the Estate is farming the land	<p>Where the Estate is farming the land in 2018 and can meet the active farmer requirements, the Executor needs to</p> <ul style="list-style-type: none"> <li>• submit a 2018 SA online, seeking advice and guidance as appropriate from their local Direct Office to activate the BPS entitlements in 2018</li> <li>• The entitlements cannot remain with the Estate indefinitely. When probate is cleared a form TE1 must be submitted for the entitlements to be inherited by the beneficiary for future scheme years.</li> </ul>
2	Probate has <b>not</b> been cleared and the Estate is <b>not</b> farming the land.	<p>If the land is not being farmed on behalf of the Estate (and cannot meet the active farmer requirements to allow them to activate the BPS entitlements) the Executor can sell, gift or lease the entitlements to a category 1 farm business which can activate the entitlements in 2018. To do this:</p> <ul style="list-style-type: none"> <li>• Executors complete and submit form TE1 by 2 May 2018 to transferee (other than beneficiary)</li> <li>• Executors complete and submit an Indemnity form by 2 May 2018</li> <li>• Transferee submits 2018 SA</li> </ul> <p>If entitlements are permanently transferred (i.e. sale or gift) the process is complete. If they are leased, they will revert back to the Estate at the end of the lease. When probate is cleared another form TE1 will need to be submitted for the entitlements to be inherited by the beneficiary for future scheme years.</p>

	<b>CIRCUMSTANCES</b>	<b>ACTION</b>
3	Probate cleared and the beneficiary is farming	<p>Where probate is cleared and the beneficiary is farming and has a category 1 farm business.</p> <ul style="list-style-type: none"> <li>• Executors complete and submit form TE1 by 2 May 2018 along with supporting evidence, e.g. grant of probate to transfer entitlements to the beneficiary</li> <li>• Beneficiary (transferee) completes and submits 2018 SA</li> </ul>
4	Probate is cleared and the beneficiary is <b>not</b> farming but wants to own the entitlements	<p>Where probate is cleared and the beneficiary is not farming but wants to retain the entitlements. Beneficiary wants to lease entitlements for 2018:</p> <ul style="list-style-type: none"> <li>• Beneficiary to contact DAERA to get a business ID</li> <li>• Executors complete and submit form TE1 by 2 May 2018 along with supporting evidence, e.g. grant of probate to transfer entitlements to the beneficiary.</li> <li>• Beneficiary completes and submits form TE1 by 2 May 2018 to lease entitlements to a category 1 farm business who can activate the entitlements in 2018</li> <li>• Transferee completes and submits 2018 SA online</li> </ul>
5	Probate is cleared and the beneficiary is <b>not</b> farming but wants to sell the entitlements	<p>Where probate is cleared and the beneficiary is not farming and wants to sell immediately the entitlements to a category 1 farm business.</p> <ul style="list-style-type: none"> <li>• Executors complete and submit form TE1 by 2 May 2018 on behalf of the beneficiary to permanently transfer the entitlements to a category 1 farm business who can activate the entitlements in 2018. Complete Part 3 of the form, entering details of the farm business obtaining the entitlements in section 2 (transferee) and in section 3, column C of the table state that this is sale of entitlements from the Estate.</li> <li>• Transferee submits 2018 SA</li> </ul>

## Section 7 – Managing and activating your entitlements: Confiscation and the 2 year usage rule

**Please be aware that it is the responsibility of a farm business to manage and activate their entitlements and make sure they are aware of the rules on confiscation.**

1. A business **must** activate all of their entitlements in at least one scheme year over any 2 year period, except in cases of force majeure or exceptional circumstance. Any entitlement (or fraction of an entitlement) that remains unused for 2 consecutive years will be confiscated and returned to the RR.
2. Where confiscation is required in 2018 from a farm business which owns or leased in entitlements which were not activated in 2016 or 2017, the lowest value entitlements will be confiscated first. We will write and tell you if any of your entitlements are due for confiscation.
3. Where a farm business leases 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 in 2018, it is irrelevant whether the entitlement was activated in the 2017 year. Only those entitlements held by the buyer or lessee for 2 years are to be considered for confiscation.
4. Transferors (lessors) who lease entitlements should be aware that if they do so for 2 years or more, and the transferee does not declare sufficient land in those 2 years to activate them, **the leased entitlements could be confiscated**, particularly if they are lower in value than other entitlements held by the business.
5. Transferees (lessees) who receive entitlements by lease should also be aware that if the entitlements they lease are of higher value than those they own, and they do not declare sufficient land to activate all the entitlements they hold each year, the entitlements they own could be confiscated.
6. **The rotation of entitlements is not available under the BPS.**
7. Under BPS it is not possible to rotate entitlements for the purposes of activation. If a business does not declare sufficient land to activate all the entitlements they hold on 15 May, higher value entitlements are activated first. There is no difference between standard and RR entitlements or between those owned or leased. A business that has leased in entitlements is considered to hold them at 15 May.
8. There is no distinction made between owned and leased in entitlements. Those of the highest value are still activated first.
9. **You are transferring entitlements at your own risk.**
10. Both parties should be aware that if, after we finalise a transfer, we discover a problem relating to the original allocation of the entitlements in 2015, or their use prior to the transfer, then the transfer may be ruled null and void. The entitlements will be recovered and returned to the RR and repayment, with interest, of any monies not due to either party will be required.



## Section 8 – Split entitlements, string transfers and Cross-Compliance requirements

### Split entitlements

1. You can split entitlements and transfer them in part. For example, if you sell or lease 0.5 hectares of land the corresponding 0.5 entitlement can be transferred. Fractions of entitlements are only created where necessary. Once split an entitlement will remain split.

### String transfers

*(When entitlements are transferred more than once in a scheme year.)*

2. You can transfer entitlements more than once in a scheme year. You need to complete a separate online application or form TE1 for each transfer but you cannot transfer entitlements until the first transfer has been approved. That is until the date you have actually acquired the entitlements.

### Example

Farm business A submits a transfer request on 6 April 2018 to transfer entitlements to farm business B. The effective date of transfer is 13 April 2018. Farm business B wishes to transfer the entitlements again to farm business C.

To do so, farm business B must submit a further transfer request, but the transfer cannot commence before 13 April 2018.

**If you are considering a 'string' transfer you may wish to take independent legal advice.**

### Cross Compliance

3. 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).
4. You should be aware that the land on which you are claiming BPS must be at your disposal on 15 May 2018. You will be responsible for Cross-Compliance obligations relating to that land for the entire calendar year and you must ensure the land remains in a use which is eligible for BPS. These obligations remain with the claimant even if land is transferred.
5. There is one exception to this rule which is when land is transferred from or to someone who has also submitted a Single Application in that calendar year.
6. If the transferor submits a Single Application for other land in that calendar year (say 2018), they will be liable for Cross-Compliance 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 2018, you would remain responsible for ensuring the Cross Compliance requirements

relating to that land were met until the end of the calendar year.

7. **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 Cross-Compliance 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.
8. In the case of livestock, the keeper of the animals is responsible for ensuring compliance with the animal related Cross-Compliance requirements.
9. The Cross-Compliance verifiable standards documents can be found on the DAERA website at:

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

## Section 9 – Notification of transfer application decision

1. We will notify both the transferor and the transferee if the transfer of entitlements is successful if you have used our online transfer service. If you have employed an agent to complete the transfer online we will notify the agent, your farm business and the transferee that the transfer has been successful. If the transfer cannot be completed online due to eligibility the customer/agent attempting to complete the transfer will be displayed a message to tell them to contact 0300 200 7848. Entitlement statements will **not** be issued.
2. If you have submitted a paper form TE1 application, both businesses will be notified, in writing, as soon as possible of the transfer approval or if the transfer has been rejected.
3. In both cases a farm business will have the right to submit a request for a review of decision. See *Section 10 – Review of Decisions*.
4. If you have not received a decision from us on your transfer of entitlements application prior to the completion of your 2018 Single Application, **both parties should complete their Single Application on the basis of what the position would be should the transfer proceed as having been approved.**

### Examples of unsuccessful transfers might include:

- Transferee does not meet the definition of a farmer in the year of transfer.
  - Transferor has not definitively established entitlements.
  - Applications received outside the deadline and therefore not eligible to transfer. In this case the decision letter will explain that the transfer will not apply until the following scheme year.
  - Transferee not registered as a farm business.
  - Application did not meet the conditions relating to the relevant method of transfer.
5. We will consider applications for transfer of entitlements on their merits, but you may be able to correct minor errors (e.g. in the case of field numbers copied down incorrectly) without having to submit a new application.

## Section 10 – Review of Decisions

1. Under the Review of Decisions procedure, if your transfer application is rejected you have a right to request a review of that decision so long as your request is lodged within the time limit specified in your decision letter.
2. The review process is intended to provide applicants with a fair, impartial and transparent assessment of the Department's decision against the framework of EU and National Regulations and Scheme Rules. The aim of the procedure is to ensure that the decision made is correct and in line with the appropriate Regulations and Scheme rules.
3. In 2017 the Department launched a public consultation on a new Review of Decisions process for area-based schemes. In December 2017 the Departmental Board decided to introduce a new, single stage, Review of Decisions process from the 2018 scheme year. The current 2-stage Review of Decisions process will close to new applications when the new process is formally launched. Applications lodged under the current process will go through that process until its conclusion.

Details will be published on the Department's website when available.

## Section 11 – Contact details

1. If you need any help or advice in relation to your transfer application or you want advice on farm business changes, please contact the

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

Email: [areabasedschemes@daera-ni.gov.uk](mailto:areabasedschemes@daera-ni.gov.uk)

Tel: 0300 200 7848

Website: <https://www.daera-ni.gov.uk/articles/area-based-schemes-2018-guidance-and-forms>

2. If you need any help or advice in relation to an application for a new business identifier, form FB1, you can contact your local DAERA Direct office on 0300 200 7848 or call at the office between 9.00 am and 4.00 pm (closed for lunch 12.30 pm to 1.30 pm) Monday to Friday. The list of local DAERA Direct offices is below.

### DAERA Direct Offices

Location	Address
<b>Armagh</b> A:tek Building Edenaveys Industrial Estate Newry Road Edenaveys Armagh BT60 1NF	<b>Ballymena</b> Academy House 121a Broughshane Street Town Parks Ballymena BT43 6HY
<b>Coleraine</b> Crown Buildings Artillery Road Millburn Coleraine BT52 2AJ	<b>Downpatrick</b> Rathkeltair House Market Street Demesne of Down Acre Downpatrick BT30 6LZ
<b>Dungannon</b> Crown Buildings Thomas Street Drumcoo Dungannon BT70 1HR	<b>Enniskillen</b> Inishkeen House Killyhevin Industrial Estate Killyhevin Enniskillen BT74 43J

Location	Address
<p><b>Strabane</b>  18 Urney Road  Magirr  Strabane  BT82 9BX</p>	<p><b>Magherafelt</b>  Units 36-38  Meadowlane Shopping Centre  Moneymore Road  Townparks of Magherafelt  Magherafelt  BT45 6PR</p>
<p><b>Mallusk</b>  Castleton House  15 Trench Road  Grange of Mallusk  Mallusk  Newotnabbey  BT36 4TY</p>	<p><b>Newry</b>  Glenree House  Unit 2, Springhill Road  Carnbane Industrial Estate  Carnbane  Newry  BT35 6EF</p>
<p><b>Newtownards</b>  Sketrick House  16 Judilee Road  Corporation South  Newtownards  BT23 4YH</p>	<p><b>Omagh</b>  Sperrin House  Sedan Avenue  Lisnamallard  Omagh  BT79 7AQ</p>

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