

2018

Guide to Business Change

Please read this guidance carefully before completing any of the following:

Form BC1 - Business Change Notification

Form BC3 - Business Merger Notification

Form BC4 - Business Scission Notification



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

www.daera-ni.gov.uk



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Section 1 – BUSINESS CHANGE FORMS

1. Introduction

- 1.1 This Guide explains the relevant forms to use when notifying the Department of a farm business change. It should not be taken as an interpretation of the EU legislation.

2. Minor Changes

- 2.1 These are changes to **your** telephone/mobile number or email or whether you are a sole trader or a member of a multi-member business. You can make these at any time by emailing or writing to the Department or at any DAERA Direct Office listed at Section 6.
- 2.2 If you are a member of a category 1 business and a **sole trader**, you can change your title, name or address at your local DAERA Direct Office as long as you bring evidence to verify your ID.
- 2.3 If you are a member of a multi-member business you must complete Form BC1 - Business Change.

3. Form BC1 - Business Change Notification

- 3.1 You should use Form BC1 to notify the Department of any change to your farm business that does not require a transfer of entitlements. This includes a change to a business address if you are a member of a multi-member business. (See Section 3 for further information.)

4. Form BC3 - Business Merger

- 4.1 You should use Form BC3 when 2 or more farm businesses are merging into one.
- 4.2 Form BC3 will also provide for the entitlements held by the farm businesses involved in the merger to be transferred to the new merged business. There is no need to submit Form TE1 - Transfer of Entitlements as well. (See Section 3 for further information.)
- 4.3 If the business merger is to take place for the 2018 Basic Payment Scheme (BPS) scheme year, Form BC3 should be received by DAERA no later than Tuesday 15 May 2018.

5. Form BC4 - Business Scission (split)

- 5.1 You should use Form BC4 when a business is being divided up into 2 or more farm businesses.

- 5.2 Form BC4 will also provide for the entitlements held by the farm businesses involved in the scission to be transferred to the new businesses. There is no need to submit Form TE1 – Transfer of Entitlements as well. (See Section 3 for further information.)
- 5.3 If the business scission is to take place for the 2018 BPS scheme year Form BC4 should be received by DAERA no later than Tuesday 15 May 2017.

6 Form FB1 - New Farm Business

- 6.1 Some business changes, e.g. when businesses are split, may also require a Form FB1 to be completed to apply for a new business identifier (business ID). You are advised to read the 'Notes' which accompany Form FB1 which explain the procedures when applying for a new farm business ID. You only need to complete Form FB1 if you require a Category 1 Business ID in order to claim BPS or any other area-related scheme on the Single Application.

7 Transfer of Entitlements

- 7.1 You should use DAERA's Online Services if you are transferring entitlements by gift, sale or lease if they are straightforward and do not involve a business change.
- 7.2 Form TE1 should be used if you are transferring entitlements by anticipated or actual inheritance.
- 7.2 Any transfer of entitlements between businesses, apart from those resulting from a merger or scission, **must** be completed through DAERA Online Services or notified to DAERA using Form TE1 by Wednesday, 2 May 2018 to take effect for the 2018 scheme year.
- 7.3 You are advised to read the Guide to Transfer of Entitlements for further information on the DAERA website:

<https://www.daera-ni.gov.uk/publications/2018-guide-trading-entitlement>

- 7.4 All forms can also be found on the DAERA website using the link below.

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

8 Impact of a business change

- 8.1 You should be aware that a change in your business could have an impact on your BPS or other area-related schemes to which you have applied. You should consider whether the business change you are making is likely to conflict with the eligibility criteria under BPS or any other schemes under the Single Application.
- 8.2 Before completing any forms regarding business changes, transfer of entitlements or setting up a new farm business, you are strongly advised to read this guide and

any other relevant guide which can be downloaded from the DAERA website at

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

- **Guide to Business Changes**
- **Guide to Transfer of BPS Entitlements**
- **Guide for DAERA Identification Numbers for Business Customers, Herd and Flock Keepers**

Section 2 – CATEGORY 1 FARM BUSINESS STRUCTURE

9 Business IDs

- 9.1 EU Regulations require the Department to maintain a record of the identity of anyone who submits an application to receive EU funding. Each farm business must be registered with the Department and have a unique business ID.
- 9.2 You must be registered with the Department with a Category 1 farm business ID to be eligible to claim payment under the BPS or other area-related schemes under the Single Application.
- 9.3 There are 3 categories of Business ID:

9.3.1 Category 1:

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

9.3.2 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.

9.3.3 Category 3:

For those farm businesses to register as a keeper of a small number of animals. You will not be able to claim grant or subsidy with this business category. If the applicant already holds a category 1 or 2 business ID a separate category 3 business ID will not be provided.

10 New Category 1 Business ID

- 10.1 Where a business change results in the setting up of a new farm business, you must submit Form FB1. You **must be** fully separate and independent from any other farm business you have an interest in and you must be able to demonstrate your business meets certain criteria concerning the legal status, economic structure, commercial structure and operational management of the business.

11 Operational separateness

- 11.1 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.

- 11.2 Farm businesses that are genuinely separate should be able to demonstrate their separateness with relative ease.
- 11.3 It is expected that each farm business ID (all categories) will normally be able to demonstrate the following:
- Separate farmyard, 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.
 - Separate legal status (e.g. the business has separate accounts).
- 11.4 The Department reserves the right to refuse or revoke a business ID where it considers that 2 or more businesses are not separate.
- 11.5 Contact your local DAERA Direct Office for further information and to obtain Form FB1 if you are unable to download this from the Department's website. Contact details are listed at the end of this guide.

12 Business Structures

- 12.1 Payment under BPS will only be made to the person having the 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.
- 12.2 BPS payment entitlements are assigned to a farm business which may be made up of a sole trader or multi members.
- 12.3 Sole Trader
- 12.3.1 A sole trader is where there is only one member in a farm business.
- 12.4 Multi-member business
- 12.4.1 A multi-member business is regarded as a business where there are 2 or more members. **All entitlements belong to the farm business.**

13. Agricultural activity

13.1 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.

13.2 All farm businesses **must** remain fully operationally separate and independent from each other as explained above. If you have commonly managed herds/flocks which are registered to another business, the Department recommends you take immediate action to manage these herds/flocks independently, including separate grazing and housing. Alternatively, you should consider merging the businesses. Paragraph 14.2.2 refers.

Section 3 – WHICH FORM TO USE WHEN NOTIFYING DAERA OF A BUSINESS CHANGE

14.1 You should ensure that the information the Department holds in relation to your farm business is accurate and up-to-date and that you remain fully separate and independent from other farm businesses.

14.2 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, using one of the following forms:

14.2.1 Form BC1 – Business Change

Use Form BC1 to notify the Department of changes that do not require a transfer of entitlements. This could be a change to the:

- legal status of a farm business e.g. from a sole trader to a partnership, partnership to sole trader, or from a partnership to a limited company
- trading title of a farm business
- membership of a farm business (someone joining or leaving the business)

If you are adding members to the farm business, these individuals **must, in person**, provide to a DAERA Direct local office an acceptable form of photographic proof of identity before the change can take effect. The photographic proof of identity will not be retained or copied. The acceptable forms of photographic identification are:

- a UK, Irish or EEA driving licence (photographic part)
- a UK, Irish or EU passport
- an Electoral Identity Card
- a Translink Senior Smartpass
- a Translink 60+ Smartpass
- a Translink War Disabled Smartpass
- a Translink Blind Person's Smartpass

14.2.2 Form BC3 - Merger

Use Form BC3 to apply for a business merger (joining of farm businesses) and to request that the payment entitlements of those businesses merging are combined and transferred into the farm business set up as a result of the merger.

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.

Where the Department finds (e.g. at inspection) that 2 businesses are associated and are not operationally separate, the businesses will be required to merge.

Similarly, 2 or more separate farm businesses may decide to combine to create one business with a singular approach to management, benefits and financial risks.

Current Business IDs will be revoked and a new Business ID will be allocated on approval of the merger and payment entitlements will be combined and transferred into the newly merged business.

14.2.3 Form BC4 - Scission

Use Form BC4 if you want to divide a farm business into 2 or more businesses and a request for the payment entitlements held by the original business divided up between the businesses formed as a result of the scission.

Form BC4 is a joint application and must be signed by all the members of the original farm business **and** the farmers managing the farm businesses created as a result of the scission. The application should detail which payment entitlements should be allocated to each new farm business.

In order to recognise the scission the following conditions must be met:

- Where the **original farm business** is divided into at least 2 **new separate farm businesses**, **one** of those new businesses **must be controlled** in terms of management, benefits and financial risks **by at least one** of the farmers (natural or legal) **who controlled the original business**;

or

- Where **the original farm business** is divided into at least **one new farm business**, **the remaining part of the original business must continue to be controlled** in terms of management, benefits and financial risks **by the farmer originally managing that business**.

Form BC4 will be assessed in order to determine whether the new businesses are separate from each other and the original business. Documentary evidence may be required by the applicants in support of Form BC4 and this may include:

- a copy of a Deed of Transfer
- a Lease Agreement
- appropriate legal documentation confirming how the business assets have been split
- a copy of the business accounts in cases where the parties indicate that the total value of the entitlements may be divided on the basis of the % shares held / profits taken by each member of the original business.

14.3 Examples of when to use the forms can be found at Annex A.

15 Minors

- 15.1 The Department regards a person under the age of 18 as a minor. Only a responsible adult can act for a farm business until such times as the minor comes of age and in such circumstances the responsible adult undertakes the risks, responsibilities and obligations associated with a business.
- 15.2 On reaching the age of 18 the minor should contact the Business Change Section in Orchard House.

Section 4 – IS THERE A DEADLINE FOR SUBMITTING A BUSINESS CHANGE FORM?

- 17.1 Form BC1 can be submitted at any time where no transfer of entitlements is involved.
- 17.2 Forms BC3 (merger) and BC4 (scission) should be submitted to the Department by **15 May 2018 if the change is to take effect for the 2018 Scheme year**. In certain circumstances, DAERA will accept a BC3 after 15 May 2018 (e.g. where DAERA finds that businesses are not separate).
- 17.3 Form FB1 (application for a new farm Business ID) can be submitted at any time but this should be as soon as you are wanting to set up a new business and well in advance of wanting to receive entitlements by transfer. This is because if you are receiving entitlements as a new farm business, you must be registered and approved with the Department as a Category 1 business before a transfer of entitlements can be approved.

Section 5 – GENERAL POINTS TO REMEMBER WHEN COMPLETING BUSINESS CHANGE FORMS

18. Nomination of authorised person

- 18.1 If you have authorised a person to act on behalf of your farm business in relation to BPS and they complete **any forms** on your behalf, **it is your responsibility to ensure that the information provided is correct.**
- 18.2 When you authorise someone to act on your behalf this authorisation will remain in place until you tell us otherwise. We will consider any information provided by the authorised person to have been provided by you.
- 18.3 The Department **will not be liable** for any direct or indirect loss or liability to you as a result of the authorised person (agent or form filler) acting on your behalf.

19. Enforcement of Judgement Office (EJO) Orders under the Crown Proceedings Act 1947 / Bankruptcy Orders

- 19.1 When an EJO / Bankruptcy Order exists against you or your farm business, you are advised to make a case in writing to the EJO / Trustee explaining your intention to move the value of your entitlements to (or between) another farm business(es). This will allow the EJO / Trustee to contact your creditors to see if they are content for this to go ahead.
- 19.2 A check will be carried out to confirm with the EJO / Trustee if the Order restricts the transfer of assets including payment entitlements. If so, then the request to move the value of your entitlements to another farm business will be rejected.

20. Debts and business changes involving a transfer of payment entitlements

- 20.1 Where the business change involves a transfer of payment entitlements **it is important to be aware that** the leaving, retiring, or death of an individual from a business **does not** extinguish the debt of the business and we would continue to deduct the debt/penalty from future direct payments made to that business.
- 20.2 New members added to an original business should be aware that they **will be responsible for any recovery of undue payments** even when the debt occurred when they were not members of that business.

21. Outstanding debts and penalties against the original farm business

- 21.1 In accordance with Article 63 of Regulation 1306/2013 and Article 7 of Commission Implementing Regulation 809/2014, the Department is legally obliged to recover any undue payments and entitlements. The only exception to this is if the payment was made in error by the competent authority (DAERA) and if the error could not have been reasonably detected by the farmer.

- 21.2 Debts would usually arise due to an overpayment of subsidy in previous years, while penalties are required to be offset against future payments. Normally in both these cases the Department would reduce future direct payments made to the business, unless the overpayment was previously repaid.
- 21.3 Therefore, any business changes will only be permitted if the new business (and its members) indicates their agreement to discharge any outstanding debt / penalty of the original business.

22. Approval/acceptance of business changes

- 22.1 The approval or acceptance of a business change does not imply that you are eligible or will receive a payment under the BPS or any other area-related payment scheme.
- 22.2 All applications for a business change will be considered in the context of the provisions of Article 60 of Regulation (EC) 1306/2013. If there is a suspicion that a farmer or a farm business has artificially created the conditions for obtaining payments contrary to the objectives of BPS, Greening Payment, YFP or any other payment scheme then such a claim will be thoroughly investigated.
- 22.3 The business or businesses resulting from the business change must reflect the actual situation in practice.
- 22.4 If a false statement is knowingly or recklessly made to obtain payment under BPS Greening Payment, YFP or any other payment scheme, the farm business is liable to prosecution. Furthermore a false statement will lead to the loss of the whole claim and recovery of any payment made.
- 22.5 Business IDs will be revoked and new business IDs issued where the business change involves a merger or scission or any other change that requires a new business ID to be issued.
- 22.6 You are advised to read all other Guides available for 2018 Scheme year, including the:
- Guide to the Basic Payment Scheme, and
 - Guide to Transfer of BPS Entitlements
- 22.7 Guides are for information only and should not be regarded as a legal interpretation of the EU Regulations governing BPS.
- 22.8 Applicants are advised to take independent legal advice, as necessary, to ensure their interests are looked after.

Section 6 – CONTACT DETAILS

Completed Forms BC1, BC3, BC4 and TE1 should be returned to:

Department of Agriculture, Environment and Rural Affairs
Area-based Schemes Payment Branch
Orchard House
40 Foyle Street
Derry/Londonderry
BT48 6AT

The completed **Form FB1**, along with all relevant documentation needed to prove you are an active farm business, should be returned to your local DAERA Direct Office.

All DAERA telephone calls are handled via NI Direct.

Phone 0300 200 7848 and ask for Orchard House or the DAERA Direct Office closest to you.

DAERA Direct Offices

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

ANNEX A

EXAMPLES OF WHEN TO USE BUSINESS CHANGE FORMS

EXAMPLE	FORM TO BE COMPLETED	RETURN THE FORM TO
Business ID 000000 is adding a new member to the business and deleting another member	Form BC1 to notify change to the Department	Area-based Schemes Payment Branch, Orchard House
DAERA has identified that one business has an association with herds / flocks registered to another farm business. Both businesses decide to merge as they are no longer operationally separate.	Form BC3 to merge 2 or more farm businesses and request a transfer of payment entitlements from the original businesses to the merged business.	Area-based Schemes Payment Branch, Orchard House
<p>Father and son decide to split the farm business as the son is setting up as head of his own farm holding under the Young Farmers' Payment Scheme.</p> <p>Son must apply for a new farm business ID. He must demonstrate that the new business is fully separate and independent from his father's business.</p> <p>The father will retain his original Business ID.</p>	<p>Form BC4 to split a farm business into 2 or more separate businesses and to divide payment entitlements between the newly formed businesses resulting from the scission.</p> <p>Form FB1 application for a new Business ID.</p>	<p>Area-based Schemes Payment Branch, Orchard House</p> <p>DAERA Direct local office</p>
<p>A farmer leaves one business and sets up on his own.</p> <p>The payment entitlements remain with the original business.</p>	<p>Form FB1 application for a new Business ID.</p> <p>Form BC1 to notify of member leaving original farm business.</p>	<p>DAERA Direct local office</p> <p>Area-based Schemes Payments Branch, Orchard House</p>
Farmer A transfers entitlements to Farmer B. Straightforward transfer with no business changes to either business.	<p>Application to transfer entitlements by gift, sale, lease – DAERA Online Services</p> <p>or</p> <p>anticipated or actual inheritance – Form TE1.</p>	Area-based Schemes Payments Branch, Orchard House
<p>Member of multi-member business dies*</p> <p>*Payment entitlements belong to a farm business and where a member of a multi member business dies, it does not require a transfer of entitlements.</p>	Form BC1 to remove farmer from the business.	Area-based Schemes Payments Branch, Orchard House

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