

Area-based Schemes

Review of Decisions Procedure

For reviews of an Area-based Scheme decision, in relation to the following Schemes:

Basic Payment Scheme (BPS)

Young Farmers' Payment (YFP)

Environmental Farming Scheme (EFS)

Agri Environment Schemes (NICMS)

Forestry Grant Schemes

Protein Crops Scheme (PCS)

February 2023

You can get a copy of this document in other formats, such as:

- Paper Copy
- Large Print
- Braille
- Audio CD/ MP3
- Computer Disk
- Other languages

To get a copy of this document in another format contact:

Email: areabasedschemes@daera-ni.gov.uk

Tel: 0300 200 7848

Post: Area-based Schemes Delivery Support Branch, Orchard House 40 Foyle Street,
Derry/Londonderry BT48 6AT

THIS BOOKLET IS EFFECTIVE FROM FEBRUARY 2023.



Rural Support provides impartial guidance for farmers and farm family members in support of their farm business and personal wellbeing. **Telephone Support Line: 0800 138 1678 (Freephone)** to chat to a dedicated support team who are available Monday - Friday, 9AM - 9PM. Voicemail and support options available at all other times.



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1. Introduction

This information booklet is designed as a guide to DAERA's Review of Decisions Procedures and includes information in relation to the powers of the Independent Panel which changed in February 2022.

The procedure covers decision letters issued in relation to the following Area-based schemes:

- Basic Payment Scheme (BPS)
- Young Farmers' Payment (YFP)
- Environmental Farming Scheme (EFS)
- Agri Environment Schemes (NICMS)
- Forestry Grant Schemes
- Protein Crops Scheme (PCS)

Applicants who feel that DAERA did not reach the correct decision in an Area-based scheme have access to the review procedure.

The Review of Decisions Procedures will continue to provide applicants with a fair, impartial and transparent assessment of a disputed decision in an efficient manner and ensure that the final decision is made within the law and in line with the regulations and scheme rules.

This procedure is an opportunity for applicants to explain and demonstrate how they feel they have met the requirements of the relevant scheme and why the initial decision should be changed. The Case Officer Review is conducted by a Case Officer who was not involved in the original decision and who will consider any relevant documentation/evidence produced by the farmer even if this wasn't available when the original decision was made.

Should the applicant remain dissatisfied following the completion of Case Officer Review, they may then apply for an Independent Panel to assess their case. The cost of applying for an Independent Panel Assessment is £200. The Independent Panel will consider any relevant documentation/evidence produced by the applicant or DAERA even if this wasn't available when the original decision was made. You can submit additional evidence that supports your original grounds for review. You must submit your application and any additional evidence within 60 days of the date of Case Officer Review final decision letter. Independent Panel Assessment applications received after the 60 day deadline will not be accepted. There will be no exceptions. Any additional evidence received after the 60 day deadline will not be accepted or considered. There will be no exceptions. The evidence provided must relate to the original decision that forms the basis for the grounds for review. The applicant (or representative) will be invited to attend a Panel assessment.

Unless the Independent Panel's decision is made on the basis of an error of law, DAERA must accept and implement the decision. If the initial decision is changed, the £200 fee will be refunded to the applicant.

Details of DAERA's Review of Decisions procedure are available on the Department's website at:



2. Your right to have a decision reviewed

If you consider that our decision regarding your Area-based scheme(s) is incorrect you have the right to request a review.

Before requesting a formal review of the decision, you should contact the relevant Scheme section in DAERA to discuss it by telephoning 0300 200 7848. The scheme staff will be able to provide a fuller explanation, either over the telephone or in writing, to you or your representative. This may allow the matter to be resolved without the need for a formal review.

Using this option does not affect your right to proceed with a formal review but the deadlines for return of the application for a review will not be extended.

3. How to request a Review of Decisions application

To request a formal review you must contact the Review of Decisions Section by email reviewofdecisions@daera-ni.gov.uk, by telephone on 02871 319774, or alternatively by writing to Review of Decisions Section, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT and request a Review of Decision application form. You must advise staff of your Business identification number, which decision(s) you wish to have reviewed, and the date of the decision. An agent or other person can help you with this.

Your completed application form must be received by DAERA **no later than 60 calendar days** from the date on our decision letter. The deadline date will be noted on the front of the application form and the accompanying cover letter.

Please email your completed application to reviewofdecisions@daera-ni.gov.uk

Alternatively, you can return your completed application to The Review of Decisions Section, Area-based Schemes Payment Branch, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT. The completed application must be received within the timescales (**no later than 60 calendar days** from the date on our decision letter) and it is your responsibility to ensure the documents arrive on time.

If your 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.

You will receive an acknowledgement of your review application from the Review of Decisions Section. If you have not received an acknowledgement within 10 days of having emailed/posted it, you should contact the Review of Decisions Section immediately.

When you complete your Review of Decisions application you must:



(i) Clearly state why you think the decision is incorrect. If you submit a review request that does not contain this information we will contact you to give you the opportunity to provide these details. If you fail to provide details as to why you believe the initial decision is incorrect, by the set deadline given by the Review of Decision Team, your review application will be rejected.

(ii) Provide all documentation in support of your case. Please ensure that any photographs you supply are dated and clearly labelled (e.g. with relevant field identifier and location of ineligible area marked).

(iii) Refer to the relevant EU or national regulations or scheme rules, where applicable.

Please note that Freedom of Information and Environmental Information Regulation requests should be sent separately to the following e-mail address asd.foi@daera-ni.gov.uk, or by post to ASD Business Support Branch, Ballykelly House, 111 Ballykelly Road, Ballykelly, Limavady BT49 9HP.

4. Decisions covered under the Review of Decisions procedure

Examples of the types of decisions that may be reviewed include:

- Penalties applied that result in a reduction or non-payment
- Ineligibility of land or other works found during an inspection
- Cross-Compliance breaches identified at inspection
- Penalties applied as a result of a Cross-Compliance breach
- Admissibility of your application
- Recoveries, in whole or part, of any payments already made

This list is not exhaustive. Your decision letter will confirm whether you have the right to have the decision reviewed.

5. Decisions not covered by the Review of Decisions procedure

Decisions that cannot be reviewed using this procedure include:

- Decisions on the exchange rates used to calculate your payment;
- Policy decisions relating to schemes;
- The standard of service you receive from us (see section 12);
- Interest charged on outstanding debts.

6. Case Officer Review Process

The review will be carried out by a Case Officer in DAERA who was not involved in the original decision.

The Review of Decisions Case Officer will contact you when they are assigned your case. The Case Officer will review the reasons why you believe the initial decision was incorrect and the evidence you have supplied and will then telephone you to discuss your review. The discussion will give you the opportunity to provide clarification on the evidence submitted to date and consider other evidence or detail that could be provided. If required the Case Officer will advise you of the deadline for submitting any additional evidence on your case and will follow this up with an e-mail or letter stating the deadline. Your review will be assessed based on the evidence you have provided by the deadline date.

The Case Officer will consider all the information you provide and review the decision against the framework of EU, and national regulations and scheme rules. The Case Officer will send you a Preliminary Case Report, by email or Royal Mail recorded delivery, to the registered trading address recorded on the Department's database. The Report will contain all the information the Case Officer considered for your case. It will also inform you of the preliminary decision which the Case Officer believes to be correct in your case.

If you don't understand something in the Preliminary Case Report, you should ask your Case Officer to explain it. If you don't agree with the Preliminary Case Report, you will have the opportunity to submit further information to support your case. You will have 10 working days from the date of the Preliminary decision letter to submit additional comments/evidence.

Once they have considered in detail your reply to the Preliminary Case Report and addressed the points raised, the Case Officer will send you a Final Case Report by email or Royal Mail recorded delivery to the registered trading address recorded on the Department's database. You can also ask for a copy to be sent to the person who helped you with the review application, if they are your authorised agent, legal representative or political representative.

The Report will contain all of the information that the Case Officer considered for your case. It will also inform you of the final decision reached in your case.

If you don't agree with the decision in the Final Case Report, you can ask for an Independent Panel to look at your case. You must ask for this within 60 days of the date of the Case Officer Review final decision letter. An Independent Panel Assessment will cost £200 and you must submit this with your completed application.

7. Independent Panel Assessment

You can only apply for an Independent Panel Assessment after the Case Officer Review has been completed.

With your Case Officer Review final decision letter you will have received an Independent Panel Assessment (IPA) application form and a Cheque Referral Form. If you choose to apply for an Independent Panel Assessment you have 60 days from the date of the Case Officer Review final decision letter to return your application form, and any additional evidence that



supports your original grounds for review. Please note only evidence that relates to the original decision, that formed the grounds for review, will be considered.

You should return the completed application form to Review of Decisions Section, Area-based Schemes Payment Branch, Orchard House, 40 Foyle Street, Derry/Londonderry, BT48 6AT. You must also enclose a cheque for £200. Cheques should be made payable to the DAERA Corporate Account and crossed "A/C payee only". **Applications that do not have payment attached will not be considered.**

If you choose to email your Independent Panel Assessment application to the Department please ensure that you send your cheque to the address above address with the Cheque 6 Referral Form. We must receive your cheque no later than one week after you e-mail your application, as we cannot progress your application until the cheque is received. You can email your application to ipa@daera-ni.gov.uk

Alternatively, you can take your application and cheque to your local DAERA Direct Office. They will provide you with an acknowledgement and send the application to the Review of Decisions Section.

If your application and any additional evidence is received after the deadline it will not be accepted. 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.

You will receive an acknowledgement of your IPA application form from the Review of Decisions Section. If you have not received an acknowledgement within 10 days of sending it you should contact the Review of Decisions Section immediately.

8. How the Independent Panel operates

The Independent Panel (the Panel) is a group of three people, appointed by DAERA, to consider a case and make a decision. Unless the Panel's decision is made on the basis of an error of law, DAERA must accept and implement the decision.

The Chairperson of the Panel will be a qualified and experienced solicitor or barrister. The other members of the Panel will have in depth experience of agricultural activity. The Chairperson will have the casting vote in decisions made by the Panel. All Panel assessments with the applicant / authorised agent / legal representative or political representative will be recorded.

Panellists are appointed by DAERA from a pool of people who have been formally selected and trained by the Department to sit on the Review of Decisions Independent Panel. Before considering a case, the Panellists are required to declare any conflict of interest that may arise; for example, any private, voluntary, charitable or political interest of panellists (or their close relatives or friends and associates) which might be perceived to be material and relevant to the case. Where conflicts of interest are identified they will be managed in a way that safeguards the integrity of the Department and the Panel's ability to deliver its services.

The Panel's role is to consider the representations made by you, but they are bound by the EU



and/or national regulations. The Panel has no discretion to operate outside the rules of the schemes. The Panel does not have the authority to make decisions in respect of legal matters; for example, ownership of land or rights/access to land or disputes between two people. Only a court can make such decisions.

DAERA conduct their Independent Panel Assessments via videoconference through the WebEx platform. DAERA staff will issue instructions on how the applicant and/or representative can download WebEx on to their device. They will offer support to the applicant and/or representative if necessary. Alternatively, face to face assessments can be arranged. Face to face assessments are carried out at the DAERA Office, Molesworth Place, Cookstown, Co. Tyrone, BT80 8NX. Any expenses incurred by you attending will not be reimbursed by DAERA.

You will be invited to attend an assessment with the Independent Panel. Your representative can also attend the assessment. DAERA should be informed in advance of who will accompany you to the assessment.

DAERA staff will make every effort to agree with you a date for the assessment. If this is not possible the assessment may proceed in your absence. **Once a date for an assessment has been set it will only be postponed in exceptional circumstances.**

During the assessment there will be an opportunity to answer any questions the Panel may have, to clarify the information you have already provided at the Case Officer Review stage. The Panel will see the same information that was presented to the Case Officer who carried out the initial review, plus any relevant documentation/evidence produced by you or DAERA prior to the assessment. You cannot introduce any additional evidence to the panel at this stage. The panel can only discuss your case on the information they hold on the day. The oral section of the assessment usually lasts 30 minutes.

On the day of the assessment proceedings will be recorded. The Panel Chairperson will make introductions and will open the assessment by asking you if there is anything you wish to highlight in relation to the evidence in the case file.

The Panel will consider all the information and make a decision based on their findings. The Panel will draft their own notes and record their decision on a decision template. You will receive a copy of the completed template with a decision letter issued from DAERA.

The Panel's decision is binding on DAERA unless it is made on the basis of an error of law.

9. What happens after the Panel Assessment?

The Panel will provide DAERA with its completed decision. This will be considered in conjunction with the facts of your case to ensure the decision is in keeping with the relevant legislation.

DAERA is obliged to accept the Panel's decision unless it is made on the basis of an error of law, in which case it will be referred back to the Panel to review, in line with legislation. DAERA must act within EU and national regulations and has no discretion to do otherwise. Its role is to ensure that all options within the EU and national regulations have been considered by the



relevant scheme, Case Officer and the Panel.

A decision letter and a copy of the Panel's final decision will be emailed to you, and if requested, your nominated representative. Alternatively, you can request this to be posted out to you.

The Independent Panel Assessment concludes DAERA's review procedures.

10. General Information

Please note that normal processing of your Area-based schemes will continue while your review is ongoing, for example debt recovery in the form of interceptions from available payments will not be suspended, interest will continue to accrue on outstanding debts and any penalties resulting from inspections or administrative checks will continue to be applied.

If the decision is changed at review, then any necessary reimbursements or adjustments to your claims will be made following the outcome of the review.

11. Outcome of the Review of Decisions Procedures

The possible outcome of the Case Officer Review or Independent Panel Assessment will be;

- a. our decision is changed in full or in part (i.e. your case is upheld or upheld in part); or
- b. our decision is not changed (i.e. your case is not upheld).

If you proceed to an Independent Panel Assessment and DAERA's decision is changed in full or in part, we will refund your fee. If the Panel does not change DAERA's decision your £200 fee will not be refunded.

12. Standard of Service

If you do not receive the standard of service you expect, you have the right to complain. We will treat your complaint seriously and deal with it as quickly as possible. A standard of service complaint cannot be used to overturn a legally correct decision. When making a complaint please provide as much information as possible about your complaint along with contact details, such as your name, telephone number, email address and/or postal address.

Your complaint will be dealt with in accordance with our Complaints Procedure available in the following link:

<https://www.daera-ni.gov.uk/publications/how-do-i-make-complaint-if-i-am-unhappy-quality-service-i-received>

Or request a copy of the Complaints Procedure by emailing complaints@daera-ni.gov.uk



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

13. Your options after the DAERA Review Process

Once you have completed the Review of Decisions process, there is no further scope for a Departmental review of your case.

Judicial Review

If you wish to challenge the final decision on a point of law, you may seek a Judicial Review through the High Court. Applications for a Judicial Review should be made to the High Court within three months of you receiving the final decision. If you consider this option is appropriate you should discuss the matter with your legal advisers. DAERA will submit recordings of Independent Panel meetings as evidence to Judicial Reviews.

Office of the Northern Ireland Public Services Ombudsman (NIPSO)

If you consider that the procedures have not been followed correctly, you can take your complaint directly to the Office of the Northern Ireland Public Services Ombudsman. Complaints should be raised within six months of receiving the final decision. Where there is recourse to a review procedure, the Ombudsman's role is to be satisfied that the applicant has had access to the review procedure and they were treated fairly and consistently within that process.

You can contact the Office of the Northern Ireland Public Services Ombudsman as follows:

In Writing: Northern Ireland Public Services Ombudsman, Progressive House, 33 Wellington Place, Belfast, BT1 6HN

Freepost: Freepost NIPSO

Telephone: 028 9023 3821

E-mail: nipso@nipso.org.uk

Freephone: 0800 343424

Website: www.nipso.org.uk

Text Phone: 028 9089 7789

Please note that if you complain to the Office of the Northern Ireland Public Services Ombudsman they will seek confirmation that the complaint has been fully considered by DAERA under our review procedures and that we have issued a final response to you. In effect this means that the Ombudsman will not consider your case unless you have first exhausted all the departmental procedures.

14. Contact Details

Prior to submitting a Review of Decisions request, you should discuss your Environmental Farming Scheme or Northern Ireland Countryside Management Scheme application by contacting:



Email Address: efs@daera-ni.gov.uk; Tel: 028 8765 7645; or alternatively by writing to Department of Agriculture, Environment and Rural Affairs - Countryside Management 2nd Floor Molesworth Place, Molesworth Street, Cookstown, BT80 8NX.

Prior to submitting a Review of Decisions request, you should discuss your application for any other Area-based scheme by contacting:

E-mail address: areabasedschemes@daera-ni.gov.uk; Tel: 0300 200 7848, or alternatively write to Department of Agriculture, Environment and Rural Affairs Area-based Schemes Payment Branch, Orchard House 40, Foyle Street, Derry/Londonderry, BT48 6AT.

Further information on the Forestry Grant Schemes Review of Decisions can be obtained via: E-mail: grants.forests@daera-ni.gov.uk, Tel: 028 66 343019 or alternatively by writing to Department of Agriculture, Environment and Rural Affairs Forest Service Grants Branch, Inishkeen House, Killyhevin, Enniskillen, BT74 4EJ.

15. Contact details of Local DAERA Direct Offices

<u>Armagh</u>	<u>Dungannon</u>	<u>Mallusk</u>
A:Tek Building Edenaveys Industrial Estate Newry Road Edenaveys ARMAGH BT60 1NF	Crown Buildings Thomas Street Drumcoo DUNGANNON BT70 1HR	Castleton House 15 Trench Road Grange of Mallusk Mallusk NEWTOWNABBEY BT36 4TY

<p><u>Ballymena</u> Academy House 121a Broughshane Street Town Parks BALLYMENA BT43 6HY</p>	<p><u>Enniskillen</u> Inishkeen House Killyhevlin Industrial Estate Killyhevlin ENNISKILLEN BT74 4EJ</p>	<p><u>Newry</u> Glenree House Unit 2 Springhill Road Carnbane Industrial Estate Carnbane NEWRY BT35 6EF</p>
<p><u>Coleraine</u> Crown Buildings Artillery Road Millburn COLERAINE BT52 2AJ</p>	<p><u>Strabane</u> Government Offices 18 Urney Road STRABANE BT82 9BX</p>	<p><u>Newtownards</u> Sketrick House 16 Jubilee Road NEWTOWNARDS BT23 4YH</p>
<p><u>Downpatrick</u> Rathkeltair House Market Street Demesne of Down Acre DOWNPATRICK BT30 6LZ</p>	<p><u>Magherafelt</u> Units 36-38 Meadowlane Shopping Centre Moneymore Road Townparks of Magherafelt MAGHERAFELT BT45 6PR</p>	<p><u>Omagh</u> Sperrin House Sedan Avenue Lisnamallard OMAGH BT79 7AQ</p>



Department of
**Agriculture, Environment
and Rural Affairs**
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***Sustainability** at the heart of a
living, working, active landscape
valued by everyone.*

