

EXPLANATORY MEMORANDUM TO

The Direct Payments to Farmers (Review of Decisions) Regulations (Northern Ireland) 2021

S.R. 2021 No 346

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (SR) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 50(3)(a) and (d) of, and paragraph 5 of Schedule 6 to, the Agriculture Act 2020, and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations enable the Department to establish procedures for the review of a relevant determination made by the Department in relation to a Direct Payment Scheme.

3. Background

- 3.1. Where an applicant is dissatisfied with a decision taken by the Department in relation to an area-based scheme, these Regulations enable the Department to establish procedures for the review of that decision.
- 3.2. The procedures to be established under these Regulations may include consideration by a Panel appointed by the Department with a view to it making a decision as to how the matter should ultimately be determined.
- 3.3. The Department must accept and implement the decision of the Panel, except where the Panel decision is made on the basis of an error of law. Where a decision made by the Panel is based upon an error of law, the Department must refer back to the Panel that decision with a direction to reconsider the application having regard to and applying the relevant legal provisions.
- 3.4. The Regulations confer power to pay remuneration and allowances to any such persons appointed, and to charge a fee in respect of the costs of the procedures.

4. Consultation

- 4.1. A consultation was carried out from 22 June 2021 to 17 August 2021 and 5 responses were received. The views of the consultees have been taken into account in drafting the legislation.

5. Equality Impact

- 5.1. The policy has been screened in compliance with section 75 of the NI Act 1998.
- 5.2. The policy will change the Review of Decisions process for all those who are unhappy with the Department's decisions in relation to their Area-based Scheme applications and choose to progress to an Independent Panel

stage. The Department must accept and implement the decision of the Panel.

- 5.3. Applicants will retain the recourse to challenge a decision through the Judicial Review process or by referral to the Ombudsman.
- 5.4. No adverse impact has been identified, an equality impact assessment is not required.
- 5.5. There may be an opportunity to actively increase the participation by disabled people in public life, by encouraging those who meet the eligibility criteria to apply for a position on the Independent Panel..

6. Regulatory Impact

- 6.1. This SR makes the Independent Panel the final decision maker, rather than the Department. There are no additional compliance or administrative burdens placed on a farm business. The scheme is optional and NI businesses would neither be placed at a disadvantage compared with other businesses elsewhere in the UK, nor would they have any special advantages. For these reasons, a full Regulatory Impact Assessment has been screened out.

7. Financial Implications

- 7.1. £293m has been allocated to Northern Ireland for Direct Payments for 2021 scheme year. This Statutory Rule has no impact on the financial allocation and decisions taken by the Panel must comply with the regulations governing Direct Payment Schemes.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Statutory Rule is assessed to have no impact on human rights. This Regulation is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Commission has introduced an equivalent derogation for Member States.

10. Parity or Replicatory Measure

- 10.1. England: if a customer's complaint is not resolved within the Paying Agency (PA), then the Appeals Team will refer it to the Independent Agricultural Appeals Panel. The Independent Agricultural Appeals Panel will make a recommendation to the Minister. The Minister's decision is final.
- 10.2. Wales: There is a two stage appeals process, the first is managed by a separate team within the Paying Agency, the second stage (which is chargeable) is considered by an external independent appeals panel. The external appeals panel will make a recommendation to the Minister. The Minister's decision is final.
- 10.3. Scotland: a two stage appeal process is detailed in regulation SSI 2015-194. The first stage requires the beneficiary to request a review of the relevant decision strictly within 60 days of the date of the letter. The Reviewing Officer located in one of the Area Offices must offer the

beneficiary an opportunity to be heard within 60 days of receipt of this request and then must issue a review report with their decision within 60 days of this review meeting. The beneficiary then has 60 days in which to decide if they wish to proceed to the second stage, which is an appeal to The Scottish Land Court. The Land Court then makes the final decision based on the facts and law of the case.

11. Additional Information

- 11.1. This SR revokes The Common Agricultural Policy (Review of Decisions) Regulations (Northern Ireland) 2015.