



Northern Ireland
Assembly

Committee for Agriculture, Environment
and Rural Affairs

OFFICIAL REPORT (Hansard)

Independent Panel for Review of Decisions:
Department of Agriculture, Environment
and Rural Affairs

28 January 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Dr Jason Foy	Department of Agriculture, Environment and Rural Affairs
Mr Gregor Kerr	Department of Agriculture, Environment and Rural Affairs
Mr John McGrath	Department of Agriculture, Environment and Rural Affairs
Ms Teresa O'Neill	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome by StarLeaf Jason Foy from area-based schemes organisational development, Gregor Kerr from area-based schemes operational policy branch, Teresa O'Neill from area-based schemes delivery unit and John McGrath from area-based schemes payment branch. I invite the officials to commence the briefing, and members will then be able to ask some questions.

Dr Jason Foy (Department of Agriculture, Environment and Rural Affairs): Thank you, Mr Chairman, for the opportunity to provide briefing to the Committee on the review of decisions process and, in particular, on the independent panel stage. The Committee will be aware from the briefing that the Department has operated a statutorily based review process for a succession of area-based schemes since 2001. Its aim has been to provide farmers with an impartial and transparent review of scheme decisions against the framework of EU and national regulations and scheme rules.

The scope of the process is limited to area-based schemes and to farm businesses that have applied to the schemes. Where a farmer believes that the Department's original decision in connection with the scheme has been incorrect, the process is intended to afford the opportunity for redress and the chance to present any pertinent additional information. The process is also important for us for good governance. It aims to ensure that, if errors or procedural shortcomings are discovered, they can be addressed and avoided so that, in future, farmers in the same position will not need to have recourse

to the review process. We have invested considerable time and resource over a long period in the review of decisions process.

The role of the independent panel is set out in legislation, and we have provided some background on that in the written briefing. The Department remains the decision-making body and cannot currently delegate the final decision to a third party. As a paying agency for EU and national funds, the Department has a responsibility to ensure that these funds are appropriately administered and that they are within the scope of the scheme rules and legislation.

Where the Department receives a recommendation from the independent panel, we treat it very seriously and give it thorough consideration at all times and in every case. Panel recommendations are not rejected lightly or without good reason. We endeavour at all times to provide to farmers a high standard of customer service, including clear and effective communication with applicants in the review of decision process. When the final decision issues, following a panel assessment, the Department has always informed the applicant in writing of both the panel's recommendation and the rationale behind its own final position, whether that is to accept or reject that panel recommendation. Where the panel recommendation has been rejected, our letter includes the specific reasons for that rejection.

I would like to reassure the Committee that the cost of a claim has never been a factor in not accepting a panel recommendation. Since the schemes are already fully funded, there is funding available to make payment against all claims deemed eligible. The Department has determined that panel recommendations cannot be accepted only where this has been necessary, where this has been imperative. In annex A of our written briefing, we have provided the rationale for rejecting panel recommendations in the 35 such cases that there have been in the past three years, and we have disclosed as much detail as we consider possible whilst maintaining the confidentiality of the process and not revealing details of individual cases unnecessarily.

Qualitative evidence from applicants' feedback in the process that we have running for the past three years has been positive. There has been a welcoming level of engagement from us, indicating that, whilst some farmers have been disappointed with the final outcome, there is certainly a recognition that there is greater clarity as to how and why decisions have been reached. To us, the reduced number of applicants going to the panel stage seems to bear that out in that we are providing more information at the initial case stage, where the applicant can more fully understand the decision that has been made. Annually, we have received an average of 24 second-stage applications since 1 April 2018, and, under the old process, the average annual figure was 138.

The final decision letter follows panel assessment, and it also informs applicants of their options. If an applicant believes that DAERA has not correctly adhered to procedures, they may refer a complaint to the NI Public Services Ombudsman (NIPSO). Judicial review (JR) is the route by which they may challenge the decision on a point of law.

The Committee will be aware that the Minister has instructed that the independent panel should make the final decision in cases referred to it, as opposed to a recommendation, and we are currently taking forward some work to put that into effect, which will require new legislation. It is intended that that will be brought into effect later this year.

I would just like to conclude my opening statement by reassuring the Committee that, under the review of decisions process that we administer for area-based schemes, our primary focus is to ensure that farm businesses are given every opportunity to present their case. We strive to ensure that the correct decision is reached in line with the scheme's legislation and that a detailed explanation is provided when the decision reached is not in the applicant's favour. Mr Chairman, that concludes my opening statement.

The Chairperson (Mr McAleer): Thank you for that briefing, Jason. A number of members want to ask questions. However, before I go any further, I will say that is a very frustrating process for farmers involved in it, particularly when the independent review finds in their favour and then the Department does not take on board that finding. It is a very frustrating and demoralising process and leaves many farmers wondering, "Why go through with it at all?". At that juncture, for many farmers it feels like they are faced with a choice of taking a judicial review, but most farmers just walk away. It is very demoralising.

Like many MLAs who have been involved in these situations in dealing with constituents, I reflect it across to another Department's area. For example I have been involved in independent reviews of

school placements, and in those situations, the Department of Education is legally obliged to take on board the legally binding decision of a tribunal. If it is successful, the school will be obliged to take on board that decision and offer a place to a child. It is a different area, but it is the same model. Farmers find it very frustrating if they get the decision that they want but the Department *[Inaudible.]* Sometimes, they feel that it is a David and Goliath scenario, where they have very little choice other than to go home and accept their loss. It is very frustrating.

The Minister is on record as having given a commitment to uphold the decisions of the independent review panel. Will that situation be legislated for? Will he be able to see that through?

Dr Foy: We believe so. Certainly, our intention is that new regulations to give effect to that will be tabled later this year, so we do believe that that is certainly possible. The Minister has been very clear in his view, and we have a clear direction on how we are going to bring that about through new regulations to give that role to the panel and put that on a proper statutory footing.

The Chairperson (Mr McAleer): Just to be clear, before I move round the Committee, the decisions of the independent panel would then become legally binding, and the Department would be obliged to take on board the view of the independent panel?

Dr Foy: The panel, effectively, would make the decision and we would then implement whatever that decision would be, so the short answer is yes. The effect of the new regulations would have the panel not making a recommendation any more but having a formal decision-making role in the process.

The Chairperson (Mr McAleer): Thank you, Jason. I am going to move round the room now. Harry?

Mr Harvey: Is that me ready to go now?

The Chairperson (Mr McAleer): Yes, we can hear you, Harry.

Mr Harvey: OK. Thank you very much, Chair. This question touches on some case-specific issues, and I appreciate if you are unable to fully answer it. However, in terms of the interest payment to those cases that have previously been the subject of a JR, I am aware that there is no legal requirement for such a payment and that any award in the past has been ex gratia. There appear to be differences in the amount awarded previously. How are such figures arrived at and who makes such a decision?

Dr Foy: Ultimately, the decision on an ex gratia payment is for the departmental accounting officer, the permanent secretary. As you noted, there is no legal requirement for the Department to pay interest on payments that are refunded. In cases where there is some justification for it — I must stress that each case is treated on its own merits — the standard that we have used is the same standard that we apply to any debts that are recoverable from farm businesses to the Department, which is the Bank of England base rate plus 1%. We believe that that is a fair standard. It is a set and transparent standard and one that takes account of prevailing economic circumstances. It is not a fixed rate in a sense; it is the Bank of England base rate plus 1%. That is what we apply in cases where we consider that interest is payable. In our consideration of any ex gratia payment, both its amount and whether it is payable or not, we are guided very much by 'Managing Public Money Northern Ireland', and the Department and the accounting officer are bound by that.

Mr Harvey: What lessons have been learned by the Department from judicial review judgements?

Dr Foy: Without going into specific cases, as I am sure the Committee will appreciate, we very much seek to learn lessons from judicial review cases and the judgements that are laid down by the judges in those cases. For example, there was a case recently, which the Committee will be aware of, in which the judge levelled criticisms against the Department that we did not fully explain our decisions properly to the applicant and did not engage sufficiently with the core issues raised by the panel. We have certainly taken that on board and are endeavouring to provide more information and a more detailed and direct explanation to applicants in future cases.

There is another case that the Committee will be aware of, in which criticisms were made and shortcomings were found in our application of the standard around negligent and intentional penalties, and there were some shortcomings in record-keeping during inspections. Those issues have certainly been addressed in recent years. However, as I say, each case is individual and so, in some cases — not many — the circumstances are unique, and if we can take lessons from that and apply them to

other cases, we will do that. However, that will not necessarily apply to every case when a rule is changed, because, again, each case is treated on its own merits.

Mr Harvey: To finish, in the past, how many panel recommendations have Ministers agreed with against the recommendation of Department officials?

Dr Foy: I am not aware of a figure on that, unfortunately. Where the Department has had the decision-making role, there has been no requirement to seek a Minister's opinion on that. The statutory basis is that the Department makes the decision and the process ends there. We do not seek the Minister's opinion on individual cases. So, I am afraid that we do not have a record of what the Minister's opinion may have been on an individual case.

Mr Harvey: OK. Thank you very much.

Mr Irwin: Jason, thank you for your presentation. Like many other MLAs, I have been involved with independent panels meeting with farmers. I was very frustrated when the Department did not accept the findings of some of the independent panels. It was very demoralising for the farmers involved. One particular farmer threw his hands up and said, "What is the point?". He was a relatively young farmer with a small farm. I welcome the fact that there have been moves to legislate in order to make the independent panel's adjudication the final decision. That is good, Jason, and I welcome that fact. I am aware, via press reports, that a number of cases, in which the independent panel has adjudicated in favour of a farmer, are sitting with the Department because it still has not made a decision on those. What is the reason for that, given the Minister's current position on it?

Dr Foy: Our position up to this point has been, and may continue to be, that we need to examine the panel's recommendations — at this point, they are still recommendations — to ensure that they are in keeping with the law as written and the regulations that still apply to schemes and scheme rules. In cases that have gone to a panel in the last three years — we have indicated this at annex A in the written briefing — we have accepted the panel's recommendation that a decision be changed. As you will see on the last page of our briefing paper, in 11 cases, the recommendation was accepted, in one case, the recommendation was partially accepted, and eight cases are still under consideration. Although those are under consideration, I do not want the Committee to form the impression that we will reject the recommendation. That is not the case. We consider each case very carefully, and we just need to ensure that the recommendation is in keeping with the regulations that govern the schemes.

Mr Irwin: OK. Do you accept — I do not want to put you on the spot — that the Department has not got it right all the time, given that it has lost a couple of judicial reviews? That being the case suggests that, in effect, the Department has not got it right in the past.

Dr Foy: I fully accept that. There are cases where the Department gets it wrong. Certainly, we try to minimise the number of instances where that happens. We have operated this process for 20 years, as we said in the briefing, to offer farmers redress. If we were perfect, that process would not be necessary, but it is necessary, because there are instances where administrative mistakes are made or where the farmer presents further information through the review process that changes our view of the case and new facts are introduced that were not available to us at the time. Where the facts change, we change our opinion. That can happen. To conclude, there are some instances where we get it wrong. I certainly have no difficulty in recognising that and saying that the challenge for us is learning from it and ensuring that we take those decisions and then apply the lessons learnt to future cases.

Mr Irwin: It is unfortunate when the Department gets it wrong, because that can be very expensive for everyone. There is, of course, a judgement call to be made in many of those cases. However, my view has always been that, if the thing is quite close, the Department should fall in on the side of the farmer. There are judgement calls to be made on some of those issues, but, obviously, ones that have been lost at JR have proven that the judge took the same view as the independent panel.

Dr Foy: In a couple of judicial review cases, the judgement has been quite careful. The decision has been remitted back to the Department to retake. It has not necessarily been the case that the presiding judge has said straight away that the Department made the wrong decision. Shortcomings had been identified in the process and the Department was then asked to retake it. That is what we have done in those cases. We seek to learn from them. Certainly, the Department has no desire to be

involved in the judicial review process any more than the applicant farmer does. However, we seek to apply those rules in the best way that we can.

The Chairperson (Mr McAleer): Rosemary, your screen has frozen. I can see you, but I cannot hear you. Are you on mute or something?

Mrs Barton: Can you hear me now?

The Chairperson (Mr McAleer): Yes, we can hear you now, Rosemary.

Mrs Barton: I welcome the new review process. Hopefully, it will gain the confidence of people who take appeals. Are there any plans to review under the new process any of the older cases that have taken place?

Dr Foy: Not at present. However, we are aware of that issue. It is certainly one that we will consider as we bring forward the legislation to implement the new process.

Mrs Barton: Right, so there is a possibility that it may eventually look at older cases?

Dr Foy: I honestly could not say, Mrs Barton. It is an issue. I certainly do not want to lead the Committee one way or the other on that, because I genuinely do not know the answer to that question. It is a question that we are aware of and will have to resolve one way or the other as the new legislation is brought forward. In short, I do not know the answer.

Mrs Barton: OK. Thank you. Over the past number of years that the current process has been in place for appeals, have any other countries in the United Kingdom had the same process?

Dr Foy: All four Administrations have review processes. There are different processes in England, Scotland and Wales, and there is a process in the Republic of Ireland as well. I think that it is fairly common across EU member states — certainly, when we were in the EU — that a process exists in one form or another, yes.

Mrs Barton: Right. What were the thoughts of Departments of Agriculture in that process? Did they listen to and take on board what independent panels suggested, or did decisions fall back to Departments?

Dr Foy: In the case of Scotland, for example, a judicial process is involved in appeals to the Scottish Land Court. Obviously, given the separate Scottish legal system, there is a separate legal process in Scotland, under a different framework. In Wales, there is a panel review, rather like ours. A recommendation is made by that panel to the Minister, who makes a final decision. That is also the case in England, where there is a panel that makes a recommendation to a Minister, who makes the final decision.

Mrs Barton: OK. Thank you. Have you any idea from, say, 2016 of the percentage of cases that have been taken to independent panel reviews where the recommendation of the independent panel has differed from that of the Department?

Dr Foy: At the initial decision stage or subsequent to the panel?

Mrs Barton: Subsequent to the panel — at the independent panel review stage.

Dr Foy: In the last table of annex A of our written briefing, we set out the position over the past three years. During that time, 44 panel assessments have been completed, and, in 24 of those, the panel has not upheld the review for the farmer. There are only 20 cases out of the 44 in which the panel has recommended that we change the decision. We have accepted that in 11 cases and partially accepted that in one case. The remaining eight are still under consideration, and those are the cases to which I referred.

Mrs Barton: OK. Last question: when do you expect the new appeals process to be in place?

Dr Foy: We aim to have it in place by the end of this year. Obviously, there will be a consultation and a process of engagement with the Committee again when we bring forward the legislation for scrutiny.

Mrs Barton: OK. Thank you very much.

Mr McGlone: Jason, it is good to see you again. I thank you and your staff for all the help that you have given in different cases.

Dr Foy: You are welcome.

Mr McGlone: I want to tie down the detail on a point that Rosemary made. You mentioned that there were eight cases in which the Department has sought to differ with the decision of the independent review mechanism or panel. Will those eight cases be held until the new legislation decides on them? That would probably create an issue for previous cases. In other words, will there be a retrospective cut-off point in the new legislation for cases before which the decision of the panel is binding on the Department?

Dr Foy: On the eight cases, we do not necessarily differ with the panel. We are looking at its recommendations in detail, and those cases will progress as normal. I do not want the Committee to take the view that we will necessarily reject the panel's recommendations in those cases, because we will not. That is our active caseload through which we are working; cases will be cleared and more cases will be added as panels continue to sit. At any given point, we always have a number of cases sitting there.

As far as retrospection is concerned, I refer to my earlier answer that we will be considering that in the context of new legislation to bring about a new system. I am keenly aware that at the point at which we switch to a new regime, there will be cases in train, and we will have to make a call and clarify in legislation, one way or the other, how those cases will be treated. Those cases may be at the panel or at post panel at the time that the new legislation comes into effect. We will try to transition that in as practicable a way as we can. I am quite mindful of unintended consequences if a farmer misses the effective date by a day or a week and the resulting perception of unfairness. We will have to think through the issue properly and carefully to ensure that we treat farmers in an equitable fashion.

Mr McGlone: OK. Thanks for that, Jason.

Mr Blair: Thank you, Jason, and your colleagues, for being with us today. My questions are mainly about the governance and accountability of the structure, so I will roll a number of points into one.

The current panel was first appointed in 2012, reinstated in 2015 and extended again in 2018. For those of us not in the Assembly prior to 2018, can you give us more information on how the panel was recruited or appointed and how vacancies are filled? Given that your briefing indicates that the current extension is until January 2021 and we are now almost in February, how will any gap be filled between then and the process being finalised for new regulations to come into place, and when might that be? Importantly for me, if the Minister is directing that the panel should now take the final decision — I do not have any issue with that — is there a plan in the regulations that are being formulated now for the future that the panel would be appointed by public appointment? It is indicated in the briefing that the current panel was not appointed by the public appointment process. Surely that would be crucial if people were going to make a final decision.

Dr Foy: That is a fair point. We have thought about the status of the panel as far as public appointments are concerned. While panel members, as they were recruited in the past, were not formal public appointments under the code, we did seek to mirror the public appointment process as much as we could. We will have to consider that issue and probably take specialist advice. When we have a panel that has a formal decision-making role, should that make panel members fully fledged formal public appointments under the code? If that is the case, that is what we will do.

We have a pool of panel members. From memory, we have around 17 to draw from, and we use them to form panels of two or three to hear cases on a day, so multiple panels are going at different times, depending on demand.

The appointment process, as you indicated, was completed a number of years ago. Through different circumstances and changes in the process, we have extended them. We had reached a point, even

before the Minister's decision on the status of the panel, at which we would seek to recruit a new panel. We will try to do the two exercises simultaneously. We will have a new set of panel members recruited and appointed — we will try as much as we can to ensure that this coincides — at the same time as the status of the panel itself changes and becomes a decision-making body. It is very much our view that we will have a similar requirement for panel members. We will require multiple panel members to work in a similar way, hearing cases on a particular day and sitting as a panel to hear multiple cases.

Mr Blair: Given that the deadline that was mentioned for the expiry of the current panel is January 2021 and we are almost at that point, I assume that the current panel system will have to roll on until those new regulations are in place. Is a process required to extend that again, or is that simply a policy change?

Dr Foy: I think that we will extend them until the end of this year, if we have not already done so. I will bring in my colleague Gregor Kerr, who can clarify that point.

Mr Gregor Kerr (Department of Agriculture, Environment and Rural Affairs): The panel has been extended until January 2022. That decision has already been taken. The panel has been extended for this year.

Mr Blair: OK.

Dr Foy: As I said, the existing panel and the structures around it will continue. We will want to continue that approach and hear cases throughout this year.

Mr Blair: OK. Thank you for that. If you do not mind my reflecting, I am mindful that that is a fairly tight deadline if a legislative process is required and, on top of that, decisions are to be made, first, on whether there will be a public appointments process and, secondly, to go through that process. We could be looking at a further extension if that is required. Is that right?

Dr Foy: We would seek to avoid that if we can. I can assure the Committee that we are very keenly aware of the timetable involved and how ambitious it is. If a further extension is required, we can do that, but we would seek to avoid doing it given the length of time that the existing panel has been there. We would like to try to have as clean a start with the new process as we can.

Mr Blair: OK. Thank you both for that.

Ms Bailey: Thanks to Jason and the team for being with us today. We all know that the independent panel's decisions are not binding. We also know that the Department must ensure that its final decision adheres to all relevant legislation and scheme rules. Will that remain the same going forward? We are now out of the EU. Will that remain the same in cases involving the environmental farming scheme (EFS) or where the EU provided funding, even for basic payment schemes, prior to the 2020 scheme?

Dr Foy: You are quite correct that those regulations will continue to apply, even with a new panel with a decision-making role in place. That will certainly be the case for the environmental farming scheme, which is fully under EU regulations. Those regulations will continue, and we must adhere to them. For nationally funded schemes, such as the basic payment scheme, from 2020 and beyond, the EU regulations have in large part been translated and brought across into UK law. I know that the Minister has separately announced some amendments and changes that he wants to make for 2021, but those regulations and statutory rules — whatever they happen to be — will still apply. As a Department, we are keen to ensure that whatever decisions the Department made in the past or a panel may make in the future are legal and in keeping with those regulations. That will not change.

Ms Bailey: Yes. Thanks. We know that a similar process has happened in all regions of the UK. I am looking at some of the statistics. In Northern Ireland, 40% of decisions were changed in part or in full at the independent panel stage. Is that the independent panel differing from the Department's decision in 40% of cases?

Dr Foy: Yes.

Ms Bailey: That is comparable with only 2% in Wales, for example. Is there any rationale from the Department about why there is such a disparity in those figures?

Dr Foy: I do not think that the figures fully reflect the fact that the applicant populations are different in Northern Ireland and Wales. For example, we have many more farmers and a higher volume of cases than, perhaps, would be expected in Wales. The schemes are different in some cases, the rules are different, there are variations in the rules, farming practices are different etc. A complicated array of factors plays into why we would have a particular volume of cases compared with other UK jurisdictions. I do not think that there is any single factor that you could put your finger on and say that that is why we have that number of recommendations being made by the panel and why Wales has a lower number. I do not know how this compares with other UK jurisdictions, but, during the review-of-decision process, even at the first stage, we see a significant proportion of cases in which farmers introduce new facts and new information at the panel stage. That might be a factor in why the figures for Northern Ireland are the way that they are.

Ms Bailey: That is grand. Are you confident that the Department's final decisions adhere to all the relevant legislation with which you have to comply?

Dr Foy: Yes, we are as confident as we can be around the need to comply with the regulations. EFS, as I said, is fully under EU regulations and will be for a few years yet. The rules and regulations that pertain to the basic payment originated in the EU, and, as the Committee will be aware, EU rules are very prescriptive, with very little room for ambiguity. There are more rules and stricter rules for these schemes to which we have to adhere, and we are very careful to ensure that we do that to avoid the risk of any financial correction or financial disallowance from the Commission, which could be significant and would have to be met by the Department and the UK taxpayer. We are very mindful of our responsibilities in that regard and we seek to avoid that.

Ms Bailey: In April 2018, DAERA tried to instigate a new single-stage process and remove the independent panel. The Ulster Farmers' Union (UFU) filed a judicial review in that case, and the Department reversed its move to remove the independent panel. What was the rationale for the Department wanting to do that?

Dr Foy: The review of the review-of-decisions process at that time was instigated at the request of the Minister at the time, and the rationale for that was a fairly high degree of dissatisfaction with the length of time that the process was taking and the length of time that it was taking for cases to get from initial decision through first-stage appeal and through panel. The Minister asked for a more streamlined process that would render decisions to farmers more quickly. After a process of public and stakeholder consultation, the decision was taken to implement a single-stage process when the Assembly was not sitting and Ministers were not in place. The process was commenced by the Minister at the time, and the single-stage process was then implemented by the Department afterwards.

Ms Bailey: When we had a Minister until January 2017, was it part of their instruction at that time to remove the independent panel?

Dr Foy: Not necessarily specifically to remove the independent panel. I do not think that the Minister's instructions were as prescriptive as that. It was to review the process in its entirety and develop a process that was more responsive, with which the farmer had more engagement and involvement and that was faster in giving final decisions to farmers.

Ms Bailey: The following year, it was officials' decision to try to remove the independent panel at that time, according to the strategy from a previous Minister, when the Assembly was down.

Dr Foy: It was essentially to try to —

Ms Bailey: Streamline.

Dr Foy: — improve the first-stage process and combine elements of both parts of the process into a single stage. That was the objective.

Ms Bailey: I will follow on from John Blair's questions about the appointment of panel members. The current panel membership has been in place for quite a long time. What experience or expertise is

needed for an appointment to the panel? For example, if the Department's final decision has to be legally compliant, is there a requirement to have members on the panel who have a legal background?

Dr Foy: At present, there is no requirement for panel members to have a legal background. Some members do, but it is not a requirement. Following on from Mr Blair's question, we will have to consider what we will require in terms of aptitude, experience and qualifications for panel members when they will have a final decision-making role. It may not necessarily be the case — we cannot say at this point — that they will need legal qualifications, but we will have to think about that in the constitution of a new panel.

Ms Bailey: Is panel membership a paid or voluntary post?

Dr Foy: There is a daily payment for members' time, travel and subsistence expenses.

Ms Bailey: With the new process being looked at by the Department, is it likely that it will be a very different process? We are now outside the EU but within the limitations of the protocol. Is there much flexibility for a very different process to be put forward?

Dr Foy: In the context of a new process, it will still be a two-stage process. We do not intend to do anything to the first stage. We would still have a panel but it would have that final decision-making role. At present, the change will be limited to that. I am not aware of any suggestions by stakeholders or anyone else to move to a completely different system, although the Minister may choose to consider that. However, that has not formed the basis of his instructions to us.

Ms Bailey: OK. Thank you very much.

Mr M Bradley: Thank you, Jason, Gregor, Teresa and John, for taking the time to appear before the Committee today.

I welcome the review of the independent panel process. The current system is too rigid and, perhaps, too dictatorial. I am concerned about decisions being overturned on appeal. That rule has not changed. I am thinking along the lines of the independent panel citing certain criteria on their assessment and determination, which has been lost on appeal. Are those successful appeal criteria amended, or do the reasons for that decision remain on an applicant's file?

Dr Foy: Sorry, I am having difficulty following the question in terms of the criteria to which you refer.

Mr M Bradley: If you make a decision and the criteria and reasons for your decision are lost on appeal, do you amend your criteria to suit the loss, or does that remain on an applicant's file?

Dr Foy: Sorry, I am struggling with the question. Is it an appeal that is lost by the Department or the farmer?

Mr M Bradley: By the Department.

Dr Foy: Right. When scheme rules have been applied incorrectly and that is found by the panel, we would certainly amend our interpretation or practice around those rules for future cases of that type. However, for the most part, the scheme rules remain as they are in regulation. I am not aware or cannot think of any cases in which we got a rule completely wrong. It is really around our application of the rules to individual circumstances. We seek to learn from those.

When a decision has been reversed or, I should say, changed by the Department, following a panel hearing, the decision is changed, and our records are amended. If it is appropriate, a further scheme payment is issued, a penalty is refunded or whatever that happens to be. Our records are amended following that ultimate decision.

Mr M Bradley: You amend an applicant's records accordingly to say that he had been penalised for whatever reason and that that was overturned on appeal.

Dr Foy: Yes.

Mr M Bradley: OK. I am thinking of something else here, and I have a reason for asking that question. How quickly will the review be concluded and any recommendations for changes implemented? Is there is a timescale?

Dr Foy: We referred to the timescale earlier, which is that we will seek to have new regulations in place by the end of the year for the revised process. Obviously, prior to that, we will consult stakeholders and engage with the Committee again on the specifics of the changes.

Mr M Bradley: Thank you very much, Jason.

The Chairperson (Mr McAleer): Jason, when do you envisage commencing the stakeholder engagement?

Dr Foy: We will seek to do that probably some time in the spring, when we have proposals and some of the issues have been teased out that we can use as a basis on which to do that consultation with stakeholders. It will be on some of the issues that the Committee has raised about the qualifications of the panel and the basis of the panel's constitution et cetera. We will need to address a number of issues. Members have raised issues about retrospective application: we will need to frame that in the consultation document, and we will try to do that in the spring.

The Chairperson (Mr McAleer): That is good, Jason, because this is long-awaited. The Minister's comments that he wants to uphold the view of the independent panel are very much welcomed. It is important that you go out and robustly engage with the people who are impacted, the stakeholder organisations and the Committee.

Dr Foy: We very much take that on board, Chairman, and we will do that. We want to ensure that, as far as possible, we get it right.

The Chairperson (Mr McAleer): That is brilliant. Thank you very much for coming along here today. It was a detailed briefing, and we appreciate it. We look forward to being part of the consultation process, which will, hopefully, start soon.

Dr Foy: Thank you, Chair.