

2017 BASIC PAYMENT SCHEME

NEGATIVE LIST Q & A

Q 1. What is the negative list?

The negative list is defined as the businesses that operate the following non-agricultural activities-

- airports
- railway services
- waterworks
- real estate services
- permanent sport and recreational grounds

EU legislation stipulates that, from 2015, no direct payments (this includes Basic Payment Scheme, Greening Payment or Young Farmers' Payment) will be granted to those who operate the non-agricultural activities on the negative list, except in certain circumstances

Further clarification on the non-agricultural activities can be found the Negative List Information leaflet.

Q 2. What does 'operate' mean?

'Operate' means to make decisions about the non-agricultural activities of the business (even if they don't take place on land owned or occupied by the business).

Farmers', who license or allow someone else to run an activity on their land under a formal written agreement, are not normally considered the operator. However, if they keep control of the activity, for example by giving instructions on how the activity is carried out, they will still be considered the operator of the activity. Applicants may wish to seek professional advice through a solicitor or land agent.

Q 3. What is an agricultural activity?

To be eligible for BPS, land has to be used primarily for an agricultural activity. Agricultural activity means

- (i) the 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.

Q 4. I operate a non-agricultural activity on the negative list and farm 30 hectares of eligible land, what options do I have to receive BPS under the active farmer exemptions?

Land won't be considered eligible for BPS where it is mainly used for non-agricultural activities, but there are 'active farmer' exceptions (sometimes called the 're-admission criteria'). We will apply a negative list test to see if you can be classified as an active farmer under the active farmer exemptions.

If you are farming at least 26 hectares of eligible land or if you received no more than €5,000 of direct payments in the previous scheme year (2016) then you will automatically qualify for the re-admission criteria and be considered as an active farmer.

As you are farming 30 hectares of eligible land you are automatically classed as an active farmer and you need take no further action.

Q 5. I do not automatically qualify for exemption as I only farm 10 hectares of land, what should I do?

If neither of the measures mentioned in Q4 apply to your farm business you have 2 other options available to you to demonstrate you meet the re-admission criteria.

You must either

1. provide evidence to the Department to show the annual amount of direct payments is at least 5% of the total receipts obtained from non-agricultural activities in the most recent fiscal year for which information is available; or
2. provide evidence to show receipts from agricultural activities represent at least 40% of total receipts obtained in the most recent fiscal year for which information is available.

Q 6. What sort of evidence is the Department looking for to be accepted under the active farmer exemption (or re-admission criteria)?

If you do not automatically qualify under the active farmer exemption, you will to provide an Accountant Certificate – Active Farmer Status completed by a professionally qualified accountant and submit this certificate with your 2017 Single Application form. You will need to take legal documents, including receipts from agricultural activities, to an independent accountant to prove that your business is eligible to claim under one of the exceptions listed at Q5.

Q 8. Do my receipts have to show the amount of VAT paid?

No, the EU Commission has confirmed that VAT is not to be included.

Q 9. When do I not need an 'Accountant Certificate – Active Farmer Status' to be returned to the Department?

You do not need to return an Accountant Certificate to prove you are an active farmer if you are farming at least 26ha or you received no more than €5,000 of direct payments in the previous scheme year (2016).

It is anticipated that in Northern Ireland there will be a small number of applicants affected by the negative list and most of those will be able to show that these two exemptions apply to them and they will not therefore need to return an Accountant Certificate or provide evidence in the form of agricultural receipts.

Q 10. How will the Department know who is an active farmer and who is not?

An active farmer control has been put in place to determine whether the farm business submitting the Single Application is actually farming the land.

Where there is doubt as to whether an applicant is actually farming the land, we will be requesting further evidence from them in order for us to determine their active farmer position. If satisfactory evidence is not provided, no BPS will be made.

Q 11. What if I consider myself to be on the negative list, but have not informed the Department?

We would strongly advise not to do this. Question 3 on the Single Application form asks you to confirm if your business operates one of the non-agricultural activities on the negative list.

If you intentionally do not tell us that you operate any one of the non-agricultural activities on the negative list, and we later find out through an inspection, you may receive intentional over-declaration penalties. A false declaration made deliberately or recklessly may also lead to criminal prosecution.

Q. 12. I am an active farmer, however, I allow my land to be used for a local car boot sale every Saturday morning during the summer months. Does this mean I am on the negative list?

Qualifying as an active farmer is about the non-agricultural business activities operated by the farming business that makes a BPS application. This is different to the rules about which non-agricultural activities are allowed to take place on eligible land.

FAQs on the NEGATIVE LIST 2017

Car boot sales would come under 'restricted' (28 day limit) activities. The 28-day limit is not the same as operating any of the non-agricultural business activities on the negative list.

If an activity lasts less than 24 hours, it still counts as 1 of the 28 days. The 28 days should include all the days for which the land was unavailable, including preparing the land and/or clearing up afterwards.

The Department provides a list of list of non-agricultural activities that do not significantly interfere with agricultural activity. These activities won't stop BPS payments for the land, as long as it is eligible for BPS.

Further information can be found in the Guide to Land Eligibility at:

<https://www.daera-ni.gov.uk/publications/2017-guide-land-eligibility>