**Cross-Compliance Penalty Regime Proposed Changes for 2025**

**Report on the Outcome of the Consultation**

**SYNOPSIS OF RESPONSES October 2024**

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* Prior to 2022 (2023 for all EU co-funded schemes), where a penalty resulting from a non-compliance that was deemed negligent at inspection had previously been capped at 15%, reoccurrence within three calendar years of that capping resulted in the breach being treated as intentional thus attracting higher penalties. What are your views on this policy?
* Since 2022 (2023 for all EU co-funded schemes) these negligent penalties were capped at 15% on repetition. What are your views on this?
* It is now proposed that this decision is reversed considering emerging environmental issues in Northern Ireland. What are your views on this?
* Do you have any other comments you wish to make on the current Cross-Compliance penalty regime and proposed changes? If yes, provide your comments.

5. Decision and Next Steps

Annex A – List of Respondents

**Further copies of this report can be obtained as follows**:

By writing to:-

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Department of Agriculture, Environment and Rural Affairs

Area-based Schemes Division

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By E-mail: crosscompliancereviewconsultation@daera-ni.gov.uk

This document can also be accessed through the Department’s website at: [The Direct Payments to Farmers (Cross-Compliance)(Revocation) Regulations (Northern Ireland) 2024 | Department of Agriculture, Environment and Rural Affairs](https://www.daera-ni.gov.uk/consultations/direct-payments-farmers-cross-compliancerevocation-regulations-northern-ireland-2024)

1. **Introduction**

In August 2024, the Department issued a consultation document seeking views on the proposal to undo changes made to the Cross-Compliance penalty regime in 2022 and 2023.

The current position

Beneficiaries of area-based scheme payments must comply with the requirements of Cross-Compliance in order to avoid any reduction or exclusion of payments. Calculation of those reductions is based on severity, extent, permanence and intent determined.

Under current Cross-Compliance penalty regulations, where a non-compliance is determined to be due to negligence, the percentage reduction cannot exceed 5% and, in the case of reoccurrence within three calendar years, cannot exceed 15%.

Where a non-compliance is determined to have been caused intentionally, then the penalties cannot be less than 15%, and can be 100%.

In 2022 a Statutory Rule (SR) 2022 No. 240 The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 was laid to remove the automatic application of intentional penalties where there is a reoccurrence of the same negligent non-compliance after capping at 15% from the 2022 scheme year. The change to the previous regime meant that penalties remained capped at 15% unless the inspectorate deemed them to have been caused intentionally. This 15% cap was applied to nationally funded schemes only. SR 2023 No. 210 The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2023 extended this to all area-based schemes in 2023.

Proposed Change to the current regime

As part of a strategy to address environmental issues such as Lough Neagh, Minister Muir announced the reversal of these decisions to take effect from 2025. This means that certain repeated negligent breaches will again be treated as intentional on repetition and attract a higher penalty of up to 100% of all area-based scheme payments claimed in that year.

Sustainability for the Future – DAERA’s Plan to 2050

*Sustainability for the Future - DAERA’s Plan to 2050* frames the strategic priorities for the next three decades.

The four strategic priorities are:

* Economic Growth - To enhance our food, forestry, fishery and farming sectors using efficient and environmentally sustainable models which support economic growth;
* Natural Environment - To protect and enhance our natural environment now and for future generations whilst advocating its value to and wellbeing for all;
* Rural Communities – To champion thriving rural communities that contribute to prosperity and wellbeing; and
* Exemplar Organisation – to be an exemplar, people focused organisation, committed to making a difference for the people we serve.

A key part of meeting our strategic priorities is through continuing to support our farming communities in continuing their role as custodians of our land and enhance the vital role they play in maintaining the long term health of our countryside. Having the right level of funding, in the right place at the right time will be vital to ensuring that the Department achieves its purpose.

Within that context, the Cross-Compliance penalty regime must be fit for purpose, making sure that applicants receive the payments they are entitled to, while protecting public money by ensuring that payments comply with the requirements that govern the schemes. However, penalties must be dissuasive for those who would seek to be non-compliant with the requirements of the Cross-Compliance Verifiable Standards.

**2. Consultation**

Consultation on the proposed review of the Cross-Compliance regime to obtain views from key stakeholders commenced on 14 August 2024 and closed on 9 October 2024. The consultation was launched via email with hard copies available on request. Key stakeholders were given the opportunity to provide their views.

The results of the consultation to reintroduce the provision at Article 39(4) of assimilate Commission Delegated Regulation 640/2014 to apply an intentional penalty on repetition of negligent breaches from 2025 will be published on DAERA’s website and will be made available in other formats on request.

In accordance with Equality Commission guidelines, the Department took care to ensure that all organisations who wanted to respond had time to do so.

**3. Engagement with stakeholders**

The Department ensured key industry stakeholders were aware of the consultation and had adequate time to collate and respond with their views. Information on the consultation and the consultation paper were provided to key stakeholders.

**4. Responses to consultation (by issue) and DAERA Response**

The consultation paper sought views on the proposal to undo earlier changes to the Cross-Compliance penalty regime from 2025.

The paper presented four questions as the basis for gathering views and formal responses. The open style of the questions in the consultation allowed consultees to express their views on additional aspects they considered important to ensure a fair and impartial review process.

Four responses were received. An overview of the main comments contained in the responses and the Department’s reply to those comments is set out below. It is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised by the consultees.

* ***Prior to 2022 (2023 for all EU co-funded schemes), where a penalty resulting from a non-compliance that was deemed negligent at inspection had previously been capped at 15%, reoccurrence within three calendar years of that capping resulted in the breach being treated as intentional thus attracting higher penalties. What are your views on this policy?***

In response to this question, all stakeholders agreed that higher penalties were proportionate on repetition. One consultee stated that higher penalties could have an adverse impact on farm businesses and viability of enterprises. However, they also added that higher penalties are acceptable where the reasons for imposing them are transparent and the individual has the right of appeal.

The Department would advise that the Cross-Compliance requirements, the standards to which all beneficiaries should carry out their farming activities, are set out in the Verifiable Standards and published on or before 1 January every scheme year. In addition, SMS messages are issued to remind all farm businesses of important dates such as the closed period for spreading. Therefore, the Department are content that the standards required are set out clearly. Where a breach or penalty letter is issued to a business following attribution of a non-compliance to it, letters always signpost that business to the next review stage should they wish to challenge the decision. The Department has a two-stage review process which includes an Independent Panel Assessment, should the beneficiary wish to avail of this.

* ***Since 2022 (2023 for all EU co-funded schemes) these negligent penalties were capped at 15% on repetition. What are your views on this?***

All stakeholders agreed that placing a cap on penalties was not appropriate. One consultee stated that the Department should carry out analysis to ensure that penalties were not being factored into routine running costs of a business as an alternative to more costly remedial action being taken.

The Department would point out that the changes to the penalty regime in 2022 was in relation to certain repeated negligent penalties only. The ability of inspectors to deem a non-compliance as intentional remained. Intentional breaches can attract a penalty of up to 100% of all payments made or to be made in the year of finding. Therefore, to factor penalties into routine running costs would be a very unsound business decision.

* ***It is now proposed that this decision is reversed considering emerging* *environmental issues in Northern Ireland. What are your views on this?***

In response to this question, all consultees were in agreement that this changewas welcomed. However, a number of responses included reference to the fact that it was not only farm businesses which should receive penalties but all those who would commit environmental crime. Two consultees suggested that funding be made available to educate farmers on best practice.

The Department welcomes the suggestions made and would advise that education is already provided by the College of Agriculture, Food and Rural Enterprise (CAFRE ).

CAFRE provides education programmes, predominately for new entrants to the agri-food industry, with sustainability/environmental content integrated across the entire provision which includes a Sustainable Agriculture Degree programme.

CAFRE also provides knowledge transfer and innovation programmes for those working within the agri-food industry, which also have a strong focus on sustainability/environmental related content. These programmes are marketed/promoted via a multichannel approach, which includes the CAFRE website, social media, printed press, a hard copy and digital Prospectus, and through engagement with stakeholders, students and school children/teachers.

CAFRE uses an omnichannel approach to reach and engage with target audiences. Depending on the campaign, audiences range from school pupils, school teachers, parents, industry groups, farmers and various stakeholders.  Promotion of programmes includes the use of on-line and off-line tools and tactics. On-line centres around the CAFRE website [www.cafre.ac.uk](http://www.cafre.ac.uk) , its link to four social media platforms using the discoverCAFRE handle, CAFRE TV on YouTube and includes text and email communication. Off-line includes in-person events and printed materials.

The Cross-Compliance penalty regime can only apply to beneficiaries of certain area-based schemes. However, there are various pieces of legislation available to the Department and other public bodies to penalise those who would commit environmental damage. Indeed, there have been instances where environmental damage has been so severe that businesses have been subject to court proceedings in addition to Cross-Compliance penalties.

* ***Do you have any other comments you wish to make on the current Cross-Compliance penalty regime and proposed changes? If yes, provide your comments.***

In response to this question, there were several issues raised which the Department intends to respond to separately. Education for farm businesses was raised again along with the suggestion that public bodies increase the number of personnel seeking out pollution issues.

The Department carries out a robust annual inspection campaign utilising various controls including physical checks, controls with remote sensing, and administrative checks. These controls are complemented by a incident referral procedure which means that the police, the public, other public bodies or other DAERA inspectorates can report any incident such as environmental crime and be assured that these will be checked out and reported against on a timely basis.

**5. Decision and Next Steps**

The Department wishes to thank those who took time to respond in writing to the consultation.

Work is now proceeding on the writing and laying of legislation to introduce a more proportionate and dissuasive regime in respect of repetition.

**Annex A – List of Respondents**

Nature Friendly Farming Network

Ulster Angling Federation

Association of Veterinary Surgeons Practising in Northern Ireland

Friends of the Earth