Consultation on the proposed changes to the Cross-Compliance penalty regime with effect from 2025

**Regulatory Impact Screening**

**October 2024**

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# INTRODUCTION

1. Minister Muir has instructed the Department that the changes made to the Cross-Compliance penalty regime in 2022 and 2023 are to be undone. He advised both the AERA Committee and stakeholders of his intention on 6 June 2024. This action is in response to emerging environmental issues. Media coverage and recent political pressure has indicated that there is a perception that these changes in policy have contributed to these issues.

The current Cross-Compliance penalty regime

1. Beneficiaries of direct payments must comply with the requirements of Cross-Compliance (the Verifiable Standards) to avoid any reduction or exclusion of payments. Calculation of those reductions is based on severity, extent, permanence, and intent determined.
2. 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%.
3. Where a negligent penalty has been repeated within three calendar years and has reached the maximum of 15%, then the penalty applied remains a negligent penalty capped at 15% on any further recurrence unless it is deemed intentional by the inspector.
4. Where a non-compliance is determined to have been caused intentionally, then the penalties cannot be less than 15%, but cannot exceed 100%.

Proposed Change to the current regime

1. Prior to 2022, when a repeated negligent penalty had previously been capped at 15% it would have been treated as an intentional penalty on further repetition. This would have attracted a higher level of reduction. This change was initially made in respect of nationally funded schemes but was extended in 2023 to all schemes previously co-funded by the EU.
2. In light of emerging environmental issues in Northern Ireland, such as Lough Neagh, it is proposed that the changes made in 2022 and 2023 are undone.
3. It is proposed to amend current legislation to reapply the previous provisions. A Statutory Rule has been drafted and scrutinised by Departmental Solicitor’s Office. Whilst consultation on the Statutory Rule is not a precondition, key stakeholders have been asked for their views as it is good practice. All those who responded to the eight-week focused consultation were in agreement that the previous provisions should be reapplied.

**Future Policy**

1. *Sustainability for Our Future - DAERA’s Plan to 2050* frames the strategic priorities for the next 3 decades.
2. 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. In addition to this, ensuring that DAERA have a robust penalty regime which deters those who would act in contravention of the Cross-Compliance verifiable standards will protect the environment in Northern Ireland for all its citizens.

# REGULATORY IMPACTS

1. Regulation can be defined as: “A rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes.” This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government. The Regulatory Impact Assessment (RIA) process is not necessary for certain identified activities:
* where policy changes will not lead to costs or savings for business;
* road closure orders; or
* changes to statutory fees by a predetermined formula such as the rate of inflation.
1. The proposed change to the legislation will ensure that the Cross-Compliance Penalty System acts as a deterrent to all those beneficiaries of direct payments who would repeatedly breach the Verifiable Standards. Penalties will be calculated and applied in accordance with the legislation. For these reasons, a full RIA has been screened out.

## REGULATORY IMPACT ASSESSMENT (RIA)

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| **Screening Questions** | **Response to Screening Questions** |  | **Full Impact Assessment Required** | **Justification / Key issues and groups to focus on** |
|  | **Yes** | **No** |  | **Yes** | **No** |  |
| Is the policy or amendment to the policy likely to have a direct or indirect impact on businesses? | 🗸 |  |  |  | 🗸 | This is an amendment to the legislation which will ensure that the Cross-Compliance penalty system will act as a deterrent to all beneficiaries of direct payments who would repeatedly carry out activities outside the requirements of the Verifiable Standards. . |
| Is the policy or amendment to the policy likely to have a direct or indirect impact on the voluntary / community sector? |  | 🗸 |  |  | 🗸 |  |
| **CONCLUSION**  |  |  |  |  | 🗸 | There would be no adverse or differential impact to any farm business in NI that claims direct payments, as it will apply the maximum penalty permitted in legislation in respect of a repeated negligent penalty. For this reason, a full RIA has been screened out. |

**When is regulatory impact assessment required?**

If the answer to any of the above is yes, consideration should be given to undertaking a Regulatory Impact Assessment. However, the level of appraisal should be proportionate to the costs involved. A Regulatory Impact Assessment is not required for:

1. proposals which impose no costs or no savings, or negligible costs or savings on business, charities, social economy enterprises or the voluntary sector;
2. increases in statutory fees by a predetermined formula such as the rate of inflation; or
3. Road closure orders.

## APPROVAL and AUTHORISATION

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| **Screened by:** | **Position/Job Title** | **Date** |
| Audrey Henderson  | Acting Grade 7, Area-based Schemes Operational Policy Branch | 24 October 2024 |
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| **Approved by:** | **Position/Job Title** | **Date** |
| Martin McKendry  | Deputy Secretary, Food and Farming Group | 31 October 2024 |
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