**Cross-Compliance Penalty Regime Proposed Changes for 2024**

**Report on the Outcome of the Consultation**

**SYNOPSIS OF RESPONSES November 2023**

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* It is proposed to remove the automatic application of intentional penalties for all EU co-funded schemes to bring them into line with nationally funded schemes. 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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Area-based Schemes Division

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This document can also be accessed through the Department’s website at: [Consultation -The Direct Payments to Farmers (Cross Compliance) (Amendment) Regulations (Northern Ireland) 2023 | Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)](https://www.daera-ni.gov.uk/publications/consultation-direct-payments-farmers-cross-compliance-amendment-regulations-northern-ireland-2023)

**1. Introduction**

In September 2023, the Department issued a consultation document seeking views on the proposal to make an amendment to the Cross-Compliance penalty regime from 2024.

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 Regulation (SR), The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - SR 2022 No. 240, was laid to remove the automatic application of intentional penalties where there is a recurrence of the same negligent non-compliance after capping at 15% from the 2022 scheme year. The change to the previous regime means that penalties will remain capped at 15% unless the inspectorate deems them to have been caused intentionally. This 15% cap was applied to nationally funded schemes only.

Therefore, for EU co-funded schemes, where a negligent penalty has been repeated within three calendar years and has reached the maximum of 15%, a further negligent reoccurrence of the same requirement must be treated as having been caused intentionally.

Proposed Change to the current regime

As EU funding ceases with effect from 31 December 2023, it is proposed that the provisions of SR 2022 No 240 - The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - are extended to include all those schemes which were previously excluded such as the Environmental Farming Scheme and the Small Woodland Grant Scheme.

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 has to 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.

In line with this, Minister Poots instructed the Department to review current Cross-Compliance penalty regime to remove the application of ‘intentional’ penalties to repeated negligent breaches.

**2. Consultation**

Consultation on the proposed review of the Cross-Compliance regime to obtain views from key stakeholders commenced on 18 September 2023 and closed on 13 November 2023. 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 remove the provision at 39(4) to apply an intentional penalty on repetition of negligent breaches from 2024 will be published on DAERA’s internet site 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**

The consultation paper sought views on the proposal to amend aspects of the current Cross-Compliance penalty regime from 2024.

The paper presented three 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.

One response was received. The following sections provide an overview of the main comments contained in the response and the Department’s reply to those comments. It is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised by the consultee.

1. **Currently, 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 will result in the breach being treated as intentional thus attracting higher penalties. What are your views on this policy?**

In response to this question, the stakeholder stated that the current policy of penalties resulting from non-compliance reoccurrence being treated as intentional within three years should remain in place and its implementation strengthened through more frequent and efficient monitoring and enforcement.

The Department would advise that a robust inspection campaign is carried out by all inspectorates within the requirements of retained European Law every year. Control points are well defined and a process that aims to complement the inspection regime is in place ensuring additional checks and inspections following concerns raised to the Department by the public, PSNI or other public bodies.

The response went on to say that recent changes to policy are also making it harder to enforce current Cross-Compliance measures. They further added that the proportion of compliance inspection in Northern Ireland is being reduced from 1% to 0.5% of farms, below the original EU legal requirement for farms in receipt of direct payments, potentially weakening the ability to assess all farms.

DAERA would point out that the reduction in the number of businesses inspected from 1% to 0.5% was in response to the COVID pandemic, and that the inspection rate returned 1% for the 2022 scheme year.

1. **It is proposed to remove the automatic application of intentional penalties.**

**What are your views on this?**

In response to this question, the stakeholder stated that they believe the automatic application of intentional penalties is a reasonable policy for farmers to comply with. Any policy change which reduces the penalty for intentional breaches will weaken the effectiveness of cross-compliance measures, watering down an already poor enforcement regime.

They went on to say that increasing percentage penalties help to tackle adverse impacts of increasing production on the environment. However, the removal of the intentional penalty and thus the opportunity for a sliding scale penalty to increase beyond 15% reduction of payment, will remove the incentive of some farm businesses to address these issues. This could cause a perverse outcome where farmers may be willing to continue receiving the 5% breach penalty if penalties cost less than taking actions to comply, leading to a long-term disregard of cross compliance.

The respondent further added that changes to what breaches are considered intentional after reoccurrence places the burden of proof on to DAERA, and given the rate of inspection discussed above, this will only worsen the monitoring and recording of intentional breaches, and likely worsen environmental impacts.

The Department would point out that under the proposed change, penalties would remain at 15% where there is repetition within three calendar years. The Department would also say that the proposed change does not alter the definition of an intentional non-compliance. Its inspectors are aware that they must consider the intent behind actions or inactions resulting in non-compliance, as well as the severity and extent of breaches.

**3. 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.**

The respondent commented that they were concerned that this consultation has only been made available to a limited number of consultees. A broader range of views should be gathered before making changes to a public policy that potentially changes the level of scrutiny being applied to the spending of public money.

The Department would point out that it was the intention of the Department to carry out consultation with a range of key stakeholders in order to get a broad range of views. The stakeholders included organisations involved with agricultural animals, the environment and farming industry representatives.

**5. Decision and Next Steps**

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

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

**Annex A – List of Respondents**

The Royal Society for the Protection of Birds (RSPB) NI