**Cross-Compliance Penalty Regime Proposed Changes for 2022**

**Report on the Outcome of the Consultation**

**SYNOPSIS OF RESPONSES August 2022**

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

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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

Jubilee House,

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Ballykelly

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By Telephone: 028 77 442258

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

This document can also be accessed through the Department’s website at: follows <https://www.daera-ni.gov.uk/publications/direct-payments-farmers-cross-compliance-amendment-regulations-northern-ireland-2022-results>

**1. Introduction**

In June 2022, the Department issued a consultation document seeking views on the proposal to make an amendment to the Cross-Compliance penalty regime from 2022.

The current position

Article 39(4) of Commission Delegated Regulation 640/2014 [Annex 1 (1)] provides for the treatment of negligent penalties as intentional where there is a recurrence of the same non-compliance after capping at 15%:

*Without prejudice to cases of intentional non-compliance, the reduction to be applied in respect of the first reoccurrence of the same non-compliance in accordance with paragraph 1 shall be multiplied by the factor three.*

*In case of further recurrences, the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous reoccurrence. The maximum reduction shall, however, not exceed 15 % of the total amount referred to in paragraph 1.*

*Once the maximum percentage of 15 % has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined again, the beneficiary shall be considered to have acted intentionally within the meaning of Article 40.*

Following the UK exit from the European Union, the legislation governing the Direct Payment Schemes was incorporated into law by the Direct Payments to Farmers (Legislative Continuity) Act 2020, allowing flexibility to amend the rules governing those schemes.

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.

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 20 June 2022. This closed on 15 August 2022 at 17:00 hours. The consultation was launched via email and hard copies where requested. Key stakeholders were given the opportunity to provide their views.

The results of the consultation have been analysed and collated in this final document to inform the decision to remove the provision at 39(4) to apply an intentional penalty on repetition of negligent breaches, from 2022. This report is being 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 2022.

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.

Three responses were received. The following sections provide an overview of the main comments contained in the responses and the Department’s reply to these comments. It is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised by consultees.

1. **Currently, where a penalty resulting from a non-compliance that was deemed negligent at inspection had previously been capped at 15%, reoccurrence within 3 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?**

Of the three responses received, one indicated that the current policy should remain in place while the other two supported a change, believing that intentional penalties were disproportionate for negligent non-compliance.

While noting the dissenting response, DAERA would be of the opinion that the rationale given related more to the selection of farm businesses for inspection rather than the level of penalty applied.

DAERA would also 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?**

Again, two of the responses supported the change while one was opposed to the removal of the application of intentional penalties on repetition. The dissenting response expressed concern that offenders may be happy to receive a 5% penalty instead of addressing issues, and that it would be more difficult to assume intentional breaches after this change.

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.**

There were mixed responses to this question. One respondent felt that the proposed changes were proportionate and not unreasonable, while a second believed that whilst repeat and intentional serious offences must be punished, farmers do not understand the implications of negligent non-compliance.

One respondent stated that an advice-led approach to compliance, rather than immediate enforcement action and penalties, should be considered. The Department accepts this, and it is currently carried out in practice. Where an inspector finds a non-compliance which is very low, negligent, and on farm, they can advise the business to carry out remedial action within a specified timescale in order to avoid the application of a penalty.

The Department would point out that the Cross-Compliance verifiable standards and penalty regime will be replaced for future schemes with new Farm Sustainability Standards which have been subject to separate consultation.

**5. Decision and Next Steps**

The Department wishes to thank all of 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 Association of Veterinary Surgeons Practising in Northern Ireland (AVSPNI)

Ulster Farmers’ Union (UFU)

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