CONSULTATION ON PROPOSED CHANGES TO THE CROSS-COMPLIANCE PENALTY REGIME WITH EFFECT FROM 2024

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# **Introduction**

This consultation document seeks your views on the proposal to make a change to the Cross-Compliance penalty regime with effect from the 2024 scheme year.

**The current Cross-Compliance penalty regime**

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, The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 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 S.R. 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 our future – DAERA’s plan to 2050**

Sustainability for our 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 property 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.

# **Consultation**

The consultation contained in this document aims to obtain the views of key stakeholders in relation to the review of the Cross-Compliance penalty regime**.**

**The consultation period**

The consultation will run for eight weeks, from 18 September until 13 November 2023.

We recognise the importance of allowing ample time for responses to the consultation and for this reason the consultation period will be eight weeks. The consultation document will be issued by email initially, but can be made available in other formats on request.

# **Summary table**

| **TOPIC OF THIS CONSULTATION** | **PROPOSED CHANGES TO THE CROSS-COMPLIANCE PENALTY REGIME WITH EFFECT FROM 2024** |
| --- | --- |
| **Scope of this consultation:** | Focused consultation with key stakeholders. |
| **Geographical scope:** | The proposals apply to Northern Ireland. |
| **Open to:** | Focused consultation with key stakeholders. |
| **Body responsible for the consultation:** | This consultation is being run by the Department of Agriculture, Environment and Rural Affairs (DAERA) |
| **Duration:** | This consultation will run for 8 weeks.  Consultation starts: 18-09-2023  Consultation ends: 13-11-2023 |
| **Enquiries:** | During the consultation, if you have any enquiries please email:  [crosscompliancereviewconsultation@daera-ni.gov.uk](mailto:crosscompliancereviewconsultation@daera-ni.gov.uk) |
| **How to respond:** | By email to:  [crosscompliancereviewconsultation@daera-ni.gov.uk](mailto:crosscompliancereviewconsultation@daera-ni.gov.uk) |
| **After the consultation:** | Responses received will be analysed and considered by the Department. The consultation responses will be published. If you do not wish your response to be published please make this clear in your reply. |

# **Equality, Rural Needs and Regulatory Impacts**

Section 75 of the Northern Ireland Act 1998 (the Act) requires DAERA to comply with two statutory duties[[1]](#footnote-1).

In carrying out our functions in relation to Northern Ireland, we are required to have due regard to the need to promote equality of opportunity between:

* Persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
* Men and women generally;
* Persons with a disability and persons without; and
* Persons with dependents and persons without.

DAERA’s arrangements for assessing our compliance with the Section 75 duties are outlined in our Equality Scheme. For example:

* arrangements for monitoring;
* assessment of impact of policies;
* consultation, training, publication, complaints, access to information and services and review.

At this stage, equality consideration have been undertaken to:

* Determine the extent of the differential impact upon the relevant groups as listed above; and
* Consider whether that impact has a negative impact on groups or individuals in relation to one or more of the nine equality categories.

In line with the Equality Scheme, an equality screening exercise has been completed. It has demonstrated that there will not be a differential impact because of an individual’s religious belief, national identity, racial group, age, marital status, sexual orientation, gender, disability or whether or not he/she/they/them has dependents. Therefore, the options are screened out from a full EQIA.

A Rural Needs Assessment has been carried out and determined that no specific design features are required to address rural issues.

# **Capturing stakeholder views – next steps**

DAERA welcomes responses and comments from key stakeholders on the proposed change outlined in this paper.

**How to respond**

This engagement exercise will be carried out by email correspondence. The response template should be emailed to:

[crosscompliancereviewconsultation@daera-ni.gov.uk](mailto:crosscompliancereviewconsultation@daera-ni.gov.uk)

**Deadline for responses**

The closing date for responses is **13 November 2023**.

Please ensure that your response is submitted by that date.

**Publication of responses**

The Department will publish a summary of responses following the closing date for receipt of views. Your response, and all other responses to this publication, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of responses as they will provide guidance on the legal position about any information given by you in response to this publication.

**Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request**.

Section 8(e) of the Data Protection Act 2018 permits processing of personal data when necessary for an activity that supports or promoted democratic engagement. Information provided by respondents to this stakeholder consultation exercise will be held and used for the purposes of the administration of this current exercise and subsequently disposed of in accordance with the provision of the Data Protection Act 2018 and the UK General Data Protection Regulation.

More information and the DAERA Privacy Statement can be found at:

<https://www.daera-ni.gov.uk/publications/daera-privacy-statement-document>

The Freedom of Information Act gives the public a right of access to any information held by a public authority. In this case, this is the Department. This right of access to information includes information provided in response to a stakeholder consultation exercise. The Department cannot automatically consider as confidential information supplied to it in response to a stakeholder consultation exercise. However, it does have the responsibility to decide whether any information provided by you in response to this stakeholder consultation exercise, including information about your identity, should be made public or treated as confidential. If you do not wish information about your identify to be made public, please include an explanation in your response, including any harm you believe such a disclosure might cause.

This means that information provided by you in response to the stakeholder consultation is unlikely to be treated as confidential except in very particular circumstances. The Lord Chancellor’s Code of Practice on the Freedom of Information Act provides that:

* The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connect with the exercise of any of the Department’s functions and it would not otherwise be provided;
* The Department should not agree to hold information received from third parties ‘in confidence’ which is not confidential in nature, and
* Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner’s Office at

Tel: (028) 9027 8757

email: [ni@ico.org.uk](mailto:ni@ico.org.uk)

Website: [ICO.Home](https://ico.org.uk/)

# **Annex A – Stakeholder Response Template**

**CONSULTATION ON PROPOSED CHANGES TO THE CROSS-COMPLIANCE PENALTY REGIME 2024**

**Stakeholder Response Template**

**How to Respond**

**It is recommended that you read the full consultation before completing your response.**

**You should complete this template and return it to us at the email address below:**

[**crosscompliancereviewconsultation@daera-ni.gov.uk**](mailto:crosscompliancereviewconsultation@daera-ni.gov.uk)

**Early responses are encouraged but all responses should arrive no later than 5pm on 13 November 2023.**

**Before you submit your responses, please read the “Freedom of Information Act 2000 - Confidentiality of Consultation Responses” section below, which gives guidance on the legal position.**

**ABOUT YOU**

**Name (required):**

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**Email address:**

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**Organisation (if applicable):**

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Please note that the text boxes used throughout this template will expand to accommodate your response – there is no character limit.

**Q1: Currently, 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 will result in the breach being treated as intentional thus attracting higher penalties. What are your views on this policy?**

**Comments**

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**Q2: 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?**

**Comments**

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**Q3: 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.**

**Comments**

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1. <https://www.daera-ni.gov.uk/publications/daera-equality-scheme-2021-2025> [↑](#footnote-ref-1)