Consultation on the proposed changes to the Cross-Compliance penalty regime with effect from 2022

**Regulatory Impact Screening**

**August 2022**

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# INTRODUCTION

1. Minister Poots has instructed the Department that the automatic application of intentional Cross-Compliance penalties to repeated negligent non-compliances should end from the 2022 scheme year.

The current Cross-Compliance penalty regime

1. Beneficiaries of area-based scheme payments must comply with the requirements of Cross-Compliance 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. In addition, where a negligent penalty has been repeated within three calendar years and has reached the maximum of 15%, the regulations require a further reoccurrence of the same requirement to be treated as having been caused intentionally.
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. Whilst these non-compliances have been determined at inspection to have been caused by negligence, the Department must treat them as if they had been caused intentionally and apply higher intentional penalties.
2. It is proposed to amend current legislation to remove this requirement and a Statutory Rule has been drafted and scrutinized 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.

**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.

1. 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.

# 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 penalties are proportionate by removing the automatic consideration as intentional of repeat negligent no-compliances which have already reached the cap at 15%. No adverse or differential impact has been identified to any NI farm business that claims direct payments as it will attribute a negligent breach to the business as recommended by the inspectorate. 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 proportionate by removing the automatic consideration as intentional of repeat negligent non-compliances which have already reached the cap at 15%. Therefore, from a business perspective, the very small number of businesses that will be affected by this change will see a benefit and this effect overall at the population level will be negligible. |
| 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** |
| Gregor Kerr | Grade 7, Area-based Schemes Operational Policy Branch | 24 August 2022 |
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| **Approved by:** | **Position/Job Title** | **Date** |
| Norman Fulton | Deputy Secretary, Food and Farming Group | 13 September 2022 |
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