

Department of Agriculture, Environment and Rural Affairs (DAERA) **Enforcement Policy**

Sustainability at the heart of a living, working, active landscape valued by everyone.



Department of
**Agriculture, Environment
and Rural Affairs**

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**INVESTORS
IN PEOPLE**

DAERA Enforcement Policy

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DAERA Enforcement Policy

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1.0 Introduction

- i. The Department of Agriculture, Environment and Rural Affairs (DAERA) has responsibility for food, farming, environment, fisheries, forestry, sustainability policy and the development of the rural sector in Northern Ireland. The Department is structured into five groups, including one Executive Agency (Northern Ireland Environment Agency) and one Public Corporation (Forest Service).
- ii. DAERA seeks to ensure continued food supply and security, champions the health and welfare of animals, and regulates activities in relation to protecting public health and the environment.
 - It is illegal to carry out a range of activities without registering compliance, making a notification, or being granted the appropriate licence, authorisation, permit, consent, or exemption.
 - It is also an offence to fail to comply with the relevant legislation, including any conditions set out in authorisations, permits, consent or licences.
- iii. The relevant statutory provisions under which we work can be found at: <https://www.daera-ni.gov.uk> and also at <https://www.netregs.org.uk>
- iv. Effective enforcement is a key component in securing compliance with the legislation, delivering government objectives and ultimately enhancing economic prosperity, the health and welfare of animals, public health and environmental quality.
- v. This policy aims to ensure that staff, those we regulate, and other stakeholders are aware of the general intent and principles underpinning our approach to enforcement. Significant work also goes into linked areas of prevention, education and compliance.
- vi. We wish to set and publish clear standards and the criteria on which we base our actions. Our policies and processes should be clearly explained and understood by all stakeholders.
- vii. This document outlines the principles and framework that we will follow to deliver consistent and proportionate enforcement and promote confidence in our enforcement process.

2.0 Objectives of DAERA Enforcement

- i. The objective of DAERA enforcement can be described in general terms as the prevention or reduction of harm, caused by non-compliance with statutory requirements.
- ii. Statutory regulations are laws which are intended to deliver the policy outcomes that prevent harm, and indeed provide benefits, to the agri-food and fishing industries, animals, rural communities, natural resources, our environment, the economy and wider society. **It is ultimately the responsibility of individuals and businesses to be aware of and comply with the law.** The Department expects full voluntary compliance but where compliance is not forthcoming, enforcement activities and resource will be directed at those non-compliances which are most harmful.
- iii. DAERA believes that in most cases, working with those it regulates, in a positive and practical manner will achieve compliance with the legislation and successful delivery of policies. However, where there are breaches of the legislation that may cause harm or deny benefits, then the presumption will be to take enforcement action appropriate to the level of harm or risk.
- iv. The significance and impact of breaches will vary considerably. When deciding the appropriate response, priority will be given to those breaches where the greatest harm is likely to be caused. Assessment of priority and conduct of actions will be guided by our key principles of enforcement below.
- v. In addition to taking enforcement action, as part of our wider objectives we will also consider:
 - Preventative action to protect public health, animal health and the environment;
 - Remedial action to repair any damage;
 - How ongoing compliance can be secured;
 - Deterrence to prevent further breaches of the law;
 - The status of any existing licence, authorisation or exemption;
 - How financial benefit gained from illegal activity can be removed; and
 - Where possible, we will seek to recover appropriate costs and ensure that the offender pays.

3.0 Principles of DAERA

- i. All enforcement action carried out by the DAERA will be firm, fair and reasonable. Our overall approach to enforcement is underpinned by the **eight principles of better regulation**:

1. Proportionality
2. Accountability
3. Consistency
4. Transparency
5. Targeted
6. Collaboration
7. Support
8. Regards for Economic Growth

1. Proportionality

The sanction of prosecution is available for all criminal offences by law; some legislation attracts civil sanctions/recompense; however, we will seek to use enforcement action that is proportionate to the significance of the offence. This includes the level of harm, the type of offending, the impact on communities, the level of financial benefit arising from the offence(s)/breach(es), or the regulatory costs avoided by failure to make the necessary notification, registration or authorisation. For minor offences, our key objective will be to seek a return to compliance. For more serious offences, we may submit a report to the Public Prosecution Service for Northern Ireland for consideration of prosecution or conduct prosecutions through solicitors.

2. Accountability

As a Government Department, DAERA is accountable to the public through the arrangements of the Legislative Assembly for Northern Ireland.

All enforcement decisions will be made with an appropriate level of oversight within the Department. All decisions to take enforcement action will be recorded and retained. Legislative arrangements are in place to allow appeals against enforcement action. DAERA's work is also subject to scrutiny by the Northern Ireland Audit Office, the Public Accounts Committee of the Northern Ireland Assembly, the Criminal Justice Inspectorate and the Agriculture, Environment and Rural Affairs Committee of the Legislative Assembly.

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Many of DAERA's policies concern the implementation of EU legislation which still apply in NI, even though the UK has left the EU. DAERA remains accountable to the EU and is subject to inspection and audits. We also provide assurances and annual reports to the EU.

3. Consistency

We will aim to take a consistent approach to our decision-making with respect to enforcement. However, consistency is not a simple matter of uniformity so, while we will consider how similar situations were handled previously, we will always consider the individual circumstances of each case.

4. Transparency

We want to help those we regulate to understand what we expect of them and what they should expect from us. It also means making clear why we have taken, or intend to take, enforcement action. Where we have appropriate discretion in the legislation being enforced, and where the assessment of the risk of harm permits, we will:

- Provide an opportunity to discuss what is required to comply with the law, sometimes before formal enforcement action is taken;
- Confirm in writing where remedial action is found to be necessary (in cases where urgent action is necessary, confirmation and explanation will be issued as soon as practicable after the event if required);
- Provide written confirmation of any rights of appeal against formal enforcement action at the time the action is taken.

These actions may not be appropriate if urgent action is required to avert or mitigate harm or there is a need to prevent evidence being destroyed, or in some cases where the potential harm is significant.

We will publish an annual report setting out a summary of all the enforcement action that has taken place during the previous year. We will also make this policy available on the DAERA website.

5. Targeted

We will direct our enforcement activity towards individuals or businesses that:

- Cause or risk serious damage to the DAERA's key objectives;
- Operate illegally outside the regulatory regime;
- Persistently and/or intentionally break the law;
- Commit an offence for the purpose of obtaining a specified payment, from a Government or an EU funded support scheme;
- Acquire significant financial advantage from their crime.

6. Collaboration

- Policymakers and regulators should collaborate with key stakeholders to identify best solutions;
- Regulators should actively identify opportunities to lessen the burden on business through more effective joined up working;
- Recognising the value of good regulation, interested parties should work together to identify opportunities for reform.

7. Support

- Regulators should work to support legitimate businesses to achieve compliance;
- 'Think business first' when designing processes which businesses are required to adopt when 'transacting' with regulators;
- Policies should be designed to support regulators and enforcers in securing compliance to meet the policy objective.

8. Regard for Economic Growth

- Regulations should balance the need to meet necessary protections while supporting wider economic growth. This may mean taking enforcement action against a person/ business in order to support the wider industry and maintain public confidence;
- Regulators should consider economic impact of their respective enforcement and inspection policies.

Link for further information: [Better Regulation An Action Plan for Reform - March 2016.pdf \(archive-it.org\)](#) pages 11 & 12 for Principles.

ii. Compliant with Key Legislation

In accordance with the European Convention on Human Rights, DAERA will endeavour to ensure policies and procedures reflect and recognise human rights. In particular, DAERA enforcement activities will comply with the key legislation governing the rights of individuals. This includes:

- Human Rights Act 1998;
- Police and Criminal Evidence (Northern Ireland) Order 1989 and its Codes of Practice;
- Criminal Procedure and Investigation Act 1996;
- Regulation of Investigatory Powers Act 2000;
- Additional Safeguards.

4.0 Compliance, Enforcement & Prosecution

- i. In the case of those we regulate who fail to comply; advice and guidance will often be our first route to securing compliance. It is important that those we regulate are fully aware of legal requirements and the relevance to their activities, as well as how to comply. We will work with stakeholder bodies to identify barriers to compliance and to provide clear, unambiguous guidance as necessary. We will also seek to educate stakeholders and the public to avoid breaches in the first place. However, this is dependent on both the severity and impact of the non-compliance.

For many policies, compliance will be assessed through inspection, testing and audits. We will devote more resources to those activities and locations presenting the greater risks of harm through non-compliance.

- ii. The choice of enforcement action taken is dependent on a range of factors and the circumstances of each case. The form, or forms, of enforcement action, which DAERA may use, will therefore differ depending on:
 - the particular nature of the non-compliance;
 - the harm caused or likely to be caused; and
 - the history of the responsible person, including any previous non-compliance or criminal conviction(s) and/or civil sanctions.
- iii. Where legislation or cross-compliance rules have been breached, and subject to the circumstances and severity of the breach, the Department has a range of actions for securing compliance including:
 - Compliance Assessment Reports;
 - Warning letters;
 - Enforcement Notices;
 - Suspension/revocation of licences/approvals;
 - Imposition of restrictions or conditions;
 - Fixed Penalty Notices;
 - Fixed Monetary Penalties or Discretionary Requirements;
 - Seizure of livestock or fish;
 - Euthanasia of animals;

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- Seizure of evidence, vehicles, boats, machinery, tools or equipment;
 - Financial penalties including reduction/withholding of Single Farm Payments or animal disease compensation payments;
 - Referral of case files to other enforcement agencies (for example the Police Service of Northern Ireland);
 - Adult Cautions;
 - Referral for prosecution;
 - Applying to the courts for additional orders e.g. disqualification from keeping animals.
- iv. This high-level enforcement policy does not give explicit guidance on the level of investigation expected of Departmental Officials. Each case is treated on its own merits and the level of investigation should be proportionate to that individual case and in line with this policy.
- v. Similarly this high-level enforcement policy does not give explicit directions on when actions should be undertaken nor what compliance/enforcement action to use. All of the actions listed in this document are open to investigators to use as and when it is deemed appropriate. Each individual case is and must be treated on its own merits. It is right that each action is open to be used when and where appropriate, without being limited by explicit directions in this guidance.
- vi. Prosecution is an important part of any statutory enforcement system - acting as both a deterrent and a punishment. As a regulator, DAERA is legally responsible for investigating breaches of legislation and preparing and submitting files to either the Public Prosecution Service (PPS) or to a solicitor.
- vii. If an investigation file is referred to the PPS, the decision to prosecute and to take a case to Court is made by the PPS. See the code for prosecutors for further info: https://www.ppsni.gov.uk/files/ppsni/2023-05/Code%20for%20Prosecutors%20-%20May%202023_0.pdf. The PPS is a wholly independent body and its decision is based on an impartial and professional assessment of the available evidence and the public interest.
- viii. Two tests, the evidential test and the public interest test, must be satisfied before the PPS will prosecute. Thus, before recommending and submitting cases to the PPS, the investigating officers must be mindful that there is sufficient evidence and that it is in the public interest to take a case.
- ix. The evidential test is met if the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction. The DAERA investigating officers will consider if there is sufficient credible admissible evidence that could be proved beyond reasonable doubt, of the commission of a criminal offence by an identifiable individual.

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- x. The DAERA investigating officers will also consider public interest factors and may highlight these in the file to the PPS. Although the PPS Code for Prosecutors states that there is a presumption that the public interest requires prosecution where there has been a contravention of the criminal law, it is not the case that all offences for which there is sufficient evidence must be prosecuted.
- xi. Generic public interest factors supporting a recommendation for prosecution include:
 - The seriousness or significance of breach or offence;
 - The harm caused or likely to be caused;
 - Where the harm has not been remedied;
 - Where the offence is prevalent;
 - Where the offence has resulted in financial loss to an individual, company or society;
 - Where the offence is premeditated;
 - Where the offence is against an authorised officer or other person serving the public;
 - Likelihood of continuance of offence or repeat offences;
 - Previous convictions/cautions;
 - Offences carried out by someone in a position of authority or trust;
 - Offences carried out by a group.
- xii. In addition to generic public interest factors there may also be policy specific factors supporting a recommendation for prosecution.
- xiii. Generic Public Interest factors against prosecution include:
 - Where the court is likely to impose a very small or nominal penalty;
 - Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;
 - Where the offence is not of a serious nature and is unlikely to be repeated;
 - Where the defendant is elderly or where the defendant is a child or a young person;
- xiv. It is recognised that prosecution is a serious matter and a decision to take this approach is not taken lightly. Under certain circumstances, DAERA may decide to recommend or pursue a prosecution without prior warning or prior use of other methods of enforcement. However, the decision to prosecute is taken only after careful consideration of all the circumstances. Prosecution is conducted either by Solicitors on our behalf or by the PPS.

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- xv. Further measures can be taken after prosecution, such as the confiscation of assets under the Proceeds of Crime Act 2002. Our aim will be to deprive those convicted of the profits of their criminal activities. Any financial investigation will be conducted with the aim of obtaining a Criminal Confiscation Order which, if unpaid, can result in a prison sentence. If the offender is imprisoned for non-payment, the Order remains in force until paid.
- xvi. Where an offence results from a Company's activities, it may be possible to enforce against individuals within the Company or against the Company itself (or both). In doing so, it is usual to consider any part played in the offence by the senior officers of the Company, including Directors, Managers and the Company Secretary.

5.0 Authorised Officers/Inspectors

- i. Authorised Officers/Inspectors are DAERA staff who have been authorised under the specific legislation that DAERA is responsible for. Authorised Officers are given the statutory authority to exercise powers and discharge responsibilities for the relevant legislation.
- ii. When exercising their authority, Authorised Officers carry a photographic authorisation card, which they will produce upon request.
- iii. When breaches of DAERA legislation are prosecuted or civil sanctions imposed, DAERA Authorised Officers may be required to assist investigations by providing witness statements, attending court and giving evidence.
- iv. This high-level enforcement policy is not designed to document officers' individual roles and responsibilities across all of DAERA work streams. More detail on this may be found within relevant work streams/policies.

6.0 Obstruction of DAERA Officers/Inspectors

- i. DAERA Officers/Inspectors are entitled to conduct their duties without fear, threat, interference or obstruction. In addition to its duty to implement and enforce the legislation, DAERA has a duty for the health and safety of its staff and will take appropriate measures to protect its staff.
- ii. Obstruction or interference with Officers/Inspectors may be a criminal offence under the legislation that the Officers/Inspectors are authorised.
- iii. In cases of obstruction, interference or threats DAERA may apply its “Unacceptable Customer Behaviour Policy” but DAERA may also take one or more of the following measures:
 - Seek PSNI assistance;
 - Seek a Warrant;
 - Submit a case file with an obstruction offence to the Public Prosecution Service for prosecution in Court.

7.0 Communication Policy

i. Press Releases

Following convictions in Court, the DAERA Press Office generally issues a press release on its website and to media organisations detailing the defendant, the offences and the penalties. The press releases provide transparency and the publicity of the penalties (custodial or financial) may act as a deterrent to others who may be tempted to offend.

ii. Intelligence and Data Sharing

Individuals who commit crimes often do not limit their criminality to one area and may indeed exploit the different enforcement roles discharged by Government agencies. It is important that enforcement agencies co-operate in investigations and in sharing information. DAERA is committed to sharing intelligence and data with other key partners including DEFRA/APHA, local District Councils, the Police, HMRC, UK Border Agency (UKBA) and our counterparts in the Republic of Ireland. Information is shared through various methods including National Intelligence Model intelligence reports and data sharing agreements.

iii. Under the Data Protection Act 1998, subject to certain conditions, personal data may be shared between authorities for the prevention and detection of crime and the apprehension and prosecution of offenders.

iv. Under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, information held by DAERA for the purposes of a criminal investigation may be exempt from the general obligation to release or disclose information held. Each request is considered on its merits by DAERA in line with the above legislation and the General Data Protection Regulations.

v. Third Party Communications and Engagement

In conducting criminal investigations, DAERA investigators will communicate directly with the defendants and their legal representatives. After cases have been submitted to the PPS, the PPS will be responsible for such communications.

However, third parties including public or industry representatives, the media, lobby groups, government officials and the general public often have an interest in cases under investigation. Sometimes they are acting on behalf of an individual under investigation or being prosecuted in Court. On other occasions, interested third parties may be pressing for DAERA or the PPS to take prosecution cases to Court.

At common law, it is an offence to pervert or obstruct the course of justice. Any attempted interference with, or obstruction of, the course of justice is a serious matter. Accordingly, DAERA will not tolerate interference by third parties, which could prejudice

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the prosecution decision-making process. Such interference may be reported to the PSNI.

vi. Feedback

If there is dissatisfaction with the level of service we provide, we welcome comment and constructive opinion about ways we can improve it. Comments on our regulatory activity can be made through an online feedback facility to the Department of Economy website [Better Regulation feedback \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/better-regulation-feedback) This is part of the NICS's commitment to deliver Better Regulation.

vii. Details of our complaints procedures can be found at: [How do I make a complaint if I am unhappy with the quality of service I received? | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk/how-do-i-make-a-complaint-if-i-am-unhappy-with-the-quality-of-service-i-received/).

viii. This policy will be reviewed every five years unless an earlier review is needed.

ix. Ownership of this policy rests with the Chairs of the EMFG Enforcement Liaison Group (to be reviewed) and the head of VSAHG's Welfare and Enforcement Branch.

All enquiries to:

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