Consultation on the proposed changes to the Cross-Compliance penalty regime with effect from 2024 - The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2023.

**Regulatory Impact Screening**

**September 2023**

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# INTRODUCTION

1. Minister Poots instructed the Department that the automatic application of intentional Cross-Compliance penalties to repeated negligent non-compliances should end from the 2022 scheme year for all nationally funded schemes such as the Basic Payment Scheme. This resulted in a Statutory Rule - The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 2022 No. 240, amending Retained Regulation (EU) 640/2014 - being laid to implement the Minister’s instruction.

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, for EU co-funded schemes only, 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 for all EU co-funded schemes.
2. As EU funding is to cease from 31 December 2023, it is proposed that a Statutory Rule be laid to reflect amendments to Retained Regulation (EU) 640/2014 which were set out in The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 2022 No. 240 to area-based schemes which had previously been co-funded by EU. A Statutory Rule has been drafted and scrutinized by the Departmental Solicitor’s Office. Whilst consultation on the Statutory Rule is not a precondition, key stakeholders will be asked for their views as it is good practice.
3. It is also proposed that Article 68 (4) of Retained Commission Implementing Regulation (EU) No 809/2014 is removed. This paragraph states:

*4.  Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for that act or standard in the following control period shall be increased. Within a specific act the competent control authority may decide to limit the scope of those further on-the-spot checks to the most frequently infringed requirements*

1. The requirements of Article 68 (4) above impose a formulaic approach to the inspection regime where an administrative decision taking account of individual circumstances would be preferable. Obviously, where there are areas of concern, the relevant areas will consider resources and adjust the inspection regime to address this. This will not form part of the Stakeholder consultation as this is a procedural issue.

**Future Policy**

1. *Sustainability for Our Future - DAERA’s Plan to 2050* - frames the strategic priorities for the next three 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 would align the previously EU co-funded schemes with the current NI Regulations for the nationally funded schemes’ legislation (The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 2022 No. 240), from 1 January 2024, ensuring 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% from 1 January 2024. 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 alignment with The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 2022 No. 240, which will ensure that the Cross-Compliance penalty system is 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 may be affected by this change will see a more fair approach and the 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** |
| Audrey Henderson | Grade 7, Area-based Schemes Operational Policy Branch | 15 September 2023 |
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| **Approved by:** | **Position/Job Title** | **Date** |
| Norman Fulton | Deputy Secretary, Food and Farming Group | 4/10/2023 |
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