EXPLANATORY MEMORANDUM TO

THE FARM SUSTAINABILITY PAYMENT SCHEME (ELIGIBILITY ETC) REGULATIONS (NORTHERN IRELAND) 2025

S.R. 2025 No. 0000

1 Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs ("the Department") to accompany this statutory rule (SR) which is laid before the Northern Ireland Assembly.

1.2 The SR is made under section 48 of and paragraphs 2(1) and 5(1) of Schedule 6 to, the Agriculture Act 2020 and Article 35 of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 and is subject to the draft affirmatory resolution procedure.

2 Purpose

2.1 The SR gives legal effect to the Farm Sustainability Payment (FSP) scheme which will replace the current Farm Sustainability Transition Payment (FSTP) on 1 January 2026.

3 Background

3.1 The FSP scheme forms part of the Sustainable Agriculture Programme (SAP). The FSP will act as a balance between providing a safety net which will help a farm business withstand 'shocks' that are beyond its ability to manage effectively and encouraging farm businesses to become more environmentally sustainable, efficient and resilient. The FSP scheme is expected to attract approximately 22,000 applications annually.

3.2 The Regulations introduce progressive capping of the FSP scheme payments phased in over a two-year period for payments above £60,000 with capping levels increasing in stages based on the size of payments. **Table 1** below sets out how progressive capping will operate.

Table1

Payment Band	Capping reduction in first year of FSP (%)	Capping reduction in second year onwards of FSP (%)
£190,000.01 +	100	100
£150,000.01- £190,000	40	80
£100,000.01- £150,000	30	60
£80,000.01- £100,000	20	40
£60,000.01- £80,000	10	20
£0 - £60,000	0	0

3.3 The rationale for introducing progressive capping is because high support payments can encourage unwarranted risk taking and reduce the incentive to manage risk within the farm business. Therefore, a balance needs to be struck between providing a safety net which helps a farm business withstand those shocks that are beyond the ability of that business to manage risk effectively, and dampening the incentive to be efficient, competitive and to manage risk proactively.

3.4 The Regulations introduce simplified land eligibility rules for the FSP scheme compared to the land eligibility rules in place for the FSTP and the previous Basic Payment Scheme. The objective of the revised rules is to establish practical land eligibility rules for the FSP scheme that complement the scheme's objectives, can be easily understood, and be robustly and efficiently enforced.

3.5 The following land or woodland is eligible for the scheme if –

- it has a boundary recognised by the Department including land with soft features or blanket bogs or lowland raised bogs;
- the applicant–
  i. has included as part of their application discrete areas of eligible woodland; or
  ii. has included as part of their application up to and including seventy percent stones, scree, rock or scattered rock.

3.6 Woodland that is or has been part of a forestry or agri-environment scheme administered by the Department on or after 1 January 2009 is eligible for the scheme.

3.7 Woodland that has not been part of a forestry or agri-environment scheme administered by the Department on or after 1 January 2009 is ineligible for the scheme if it is –

- not mapped on the LPIS by the date the regulations come into operation;
- a discrete area of woodland which is 5 hectares or more;
- part of a woodland parcel which is less than 5 hectares and is contained in a woodland block; or
- State owned or on state owned land.

3.8 Where land is to be mapped on the LPIS (Land Parcel Identification System) for the first time, an eligible farm business must provide such information in relation to the identification of and the applicant's title to that land as the Department may require, or where land is already mapped on the LPIS, the proof of title may be requested by the Department.

3.9 The Regulations include a list of features and land uses that will be ineligible for the FSP scheme such as building sites, land used for solar panels, public and private gardens, public parks, golf courses and airstrips. Up to now this list was not included in legislation and DAERA had to determine the eligibility of areas such as this on a case-by-case basis. This list set out in legislation will enable DAERA to automatically exclude areas of this nature.

3.10 To support the simplified land eligibility rules and mitigate against any unintended consequences the Regulations amend the eligibility requirements for the FSP scheme to state that only active farmers undertaking agricultural activity are eligible to apply. They must also have management control of land used to activate entitlements.

3.11 Consequently, the Regulations require applicants for the FSP scheme to carry out agricultural activity on at least 3 hectares of land used to activate entitlements. However, where an applicant submits a claim of less than 5 hectares, they must carry out agricultural activity on at least 2 hectares of land used to activate entitlements.

3.12 The land eligibility rules introduced by the Regulations will apply to Environmental Farming Scheme (EFS) Higher Agreements which were made by the Department before the date on which these Regulations come into operation.

3.13 The Regulations reset the two-year entitlement confiscation rule from the commencement of the FSP scheme meaning that no entitlements will be confiscated for non-activation in 2026. This is because the FSTP and the FSP scheme are being treated as two separate schemes.

3.14 The Regulations define the order in which DAERA will apply scheme penalties as follows -

- If it is found that a farm business has claimed on more land than it should have an over declaration penalty will be applied first to 'correct' the claim. To do otherwise could potentially result in a farm business being penalised more than they are paid.

- Secondly, the late claim penalty will be applied, where businesses are penalised 1% for every working day their claim is received late, i.e. after the 15 May.
- The next penalty to be applied will be if a business failed to meet certain Conditionality requirements.
- The final penalty that will be applied is for breaches of Cross-Compliance and Farm Sustainability Standards (FSS). It is necessary to apply the FSS penalty last, as DAERA may receive notification of a breach from three different Competent Control Authorities and these types of penalties can occur at any time of the year. Furthermore, as they are a percentage reduction and not a fixed amount it could involve multiple recalculations of the FSP payment including any penalties applied.

3.15 The regulations legislate that applicants for the FSP scheme will be required to meet the following conditionalities in order to receive their full FSP.

- Participation in the Soil Nutrient Health Scheme. Farm businesses must have registered for the SNHS and completed training offered to it by the closing of the Single Application Form window (15 May 2027) to be compliant. For those farm businesses that are not compliant at this stage, the Regulations legislate that a 10% penalty will be applied to their Farm Sustainability Payment in 2027. The penalty will be increased to 15% for continued non-compliance in 2028 and will continue to be applied at 15% until the conditionality has been met.

- Participation in the Bovine Genetics Project. Farm businesses must have registered for the Project and completed training offered to it by the closing of the Single Application Form window (15 May 2028) to be compliant. As with the SNHS conditionality, for those farm businesses that are not compliant at this stage, the Regulations legislate that a 10% penalty will be applied to their Farm Sustainability Payment in 2028. The penalty will be increased to 15% for continued non-compliance in 2029 and will continue to be applied at 15% until the conditionality has been met.

3.16 The Regulations also legislate that penalties for failure to meet the FSP conditionalities should be applied concurrently. Therefore, for example if a business does not meet both the SNHS conditionality and the Ruminant Genetics conditionality in 2028 the resultant penalties should be added together.

3.17 The Regulations legislate that preliminary checks will no longer be mandatory however the Department retains the authority to implement other checks as required.

3.18 The Regulations remove the on-the-spot checks inspection rate for area-based schemes and replace it with a requirement for DAERA to define the rate. The mandatory inspection rate is being removed as it is intended that the FSP scheme land eligibility controls will now be carried out using remote sensing techniques therefore removing the requirement for on-the-spot checks.

3.19 The Regulations amend The Farm Sustainability (Transitional Provisions) Regulations (Northern Ireland) 2025. Firstly, it is clarified that businesses not meeting the historic years requirements are not eligible for the FSP scheme in 2026 only. They may be eligible in future years but would need to acquire FSP entitlements from the market and meet all the other requirements of the scheme. Secondly, a restriction is applied on the transfer of entitlements from ineligible businesses in 2026 to new businesses established on or after the day the regulations are made (date to be inserted) to prevent a circumvention of the Historic Years requirements.

3.20 The regulations also amend the Commission Delegated Regulation (Regulation 640/2014).

3.21 In Article 13 they omit paragraph 3 thereby removing a 1% per day penalty for amendments to fields claimed made after the date of submission.

3.22 Article 14 is removed as it is no longer required, as it related to the allocation of entitlements.

3.23 Article 16 is amended through replacing non-declaration penalties with penalties for failure to comply with conditionalities.

3.24 In article 19a the penalty for over declaration in paragraph 1 is increased from 1.5 the difference found to twice the difference found.

3.25 The regulations also omit paragraphs 2 and 3 of Article 19 of the Commission Delegated Regulation (Regulation 640/2014). This removes penalties which exceed 100% of the payment due, in respect of what were previously area-based payments under Pillar 2 (Rural Development) of the Common Agricultural Policy, chiefly agri-environment and forestry payments. These penalties apply to a very small number of businesses and are complicated to administer as they involve a deduction to payments in following years.

3.26 The regulations amend Article 72 of 809/2014 by removing paragraph 3 to simplify the requirements regarding control reports for Farm Sustainability Standard checks.

4 Consultation

4.1 The Department consulted from 21 December 2021 to 15 February 2022 on the introduction of a Resilience Payment as part of the Future Agricultural Policy Proposals for Northern Ireland consultation. The name of the Reslience Payment subsequently changed and a number of the Resilience Payment policy proposals now form part of the FSP scheme. Stakeholder responses received in respect of these proposals were considered and included in the analysis of the Future Agricultural Policy Decisions in Northern Ireland published on 22 March 2022.

4.2 The Agricultural Policy Stakeholder Group (APSG) has been established by the Department to ensure that stakeholder views are understood and properly considered during the development of the Sustainable Agriculture Programme. A number of presentations have been made to this group to discuss the FSP policy.

5 Equality Impact

5.1 In accordance with DAERA's obligations under section 75 of the Northern Ireland Act 1998, the potential equality impact of the statutory rule has been assessed. The FSP is a new scheme and is not targeted at any one particular Section 75 category. All eligible farm businesses will benefit from this policy regardless of which section 75 category they fall into. The screening decision was however that the SR should be screened out with mitigations. These mitigations are designed to ensure that all farm businesses are provided with adequate time, guidance and training to comply with the Regulations.

6 Regulatory Impact / Better Regulation / Data Protection Impact Assessment

6.1 The FSP is intended to provide payments to farm businesses most at risk from shocks outside their control. It is therefore unlikely that there will be any mandatory costs, savings or administrative burdens placed on NI farm businesses. Rather the FSP is anticipated to have a positive direct impact on eligible farm businesses. The FSP will operate using the same procedures and systems for data recording and processing as the FSTP. No data protection issues are therefore anticipated.

7 Financial Implications

7.1 From 2025/26 as part of its draft budget, the Executive has agreed to baseline the Resource DEL allocated in the NI block grant for farming and fisheries as Executive Earmarked to fund the Sustainable Agriculture Programme.

8 Section 24 of the Northern Ireland Act 1998

8.1 The Regulations do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9 EU Implications

9.1 There are no EU implications associated with this statutory rule.

10 Parity or Replicatory Measure

10.1 Work is ongoing across the other UK Devolved Administrations to develop and implement new farm support polices following the UK exit from the EU. While there are agricultural support schemes in GB, there are none that are directly comparable to the FSP. RoI will deliver payment schemes in line with requirements set out in the EU CAP 2023-27 programme.

11 Additional Information

11.1 For further information contact George Moffett, Agricultural Policy Division, Department of Agriculture, Environment and Rural Affairs (George.moffett@daera-ni.gov.uk)