

Single Farm Payment 2005



CAP Reform

Part 4 Cross-Compliance Inspection and Sanctions



Department of Agriculture and Rural Development

Single Farm Payment 2005

CAP REFORM

Part 4

Cross-Compliance Inspection and Sanctions

Guidance Booklet

MARCH 2005

CROSS-COMPLIANCE INSPECTION AND SANCTIONS

GUIDANCE FOR FARMERS

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1. Background

The Common Agricultural Policy (CAP) Single Farm Payment Regulations require Member States to put in place arrangements to enforce the Cross-Compliance Verifiable Standards. The inspection and sanction arrangements that will be applied in Northern Ireland to support these requirements are set out in this booklet.

This booklet should be read in conjunction with the CAP Reform: Part 3 Cross-Compliance Verifiable Standards booklet which the Department of Agriculture and Rural Development published in December 2004. The Cross-Compliance Verifiable Standards booklet sets out the Cross-Compliance standards you must meet in return for receipt of direct agricultural support (this includes the Single Farm Payment and other subsidies such as Protein Crop Premium and Aid for Energy Crops).

Cross-Compliance applies to all agricultural land within an agricultural business irrespective of whether it is used to activate Single Farm Payment Scheme entitlements. For permanently held land (either owned or under an agricultural tenancy), Cross-Compliance applies for the full 12 calendar months. Claimants of direct agricultural support must also comply with the Cross-Compliance requirements on set-aside land, common land, shared grazing and land taken in conacre.

2. Who has responsibility for ensuring compliance with the Cross-Compliance Standards?

The Department of Agriculture and Rural Development (DARD) and the Environment and Heritage Service (EHS), which is part of the Department of the Environment, will between them be responsible for the Cross-Compliance standards which came into force from 1 January 2005. The table in Annex A sets out the areas of Cross-Compliance which come into effect during 2005 together with the responsible body.

DARD and EHS will undertake inspections for each of the Cross-Compliance requirements for which they are responsible.

3. How will the Cross-Compliance Standards be inspected?

It is likely that compliance with these Standards will be verified by a combination of on-farm inspections and administrative checks. All potential breaches reported to DARD and EHS (for example, by another government body or a member of the general public) will be investigated.

On-farm Inspections

In line with European Commission guidance, DARD and the EHS will ensure that on-farm inspections are carried out on at least 1% of farms claiming direct agricultural support. In achieving this level of inspection DARD and EHS will ensure that a minimum 1% check is carried out in respect of each Statutory Management Requirement (SMR) and Good Agricultural and Environmental Condition (GAEC) requirement. However, Commission guidance also states that where domestic legislation implementing the

Cross-Compliance requirements sets a higher level of inspection, that level of on-farm inspection should be undertaken in respect of those requirements in question.

At present there are three elements of the Cross-Compliance requirements where a higher inspection rate is required in order to satisfy legislative requirements:

1. DARD is required to carry out a 5% inspection check of all bovine herds for compliance with Cattle Identification requirements under Commission Regulation 1082/2003. This level of inspection will continue and any breaches of the Identification and Registration of Animal Cross-Compliance Verifiable Standards identified will be noted.
2. DARD is also required to carry out a minimum 5% on-farm eligibility check of land declared as part of the Integrated Administration and Control System (IACS) application process. Any breaches of the Cross-Compliance requirements identified during these inspections will be noted.
3. The EHS is required to ensure that Sites of Community Importance (SCI) (formally candidate Special Area of Conservation (SAC)) and Special Protection Area (SPA) are maintained in favourable conservation status under Commission Directive 92/43/EEC and local legislation (the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995). If you have such an area on your land you will have been formally notified by the EHS and in line with existing practice 100% of sites will be inspected each year along with all Areas of Special Scientific Interest (ASSI). During these inspections breaches of the Verifiable Standards established in respect of Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna as they apply to these areas will be noted.

The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004, which came into operation on 29 October 2004, requires the establishment and application of an Action Programme to regulate farming activities throughout Northern Ireland in order to reduce and prevent water pollution from agricultural sources. The proposed Action Programme issued for public consultation on 21 February 2005. Once established, farmers will be provided with details of the Action Programme and procedures for inspection will be put in place to ensure compliance with the mandatory measures therein.

Will I get advance notice of on-farm inspections?

There is no requirement for DARD or the EHS to provide advance notice of on-farm inspections. However, provided that the purpose of the inspection is not jeopardised, advance notice may be given and in most instances this will not exceed 48 hours.

What assistance must I provide during an inspection?

You must provide all reasonable assistance to enable an inspection to be carried out. If you intentionally obstruct or fail to co-operate during an inspection you may be liable to prosecution and a fine.

What will be checked at inspection?

The checks that will be carried out during inspection are set out in the Field Checks sections of the CAP Reform: Part 3 Cross-Compliance Verifiable Standards booklet.

Report Forms

A report will be produced setting out the findings of each on-farm inspection. You will have the opportunity to see and sign the report, and to add any observations (for example, whether you agree with the findings). If a breach is identified, you will receive a letter from DARD providing details of the breach and the resulting penalty.

How will farms be selected for on-farm inspection?

Farms will be selected for on-farm inspection using a risk based approach. Between 75% and 80% will be selected in this way, the remainder will be selected on a random basis.

Administrative checks

Administrative checks will be used, as appropriate, to identify non-compliance. It is expected that most administrative checks will concentrate on the area of animal identification and registration and involve cross checks against DARD's Animal and Public Health Information System (APHIS) to identify breaches. Breaches discovered in this way could result in a penalty being applied to your direct agricultural support payment.

Other reports of breaches

In addition to the on-farm inspections and administrative checks as outlined above, suspected breaches can also be reported by, for example, other government bodies and the general public. All such reports will be followed up and all confirmed breaches will be documented. Breaches reported in this way could result in a penalty being applied to your direct agricultural support payment.

4. Who will be held responsible for breaches of the Cross-Compliance Standards?

As a general rule, for breaches of land related Cross-Compliance requirements, it is the person claiming direct agricultural support against that land that will be held responsible for any breach that occurs. For breaches of the animal identification and registration requirements it will be the registered keeper of the animal who will be held responsible.

The following table sets out various land management scenarios and allocates responsibility for meeting the Cross-Compliance requirements. The list of scenarios is not exhaustive.

Scenario	Person held accountable for Cross-Compliance
Landowner submits a claim for Single Farm Payment with no other party involved.	Landowner
Landowner submits a claim for Single Farm Payment against his/her land and contracts another farmer to farm his/her land and meet the Cross-Compliance requirements.	Landowner
Farmer leases in land (not conacre) to support his/her production and claims Single Farm Payment for all of the land.	Farmer
Landowner submits a claim for Single Farm Payment for land which he/she rents out in conacre to another farmer. The other farmer claims Single Farm Payment on his/her own land. A breach is found on the conacre land (that is, land owned by landowner).	Landowner
Landowner lets land in conacre to a farmer. Landowner does not claim Single Farm Payment but farmer does.	Farmer

5. What will be done to keep on-farm inspections to a minimum?

DARD and EHS are committed to ensuring that Cross-Compliance inspections should not place an undue burden on farmers. To that end, on-farm inspections will be co-ordinated, as far as possible, to reduce the number of inspections required. Most inspections by EHS of SCI, SPAs and ASSI will be undertaken by aerial reconnaissance.

In meeting the 1% overall Cross-Compliance inspection requirement, DARD and EHS will try, as far as possible, to ensure that all the Cross-Compliance requirements that apply to a farm selected for inspection are inspected at the one time. This will mean that, where practicable, inspections will be co-ordinated so that the agencies involved attend the farm at the same time. In adopting this approach, DARD and EHS also recognise the need to ensure that these co-ordinated inspections do not tie up the farmer's time unnecessarily. If you are selected for a Cross-Compliance inspection by either DARD or EHS you will be inspected for all the relevant Cross-Compliance standards that fall under that particular department's/agency's area of responsibility. However, if you are selected by both DARD and EHS you will be inspected against all the relevant Cross-Compliance standards.

6. What sanctions may apply?

If you, or someone acting on your behalf, fail to comply with any of the Statutory Management Requirements or the standards relating to Good Agricultural and Environmental Condition, your overall direct agricultural support payment may be reduced or you may, in extreme circumstances, be excluded from an aid scheme. You will be responsible for your employees or persons who undertake tasks for you, as well as for agents and those who could be said to be acting on your behalf, such as contractors.

A failure to comply with certain Cross-Compliance requirements relating to the Statutory Management Requirements may be a criminal offence under domestic legislation and, as such, would carry a criminal sanction. A failure to comply with the requirements of relevant legislation could, therefore, result in you being prosecuted in addition to the payment reductions and exclusions detailed below.

If you act negligently and fail to comply with a Cross-Compliance requirement, your overall direct payment will generally be reduced by 3% for each non-compliance. However, this reduction can be reduced to 1% or increased to 5%, depending on the seriousness of the breach. The seriousness of the breach will depend on the assessment of the severity, the extent and permanence of the breach identified. For very minor technical breaches a warning letter may be issued.

If you commit more than one breach in the same Statutory Management Requirement category, (that is, either the environmental regulations or the animal identification and registration regulations) or Good Agricultural and Environmental Condition then this will be treated as one non-compliance for the above purposes. Where a breach of the same specific requirement or verifiable standard is repeated within three years, the reduction will be increased by a factor of three, up to a maximum of 15%. Once the reduction reaches 15%, if you fail to comply with the same requirement or standard you will be treated as having intentionally failed to comply.

Where more than one negligent non-compliance with regard to the different Statutory Management Requirement categories or GAEC has been determined each case of non-compliance will attract a penalty. These penalties shall be added however the maximum reduction shall not exceed 5%.

Depending on the circumstances surrounding a particular breach it may be decided to class your first breach of a Cross-Compliance standard as intentional. In cases of intentional non-compliance, your direct payment will generally be reduced by 20% but this reduction can be reduced to 15% or increased to 100%. Intentional non-compliance may even result in exclusion from that aid scheme in the following calendar year. Where an intentional breach of the same specific requirement or standard is repeated within three years it will lead to exclusion from the aid scheme concerned for that calendar year and in extreme cases exclusion from the following calendar year as well.

It is also important to note that while a breach in the first instance could be deemed as negligence a repeat could be deemed as intentional and a higher penalty would therefore apply.

The following table summarises the information overleaf:

Breach	Breach classified as negligence	Breach classified as intentional
First breach	<p>1% - 5% Penalty</p> <p>If negligent breaches are identified in a number of Cross-Compliance categories, penalties of between 1% and 5% will be applied for each. However, the total penalty cannot exceed 5%.</p>	<p>15% - 100% Penalty and in extreme cases will lead to exclusion from the aid scheme for the following year.</p>
Repeat breach of the same specific Cross-Compliance requirement	<p>Original penalty x 3</p>	<p>If the breach is now considered intentional a 15% - 100% penalty will apply and in extreme cases will lead to exclusion from the aid scheme for the following calendar year.</p> <p>If the first breach was deemed intentional, the repeat breach will lead to exclusion from the aid scheme for the current calendar year and in extreme cases for the following calendar year.</p>
Second repeat breach of the same specific requirement	<p>Repeat penalty x 3 (capped at 15%)</p> <p>If the repeat penalty had reached 15%, the next breach, if of the same specific requirement, will be deemed to be intentional and the penalty will be in range 15% - 100% and in extreme cases may result in exclusion from the aid scheme for the following year.</p>	<p>If the breach is now considered intentional a 15% - 100% penalty will apply and in extreme cases may result in exclusion from the aid scheme for the following year.</p> <p>If the first repeat breach was deemed intentional, the second repeat breach will lead to exclusion from the aid scheme for the calendar year concerned and in extreme cases may result in exclusion from the aid scheme for the following year.</p>

<p>Third repeat breach of the same specific requirement</p>	<p>Second repeat penalty x 3 (capped at 15%)</p> <p>If the repeat penalty had reached 15%, the next breach, if of the same specific requirement, will be deemed to be intentional and penalty will be in range 15% - 100% and in extreme cases may result in exclusion from the aid scheme for the following year.</p>	<p>If the breach is now considered intentional a 15% - 100% penalty will apply and in extreme cases may result in exclusion from the aid scheme for the following year.</p> <p>If the second repeat breach was deemed intentional, the third repeat breach will lead to exclusion from the aid scheme for the calendar year and in extreme cases may result in exclusion from the aid scheme for the following year.</p>
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Examples

- (i) *A farmer in the first year was found to be negligent and a penalty of 3% applied. If the farmer repeated the same breach for a second time, the penalty would increase to 9% (that is, 3% x 3). If he/she then repeated the same breach for the third time, the breach would be capped at 15% (9% x 3 = 27% and reduced to 15%). If a fourth breach of the same requirement was found, this would now be automatically classed as intentional and, depending on the extent, severity and permanence of the breach, the penalty will be 15% to 100% and in extreme cases may result in exclusion from the aid scheme for the following calendar year.*
- (ii) *A farmer in the first year was found to be negligent and a penalty of 4% applied. If the breach was repeated and given the particular circumstances, was now determined to be intentional, this would result in a 15% to 100% penalty being applied and in extreme cases may result in exclusion from the aid scheme for the following calendar year.*
- (iii) *A farmer in the first year was found to have committed an intentional non-compliance and a 15% to 100% penalty was applied. If the breach was repeated a second time within three years of the original breach being discovered the farmer would be excluded from the aid scheme for that calendar year and in extreme cases may be excluded from the aid scheme for the following calendar year.*

Where similar Cross-Compliance requirements exist across England, Scotland, Wales and Northern Ireland the level of penalties for breaches of Cross-Compliance will be standardised across the United Kingdom. This means that a farmer in Northern Ireland should receive the same level of penalty as a farmer in England, Scotland or Wales for a similar breach.

If you breach a Cross-Compliance Verifiable Standard which is also a requirement under the Less Favoured Area Compensatory Allowance Scheme or Agri-Environment Schemes, depending on the circumstances, a penalty may be applied to both your Single Farm Payment and any payment due in respect of the other Schemes.

7. Can I appeal?

You have a right to appeal any decision to apply a penalty or exclusion. Details of the appeals procedure will be sent with the letter advising you of the breach and subsequent penalty. An information leaflet on the Single Farm Payment appeals procedure and application forms are available on request from:

**The Single Farm Payment Appeals Section
Orchard House
40 Foyle Street
Derry/Londonderry
BT48 6AT**

**Tel : 028 7131 9900
Fax: 028 7131 9800**

Email: gspd.sfps@dardni.gov.uk

8. Contact Details

If you have a query on any of the information contained within the booklet or you wish to request the booklet in an alternative format please contact:

**Department of Agriculture and Rural Development
Rural Payments and Inspection Division
Room 558
Dundonald House
Upper Newtownards Road
Belfast
BT4 3SB**

**Tel: 028 9052 5549
Fax: 028 9052 4431**

Email: gspd.sfps@dardni.gov.uk

Bodies Responsible for Cross-Compliance Requirements

1 Statutory Management Requirements (SMRs)

Statutory Management Requirement	Responsible Body
Council Directive 79/409/EEC on the conservation of wild birds (Articles 3, 4(1), (2), (4), 5, 7 and 8)	EHS
Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (Articles 6, 13, 15 and 22(b))	EHS
Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances (Articles 4 and 5)	EHS
Council Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (Article 3)	EHS
Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (Articles 4 and 5)	EHS
Council Directive 92/102/EEC on the identification and registration of animals (Articles 3, 4 and 5)	DARD
Commission Regulation (EC) No 2629/97 of laying down detailed rules for the implementation of Council Regulation (EC) 820/97 as regards eartags, holding registers and passports in the framework of the system for the identification and registration of bovine animals (Articles 6 and 8)	DARD
Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (Articles 4 and 7)	DARD
Council Regulation No 21/2004 establishing a system for the identification and registration of ovine and caprine animals (Articles 3, 4 and 5)	DARD

2 Good Agricultural and Environmental Conditions (GAEC)

DARD will be responsible for the GAEC measures. There are six GAEC measures:

- 1 Soil Management
- 2 Supplementary Feeding
- 3 Overgrazing
- 4 Under-grazing
- 5 Field Boundaries
- 6 Protection of Habitats (wildlife areas), Archaeological Sites and Permanent Pasture



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