

Calculation of Cross-Compliance Penalties (2014)

1. This document sets out the Northern Ireland penalty framework for calculating penalties for breaches of the **Cross-Compliance** requirements.
2. Cross-Compliance applies to the following payments and schemes:
 - Single Payment Scheme;
 - Less Favoured Area Compensatory Allowances Scheme;
 - Aid for Energy Crops;
 - Protein Crop Premium;
 - Organic Farming Scheme;
 - NI Countryside Management Scheme;
 - Woodland Grant Scheme (agreements signed after 1/1/07)
 - Farm Woodland Premium Scheme (agreements signed after 1/1/07)
 - Sustainable Forest Operation Grant Scheme (agreements signed after 1/1/07)

Background

3. The Northern Ireland Cross-Compliance requirements are divided into two key sets of requirements:
 - (1) Maintenance of land in Good Agricultural and Environmental Condition (GAEC). There are seven main GAEC measures as follows:
 - Soil Management;
 - Supplementary Feeding;
 - Overgrazing;
 - Under Grazing;
 - Field Boundaries;
 - Protection of Habitats (wildlife areas), Archaeological Sites and Permanent Pasture;
 - Irrigation Authorisations;
 - Protection of Ground Water Against Pollution
 - (2) Compliance with Statutory Management Requirements (SMRs). The SMRs relate to existing European Legislation on:
 - The environment;
 - Public, animal and plant health;
 - Animal welfare.
4. Full details of the Northern Ireland Cross-Compliance requirements can be found in the booklet Cross-Compliance Verifiable Standards Summary (1 January 2014) at - www.dardni.gov.uk/cross-compliance.

Identification of non-compliance

5. Non-compliance with the Cross-Compliance requirements will be verified through a programme of on-farm inspections. Where non-compliance is identified, the breach will be assessed in terms of intent, extent, severity, permanence and repetition. The assessment of each of these principles will be used to determine whether a penalty is applied, and at what level. Penalties in respect of findings at inspection will be applied in the year of the finding.
6. To assist inspectors assess the severity, permanence, intent and extent of breaches guidance documents have been developed. To help with the assessment of these issues for breaches of the Cattle Identification, Registration and Movement requirements under SMR 7 calculation method has been developed (details of the calculator method can be found by following web link [How Cross Compliance Penalties are Calculated](#)).

Fixing of penalties - who will be held responsible?

7. As a general rule the person who claims the land will be held responsible for a land related Cross-Compliance breach on that land unless they can prove that they are not responsible.
8. If more than 1 person submits a claim on a piece of land (e.g. one person claims SFP and the other person claims LFACA) both will receive a penalty unless it can be proved who was directly responsible for the breach.
9. As established above, any applicant that has used the land to support a claim on which a breach has been identified will be penalised. However, in addition to that applicant it is possible that another farmer has declared the same land but not used it to support a claim. If this farmer is claiming other land under a different scheme they also will receive a penalty against the scheme in question unless it can be proved they were not directly responsible for the breach. This is because Cross-Compliance applies to all the agricultural land on an applicant's holding not just the land used to support a claim for funding.
10. In addition, in relation to land breaches, Article 23 of Regulation 73/2009 allows us to hold another person responsible if the breach was directly attributable to them in a period when they had responsibility for the land. This is provided the other person is a claimant under at least one of the schemes covered by Cross-Compliance. If they are not a claimant and the breach is directly attributable to them, then penalties are applied to the person who claimed the land concerned.
11. Therefore if the transferor (i.e. the person the claimant took the land from) submits a claim for other land in that calendar year, they will be liable for Cross-Compliance breaches during the period that the transferred land was at their disposal (i.e. before it was transferred). Similarly, if the claimant claimed on some land which he then transferred out after 15 May, and if the transferee (i.e. the person who has acquired the land from the claimant) has submitted a

claim in that calendar year, they (the transferee) will be liable for Cross-Compliance breaches during the period the land was at their disposal (i.e. from the date of the transfer). However if the transferor or transferee in the above examples does not submit a claim in that calendar year, then the claimant will be held liable for Cross-Compliance breaches directly attributable to the transferor or transferee during the time the land was transferred.

12. Therefore, if the claimant is transferring land (either in or out) during the year, **he should carefully consider the terms of any contractual arrangements between himself and the transferor or transferee.** This is so he can make sure that his interests are protected and he can produce documentary evidence regarding responsibility for the land if either a Cross-Compliance breach occurs or access to inspectors is prevented before or after the land transfer. Land is to be considered at the disposal of the claimant for the entire calendar year of the claim unless documentary evidence proves otherwise. The onus is on the claimant to produce such evidence.
13. Nitrates Controller Agreements: If a breach of SMR 5(Nitrates) is identified in the first instance, it is the person claiming the land for direct agricultural support purposes that is responsible for the breach and any associated penalty. However, if evidence is provided that another party has agreed to take responsibility for nitrates purposes on the land (Nitrates Action Programme Controller Agreement), they will be held responsible, and any associated penalty to their direct agricultural support payments will be applied. It is recognised that this could create a loophole if the person named in the Controller Agreement is not in receipt of direct agricultural support. In these cases, the NIEA carries out further investigations to ensure that the Controller Agreement is valid and to check for evidence of collusion between the claimant and the person named in the Controller Agreement, to avoid the application of Cross Compliance penalties. If collusion is identified, NIEA will notify the Paying Agency and the SMR 5 penalty shall be applied to the person claiming the land for direct agricultural support purposes.
14. Therefore the liability rules will be applied following the examples set out below (for each of these scenarios below where there is more than one farmer involved neither farmer has been able to prove who is directly responsible for the breach identified) :

Scenario	Responsibility
1. Farmer A claims land for SFP (no other claims i.e. LFACA, New Countryside Management Scheme etc are lodged in respect of the land) and a breach is identified.	The penalty should be applied to farmer A.
2. Farmer A claims land for SFP and LFACA and a breach is identified on the land (no other claims are lodged in respect of the land).	Penalties should be applied to farmer A's SFP and LFACA.

3. Farmer A claims SFP and LFACA on parcel B. He also declares parcel C on his application form but does not claim on it. A breach is identified on parcel C. No one else submits a claim in respect of parcel C.	Penalties should be applied to farmer A's SFP and LFACA.
4. Farmer A claims a piece of land for SFP and Farmer B claims the same piece of land for LFACA and a breach is identified.	Both should be penalised against the claims they submitted on the land in question unless it is proved that one of the applicants was solely responsible for the breach.
5. If no one uses the land to support a claim but farmer A (who is claiming funding under a scheme covered by Cross-Compliance) certifies on his application form that it forms part of his land (and he is the only one to do this) and a breach is identified	Farmer A should be penalised against the scheme covered by Cross-Compliance.
6. If no one uses the land to support a claim, but farmer A and farmer B (who are claiming funding under schemes covered by Cross-Compliance) certify on their application forms that it forms part of their land and a breach is identified	Both should be held responsible and penalties should be applied to the schemes each has applied for funding under unless it can be proved that one of the applicants was solely responsible for the breach.
7. Farmer A submits a claim for SFP for land which he rents out in conacre to Farmer B. Farmer B claims SFP on his own land and includes the conacre land on his SAF. A breach is found on the conacre land (i.e. land owned and claimed by Farmer A).	Farmer A and Farmer B should be held responsible and the appropriate penalties applied to both their SFP claims unless it can be proved that one of the applicants was solely responsible for the breach.

8. Farmer A claims SFP on a particular piece of land and NICMS on a different piece of land. No one has used the SFP land to support a NICMS application. There is a breach identified on the land on which Farmer A claims SFP.	A penalty should be applied, to the farmer's SFP and NICMS payments.
9. Farmer A claims LFACA on an area of land and SFP on different land. Farmer B claims SFP on the same land that farmer A claims LFACA on. A breach on this land is identified.	Farmer A should receive a penalty against his LFACA and SFP claims and farmer B should received a penalty against his SFP claim unless it can be proved that one of the applicants was solely responsible for the breach.
10. Farmer A claims SFP on field C. Farmer A sells field C to Farmer B in September (Farmer B claims SFP in his own right). Farmer B breaches SMR 5 in field C in October.	Farmer B is liable and reduction would be applied to his SFP.
11. Farmer A claims under NICMS on field C. Farmer A sells field C to Farmer B in September (Farmer B claims under the NICMS (on other land) in his own right. Farmer B breaches SMR 5 in field C in October.	Farmer B is liable and reduction would be applied to his NICMS claim.
12. Farmer A claims SFP on field C. Farmer A sells field C to Farmer B in September (Farmer B only claims under the NICMS on other land). Farmer B breaches SMR 5 in field C in October.	Farmer B is liable for NICMS and a reduction would be applied to his NICMS claim.
13. Farmer A claims SFP and LFACA on field C. Farmer A sells field C to Farmer B in September (Farmer B only claims under the NICMS (on other land). Farmer B breaches SMR 5 in field C in October and liability for the breach cannot be established.	Farmer A is liable for SFP and LFACA and reductions would be applied to his SFP and LFACA payments. Farmer B is liable for the NICMS and a reduction would be

	applied to his NICMS claim.
14. Farmer A claims SFP and LFACA on field A but a valid Nitrates Controller Agreement is in place giving responsibility for nitrates purposes to Farmer B. A breach of SMR 5 is identified	Farmer B is liable and a penalty should be applied to all Farmer B's direct agricultural support payments
15. Farmer A claims SFP and LFACA on field A and Farmer B claims NICMS. A valid Nitrates Controller Agreement is in place giving responsibility for nitrates purposes to Farmer C. A breach of SMR 5 is identified.	Farmer C is liable and a penalty should be applied to all Farmer C's direct agricultural support payments

15. Responsibility for ensuring compliance with the animal related Cross-Compliance requirements falls to the keeper of the animals.
16. While the above table sets out our default position with regard to responsibility if the applicant can prove that he/she or the person to whom or from whom the agricultural land was transferred was not responsible for the breach then we will not impose a penalty. In these types of cases the evidence will be carefully evaluated before a final decision is taken on liability.

Rules on the calculation of penalties

17. The principles for assessing Cross-Compliance breaches and for the application of penalties are set out in Council Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1122/2009.
18. The Cross-Compliance requirements for the purpose of applying penalties are grouped into the following areas:
 - a. Cross-Compliance Area 1 = GAEC
 - b. Cross-Compliance Area 2 = Public, animal and plant health SMRs
 - c. Cross-Compliance Area 3 = Environmental SMRs
 - d. Cross-Compliance Area 4 = Animal welfare SMRs
19. If you act **negligently** and fail to comply with a Cross-Compliance requirement your overall payment in respect of the schemes listed in paragraph 2 will generally be reduced by 3% for each non-compliance. However, this reduction can be decreased to 1% or increased to 5%, depending on the overall seriousness of the breach. The seriousness of the breach will depend on the assessment of its severity, extent and permanence provided by the inspector. For very minor technical breaches a warning letter may be issued.

Example - Breach assessed as negligent

You have breached Soil Management GAEC requirement “has the land been severely poached”. The judgement is that the breach is medium severity, caused by negligence, is rectifiable and the effect is confined on-farm. To identify the penalty to be imposed for this breach you use the negligent penalty framework ([please click here](#)), go to the section limited on-farm effect, medium severity and permanence rectifiable. This indicates that the penalty in this case will be 3% reduction in your 2014 payments under the schemes listed in paragraph 2. This technique should be repeated for each negligent breach reported.

20. Depending on the circumstances surrounding a particular breach it may be decided to class a breach of a Cross-Compliance requirement standard as **intentional**. In cases of intentional non-compliance your payment will generally be reduced by 20%, but this reduction can be decreased to 15% or increased to 100%.

Example - Breach assessed as intentional

You have breached the Soil Management GAEC requirement “has the land been severely poached”. The judgement is that the breach is medium severity, is intentional, is rectifiable and the effect is confined on-farm. To identify the penalty to be imposed for this breach you should go to the intentional penalty framework ([please click here](#)), go to the section limited on-farm effect, medium severity and permanence rectifiable. The penalty in this case will be a 30% reduction in your 2014 payments under the schemes listed in paragraph 2. This technique should be repeated for each intentional breach reported.

21. The rules governing the size of penalties to be applied for both negligent and intentional breaches have been incorporated into UK- wide penalty frameworks. The negligent penalty framework and the intentional penalty framework is at the [DARD website](#).
22. Once a breach has been notified to the Paying Agency, the size of the penalty to be applied will be calculated using the relevant overarching penalty framework. This is to ensure, as far as possible, that a farmer in Northern Ireland receives the same level of penalty as a farmer in England, Scotland or Wales for a similar breach.

More than one negligent breach in the same Cross-Compliance area

23. If you have more than one negligent breach in the same Cross-Compliance area in the same calendar year (that is either the environmental SMRs, the public, animal and plant health SMRs, the animal welfare SMRs or Good Agricultural and Environmental Condition), then this will be treated as one non-compliance for the purpose of fixing a penalty. In this case the highest penalty in respect of the non-compliances identified will be applied.

Example of more than one negligent breach in the same Cross-Compliance area

You have negligently breached the following three GAEC requirements which, from the negligent penalty framework, would attract the associated penalties:

a) GAEC Soil Management Requirements

“Has land been severely trampled or poached?” – Penalty 3%

b) GAEC Supplementary Feeding Sites

“Is there evidence of sacrifice areas/paddocks (other than those permitted)?”
– Penalty 1%

c) GAEC Field Boundaries

“Is there evidence of field boundary removal without prior DARD approval?” –
Penalty 1%

Because the three breaches are negligent breaches and fall within the same Cross-Compliance Area (Area 1 – GAEC) they will be treated as one breach with the highest penalty in respect of the non-compliances identified being imposed, that is 3%.

More than one intentional breach in the same Cross-Compliance area

24. If you have more than one intentional breach in the same Cross-Compliance area in the same calendar year (that is either the environmental SMRs, the animal identification and registration SMRs, the animal welfare SMRs or Good Agricultural and Environmental Condition), then they will be treated as one non-compliance for the purpose of fixing a penalty. In this case the highest penalty in respect of the non-compliances identified will be applied.

Example of more than one intentional breach within the same Cross-Compliance area

You have intentionally breached the following three GAEC requirements which, from the intentional penalty framework, would attract the associated penalties:

a) GAEC Soil Management Requirements

“Has land been severely trampled or poached?” – Penalty 20%

b) GAEC Supplementary Feeding Sites

“Is there evidence of sacrifice areas/paddocks (other than those permitted)?”
– Penalty 20%

c) GAEC Field Boundaries

“Is there evidence of field boundary removal without prior DARD approval?” – Penalty 30%

Because the three breaches fall within the same Cross-Compliance Area (Area 1 – GAEC), they will be treated as one breach and the highest penalty in respect of the non-compliances identified being imposed, that is 30%.

25. If both negligent and intentional breaches are discovered in the same Cross-Compliance area, then they will be treated as one non-compliance for the purposes of fixing a penalty. In this case, the highest penalty in respect of the non-compliances identified will be imposed.

Example of a combination of negligent and intentional breaches within the same Cross-Compliance area

You have negligently breached the first two of the following three GAEC requirements and intentionally breached the third, attracting the following associated penalties:

a) GAEC Soil Management Requirements

Negligent breach of “Has land been severely trampled or poached?” – Penalty 3%

b) GAEC Supplementary Feeding Sites

Negligent breach of “Is there evidence of sacrifice areas/paddocks (other than those permitted)?” – Penalty 1%

c) GAEC Field Boundaries

Intentional breach of “Is there evidence of field boundary removal without prior DARD approval?” – Penalty 30%

As all the breaches fall within the same Cross-Compliance Area (Area 1 – GAEC) they will be treated as one breach with the highest penalty in respect of the non-compliances identified being imposed that is 30%.

26. The rules above (breaches within the same Cross-Compliance area) also apply if breaches are discovered within the same GAEC measure or Statutory Management requirement.

Negligent breaches identified under different Cross-Compliance areas

27. Where more than one negligent non-compliance with regard to the different SMR categories or GAEC has been determined in the same calendar year, each case of non-compliance will attract a penalty. These penalties shall be added, however the maximum reduction will not exceed 5%.

28. There is no maximum level of reduction if more than one intentional non-compliance with regard to the different SMR categories or GAEC has been determined in the same calendar year (see example 4 below).

Example 1

You have negligently breached the following Cross-Compliance requirements:

a) GAEC Soil Management Requirements (Cross-Compliance Area 1)

Negligent breach of “Has land been severely trampled or poached?” – Penalty 3%

b) SMR 2 Habitats (Cross-Compliance Area 3)

Negligent breach of “Is there evidence of destruction, cutting or uprooting of protected plant species?” – Penalty 1%

Because the two breaches fall into different Cross-Compliance areas (that is 1 and 3), the associated penalties will be added together to give the overall penalty to be deducted that is $3\% + 1\% = 4\%$ penalty.

Example 2

You have negligently breached the following Cross-Compliance requirements:

a) GAEC Soil Management Requirements (Cross-Compliance Area 1)

Negligent breach of “Has land been severely trampled or poached?” – Penalty 3%

b) SMR 2 Habitats (Cross-Compliance Area 3)

Negligent breach of “Is there evidence of destruction, cutting or uprooting of protected plant species?” – Penalty 3%

Because the two breaches fall into different Cross-Compliance areas (that is 1 and 3) the associated penalties will be added together to give the overall penalty to be deducted that is $3\% + 3\% = 6\%$ penalty. However, because these are first time negligent breaches the overall penalty cannot be over 5%, so therefore, the 6% penalty will be reduced and a penalty of 5% imposed.

Example 3

You have negligently breached Cross-Compliance requirements under Cross-Compliance areas 1 and 3 and intentionally breached a requirement under Cross-Compliance area 2:

a) GAEC Soil Management Requirements (Cross-Compliance Area 1)

Negligent breach of “Has land been severely trampled or poached?” – Penalty 3%

b) SMR 2 Habitats (Cross-Compliance Area 3)

Negligent breach of “Is there evidence of destruction, cutting or uprooting of protected plant species?” – Penalty 3%

c) SMR 6 Animal Identification and Registration (Cross-Compliance Area 2)

Intentional breach of “Pigs of any age moving to slaughterhouse without a DARD herd mark” – 30%

Because all three breaches fall into different Cross-Compliance areas (that is 1, 2 and 3) the associated penalties will be added together to give the overall penalty to be deducted i.e. $3\% + 3\% + 30\% = 36\%$ penalty. However, because the first two are first time negligent breaches the overall penalty cannot be over 5%, so therefore, the 6% penalty will be reduced and a penalty of 5% applied. As the 5% cap only applies to negligent penalties the 30% intentional penalty will be added to the 5% penalty for the negligent breaches, giving an overall penalty of $5\% + 30\% = 35\%$ to be imposed.

Example 4

You have intentionally breached the following Cross-Compliance requirements:

a) GAEC Soil Management Requirements (Cross-Compliance Area 1)

Intentional breach of “Has land been severely trampled or poached?” – Penalty 20%

b) SMR 2 Habitats (Cross-Compliance Area 3)

Intentional breach of “Is there evidence of destruction, cutting or uprooting of protected plant species?” – Penalty 30%

Because the two breaches fall into different Cross-Compliance areas (that is 1 and 3) and are considered intentional, the associated penalties will be added together to give the overall penalty to be deducted i.e. $20\% + 30\% = 50\%$ penalty.

Minor Non-Compliances

29. The Commission, as part of the CAP Simplification process, has agreed the use of Cross-Compliance warning letters for negligent minor non-compliances which are rectifiable. However, all such cases must be followed up to ensure that the minor non-compliance has been rectified within a time limit.

Example of the type of breach for which a warning letter would be issued if the breach was rectified within the time limit set by the Inspector.

Under the Food and Feed Law SMR, there is a requirement which states “You must ensure that milking equipment and the premises where milk is stored, handled or cooled must be located and constructed so as to limit the risk of contamination of milk”. For this breach, a warning letter would be issued if the Inspector judged that there were only minor problems with the location or construction of the premises and that this posed only a small risk of contamination. If the breach was judged to be more serious a penalty would be applied.

30. If the breach is rectified at the time of inspection or is rectified by the deadline set, a warning letter will be issued in respect of the minor non-compliance. If the breach has not been rectified and at re-inspection the inspector assesses that the breach still warrants a warning letter, a 1% penalty will be applied.
31. If at re-inspection the inspector assesses that the breach has worsened, the appropriate penalty based on the severity, extent, permanence etc identified at re-inspection will be applied.
32. A non-compliance which has been considered as minor for which a warning letter has been issued and which has been remedied by the farmer within the time limit set will not be considered as a non-compliance for the purposes of repetition.

Example 1

In 2012 you negligently breached the following Cross-Compliance requirement:

SMR 10 Food and Feed Law (Cross-Compliance Area 2)

Negligent breach of – “Milking must be carried out hygienically” – Penalty Warning Letter. However you subsequently rectify the breach within the time limit set by the inspector. In this case the warning letter should still issue.

Example 2

In 2014 a breach of the same specific requirement is identified. This will not be considered as a repeat breach because the first breach was rectified within the time limit set by the inspector. The breach in 2014 will therefore be treated as a first time breach and the appropriate penalty applied.

Repeat breaches

33. For a breach to be classed as a repeat breach you must have breached the same specific Cross-Compliance requirement within three calendar years of the date of the inspection which identified the first breach. As an example of what is meant by the same specific Cross-Compliance requirement within GAEC Measure 1 (Soil Management), there are 3 specific Cross-Compliance requirements:

(1) Has the land been severely trampled or poached?

- (2) Is there evidence of cultivated land not in crop/grass/stubble cover or ploughed or disced?
 - (3) Is there evidence of cultivations on waterlogged soil?
34. If you breach requirement (1) more than once in a three calendar year period, the breach will be considered a repeat breach. However, if you breach the first requirement in year 1 and the second requirement in year three, it will not be considered a repeat breach.
35. It is possible to breach the same specific Cross-Compliance requirement more than once in the same calendar year. If this situation occurs, the standard repeat breach penalty rules apply.

Repeat Breach of the same specific Cross-Compliance requirement due to negligence.

36. Where a repeat breach is discovered within three calendar years of the discovery of the original negligent breach, the penalty to be applied will be the penalty in respect of the repeated non-compliance multiplied by a factor of three.

Example

In 2012 you negligently breached the following Cross-Compliance requirement:

GAEC Soil Management Requirements (Cross-Compliance Area 1)

Negligent breach of “Has land been severely trampled or poached?” – Penalty 1%

In 2014 a breach of the same specific requirement is identified which because of its severity, extent, permanence etc would attract a penalty of 3%.

As this is a first time repeat breach we must multiply the penalty level due in respect of the repeated non-compliance by 3 that is $3\% \times 3 = 9\%$ reduction will be applied.

37. In cases of further repetitions, the multiplication factor 3 shall be applied each time to the result of the reduction fixed in respect of the previous repeated non-compliance. The maximum reduction shall, however, not exceed 15%. Once the reduction reaches 15% if you fail to comply with the same requirement you will be treated as having intentionally failed to comply. Once the maximum percentage of 15% has been reached you will be informed that if the same non-compliance is determined again, it will be considered that you acted intentionally. Where a further non-compliance is identified of the same Cross-Compliance requirement, within a three calendar year period beginning when the last breach was identified, the percentage reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15% was applied by the factor three.

Example 1

Following on from the example above 6 months later you are inspected again and a breach of the same specific requirement is identified:

Negligent breach of “Has land been severely trampled or poached?” Previous penalty $9\% \times 3$ (because it is a 2nd time repeat breach) = 27%, but this must be reduced to 15% as the maximum deduction for a repeat negligent breach is 15%. At this stage you will be informed that if the same non-compliance is determined again, it will be considered that you acted intentionally

Example 2

A year later a breach of the same specific requirement is identified:

Breach of “Has land been severely trampled or poached?”

The breach is now considered to have been caused intentionally. The percentage reduction will be calculated by multiplying the result of the previous multiplication, where applicable, before the limitation to 15% was applied by 3 that is previous penalty before reduced to 15% = $27\% \times 3 = 81\%$.

Other rules relating to capping negligent breaches at 15 %

38. In cases where a repeated non-compliance is determined together with another non-compliance or another repeat non-compliance the resulting penalties should be added together. The overall penalty shall however not exceed 15%.

Example 1

It is found that you have breached the following requirements:

GAEC Soil Management Requirements (Cross-Compliance Area 1)

Repeat negligent breach of “Has land been severely trampled or poached?” = Penalty 5% (based on the severity, extent, permanence etc identified in respect of the repeat breach) $\times 3 = 15\%$.

SMR 2 Habitats (Cross-Compliance Area 3)

Negligent breach of “Is there evidence of destruction, cutting or uprooting of protected plant species?” = Penalty 3%

The penalty to be imposed is $15\% + 3\% = 18\%$ but capped at 15%. Because the GAEC Soil Management breach has reached the 15 % capping level at this stage you will be informed that if the same breach of the GAEC Soil Management Requirement is identified again, it will be considered that you acted intentionally

Example 2

It is found that you have breached the following requirements:

GAEC Soil Management Requirements (Cross-Compliance Area 1)

Repeat negligent breach of “Has land been severely trampled or poached?” =
Penalty 3% (based on the severity, extent, permanence etc identified in respect of
the repeat breach) X 3 = 9%

SMR 2 Habitats (Cross-Compliance Area 3)

Repeat negligent breach of “evidence of non-compliance with terms of management
agreement” = Penalty 3% (based on the severity, extent, permanence etc identified
in respect of the repeat breach) X 3 = 9%

The penalty to be imposed is 9% + 9% = 18% but capped at 15%.

Example 3

Following on from example 2 in the following year the following breaches are
identified again:

GAEC Soil Management Requirements (Cross-Compliance Area 1)

2nd repeat negligent breach of “has land been severely trampled or poached?” =
Previous penalty 9% X 3 = 27%

SMR 2 Habitats (Cross-Compliance Area 3)

2nd repeat negligent breach of “Evidence of non-compliance with terms of
management agreement” = Previous penalty 9% X 3 = 27%

The penalty to be imposed is 27% + 27% = 54% but capped at 15%. At this stage
you will be informed that if either of the above non-compliances are determined
again, it will be considered that you acted intentionally

Intentional repeat breaches

39. Where an intentional breach of the same specific requirement is repeated
within three calendar years of the original breach being identified the penalty
to be applied will be the penalty in respect of the repeated non-compliance
multiplied by a factor of three.
40. In cases of further repetitions, the multiplication factor 3 shall be applied each
time to the reduction fixed in respect of the previous non-compliance.

Example 1

In June 2012 at inspection it was discovered that a farmer intentionally breached the
following Cross-Compliance requirement:

GAEC Soil Management Requirements (Cross-Compliance Area 1)

Intentional breach of - has land been severely trampled or poached? – Penalty 15%

Example 2

In February 2013 the farmer is inspected again and an intentional breach of the same specific requirement is identified which because of its severity, extent, permanence etc would attract a penalty of 20%.

Because this is a first time repeat breach we must multiply the penalty level due in respect of the repeated non-compliance by 3 i.e. $20\% \times 3 = 60\%$ reduction should be applied.

Example 3

In June 2014, the farmer is inspected again and a breach of the same specific requirement is identified:

Intentional breach of - has land been severely trampled or poached? – Previous penalty $60\% \times 3$ (because it is a 2nd time repeat breach) = 180%. Therefore a 100% penalty should be applied

Example 4

A year later the farmer is inspected again and an intentional breach of the same specific requirement is identified:

Breach of - has land been severely trampled or poached?

As the previous penalty was 100% this should be multiplied by 3 = 300%. Therefore a 100% penalty should be applied.