

2021 Cross-Compliance

1. Cross-Compliance Penalty Business Rules

- 1.1** Following a review of the Cross-Compliance penalty regime, there have been changes to the penalty matrices with effect from 2021.

2. UK Exit from the EU (Brexit)

2.1 Legislation

The Withdrawal Agreement setting the terms for the withdrawal of the UK from the EU disapplies the EU direct payments regulatory requirements (Regulation No.1307/2013) and associated regulations in the UK from the 2020 scheme year. However, the Withdrawal Agreement requires the UK to operate direct payments schemes in 2021 which are equivalent to the EU schemes.

Therefore, the EU direct payment regulations are reapplied in UK law by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and as amended by secondary legislation made under the Direct Payments to farmers (Legislative Continuity) Act 2020 and the Agriculture Act 2020. Consequently, the arrangements for direct payments in the 2021 scheme year replicate those for the 2020 scheme year, other than the changes arising from the EU Exit. Any references in the Cross-Compliance Penalty Business Rules are to be taken as references to those provisions, as retained in UK law.

Cross-Compliance Penalty Business Rules



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Introduction

1. These instructions are to be used in all cases where penalties need to be determined for non-compliance with **Cross-Compliance** standards under the following Area-based Schemes:

- Basic Payment Scheme (BPS)
- Young Farmers Payment
- Environmental Farming Scheme (EFS);
- Forestry Expansion Scheme; Forest Protection Scheme
- Woodland Investment Grant
- Protein Crops Scheme
- Small Woodland Grant Scheme
- Farm Woodland Premium Scheme (agreements signed on or after 1/1/07)

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

2. The following areas under the Department of Agriculture, Environment and Rural Affairs (DAERA) have responsibility for ensuring compliance with the Cross-Compliance standards - Food and Farming Group (FFG), Veterinary Service Animal Health Group (VSAHG) and the Northern Ireland Environment Agency (NIEA), which is an Agency of DAERA. In addition, the Health and Safety Executive (Northern Ireland) (HSE[NI]) also have responsibility for an element of the Cross-Compliance standards. The table in **Annex 1** sets out the Cross-Compliance SMRs and GAECs effective from 1 January and the areas of Cross-Compliance that they fall into, together with the responsible body.
3. FFG, VSAHG and NIEA have all been designated as competent control authorities in Northern Ireland and will undertake inspections for each of the Cross-Compliance requirements for which they are responsible. HSE(NI) has also been designated as a competent control authority but its Cross-Compliance inspections are undertaken by Agri-food Inspection Branch (AfIB) within VSAHG.

4. Compliance with these Standards will be verified by on-farm inspections.

How will the Cross-Compliance standards be inspected in Northern Ireland

5. DAERA FFG, VSAHG, NIEA and HSE (NI) will ensure that **on-farm Cross-Compliance inspections** are carried out on at least 1% of farms claiming Area-based Schemes support. 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 five elements of the Cross-Compliance requirements where a higher inspection rate is required in order to satisfy legislative requirements:

- VSAHG is required to carry out a 3% inspection check of all bovine herds for compliance with Cattle Identification requirements under Commission Regulation 1082/2003 (as amended by Commission Regulation 1034/2010). This level of inspection will continue and any breaches of the Identification and Registration of Animal Cross-Compliance Verifiable Standards identified will be reported to the Paying Agency.
- VSAHG is required to carry out a 3% inspection check of all sheep and goat herds for compliance with the Sheep and Goat Identification requirements. This level of inspection will continue and any Cross-Compliance breaches identified will be reported to the Paying Agency.
- In relation to SMR 5, Restrictions on the Use of Substances Having Hormonal or Thyrostatic Action and Beta-agonists in Farm Animals, DAERA VSAHG is required to carry out inspections in line with the national control plan. Breaches identified as part of these inspections will be reported to the Paying Agency.
- DAERA FFG is also required to carry out an 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 reported to the Paying Agency.

- Northern Ireland is required to ensure that Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) (formally Sites of Community Importance [SCIs]) are maintained in favourable conservation status under Commission Directive 92/43/EEC and domestic legislation (The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995). If farmers have such an area on their land, they will have been formally notified by NIEA and in line with selection process, sites will be inspected each year along with all Areas of Special Scientific Interest (ASSIs). During these inspections, breaches of the Verifiable Standards established in respect of Council Directive 2009/147/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 reported to the Paying Agency. **NB – conservation of wild birds (SMR2) extends to all land.**

6. In addition to the on-farm inspections outlined above, suspected breaches can also be reported by, for example, other Government bodies and the public. All such reports will be followed up and all confirmed breaches will be documented. Breaches reported in this way can result in penalties being applied.

Selecting applicants for on-farm Cross-Compliance inspection

7. In accordance with Articles 68 and 69, of Commission Implementing Regulation 809/2014, DAERA FFG, VSAHG and NIEA shall select applicants for on-farm inspection using risk analysis methodology. HSE(NI) inspections will be selected as part of the DAERA FFG risk selection process.

DAERA FFG, VSAHG and NIEA will all perform their own random and risk selection processes.

DAERA FFG approach to random and risk selection

8. The DAERA FFG approach to Cross-Compliance random and risk selection is set out in **Annex 2**.

Reporting of breaches

9. Breaches will be recorded using purposely-designed report forms. An example of a report form is attached at **Annex 3**. The attached report form is designed to record the findings of SMR 4 Food and Feed Law Cross-Compliance inspections. These forms have been designed to allow the Paying Agency to identify the appropriate level of penalty in respect of the reported breach by reference to the negligent penalty matrix at **Annex 4** and the intentional penalty matrix at **Annex 5**.
10. Penalties in respect of findings at inspection should be applied in line with the rules in place in the year of the finding.
11. The following report forms have been in place since 2015:

CCA responsible for report form	Title of report form	Coverage of report form
NIEA	Cross-Compliance Report Form	Cross-Compliance requirements for SMRs 1 to 3 and GAECs 1 to 3.
FFG	GAEC report form (section 6 of IRFL report form)	GAECs 4, 5, 6 and 7.
VSAHG	Veterinary Service Cross-Compliance report form	SMRs 5, 6, 8 and 9,
VSAHG	Cattle report form (captured through CII report forms)	SMR 7
HSE(NI) inspections are undertaken by Agri-food Inspection Branch within DAERA	Restrictions on the use of Plant Protection Products	SMR 10

VSAHG on behalf of HSE(NI))		
VSAHG (inspections are undertaken by Agri-food Inspection Branch within VSAHG)	Food and Feed Law	SMR 4
VSAHG	Animal Welfare Report Form	SMRs 11, 12 and 13

Should a Cross-Compliance penalty be applied if a breach is found to have occurred in a previous scheme year but the breach would no longer constitute a breach in the year of finding?

Legal advice has been received on this issue. The legal advice supports the following approach:

For cases where a breach is identified in the current scheme year (year of finding) but it is clear from ortho imagery that the breach actually occurred in a previous scheme year, the resulting penalty should be applied to payments due to the person responsible for the breach in the current scheme year (the year of finding).

If the rules in place when the breach occurred have changed and the breach would no longer constitute a breach in the year of finding, the penalty should still be applied to the year of finding based on the rules in place during the year of occurrence.

Fixing of penalties – who will be responsible

12. The basic principle behind the Northern Ireland Cross-Compliance policy on liability is that the person who declares the land should be held responsible for a land related Cross-Compliance breach on that land unless they can prove that they are not responsible.

14. If more than one person declares a piece of land (for example, one person claims BPS and the other person claims EFS) both should receive a penalty unless it can be proved who was directly responsible for the breach.
15. In addition, in relation to land breaches, Article 97 of Regulation 1306/2013 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 the scheme in question. 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.
16. Therefore, if the transferor (that is 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 (that is before it was transferred). Similarly, if the claimant claimed on some land which they then transferred out after 15 May, and if the transferee (that is 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 (that is 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.
17. If the claimant is transferring land (either in or out) during the year, **they should carefully consider the terms of any contractual arrangements between themselves and the transferor or transferee.** This is to make sure that their interests are protected and they 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.

18. Therefore, the liability rules should 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 BPS (no other claims are lodged in respect of the land) and a breach is identified.	The penalty should be applied to A.
2. Farmer A claims land for BPS and EFS 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 BPS and EFS payment.
3. Farmer A claims BPS and EFS 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 BPS and EFS payment.
4. Farmer A claims a piece of land for BPS and Farmer B claims the same piece of land for EFS 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 directly responsible for the breach.
5. Farmer A claims BPS on a particular piece of land and EFS on a different piece of land on which he has not claimed BPS. There is a breach identified on the land on which Farmer A claims.	A penalty should be applied to the farmers BPS and EFS payment.
6. Farmer A claims BPS on field C. Farmer A sells field C to Farmer B in September (Farmer B claims BPS in	Farmer B is liable and reduction would

his own right). Farmer B breaches SMR 1 in field C in October.	be applied to his BPS payment.
7. Farmer A claims under EFS on field C. Farmer A sells field C to Farmer B in September. Farmer B claims under EFS (on other land) in his own right. Farmer B breaches SMR 1 in field C in October.	Farmer B is liable and reduction would be applied to his EFS payment.
8. Farmer A claims BPS on field C. Farmer A sells field C to Farmer B in September (Farmer B only claims under EFS on other land). Farmer B breaches SMR 1 in field C in October.	Farmer B is liable for the breach and a reduction would be applied to his EFS payment.
9. Farmer A claims BPS and EFS on field C. Farmer A sells field C to Farmer B in September (Farmer B only claims under EFS (on other land). A breach of SMR 1 is identified in field C in October and liability for the breach cannot be established.	Reductions would be applied to Farmer A's BPS and EFS payments. A reduction would be applied to Farmer B's EFS payment.

19. For **GAEC land related Cross-Compliance breaches**, if the inspector is able to identify who is directly responsible for the breach the person responsible should be identified in the comments box associated with the question on the report form against which the breach has been identified. **The inspector should provide as much evidence as possible to justify this decision.** If the inspector has identified who is directly responsible for the breach, the resulting penalty should only be applied to the Area-based Scheme payments due to that individual.

20. For **NIEA related breaches** it has been established that if a land related breach is identified the inspector will work to identify who is directly responsible for the breach. NIEA will then complete a report form to report this individual/business to the Paying Agency. If it is not possible to identify who is directly responsible for the breach, it is NIEA practice to complete a separate report form for all those that have an interest in the land concerned. Therefore, for breaches of SMRs 1 to 3 and GAECs 1 to 3 identified by NIEA, a Cross-Compliance penalty should only be applied to the person

identified on the report form. Penalties should not be cross-referred to anyone else who has declared an interest in the land.

21. Responsibility for ensuring compliance with the animal related Cross-Compliance requirements falls to the keeper of the animals.

22. While the above table sets out the Department's default position, Article 97 states:

“the administrative penalty provided for in Article 91 shall be imposed where the rules on cross-compliance are not complied with at any time in a given calendar year (“the calendar year concerned”) and where the non-compliance in question is directly attributable to the beneficiary who submitted the aid application or the payment claim in the calendar year concerned.” Therefore, if the person(s) declaring the land can prove that he/she/they or the person to whom or from whom the agricultural land was transferred was not responsible for the breach then we cannot impose a penalty.

23. It is unlikely that such circumstances will occur. However, if it does it is important that for each case of this type, the evidence be carefully evaluated because this type of claim, if it becomes widespread, has the potential to make the Cross-Compliance requirements hard to enforce.

Cross-Compliance rules in relation to Forestry Schemes

24. Article 91 of Regulation 1306/2013 states that a Cross-Compliance penalty should be applied where a non-compliance is the result of an act or omission directly attributable to the beneficiary concerned when one or both of the following additional conditions are met:

- The non-compliance is related to the agricultural activity of the beneficiary;
- The area of the holding of the beneficiary is concerned.

25. In relation to forest areas, the regulation states that the penalty shall not apply if no support is claimed under the forestry schemes covered by Cross-Compliance in respect of the forest area in which the breach is discovered. Therefore, if an

applicant has claimed under one of the forestry schemes covered by Cross-Compliance and a Cross-Compliance breach is identified on the forestry area claimed then a Cross-Compliance penalty should be applied to all the Area-based Schemes claimed by the applicant. However, if a Cross-Compliance breach is identified in a forestry area not used to support a claim in respect of one of the forestry schemes covered by Cross-Compliance then a Cross-Compliance penalty should not be applied.

26. If an applicant has only applied for a forestry scheme covered by Cross-Compliance, in addition to complying with the Cross-Compliance requirements on the forestry land used to support the claim, they must also meet the Cross-Compliance requirements on any agricultural land within their holding and in relation to any agricultural activity they undertake. In this scenario, if a Cross-Compliance breach is identified on non-forestry land or in relation to an agricultural activity the applicant undertakes then a Cross-Compliance penalty should be applied to the forestry scheme payment.

Interpretation of reduction rules

27. Since 1 January 2015, the Cross-Compliance requirements for the purposes of imposing penalties are grouped into the following areas:

- Cross-Compliance area 1 = environment, climate change and good agricultural condition of land (SMRs 1-3 and GAEC)
- Cross-Compliance Area 2 = Public health, Animal health and Plant Health (SMRs 4 to 10)
- Cross-Compliance Area 3 = Animal Welfare (SMRs 11 to 13)

28. If a farmer acts **negligently** and fails to comply with a Cross-Compliance requirement, his/her overall Area-based Schemes 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, extent and permanence of the breach provided by the inspector reporting the breach. Very minor technical

breaches (classed as very low) can be dealt with under the Cross-Compliance early warning system.

29. 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 the overall Area-based Scheme payment will generally be reduced by 20% but this reduction can be reduced to 15% or increased to 100%. (Interpretations of rules governing more than one breach of a specific Cross-Compliance standard, breaches of different Cross-Compliance areas and reoccurring Cross-Compliance breaches are discussed later in this document).
30. The rules governing the size of penalties to be applied for both negligent and intentional breaches have been incorporated into two penalty matrices. The negligent penalty matrix is attached at **Annex 4**. The intentional penalty matrix is at **Annex 5**.
31. Once a breach has been notified to the Paying Agency, the size of the penalty to be applied should be calculated using the relevant overarching penalty matrix.

Example 1 (Breach assessed as negligent)

An inspector has reported a breach of Minimum Soil Cover GAEC4. The inspector's judgement is that the breach is medium severity, caused by negligence, is rectifiable and the effect is confined to on-farm.

To identify the penalty to be applied for this breach you should go to the negligent penalty framework, go to the section limited on-farm effect, medium severity and permanence rectifiable. This will tell you that the penalty should be 3%. This technique should be repeated for each breach due to negligence reported.

Example 2 (Breach assessed as intentional)

An inspector has reported a breach of Minimum Soil Cover GAEC 4. The inspector's judgement is that the breach is medium severity, is intentional, is rectifiable and the

effect is confined to on-farm.

To identify the penalty to be applied for this breach you should go to the intentional penalty framework, go to the section limited on-farm effect, medium severity and permanence rectifiable. This will tell you that the penalty should be 24%. This technique should be repeated for each intentional breach reported.

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

32. If a farmer commits more than one negligent breach in the same Cross-Compliance area in the same calendar year (that is Environment, climate change, good agricultural condition of land (Area 1), Public health, animal health and plant health (Area 2) or Animal Welfare (Area 3)) then this should be treated as one non-compliance for fixing a penalty. In this case, the highest penalty in respect of the non-compliances identified should be applied.

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

33. If a farmer commits more than one intentional breach in the same Cross-Compliance area in the same calendar year (that is Environment, climate change, good agricultural condition of land (Area 1), Public health, animal health and plant health (Area 2) or Animal Welfare (Area 3)) then they should be treated as one non-compliance for fixing a penalty. In this case, the highest penalty in respect of the non-compliances identified should be applied.

A combination of negligent and intentional breaches in the same Cross-Compliance area

34. If a farmer commits a combination of intentional and negligent breaches in the same Cross-Compliance area in the same calendar year (that is Environment, climate change, good agricultural condition of land (Area 1), Public health, animal health and plant health (Area 2) or Animal Welfare (Area 3)) then they should 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 should be applied.

Example 1 - (more than one negligent breach in the same Cross-Compliance area identified)

At inspection, it is discovered that a farmer has negligently breached the following three requirements, which from the negligent penalty framework would attract the associated penalties:

- GAEC 4 Minimum soil cover – Penalty 3%.
- SMR 1 – Protection of water against nitrate pollution - Penalty 1%.
- GAEC 7 Retention of landscape features – Penalty 1%

Because the three breaches are negligent breaches and fall within the same Cross-Compliance Area (Area 1 – Environment, Climate change, good agricultural condition of land) they should be treated as one breach with the highest penalty in respect of the non-compliances identified being applied - **3%**.

Example 2 - (more than one intentional breach within the same Cross-Compliance area identified)

At inspection, it is discovered that a farmer has intentionally breached the following three requirements, which from the intentional penalty framework would attract the associated penalties:

- GAEC 4 Minimum Soil Cover requirement – Penalty 20%
- SMR 1 – Protection of water against nitrate pollution - Penalty 20%
- GAEC 7 Retention of landscape features – Penalty 24%

Because the three breaches are all intentional breaches and all fall within the same Cross-Compliance Area (Area 1 – Environment, Climate change, good agricultural condition of land) they should be treated as one breach with the highest penalty in respect of the non-compliances identified being applied - **24%** penalty.

Example 3 - (a combination of negligent and intentional breaches within the same Cross-Compliance area)

At inspection it is discovered that a farmer has negligently breached the first two of the following three requirements and intentionally breached the third attracting the following associated penalties:

- GAEC 4 Minimum Soil Cover requirement - Penalty 3%
- SMR 1 – Protection of water against nitrate pollution - Penalty 1%
- GAEC 7 Retention of landscape features – Penalty 24%

Because all the breaches fall within the same Cross-Compliance Area (Area 1 – Environment, Climate change, good agricultural condition of land) they should be treated as one breach with the highest penalty in respect of the non-compliances identified being applied - **24%**.

35. 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.
36. Even though only the highest penalty is applied in the preceding examples, it is important that all breaches be recorded so that reoccurring breaches can be identified.

Breaches identified under different Cross-Compliance areas

37. If negligent non-compliance breaches are identified in different Cross-Compliance areas, in the same calendar year each case of non-compliance will attract a penalty. These penalties shall be added together. However, the maximum reduction shall not exceed 5%.
38. There is no maximum level of reduction if intentional non-compliances are identified in different Cross-Compliance areas in the same calendar year (see example 4 below).

Example 1

At inspection, it is discovered that a farmer has negligently breached the following Cross-Compliance requirements:

- GAEC 4 Minimum soil cover (Cross-Compliance Area 1) – Penalty 3%
- SMR 11 Minimum standards for the protection of calves (Cross-Compliance area 3) – Penalty 1%

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

Example 2

At inspection, it is discovered that a farmer has negligently breached the following Cross-Compliance requirements:

- GAEC 4 Minimum soil cover (Cross-Compliance Area 1) - Penalty 3%

- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) – Penalty 3%

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

Example 3

At inspection, it is discovered that a farmer has negligently breached Cross-Compliance requirements under Cross-Compliance areas 1 and 3 and intentionally breached a requirement under Cross-Compliance area 2:

- GAEC 4 Minimum soil cover (Cross-Compliance Area 1) – Penalty 3%
- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) – Penalty 3%
- SMR 6 Pig Identification and Registration (Cross-Compliance Area 2) – Penalty 24%

Because all three breaches fall into different Cross-Compliance areas (that is 1, 2 and 3) the associated penalties should be added together to give the overall penalty to be applied = 3% + 3% + 24 = 30% penalty. However because the first two are first time negligent breaches the overall penalty cannot be over 5% so therefore the 6% penalty should be reduced and a penalty of 5% applied. As the 5% cap only applies to negligent penalties the 24% intentional penalty should be added to the 5% penalty for the negligent breaches giving an overall penalty of 5% + 24% = **29%** to be applied.

Example 4

At inspection, it is discovered that a farmer has intentionally breached the following Cross-Compliance requirements:

- GAEC 4 Minimum soil cover (Cross-Compliance Area 1) – Penalty 20%
- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) – Penalty 24%

Because the two breaches fall into different Cross-Compliance areas (that is 1 and 3) and are considered intentional the associated penalties should be added together to give the overall penalty to be applied = 20% + 24% = **44%** penalty.

39. The early warning system (warning letter provisions) set out in Article 99 of Council Regulation 1306/2013 can apply to negligent, very low non-compliances which are classed as on-farm and rectifiable. Breaches for which early warning system letters can be issued are set out in the current Guidance for Inspectors documents. Warning letters cannot be issued in respect of very low intentional breaches.
40. If a breach of this nature is identified it must be recorded on the penalty system. Even if the applicant rectifies the breach at the time of the inspection, an early warning system warning letter should be issued to the applicant. The warning letter should notify the applicant of the finding and, if the breach was not rectified at the time of inspection, the obligation to rectify the breach. If the breach was not rectified at the time of the inspection, the letter should also indicate the date by which the breach should be rectified and the fact that a financial penalty may be applied if the breach is not rectified by that date. This date will have been identified by the inspector but should not be later than the end of the year following the one in which the finding was made.
41. If at re-inspection within 3 calendar years of the identification of the original breach it is identified that the original breach has not been rectified, a 1% penalty should be

applied to payments issued to the applicant concerned in the year in which the original breach was identified.

42. In addition, this should be classed as a reoccurrence of the original breach and the penalty to be applied as a result of the second inspection should be dealt with in line with the reoccurrence rules set out in paragraphs 46 - 62. This is because the original penalty is now 1% and as such can be taken into account for repetition.

43. If it is identified outside the 3 calendar year period that the applicant has not rectified the breach by the deadline set by the inspector then this should be treated as a first time breach in the year of the second inspection.

44. In addition, no penalty should be applied in respect of the original breach.

45. A non-compliance for which an early warning system letter has been issued and which has been remedied by the farmer within the time limit set, should not be considered as a non-compliance for the purposes of reoccurrence.

Example 1

At inspection in 2017, it was discovered that a farmer negligently breached the following Cross-Compliance requirement:

- SMR 4 Food and Feed Law (Cross-Compliance Area 2) – Penalty: Early Warning System / Warning Letter. The applicant subsequently rectifies the breach within the time limit set by the inspector. The Early Warning System breach should be recorded on the penalty system and a warning letter should issue.

Example 2

In 2018, the farmer is inspected again and a breach of the same specific requirement is identified. This should not be considered as a repeat breach because the first breach was rectified within the time limit set by the inspector. The breach in 2018

should therefore be treated as a first time breach and the appropriate penalty should be applied.

Example 3

At inspection in 2017, it was discovered that a farmer negligently breached the following Cross-Compliance requirement:

- SMR 4 Food and Feed Law (Cross-Compliance Area 2) – Penalty: Early Warning system / Warning Letter requiring that the breach be remedied within 3 months of the date of the inspection.

The farmer was inspected again in 2018 (within 3 calendar years of the original breach) and it was discovered that the breach identified in 2017 had not been remedied. This should therefore be considered a reoccurrence breach of the breach identified in 2017. A 1% penalty should therefore be applied retrospectively for the original breach identified in 2017 and the 2018 breach should be considered a reoccurrence of the breach identified in 2017. The penalty to be applied in 2018 should be calculated in line with the reoccurrence rules set out in paragraphs 46 - 59.

Example 4

At inspection in 2017, it was discovered that a farmer negligently breached the following Cross-Compliance requirement:

- SMR 4 Food and Feed Law (Cross-Compliance Area 2) – Penalty: Warning Letter issued requiring that the breach be remedied within 3 months of the date of the inspection. The applicant was not re-inspected to determine that the breach had been remedied.

The farmer is inspected again in 2020 and it is discovered that the breach identified in 2017 has not been remedied. As the inspection did not occur within 3 calendar years of the first inspection this should not be considered a reoccurrence of the

breach identified in 2017. No penalty should be applied in respect of the 2017 breach. The penalty in 2020 should be calculated taking into account the intent, severity, extent and permanence of the 2020 breach.

Reoccurrence breaches

46. For a breach to be classed as a reoccurrence breach the business concerned must have breached the same specific Cross-Compliance requirement within three calendar years of the date of the inspection which identified the first breach.

What does 'the same specific Cross-Compliance requirement' mean?

47. Each SMR and GAEC has a number of requirements or verifiable standards which beneficiaries of Area-based schemes must meet. These are set out in the *Northern Ireland Cross-Compliance Verifiable Standards* every year.

48. For example: GAEC 5 (Minimum land management reflecting site specific conditions to limit erosion) has **five** specific Cross-Compliance requirements or verifiable standards:

i. You must protect soils from erosion and maintain soil structure by preventing land from being excessively trampled, poached or rutted including on bank sides and along watercourses.

ii. You must not carry out any cultivation if water is standing on the surface, or if the soil is waterlogged. Cultivations include any mechanical field operation, for example, harvesting, manure spreading, ploughing or discing.

iii. Supplementary feeding sites and sacrifice areas should be rotated and managed to prevent excessive trampling, poaching or vehicle rutting to minimise soil erosion and must not cause runoff to waterways. Sacrifice areas must be ploughed and sown in the following spring. Natural regeneration (recovery of the sward) and surface seeding will be permitted provided there is at least 90% grass/crop coverage by the end of spring.

iv. You must avoid overgrazing grassland, semi-natural habitat, or archaeological sites with livestock in such numbers which would damage the growth, quality or species composition of vegetation on that land to any significant degree

v. You must not burn heather, gorse, whin or fern between 15 April and 31 August to prevent erosion.

49. If the business breaches requirement 1 more than once in a three calendar year period the breach will be considered to be a reoccurrence breach. However if the business breaches requirement 1 in year 1 and requirement 2 in year 3 it will not be considered as a reoccurrence breach.

50. The following table has been included to provide guidance on what is meant by a three calendar year period –

Scenario	Date of first breach	Date of second breach	Reoccurrence?
1.	1/8/15	30/6/18	No
2.	2/1/16	30/6/18	Yes
3.	2/1/17	30/6/18	Yes
4.	2/1/18	30/6/18	Yes

Scenario 1 above is not a reoccurrence breach as the gap between the two breaches is beyond the **3 calendar year limit**. The three calendar years from the date of the first breach would be 2015, 2016 and 2017.

51. 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 reoccurrence breach business rules apply.

52. First time recurrence penalties applied can be lower than those applied in respect of the original breach. For example:

In year 1, an inspection is carried out which leads to a 5% penalty. The farmer repeats this breach within three calendar years and the inspector assesses the

breach as low severity attracting a penalty of 1%. As this is a reoccurrence breach and the reoccurrence breach rules apply, the 1% penalty should be multiplied by 3 giving a **3%** penalty.

Reoccurrence breach of the same specific Cross-Compliance requirement due to negligence

53. Where a reoccurrence 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 reoccurrence non-compliance multiplied by a factor of three.

54. In cases of further reoccurrence (second or subsequent repeats), the multiplication factor of 3 shall be applied each time to the result of the reduction fixed in respect of the previous recurrent non-compliance. However, the maximum reduction shall not exceed 15%. Once the reduction reaches 15%, the business should be advised that if the same non-compliance is determined again within three calendar years, it will be treated as intentional. Where the same breach is identified within three calendar years of the last breach, the percentage reduction to be applied shall be fixed by using the severity, extent and permanence reported to identify the appropriate penalty from the Intentional Penalty matrix.

Example 1

At inspection in June 2018, it was discovered that a farmer negligently breached the following Cross-Compliance requirement:

- GAEC 5 Minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1** - Penalty 1%

Example 2

In February 2020 the farmer is inspected again and a breach of the same specific requirement is identified.

- GAEC 5 Minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1** - Penalty 3%

This is therefore a reoccurrence breach. Because this is a first time reoccurrence breach we must multiply the penalty due in respect of the recurrent non-compliance by 3 - $3\% \times 3 = 9\%$ reduction should be applied.

Example 3

Six months later the farmer is inspected again and a breach of the same specific requirement is identified:

- GAEC 5 Minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1**

Because this is second time reoccurrence breach, the previous penalty will be used for the calculation of the penalty to be applied. The previous penalty was 9%.

Therefore, this is multiplied by 3 resulting in a penalty of 27%. However, this must be reduced to **15%**, as this is the maximum reduction allowed for a reoccurrence negligent breach.

<p>NOTE: At this stage, the farmer should be informed that if the same non-compliance is determined again, it will be considered that he/she acted intentionally.</p>
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Example 4

A year later, in 2021, the farmer is inspected again and a breach of the same specific requirement is identified:

- GAEC 5 Minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1**

The breach is now considered to have been caused intentionally. The inspector has classed the breach as medium severity, on-farm and rectifiable and therefore

the appropriate penalty should be drawn from the Intentional Penalty matrix - that is **24%**.

Other rules relating to capping negligent breaches at 15%

55. In cases where a recurrent non-compliance is determined together with another non-compliance or another recurrent non-compliance, the resulting penalties should be added together. However, the overall penalty shall not exceed 15%.

Example 1

At inspection, the following breaches are found:

- GAEC 5 minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1**

Reoccurrence negligent breach– Penalty 5% (based on the severity, extent and permanence identified in respect of the repeat breach) X 3 =15%.

- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) **verifiable standard 4** - First time penalty 3%

The penalty to be applied is 15% + 3% = 18% but capped at **15%**. Because the GAEC 5 breach has reached the 15 % capping level at this stage, the farmer should be informed that if the same breach of **GAEC 5 verifiable standard 1** is identified again, it will be considered that he/she acted intentionally.

Example 2

At inspection, the following breaches are found:

- GAEC 5 minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1**

Reoccurrence negligent breach – Penalty 3% (based on the severity, extent and permanence identified in respect of the repeat breach) X 3 = 9%

- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) **verifiable standard 4**

Reoccurrence Negligent breach - Penalty 3% (based on the severity, extent and permanence identified in respect of the repeat breach) X 3 = 9%

The penalty to be applied is $9\% + 9\% = 18\%$ but capped at **15%**.

NOTE: At this stage, however, the farmer should **not** be informed that if the same non-compliances are determined again, it will be considered that he/she acted intentionally. This is because neither of the breaches individually has reached the 15% capping level.

Example 3

Following on from example 2, in the following year the same breaches are identified again.

- GAEC 5 minimum land management reflecting site specific conditions to limit erosion (Cross-Compliance Area 1) **verifiable standard 1**

2nd reoccurrence negligent breach – previous penalty $9\% \times 3 = 27\%$

- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) **verifiable standard 4**

2nd reoccurrence negligent breach – previous penalty $9\% \times 3 = 27\%$

The penalty to be applied is $27\% + 27\% = 54\%$ but capped at **15%**. At this stage, the farmer should be informed that if either of the above non-compliances is determined again, it would be considered that he/she acted intentionally.

These rules have been built into the negligent penalty matrix.

Intentional reoccurrence breaches

56. Prior to 2021, where a reoccurrence intentional breach was discovered within three calendar years of the discovery of the original intentional breach, the penalty to be applied was multiplied by a factor of 3.

57. With effect from scheme year 2021, where a reoccurrence intentional breach is discovered within three calendar years of the discovery of the original intentional breach the penalty to be applied will be the penalty in respect of the reoccurrence non-compliance multiplied by a factor of two.

58. In cases of further reoccurrences (second or subsequent repeats), the multiplication factor 2 shall be applied each time to the result of the reduction fixed in respect of the previous recurrent non-compliance.

Example 1

At inspection in June 2017, it was discovered that a farmer intentionally breached the following Cross-Compliance requirement:

- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3) **verifiable standard 12** - Penalty **15%**

Example 2

In February 2019 the farmer is inspected again and an intentional breach of the same specific requirement is identified which because of its severity, extent and permanence would attract a penalty of **20%**

Because this is a first time reoccurrence breach, we must multiply the penalty level due in respect of the recurrent non-compliance by 3 (pre-2021). That is 20% X 3 = **60%** reduction should be applied.

Example 3

A year later, in February 2020, the farmer is inspected again and a breach of the same specific requirement is identified - Penalty **15%**

Because this is a second time reoccurrence breach the previous reoccurrence penalty (i.e. 60%) should be multiplied by 3 = 180%. Therefore, a **100%** penalty should be applied.

Example 4

In 2021, the farmer is inspected again and an intentional breach of the same specific requirement is identified. As the previous penalty was 180%, this should be multiplied by 2 = 360%. Therefore, a **100%** penalty should be applied.

These rules have been built into the intentional penalty matrix.

Rules for calculating reoccurrence penalties if a number of breaches have been identified within the same Cross-Compliance area and have been treated as one non-compliance for penalty purposes and then subsequently the same breaches are identified together again.

59. If a number of first time breaches are identified in the same Cross-Compliance area in the same calendar year, we would treat these first time breaches as one non-compliance and apply the highest penalty due in respect of them. If the same breaches are identified together again within the same calendar year or within 3 calendar years of the first time breaches being identified, the reoccurrence breaches identified should also be treated as one non-compliance for reoccurrence purposes and the highest reoccurrence intentional penalty identified should be multiplied by 2,

from 2021, to give the reoccurrence penalty to be applied. Reoccurrence intentional penalties should be multiplied by 3 if being applied to scheme years before 2021.

Example 1

In the 2018 scheme year the following negligent breaches were identified within the same Cross-Compliance area (area 1) –

SMR 1 (verifiable standard 3) – 1% penalty

SMR 2 (verifiable standard 2) – 3% penalty

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is **3%**.

In the 2020 scheme year first time reoccurrence negligent breaches of the exact same Cross-Compliance requirements were identified–

SMR 1 (verifiable standard 3) – 1% penalty X 3 = 3%

SMR 2 (verifiable standard 2) – 3% penalty X 3 = 9%

The two non-compliances found in 2018 are in the same Cross-Compliance area and have therefore been treated as one non-compliance. As the same set of non-compliances reoccurred in the 2020 scheme year they should also be treated as one non-compliance. As these are first time reoccurrences the highest penalty identified at the 2020 inspection should be multiplied by 3 = 3% X 3 = **9%**.

Example 2

In the 2019 scheme year the following intentional breaches were identified within the same Cross-Compliance area (area 1) –

SMR 1 (verifiable standard 3) – 15% penalty

SMR 2 (verifiable standard 2) – 30% penalty

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is **30%**.

In the 2021 scheme year first time reoccurrence intentional breaches of the exact same Cross-Compliance requirements were identified –

SMR 1 (verifiable standard 3) –15% penalty X 2 = 30%

SMR 2 (verifiable standard 2) – 24% penalty X 2 = 48%

The two non-compliances found in 2019 are in the same Cross-Compliance area and have therefore been treated as one non-compliance. As the same set of non-compliances reoccurred in the 2021 scheme year they should also be treated as one non-compliance. As these are first time reoccurrences the highest penalty identified at the 2021 inspection should be multiplied by 2 = 24% X 2 = **48%**.

Example 3

In the 2019 scheme year the following breaches were identified within the same Cross-Compliance area (area 1) –

SMR 1 (verifiable standard 3) –20% (intentional penalty)

SMR 2 (verifiable standard 2) – 3% (negligent penalty)

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is **20%**.

In the 2021 scheme year first time reoccurrence breaches of the exact same Cross-Compliance requirements were identified –

SMR 1 (verifiable standard 3) –18% intentional penalty X 2 = 36%

SMR 2 (verifiable standard 2) – 3% negligent penalty X 3 = 9%

The two non-compliances found in 2019 are in the same Cross-Compliance area and have therefore been treated as one non-compliance. As the same set of non-

compliances have been repeated in the 2021 scheme year they should also be treated as one non-compliance. As these are first time reoccurrences the highest penalty identified at the 2021 inspection should be multiplied by 2 = 18% X 2 = **36%**.

Example 4

In the 2016 scheme year the following negligent breaches were identified within the same Cross-Compliance area (area 1) –

SMR 1 (verifiable standard 3) –1% penalty

SMR 2 (verifiable standard 2) – 3% penalty

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is **3%**.

In the 2018 scheme year the following negligent breaches were identified within area 1 –

SMR 1 (verifiable standard 3) =1% penalty X 3= 3%

SMR 2 (verifiable standard 2) = 3% penalty X 3 = 9%

SMR 2 (verifiable standard 3) = 3% penalty

The two non-compliances identified in 2016 are in the same Cross-Compliance area and have therefore been treated as one non-compliance. As the same set of non-compliances have been repeated in the 2018 scheme year they should also be treated as one non-compliance. As these are first time reoccurrences the highest penalty identified at the 2018 inspection should be multiplied by 3 = 3% X 3 = 9%. A new breach was also identified in 2018 (SMR 2 verifiable standard 3 = 3%) and this should be added to the 9% penalty to give an overall penalty of **12%**.

Example 5

In the 2018 scheme year the following negligent breaches were identified within the same Cross-Compliance area (area 3) –

SMR 3 (verifiable standard 1) – 1% penalty

SMR 3 (verifiable standard 2) – 3% penalty

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is 3%.

In the 2019 scheme year the following negligent breaches were identified -

SMR 3 (verifiable standard 1) = 1% penalty X 3 = 3%

SMR 3 (verifiable standard 2) = 1% penalty X 3 = 3%

SMR 1 (verifiable standard 3) = 1%

The two non-compliances identified in 2018 are in the same Cross-Compliance area and have therefore been treated as one non-compliance. As the same set of non-compliances reoccurred in the 2019 scheme year they should also be treated as one non-compliance. As these are first time reoccurrences the highest penalty identified at the 2019 inspection should be multiplied by 3 = 1% X 3 = 3%. A new breach was also identified in 2019 SMR 1 verifiable standard 3 = 1%) and this should be added to the 3% penalty to give an overall penalty of **4%**.

Subsequently in the scheme year 2020 the following negligent breaches are identified

SMR 3 (verifiable standard 2) (2nd time reoccurrence) = 5%

SMR 1 (verifiable standard 3) (1st time reoccurrence) = 3%

In year 2020, two of the requirements breached in 2019 have been breached again and constitute reoccurrences. However, as this combination of breaches have not been treated as one non-compliance in the previous years they should be added together to identify the penalty to be applied.

SMR 1 (verifiable standard 3) is a first time reoccurrence breach so the penalty identified in 2018 should be multiplied by 3 to calculate the repeat penalty $3\% \times 3 = 9\%$.

SMR 3 (verifiable standard 2) is a second time reoccurrence therefore it is necessary to multiply the penalty applied in respect of the first reoccurrence by 3 to calculate the reoccurrence penalty $3\% \times 3 = 9\%$.

These penalties should be added together $9\% + 9\% = 18\%$. However as these are both negligent breaches, the 15% capping rule comes into force and the overall penalty should be reduced to **15%**.

Example 6

In the 2016 scheme year the following negligent breaches were identified within the same Cross-Compliance area –

SMR 1 (verifiable standard 3) – 1% penalty

SMR 2 (verifiable standard 2) – 3% penalty

These non-compliances should be treated as one non-compliance and the highest penalty should be applied. That is 3%.

In the 2018 scheme year the following breaches have been identified –

SMR 1 (verifiable standard 3) – 1% (negligent) penalty $\times 3 = 3\%$

SMR 2 (verifiable standard 2) – 3% (negligent) penalty $\times 3 = 9\%$

SMR 2 (verifiable standard 5) – 3% (negligent) penalty

SMR 3 (verifiable standard 1) – 15% (intentional breach)

The breaches of SMR 2 (verifiable standard 5) and SMR 3 (verifiable standard 1) are first time breaches in the same area of Cross-Compliance and should therefore be considered as one non-compliance. The highest penalty in respect of these should be applied. That is the 15% intentional penalty. This should be added to the

recurrent non-compliances. The recurrent non-compliances concerning SMR 1 (verifiable standard 3) and SMR 2 (verifiable standard 2) should be considered as one non-compliance as they were treated as one non-compliance in 2016. As these are first time reoccurrences the highest penalty identified at the 2018 inspection should be multiplied by 3 = 3% X 3 = 9%. The highest reoccurrence penalty should be applied and added to the 15% first time penalty giving an overall penalty of **24%**. The 15% capping rule does not apply in this case because the first time breach is an intentional breach.

Example 7

In the 2017 scheme year the following negligent breach was identified –

SMR 1 (verifiable standard 3) – 1% penalty

In the 2018 scheme year the following negligent breach was identified –

SMR 3 (verifiable standard 2) – 3% penalty

In the 2019 scheme year the following negligent breaches were identified –

SMR 1 (verifiable standard 3) – 1% penalty X 3% = 3%

SMR 3 (verifiable standard 2) – 3% penalty X 3% = 9%

As these non-compliances have not been considered to be one non-compliance in the previous three calendar years the penalties should be added to give the overall penalty to be applied = **12%**.

What if there is a combination of reoccurrence breaches and first time breaches in different Cross-Compliance areas?

60. If at inspection, a reoccurrence breach is discovered in respect of Cross-Compliance area 1 and a new breach is discovered in respect of Cross-Compliance area 2, the resultant penalties should be added together to calculate the total penalty. For negligent breaches remember the 15% capping requirement.

What if there is a combination of reoccurrence breaches and first time breaches in the same Cross-Compliance area?

61. Reoccurrence breaches and new breaches discovered during an inspection should be considered separately even if they are both to be considered as intentional or negligent in nature and to have occurred within the same Cross-Compliance area. The reoccurrence penalties should be added to the first time penalty established by following the rules set out in paragraphs 27-45 to calculate the total penalty. For negligent breaches remember the 15% capping requirement.

Example 1

At inspection, it is found that a farmer has negligently breached the GAEC requirements below. The breach of GAEC 5 is a reoccurrence breach whilst the GAEC 4 breach has been discovered for the first time.

- GAEC 5 (verifiable standard 1) – Penalty 3% (based on the severity, extent, permanence etc identified in respect of the repeat breach) X 3 = 9%
- GAEC 4 (verifiable standard 1) – Penalty 1%

To calculate the overall penalty you should add both penalties – 9% + 1% = **10%**

Example 2

At inspection in 2021, it is discovered that a farmer has negligently breached the GAEC requirements below. The breach of GAEC 5 is a reoccurrence breach whilst the GAEC 4 and 7 breaches have been discovered for the first time.

- GAEC 5 (verifiable standards 1) – Penalty 3% (based on the severity, extent and permanence identified in respect of the repeat breach) X 3 = 9%
- GAEC 4 Minimum Soil Cover (verifiable standard 1) – Penalty 1%

- GAEC 7 (verifiable standard 2) – Penalty 5%.

To calculate the overall penalty you should add the reoccurrence penalty – 9% to the first time penalties $5\% + 1\% = 6\%$. However, these first time breaches are in the same Cross-Compliance area so they should be treated as one non-compliance and the highest penalty (5%) applied. The overall penalty should therefore be $9\% + 5\% = 14\%$.

If a negligent breach is reoccurring but is classed as intentional

62. If at inspection in year 1 a business is found to have breached a specific requirement due to negligence and within the next three calendar years is found to have breached it again intentionally, the second breach cannot be considered to be a reoccurrence breach as the intent behind the two breaches is different. Therefore, in this case the second breach should be treated as a first time intentional breach.

Breaches that are permanent in nature

63. If a breach is identified that is classed as permanent in nature this specific breach should be excluded from any further inspection. However it will be possible for the farmer responsible for the breach to breach the same specific requirement at future inspections and if this inspection is within the three calendar year repetition window the breach should be treated as a reoccurrence breach with the reoccurrence breach rules being applied.

Example

A farmer removes a field boundary and the inspector classifies the breach as permanent. If the same farm is inspected in the following year, the farmer should not be penalised again for removing that field boundary. However if he has removed another field boundary the reoccurrence breach rules will apply.

What if the farmer fails to rectify a breach within the timeframe set by the Competent Control Authority?

64. It is possible for a breach to be considered a reoccurrence breach if the farmer fails to rectify the breach within the timeframe set by the competent control authority.

Note: if a breach falls into the warning letter (early warning system) category and has been remedied within the timeframe set by the inspector, a future breach of the same requirement is not classified as a reoccurrence breach.

Example

NIEA identifies a breach of SMR 1 (Protection of Water against Nitrates Pollution) which leads to the application of a 3% penalty. NIEA informs the farmer that the breach should be rectified within 1 year. NIEA re-inspects the farm 18 months later and the breach has not been rectified. This is now either a reoccurrence breach or the competent control authority must decide if it now constitutes an intentional breach.

At what stage should the Cross-Compliance penalty be applied?

65. Reductions to a farmers Area-based Schemes payment should be made in the following order and each successive reduction will be based on the amount resulting from the previous reduction as provided for in Article 6 of the Implementing act 809/2014:

- Over-declaration penalty (if applicable);
- Late claim penalty (if applicable);
- Non-declaration penalty (if applicable);
- Deductions to respect financial ceilings (if applicable);
- Cross-Compliance penalty (if applicable); and
- Offset penalties from previous years (if applicable).

66. A Cross-Compliance penalty must be applied to the total Area-based Schemes payment due to the farmer in the calendar year in which the non-compliance was identified. Payments to farmers who have been selected for Cross-Compliance inspection can issue before the inspection is completed. However if Cross-Compliance breaches are subsequently identified when the inspection is carried out the resulting penalties should be applied and any overpayment recovered from the recipient.

67. If a Cross-Compliance inspection selected in 2017 does not take place until 2018 and a breach of the Cross-Compliance requirements is identified, the penalty should be applied to the 2018 payment.

Cross-Compliance and de-minimis

68. Cross-Compliance penalties should always be applied. They are not subject to any de-minimis provisions.

How to calculate a penalty if a Cross-Compliance standard appears more than once within the Northern Ireland Cross-Compliance framework

Article 73 Paragraph 3 of Commission Implementing Regulation 809/2014

General principles

A non-compliance with a standard which also constitutes a non-compliance with a requirement shall be considered to be one non-compliance. For the purposes of the calculation of reductions, the non-compliance shall be considered as part of the area of the requirement.

69. Council Regulation 1306/2013 explains that the term “requirement” relates to the Statutory Management Requirements (Article 91 (3)(b)) while the term “standard” relates to the GAEC standards (Article 94).

70. Under both GAEC 1 Establishment of Buffer Strips along Water Courses and SMR 1 Protection of Water against Nitrates Pollution we have the following verifiable standards –

1. You must not apply chemical fertiliser within 2 metres of a waterway

2. You must not apply organic manure within:
 - 20 metres of lakes; or
 - 10 metres of any other waterway, including open areas of water, open field drains or any drain which has been backfilled to the surface with permeable material such as stone/aggregate. However this may be reduced to 3 metres, provided the land has an average incline of less than 10% towards the waterway, and the organic manures are spread by band spreaders, trailing shoe, trailing hose or soil injection; or where the adjoining area is less than one hectare in size, or not more than 50 metres in width, or 50 metres of a borehole, spring or well, or 250 metres of a borehole used for a public water supply, or 15 metres of exposed cavernous or karstified limestone features (such as swallowholes and collapse features).
 - From 30 September to 15 October and for the month of February the buffers are increased to:
 - 15m from a waterway and 30m from a lake.
 - from 3m to 5m for grassland fields less than a hectare in size or 50m in width where the land has a slope of less than 10% towards the waterway and the organic manure is spread by LESSE band spreader, dribble bar, trailing hose, trailing shoe or soil injection.

3. You must not apply fertilizers on grassland with an average incline of greater than 15% and any other land with an average incline of greater than 12% - for organic manures within—
 - 30m of lakes; or

- 15m of any waterway, other than lakes, including open areas of water, open field drains or any drain which has been backfilled to the surface with permeable material such as stone/aggregate; and

for chemical fertiliser within—

- 10m of lakes; or

- 5m of any waterway, other than lakes, including open areas of water, open field drains or any drain which has been backfilled to the surface with permeable material such as stone/aggregate.

67. Therefore in line with Article 73 if at inspection a breach of verifiable standard 1 is identified against both SMR 1 and GAEC 1 only the penalty identified against SMR 1 should be applied. A record of the breach identified against GAEC 1 should be recorded, however, for future reference. The same rule applies if a breach of verifiable standard 2 is identified against both SMR 1 and GAEC 1.