

## Calculation of Cross-Compliance Penalties (Updated Dec. 2016)

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 Area-based schemes:

### *Schemes coming into effect from 2015 onwards*

- Basic Payment Scheme (BPS)
- Greening Payment
- Young Farmers Payment
- Areas of Natural Constraint Scheme
- Environmental Farming Scheme;
- Forest Expansion Scheme;
- Forest Protection Scheme
- Woodland Investment Grant

### *Schemes that will continue in 2015 and beyond*

- Organic Farming Scheme
- NI Countryside Management Scheme
- Woodland Grant Scheme (agreements signed on or after 1/1/07)
- Farm Woodland Premium Scheme (agreements signed on or after 1/1/07)
- Sustainable Forest Operation Grant Scheme (agreements signed on or after 1/1/07).

## Background

3. There are two aspects to Cross-Compliance. The first of these is compliance with specific articles contained within 13 European regulatory requirements covering the environment, climate change, public health, animal health and plant health and animal welfare. These are known as the **Statutory Management Requirements (SMRs)**.
4. The second aspect of Cross-Compliance is a requirement that all those in receipt of payments in respect of the schemes listed in paragraph 2 maintain all their land in **Good Agricultural and Environmental Condition (GAEC)**. The Northern Ireland GAEC Measures have been developed from a framework set out by the European Commission to address the following issues:
  - **Protection and management of water** - protect water against pollution and run-off, and manage the use of water;
  - **Protection of soil and carbon stock** - minimum soil cover, prevention of erosion and maintenance of soil organic matter levels;
  - **Minimum level of maintenance** - retention of landscape features and avoiding the deterioration of habitats.

5. Full details of the Northern Ireland Cross-Compliance requirements can be found in the booklet Cross-Compliance Verifiable Standards Summary (1 January 2017) at - <https://www.daera-ni.gov.uk/publications/cross-compliance-verifiable-standards>

### **Identification of non-compliance**

6. 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.
7. 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 a 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?**

8. 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.
9. If more than one person submits a claim on a piece of land (e.g. one person claims the basic payment and the other person claims a legacy Environmental payment such as NICMS) both should receive a penalty unless it can be proved who was directly responsible for the breach.
10. 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.
11. 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 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.

12. 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.
13. 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.
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 Basic Payment / Greening (no other claims 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 Basic Payment / Greening Payment and ANC Payment 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 Basic Payment and Greening payment and the ANC Payment.
3. Farmer A claims Basic Payment / Greening Payment and ANC Payment 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 Basic / Greening Payments and ANC Payment.
4. Farmer A claims a piece of land for Basic Payment and Farmer B claims the same piece of land for NICMS 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.

Scenario	Responsibility
5. Farmer A claims Basic Payment / Greening Payment on a particular piece of land and NICMS on a different piece of land on which he has not claimed Basic Payment / Greening Payment. There is a breach identified on the land on which Farmer A claims Basic Payment / Greening Payment.	A penalty should be applied to the farmers Basic / Greening and NICMS payments.
6. Farmer A claims Basic Payment / Greening Payment on field C. Farmer A sells field C to Farmer B in September (Farmer B claims Basic Payment / Greening Payment 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 Basic / Greening Payments.
7. 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 1 in field C in October.	Farmer B is liable and reduction would be applied to his NICMS claim.
8. Farmer A claims Basic Payment / Greening Payment 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 1 in field C in October.	Farmer B is liable for the NICMS and a reduction would be applied to his NICMS claim.
9. Farmer A claims Basic Payment / Greening Payment and ANC Payment on field C. Farmer A sells field C to Farmer B in September (Farmer B only claims under the NICMS (on other land). A breach of SMR 1 is identified in field C in October and liability for the breach cannot be established.	Farmer A is liable for Basic / Greening Payments and ANC Payment and reductions would be applied to his Basic / Greening and ANC payments. Farmer B is liable for NICMS and a reduction would be applied to his NICMS claim.
10. Farmer A claims Basic Payment / Greening Payment and ANC Payment on field A but a valid Nitrates Controller Agreement is in place giving responsibility for nitrates purposes to Farmer B. A breach of SMR 1 is identified.	Farmer B is liable and a penalty should be applied to all Farmer B's area-based scheme payments.
11. Farmer A claims Basic / Greening Payment and ANC Payment 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 1 is identified.	Farmer C is liable and a penalty should be applied to all Farmer C's area-based schemes payments.

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

## Rules on the calculation of penalties

16. The principles for assessing Cross-Compliance breaches and for the application of penalties are set out in Council Regulation (EC) No 1306/2013 and Commission Regulation (EC) No 640/2014 and 809/2014.
17. The Cross-Compliance requirements for the purpose of applying penalties are grouped into the following areas:
  - a. Cross Compliance Area 1 = Environment, climate change and good agricultural condition of land (SMRs 1-3 and GAEC)
  - b. Cross-Compliance Area 2 = Public health, Animal health and Plant Health (SMRs 4 to 10)
  - c. Cross-Compliance Area 3 = Animal Welfare (SMRs 11 to 13)
18. 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 reporting the breach. Very minor technical breaches can be dealt with under the Cross Compliance early warning system.
19. 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 repeating Cross-Compliance breaches follow later in the text).
20. The rules governing the size of penalties to be imposed for both negligent and intentional breaches have been incorporated into UK wide penalty frameworks. The negligent and intentional penalty frameworks are available at the following link – <https://www.daera-ni.gov.uk/articles/what-cross-compliance>
21. Once a breach has been notified to the Paying Authority, the size of the penalty to be imposed will be calculated using the relevant overarching penalty framework

### Example 1 (Breach assessed as negligent)

An inspector has reported a breach of the Minimum soil cover GAEC requirement:

“After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:

- the stubble of the harvested crop remains in the land; or
- the land is sown with a crop which will take up Nitrogen”.

His 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 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 will be repeated for each breach due to negligence reported.

#### Example 2 (Breach assessed as intentional)

An inspector has reported a breach of the Minimum soil cover GAEC requirement:

“After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:

- the stubble of the harvested crop remains in the land; or
- the land is sown with a crop which will take up Nitrogen”.

His 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, go to the section limited on-farm effect, medium severity and permanence rectifiable. This will tell you that the penalty should be 30%. This technique will be repeated for each intentional breach reported.

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

22. If you have 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 the purpose of fixing a penalty. In this case the highest penalty in respect of the non-compliance identified will be imposed.

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

23. If you have 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 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 imposed.

## **A combination of Negligent and Intentional breaches in the same Cross-Compliance area**

24. If you have 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 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 1** - More than one negligent breach in the same Cross-Compliance area identified

At inspection it is discovered that you have negligently breached the following three requirements which from the negligent penalty framework would attract the associated penalties:

- GAEC 4 Minimum soil cover requirement  
After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 3%
- SMR 1 – Protection of water against pollution caused by nitrates from agricultural sources  
N fertiliser applications must not exceed crop requirement - Penalty 1%
- GAEC 7 Retention of landscape features  
Is there evidence of landscape feature removal without prior DAERA approval? – 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 will be treated as one breach with the highest penalty in respect of the non-compliances identified being imposed i.e. 3%.

### **Example 2** - More than one intentional breach within the same Cross-Compliance area identified

At inspection it is discovered that you have intentionally breached the following three requirements which from the intentional penalty framework would attract the associated penalties:

- GAEC 4 Minimum soil cover Requirement  
After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or

- the land is sown with a crop which will take up Nitrogen – Penalty 20%
- SMR 1 – Protection of water against pollution caused by nitrates from agricultural sources  
N fertiliser applications must not exceed crop requirement -Penalty 20%
- GAEC 7 Retention of landscape features  
Is there evidence of landscape feature removal without prior DAERA approval? – Penalty 30%

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 will be treated as one breach with the highest penalty in respect of the non-compliances identified being imposed i.e. 30% penalty.

**Example 3** - A combination of negligent and intentional breaches within the same Cross-Compliance area

At inspection it is discovered that you have 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  
Negligent breach of - After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 3%
- SMR 1 – Protection of water against pollution caused by nitrates from agricultural sources  
Negligent breach of - N fertiliser applications must not exceed crop requirement - Penalty 1%
- GAEC 7 Retention of landscape features  
Intentional breach of - Is there evidence of landscape feature removal without prior DAERA approval? – Penalty 30%

Because all the breaches fall within the same Cross-Compliance Area (Area 1 – Environment, Climate change, good agricultural condition of land) they will be treated as one breach with the highest penalty in respect of the non-compliances identified being imposed i.e. 30%.

25. 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**

26. 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 however the maximum reduction shall not exceed 5%.
27. 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 you have negligently breached the following Cross-Compliance requirements:

- GAEC Minimum soil cover (Cross-Compliance Area 1)  
After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 3%
- SMR 11 Minimum standards for the protection of calves (Cross Compliance area 3)  
You must inspect all housed calves at least twice a day – Penalty 1%

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

### **Example 2**

At inspection it is discovered that you have negligently breached the following Cross-Compliance requirements:

- GAEC Minimum soil cover (Cross-Compliance Area 1)  
After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 3%
- SMR 11 Minimum standards for the protection of calves (Cross Compliance Area 3)  
You must inspect all housed calves at least twice a day – Penalty 3%

Because the two breaches fall into different Cross-Compliance areas (i.e. 1 and 3) the associated penalties should be added together to give the overall penalty to be deducted  $3\% + 3\% = 6\%$  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

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

- GAEC Minimum soil cover (Cross-Compliance Area 1)  
Negligent breach of – After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 3%
- SMR 11 Minimum standards for the protection of calves (Cross Compliance Area 3)  
Negligent breach of – You must inspect all housed calves at least twice a day – Penalty 3%
- SMR 6 Identification and Registration of Pigs (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 (i.e. 1, 2 and 3) the associated penalties should be added together to give the overall penalty to be deducted  $3\% + 3\% + 30\% = 36\%$  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

At inspection it is discovered that you have intentionally breached the following Cross-Compliance requirements:

- GAEC Minimum soil cover (Cross-Compliance Area 1)  
After harvesting a crop you must establish minimum soil cover by ensuring that from harvest until 15 January in the following year one of the following conditions is met on that land at any time:
  - the stubble of the harvested crop remains in the land; or
  - the land is sown with a crop which will take up Nitrogen – Penalty 20%
- SMR 11 Minimum standards for the protection of calves (Cross Compliance Area 3)  
You must inspect all housed calves at least twice a day – Penalty 30%

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

### **Minor Non-Compliances**

28. 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 will 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.**

29. 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 will 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 2016 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 2017 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 2017 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 5 (Minimum land management reflecting site specific conditions to limit erosion), there are five specific Cross-Compliance requirements:
- i. Has the land been severely trampled or poached?
  - ii. Is there evidence of cultivations on waterlogged soil?
  - iii. Are supplementary / winter feeding sites and sacrifice areas rotated and managed to prevent excessive trampling poaching or vehicle rutting?
  - iv. Is there evidence of overgrazing grassland, semi-natural habitat or archaeological sites?
  - v. Has the farmer burnt heather, gorse, whin or fern between 15 April and 31 August?
34. If you breach requirement (i) 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. 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.	1/8/13	30/6/16	No
2.	2/1/14	30/6/16	Yes
3.	2/1/15	30/6/16	Yes
4.	2/1/16	30/6/16	Yes

Scenario 1 above is not a repeat breach as the gap between the 2 breaches is beyond the 3 calendar year limit. The three calendar years from the date of the first breach would be 2013, 2014 and 2015.

36. 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 repetition breach business rules apply.

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

37. 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.
38. 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 using the severity, extent and permanence associated with the repeat breach to identify the appropriate penalty from the Intentional Penalty matrix.

#### **Example 1**

In June 2014 at inspection it was discovered that 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%

#### **Example 2**

In February 2016 your business is inspected again and a breach of the same specific requirement is identified. This is considered to be a repeat breach. Because of its severity, extent, permanence etc it would attract a penalty of 3%. Because this is a first time repeat breach we must multiply the penalty level due in respect of the repeat non-compliance by 3 i.e.  $3\% \times 3 = 9\%$  reduction will be applied.

#### **Example 3**

Six months later your business is 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 this 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 4**

A year later your business is inspected again and 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 inspector has classed the breach as medium severity, on-farm and rectifiable and therefore the appropriate penalty will be drawn from the Intentional Penalty matrix ie 30%.

#### **Other rules relating to capping negligent breaches at 15 %**

39. In cases where a repeated non-compliance is determined together with another non-compliance or another repeat non-compliance the resulting penalties will be added together. The overall penalty shall however 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)  
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) X 3 = 15%.
- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3)  
Negligent breach of – You must not tether your calves – Penalty 3%

The penalty to be imposed is  $15\% + 3\% = 18\%$  but capped at 15%. Because the GAEC 5 minimum land management reflecting site specific conditions to limit erosion breach of - has the land been severely trampled or poached - has reached the 15 % capping level at this stage you will be informed that if the same breach of the GAEC minimum land management reflecting site specific conditions to limit erosion Requirement – has the land been severely trampled or poached - is identified again, it will be considered that you 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)

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 11 Minimum standards for the protection of calves (Cross-Compliance Area 3)  
Repeat Negligent breach of – You must not tether your calves– 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%. At this stage however you will not be informed that if the same non-compliances are determined again, it will be considered that you acted intentionally. This is because neither of the breaches individually have 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)  
2nd reoccurrence negligent breach of - has land been severely trampled or poached? – Previous penalty 9% X 3 = 27%
- SMR 11 Minimum standards for the protection of calves (Cross-Compliance Area 3)  
2nd Repeat Negligent breach of – You must not tether your calves– 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**

40. Where a repeat intentional breach is discovered within three calendar years of the original intentional breach the penalty to be applied will be the penalty in respect of the repeat non-compliance multiplied by a factor of three.
41. In cases of further repetitions, the multiplication factor 3 shall be applied each time to the reduction fixed in respect of the previous repeat non-compliance.

### **Example 1**

In June 2014 at inspection it was discovered that you intentionally breached the following Cross-Compliance requirement:

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

You must provide artificial lighting for a period equal to the period of natural light normally available between 9.00am and 5.00pm– Penalty 15%

### **Example 2**

In February 2016 your business 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 will be applied.

### **Example 3**

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

Intentional breach of - You must provide artificial lighting for a period equal to the period of natural light normally available between 9.00am and 5.00pm – Penalty 15%. Because this is a second time repeat breach the previous repeat penalty (ie 60%) will be multiplied by 3 = 180%. – Therefore a 100% penalty will be applied.

### **Example 4**

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

Breach of - You must provide artificial lighting for a period equal to the period of natural light normally available between 9.00am and 5.00pm.  
As the previous penalty was 100% this will be multiplied by 3 = 300%.  
Therefore a 100% penalty will be applied.

42. These rules have been built into the intentional overarching penalty framework.