



Isle of Man
Government

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Countryside Care Scheme

Cross Compliance Penalties

CROSS COMPLIANCE PENALTIES

Introduction

This section describes the Cross Compliance penalty framework that applies to the Countryside Care Scheme.

As previously documented, there will be a transition of penalties over a three year period as follows;

Scheme Year 1- If a penalty is applied, the percentage penalty will be 50% of the penalty e.g. a 5% penalty will become 2.5% penalty.

Scheme Year 2- If a penalty is applied, the percentage penalty will be 75% of the penalty e.g. a 4% penalty will become a 3% penalty.

Scheme Year 3 onwards - If a penalty is applied, the percentage penalty will be charged in full.

There are 3 tables associated with the penalty guidance. **Table 1** sets out the penalty matrices and shows the penalties that will be applied depending on the category of breach. **Table 2** is the Cattle Penalty Calculator which is currently used at Cattle Identification Inspections (CII) by Animal Health. **Table 3** contains guidelines for categorising a breach of Cross Compliance. Whilst these tables describe many of the anticipated problems, they cannot cover every possible scenario. Any breaches not covered in the guidance will be considered as and when they arise. Breaches of the Statutory Management Requirements (SMRs) will be assessed when the breach occurs and the penalty determined by reference to the penalty matrix.

In respect of breaches concerning animal health issues: these may be of a fixed nature and set at a fixed fee.

Cross Compliance is divided into two key sets of requirements. Farmers must meet these requirements in order to receive payments in full under the Countryside Care Scheme. They are:

a) Maintenance of land in **Good Agricultural and Environmental Condition** (GAEC). The GAEC standards address four main areas:

- soil erosion,
- soil organic matter,
- soil structure, and
- minimum levels of maintenance.

b) Compliance with **Statutory Management Requirements** (SMRs). The SMRs relate to existing legislation on:

- the environment, wildlife and countryside,
- public and plant health,
- animal health and welfare, and

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- livestock identification and traceability.

BASIC PRINCIPLES OF THE PENALTY FRAMEWORK

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. Any reductions will be applied to the overall amount of payments that have been, or will be, granted to a farmer in the calendar year that the non-compliance was found.

A guide for determining **each of these principles** is set out below.

Table 1 sets out the penalty matrices. These detail the categories against which every breach must be assessed, and the matching penalty.

Intent

Where a farmer breaches the Cross Compliance requirements and has acted intentionally, or negligently, a penalty will generally be imposed. The working descriptions for **Negligent** and **Intentional** are as follows:

Negligent

This is where a farmer has breached a SMR or GAEC measure as a result of failing to take **reasonable care, skill or foresight**. An example of this would be a farmer who causes pollution by spreading slurry near a watercourse.

For the first breach in the case of negligence, payments may be reduced by up to 5%. If there is more than one negligent breach the penalties will accumulate, but the overall reduction will not exceed 5%. This does not apply when dealing with repeat breaches as explained later. In some situations where there is a minor or technical violation of the Cross Compliance rules the penalty may be reduced to 1% or a warning letter.

Intentional

Intentional non-compliance has been defined as being the same as its legal meaning within criminal and civil law. Very broadly, an intentional non-compliance is where the applicant has **knowingly breached the rules that are set out with an understanding of what he was doing and the likely consequences of his actions**. An example of an intentional non-compliance would be a farmer removing a hedge after his application for consent had been turned down.

In cases of intentional non-compliance, there is a minimum penalty of 15% and a maximum penalty of 100% and may even result in exclusion from the Countryside Care Scheme in the following Scheme year.

Extent

The 'extent' of non-compliance shall be determined by taking into account, whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself.

Extent in this context is whether the effects of a breach will be felt On farm or Off farm. For example, to assess the impact of soil erosion, we must consider whether the effects have been confined to the farm or have spread to the wider environment e.g. downstream watercourses or deposition onto a neighbours field or public road.

Severity

The 'severity' of non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance, taking account of the aims of the requirement or standard concerned.

In other words what effect has the particular breach had in relation to what the measure or requirement is intended to achieve. The severity is assessed under five headings – Minimum (minor), Minimum, Medium, High or Very High. Guidance used by inspectors to help categorise the severity of a breach is set out in Table 3.

Permanence

Whether non-compliance is of 'permanence' shall depend in particular, on the length of time for which the effects last or the potential for terminating those effects by reasonable means.

Taking the above into account, the permanence of a breach will be classed as either rectifiable (minor), rectifiable or permanent. Permanent breaches attract higher penalties than rectifiable breaches due to their longer term effect. Again guidance set out in Table 3 helps to categorise the permanence of a breach.

Repetition

If non-compliance with the same requirement or standard is identified within a period of three years, it will be considered to be a repeat breach.

Most of the GAEC standards relate to one standard. For example GAEC 1 (as defined in table 3) relates to the prevention of soil erosion over the winter period. If soil erosion under GAEC 1 is identified in year 1 and again in year 2 or 3 then this would be considered a repeat breach.

Some GAEC standards as well as the SMRs relate to more than one standard or requirement. For example GAEC 16 relates to the retention of a range of boundary features. To be considered a repeat the farmer has to have breached the same requirement within the standard. For example, if in year 1 a farmer removes a hedge and in year 2 trims a hedge outside the dates specified in the relevant codes of practice, this would not be considered to be a repeat since the breaches relate to different requirements within the standard. Equally, under the livestock identification and traceability SMR 6, there are a range of different requirements including: correct tagging, reporting movements, correct dates of birth and reporting deaths. Consequently if incorrect dates of birth are found in year 1, and a non notified death is found in year 2 or 3 then this would not be considered a repeat breach.

Once a repeat breach has been identified the associated penalty must be considered. Where repeated breaches have been determined, the percentage penalty will be three times the penalty applied to the first breach. There are examples to demonstrate this in Appendix 1.

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Table 1

Penalty Matrix (Negligent)

| INTENT | EXTENT | SEVERITY | PERMANENCE | Penalty for 1st breach | | | | |
|------------------|-----------------|------------------|---------------------|------------------------|----------------|----------------|----------------|------|
| | | | | 1st repetition | 2nd repetition | 3rd repetition | 4th repetition | |
| Negligent | On-farm effect | Minimum effect | Rectifiable (minor) | WL | 1% | 3% | 9% | 15% |
| | | | Rectifiable | 1% | 3% | 9% | 15% | 81% |
| | | Permanent | | | | | | |
| | | Medium effect | Rectifiable | 3% | 9% | 15% | 81% | 100% |
| | | | Permanent | | | | | |
| | | High effect | Rectifiable | 5% | 15% | 45% | 100% | 100% |
| | | | Permanent | | | | | |
| | | Very high effect | Rectifiable | 5% | 15% | 45% | 100% | 100% |
| | Permanent | | | | | | | |
| | Off-farm effect | Minimum effect | Rectifiable | 1% | 3% | 9% | 15% | 81% |
| | | | Permanent | 3% | 9% | 15% | 81% | 100% |
| | | Rectifiable | 5% | | | | | |
| | | Permanent | | | | | | |
| | | Medium effect | Rectifiable | 3% | 9% | 15% | 81% | 100% |
| | | | Permanent | | | | | |
| | | High effect | Rectifiable | 5% | 15% | 45% | 100% | 100% |
| Permanent | | | | | | | | |
| Very high effect | Rectifiable | 5% | 15% | 45% | 100% | 100% | | |
| | Permanent | | | | | | | |

Note

- stippled boxes reflect penalties which have been capped at 15%.**
- WL = Warning letter**

Penalty Matrix (Intentional)

| INTENT | EXTENT | SEVERITY | PERMANENCE | Penalty for 1st breach | All subsequent repetitions |
|-------------|-----------------|------------------|-------------|------------------------|----------------------------|
| | | | | | |
| Intentional | On-farm effect | Minimum effect | Rectifiable | 15% | 100% |
| | | | Permanent | 20% | |
| | | Medium effect | Rectifiable | | |
| | | | Permanent | | |
| | | High effect | Rectifiable | 50-100% | |
| | | | Permanent | | |
| | | Very high effect | Rectifiable | 50-100% | |
| | | | Permanent | | |
| | Off-farm effect | Minimum effect | Rectifiable | 30% | |
| | | | Permanent | 40% | |
| | | Medium effect | Rectifiable | | |
| | | | Permanent | | |
| | | High effect | Rectifiable | 100% | |
| | | | Permanent | | |
| | | Very high effect | Rectifiable | 100% | |
| | | | Permanent | | |

Cross Compliance Cattle Penalty Calculator

(Used for SMR 6)

Discrepancies found at inspection will result in Cattle Identification Inspection (CII) failure codes being allocated. The codes, their relative severity scores and extents are as identified in table 2. This system is already in operation at any CII inspection.

The CII errors found at inspection will be used to calculate the Severity and Extent, as follows.

Each CII error will be allocated a score for Cross Compliance purposes depending on its relative seriousness. An overall score will then be calculated for the inspection and this will determine the Severity. Each CII error will also be defined as having either an 'On farm' or 'Off farm' effect and this will be used to determine the Extent

The scores will then be added together (including multiples errors for a single animal) and divided by the number of animals checked during the inspection and then expressed as a percentage. The resultant figure will be the overall score for the inspection and will be used to determine severity as per the following table.

Cattle keepers are required to replace missing ear tags as soon as possible after first becoming aware of the loss. Missing ear tags found at inspection will not count towards Cross Compliance penalties provided they are replaced within 28 days of the inspection. Follow up inspections and information from the Bovine Identification and Tracing System (BITS) will be used to check whether ear tags have been replaced within 28 days. If ear tags are not replaced within 28 days, the error will be considered as an Intentional breach of Cross Compliance, which will result in a minimum 15% penalty.

| Score (%) | Severity |
|------------------|-----------------|
| 3.01 - 5 | Minimum* |
| 5.01 - 10 | Minimum |
| 10.01 - 20 | Medium |
| 20 + | High |

*In certain circumstances a score of 3.01 - 5 will be considered in conjunction with the Permanence assessment as 'Minimum Severity – Rectifiable (minor).'

Scores of up to and including 3.0 will not be regarded as negligent and no penalty will apply unless the breach was considered intentional.

If the inspection result includes one or more 'Off farm' errors then the inspection is considered to have an 'Off farm' extent.

Intent and Permanence

The inspector will assess the Intent and Permanence of any breaches against the criteria defined previously.

Repetition

Repeat breaches will be dealt with in accordance with the Cross Compliance Notes for Guidance.

Table 2

Cross Compliance Cattle Penalty Calculator

| Code | Explanation | Severity | Extent - Animal on holding | Extent - Animal no longer on holding |
|-------------|--|-----------------|-----------------------------------|---|
| NF | Mandatory information missing from farm records | 1.0 | On farm | On farm |
| FM | Failure to report movement | 1.0 | On farm | On farm |
| TG2 | Animal without tags (Note a missing flag is considered a lost tag) | 1.0 | On farm | n/a |
| DB | Registered with an incorrect date of birth | 0.7 | On farm | Off farm |
| DD | Animal dead and passport/ not returned to Cattle Passport Centre prior to inspection | 0.7 | On farm | On farm |
| NA | Documents present but animal not found | 0.7 | Off farm | Off farm |
| ID | Dam identification error (other than space or leading zero issues) | 0.7 | On farm | Off farm |
| NP | Animal found with no passport | 0.7 | On farm | Off farm |
| TG | Animal Incorrectly tagged | 0.4 | On farm | n/a |
| MV | Animal Movement details incorrectly reported to Cattle Passport Centre | 0.4 | On farm | On farm |
| OP | Other passport discrepancy (such as wrong breed or sex) | 0.0 | On farm | n/a |
| IP | Invalid passport | 0.0 | On farm | n/a |
| LZ | Less serious Dam identification errors | 0.0 | On farm | n/a |

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Table 3

Guidance on categorising a breach of Cross Compliance.

NB Please note that the examples are indicative and outcomes will depend on an Inspector's assessment of individual cases.

| GAEC Standard | GAEC Standard Requirements | Definition - Examples and Measurement of the Extent of non-compliance | Extent - On farm /Off farm | Severity - Minimum / Medium /High | Permanence - Rectifiable (minor) /Rectifiable /Permanent |
|----------------------|--|--|-----------------------------------|--|---|
| Standard 1 | All cropped land over the following winter must, where soil conditions after harvest allow, have either: crop cover, grass cover, stubble cover, ploughed surface or a roughly cultivated surface. Fine seedbeds must only be created very close to sowing. | Soil erosion: - up to 1 acre | On farm / Off farm | Minimum | Rectifiable |
| | | - more than 1 acre but less than 12 acres. | On farm / Off farm | Medium | Rectifiable |
| | | - more than 12 acres. | On farm / Off farm | High | Rectifiable |
| Standard 2 | In areas prone to wind erosion you must take reasonable steps to reduce the risk of soil loss in spring by maintaining crop cover, using coarse seedbeds, shelter belts or nurse crops, or use other appropriate measures with an equivalent effect. | Wind erosion identified no steps taken to reduce soil loss: - up to 1 acre. | On farm / Off farm | Minimum | Rectifiable |
| | | - more than 1 acre but less than 12 acres. | On farm / Off farm | Medium | Rectifiable |
| | | - more than 12 acres. | On farm / Off farm | High | Rectifiable |
| Standard 3 | On sites where capping is a problem you must form a coarse seedbed or break any cap that forms to avoid erosion. | Capping identified but no remedial action taken: - up to 1 acre. | On farm / Off farm | Minimum | Rectifiable |
| | | - more than 1 acre but less than 12 acres. | On farm / Off farm | Medium | Rectifiable |
| | | - more than 12 acres. | On farm / Off farm | High | Rectifiable |
| Standard 4 | The farmer has used, or permitted the use of, motorised vehicles on waterlogged soil without one of the | Where use of a motorised vehicle has been attempted, but abandoned due to soil condition | On farm / Off farm | Minimum (minor) | Rectifiable |

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| | permitted conditions applying to the situation | Where a motorised vehicle has been used on waterlogged soil | On farm / Off farm | Minimum | Rectifiable |
| | | where a motorised vehicle has been continuously used on waterlogged soil | On farm / Off farm | Medium | Rectifiable |
| Standard 4 | The farmer has carried out mechanical field operations on waterlogged soil without one of the permitted conditions applying to the situation | Where an operation has been attempted, but abandoned due to soil condition. | On farm / Off farm | Minimum (minor) | Rectifiable |
| | | Where an operation has been carried out. | On farm/ Off farm | Minimum | Rectifiable |
| | | Where multiple operations have been carried out in a waterlogged field, e.g. ploughing and drilling in separate passes. | On farm/ Off farm | Medium | Rectifiable |
| | | Where multiple operations have been carried out in multiple fields | On farm/ Off farm | High | Rectifiable |
| Standard 5 | Prior approval must be sought from DAFF before burning these residues: cereal straw, cereal stubble, residues of oilseed rape, residues of field beans harvested dry or residues of peas harvested dry | Evidence of burning crop residue on land up to and including 2 acres | On farm / Off farm | Minimum | Rectifiable |
| | | Evidence of burning crop residues on land which is more than 2 acres in size but no greater than 12 acres of land | On farm/ Off farm | Medium | Rectifiable |
| | | Evidence of burning crop residue on land which is greater than 12 acres in size | On farm/ Off farm | High | Rectifiable |
| Standard 6 | You must follow the latest edition of The Heath Burning Code on Registered Heath (available from DAFF) and follow the Heath Burning | Soil erosion due to non compliance with the Heath Burning Code: - burning unsuitable areas. | On farm / Off farm | Minimum | Rectifiable |

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| | Code guidelines as best practice elsewhere. | - burning in unsuitable weather conditions e.g. windy conditions. | On farm / Off farm | Medium | Rectifiable |
| | | - out of control fire | On farm / Off farm | High | Rectifiable |
| Standard 7 | Prevent erosion of land, particularly, banks of watercourses, watering points and feeding areas from overgrazing, heavy trampling or heavy poaching by livestock. Where this occurs reduce stock until the land has recovered. All problems should be rectified at any time during the next growing season after the period that the problem has occurred. This measure does not apply to areas within 10m of a gateway and 3m of farm tracks necessarily used during wet-periods. | Erosion caused by livestock from overgrazing, heavy trampling or heavy poaching: - up to 1 acre. | On farm / Off farm | Minimum | Rectifiable |
| | | - more than 1 acre but less than 12 acres. | On farm / Off farm | Medium | Rectifiable |
| | | - more than 12 acres. | On farm / Off farm | High | Rectifiable |
| Standard 8 | On arable land: | | | | |
| | (i) Use suitable break crops in an arable rotation; or | Use of organic materials - no records. | On farm | Minimum | Rectifiable |
| | (ii) Optimise the use of organic materials by basing rates of application on soil and crop needs. Where break crops are not used, a record should be kept for 5 years of organic materials and quantities applied to arable land. | No break crop and no use of organic materials. | On farm | High | Rectifiable |

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| <p>Standard 9</p> | <p>All organic manures applied to stubble must be done in such a way to minimise the risk of pollution. Use correctly sited field middens to reduce the risk of pollution.</p> | <p>Follow Guidelines contained in the Code of Good Agricultural Practice for the Protection of Water.</p> | <p>On farm/ Off farm</p> | <p>High</p> | <p>Rectifiable</p> |
| <p>Standard 10</p> | <p>i) Avoid undergrazing at a level where the growth of scrub or coarse vegetation is detrimental to the environmental or agricultural interest in the field. ii) Where undergrazing is identified, a management regime to be observed on that site must be approved by DAFF.</p> | <p>Undergrazing to the detriment of the environmental or agricultural interest in the field: - Undergrazing up to 2% of the holding. - Undergrazing more than 2% but less than 10% of the holding. - Undergrazing more than 10% but less than 20% of the holding. - Undergrazing more than 20% of the holding. Management regime not followed by end of next growing season: - agreed stocking not met by up to 5%. - agreed stocking not met by more than 5% but less than 25%. - agreed stocking not met by more than 25% but less than 50%. - agreed stocking not met by more than 50%. - topping not carried out</p> | <p>On farm On farm On farm On farm On farm On farm On farm On farm</p> | <p>Minimum Minimum Medium High Minimum Minimum Medium High High</p> | <p>Rectifiable (minor) Rectifiable Rectifiable Rectifiable Rectifiable (minor) Rectifiable Rectifiable Rectifiable Rectifiable</p> |
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| Standard 11 | <p>i) Avoid overgrazing with livestock and other species in such numbers as to adversely affect the growth; structure; or species composition of vegetation on the land. The only exception to this is where vegetation is normally grazed to destruction to a significant degree (i.e. land that is to be cultivated immediately after grazing by livestock, which remove the entire crop).</p> <p>ii) Where overgrazing is as a result of an unexpected and unpredictable incursion of wild or feral animals (e.g. rabbits, geese) and it can be shown that appropriate action had been taken to deal with the problem then you will not be held accountable for overgrazing caused as a result of this infringement.</p> <p>iii) Where overgrazing is attributable to Wild or feral animals you will be expected to provide evidence of use of available control methods.</p> <p>iv) Where overgrazing is identified, a management regime to be observed on that site must be approved by DAFF.</p> | <p>Overgrazing adversely affecting the growth, structure or species composition of the vegetation on the land.</p> <p>Semi-natural habitats</p> <p>a) Overgrazing up to 2% of the holding.</p> | On farm | Minimum | Rectifiable (minor) |
| | | b) Overgrazing more than 2% but less than 10% of the holding. | On farm | Minimum | Rectifiable |
| | | c) Overgrazing more than 10% but less than 20% of the holding. | On farm | Medium | Rectifiable |
| | | d) Overgrazing more than 20% of the holding. | On farm | High | Rectifiable |
| | | <p>Management regime not followed:</p> <p>- agreed stocking exceeded by up to 5%.</p> | On farm | Minimum | Rectifiable (minor) |
| | | - agreed stocking exceeded by more than 5% but less than 25%. | On farm | Minimum | Rectifiable |
| | | - agreed stocking exceeded by more than 25% but less than 50%. | On farm | Medium | Rectifiable |
| | | - agreed stocking exceeded by more than 50%. | On farm | High | Rectifiable |
| Standard 12 | <p>Supplementary feeding sites must be managed to prevent land, and especially semi-natural vegetation, from excessive trampling, poaching or vehicle rutting to minimise soil</p> | <p>Unsuitable Supplementary Feeding, on natural or semi natural habitat where it will not be restored to its original condition by the end of the</p> | | | |

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| | erosion and to avoid run off to water ways. | growing season in the following calendar year: Less than half an acre | On farm | Minimum | Rectifiable |
| | | More that ½ acre but less than 1 acre | On farm | Medium | Rectifiable |
| | | 1 acre and over | On farm | High | Rectifiable |
| Standard 13 | Do not discard (or store) waste: plastic, paper, wood, timber, wire, fencing materials, feed containers, scrapped machinery or vehicles, building materials or any other litter, waste or scrap on agricultural land or in woodland, ponds or other areas of habitat . | <u>Waste:</u> plastic, paper, wood, timber, wire, feed containers, fencing materials and building materials | On farm | Minimum (minor) | Rectifiable |
| | | <u>Waste:</u> scrapped machinery and vehicles | On farm | Minimum | Rectifiable |
| | | <u>Waste:</u> Chemical, Pesticide or Medicine containers not disposed of appropriately | On farm | High | Rectifiable |
| Standard 14 | Retain all semi-natural habitats (rough grazing, woodland, scrub, moorland, wetlands, species-rich grasslands), ponds, shelterbelts, trees protected under the Tree Preservation Act 1993 and archaeological features. | Functional stock proof fences around shelter belts and copses have not been maintained. | On farm | Minimum | Rectifiable |
| | | Severe poaching in copses or shelter belts. | On farm | Medium | Rectifiable |
| | | Eutrophication of pond | On farm | Medium | Rectifiable |
| | Ensure that you have identified the location and extent of all archaeological heritage sites listed on the National Heritage Record on your land and that all (or any part of) are not demolished, destroyed, removed, damaged, altered, added to or flooded etc unless authorised by Manx National Heritage or any other appropriate body or an | Pond has been drained | On farm | High | Permanent |
| | | Damage or destruction of any archaeological heritage site | On farm | Range from Minimum to High | Rectifiable/ Permanent |
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| | exceptional circumstance occurs. | | | | |
| Standard 15 | Do not apply any fertilisers, manures, pesticides, or liming materials to any rough grazings, moorland, unimproved pastures, wetlands, or other semi-improved areas. In some circumstance you may obtain prior written permission from DAFF, in which case you must comply with any conditions contained. | Pesticides, lime or fertiliser applied to rough grazing and semi-natural areas: - up to 1 acre. | On farm | Minimum | Rectifiable |
| | | - more than 1 acre but less than 12 acres. | On farm | Medium | Rectifiable |
| | | - more than 12 acres | On farm | High | Rectifiable |
| Standard 16 | You must not damage, nor without the prior written agreement of DAFF and any other appropriate statutory bodies remove or destroy any of the following boundary features: turf and stone-faced banks and hedges, any type of walls complete or dilapidated, hedges and hedgerow trees, boundary trees or watercourses. You must not cultivate or apply fertilisers, dredgings, slurry, manures or pesticides to land within 1 metre (margin) of the centre of a hedgerow or land within 1 metre (margin) of the top of the bank of a watercourse. Hedge trimming must be carried out in accordance with the Manx Hedgerow Code of Best Practice | Damage to any type of walls, turf and stone-faced banks, walls, hedges and hedgerow trees, boundary trees and watercourses. | On farm | Minimum | Rectifiable |
| | | Removal of poor quality walls, turf and stone-faced banks, or hedges | On farm | Medium | Permanent |
| | | Removal of good quality walls, turf and stone-faced banks or hedges | On farm | High | Permanent |
| | | Removal of hedgerow trees, boundary trees and watercourses. | On farm | High | Permanent |
| | | Hedges trimmed in contravention of the Manx Hedgerow Code of Best Practice | On farm | Medium | Rectifiable |
| Standard 17 | Avoid the encroachment of unwanted | Land infested with unwanted | | | |

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| | <p>vegetation which degrades the agricultural and environmental value of the land to the extent that the land is not capable of returning to agricultural production at any time during the growing season in the following calendar year</p> | <p>vegetation and not returning to agricultural production at any time during the growing season in the following calendar year:</p> <p>- 20% or less of a field</p> <p>- more than 20% but less than 50% of a field</p> <p>-more than 50% of a field.</p> | <p>On farm</p> <p>On farm</p> <p>On farm</p> | <p>Minimum</p> <p>Medium</p> <p>High</p> | <p>Rectifiable</p> <p>Rectifiable</p> <p>Rectifiable</p> |
| <p>Standard 18</p> | <p>You must not without lawful authority or excuse disturb the surface of a public right of way that crosses your land so as to render it inconvenient to pass over it, or block the free passage along a right of way such as by locking gates, growing crops, allowing overhanging vegetation, or blocking the route with electric or barbed wire fences.</p> | <p>A stile and/or a gate for which the farmer is responsible has not been maintained to a standard of repair which ensures it is reasonably easy to use.</p> <p>The surface of a visible cross-field footpath or bridleway has been disturbed and has not been reinstated within the specified time.</p> | <p>On farm</p> <p>On farm</p> | <p>Minimum</p> <p>Medium</p> | <p>Rectifiable</p> <p>Rectifiable</p> |

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Appendix 1

EXAMPLES OF MULTIPLE AND REPEAT BREACHES

Example One

During an inspection in February 2010, incorrectly tagged cattle were found (SMR 6) resulting in a 1% penalty.

In November 2011 further animals are discovered incorrectly tagged - a repeat of the breach identified in 2010. Therefore a 3% penalty (1% x 3) is applied.

In the case of further repetitions of negligent breaches the multiplication factor of three will be applied each time to the result of the reduction fixed in respect of the previous repeated breach. The maximum reduction will, however, not exceed 15%.

Example Two

During an inspection in February 2009, soil erosion on cropped land (GAEC measure 1) is identified resulting in a 3% penalty.

In December 2010 a further breach of GAEC measure 1 is identified - a repeat of the breach in 2009. Therefore a 9% penalty (3% x 3) is applied.

In December 2011, a third breach of GAEC measure 1 is identified - a repeat of the breaches identified in 2009 and 2010. In this case 9% multiplied by 3 gives 27% but the maximum penalty ceiling is 15% and so the 27% is scaled back down to 15%.

Once the maximum percentage of 15% has been reached any further repeat breach will be considered as intentional. The resulting penalty will be 3 times the result of the previous penalty before (where applicable) the limitation to 15%.

In example two, the third breach would have resulted in a 27% penalty without the 15% ceiling. A fourth breach would therefore result in an 81% penalty (27% x 3).

AREAS OF CROSS COMPLIANCE AND MULTIPLE FIRST TIME BREACHES

Cross Compliance is classified under 4 'Areas'. These are:

- Environment (SMRs 1, 2, 3, 4, 5)
- Public, animal and plant health (SMRs 6, 7, 8, 9, 10, 11, 12, 13)
- Animal welfare (SMR 14)
- GAEC (All GAEC standards)

There are a number of rules governing the calculation of penalties from multiple first time breaches. If there is more than one breach within the same area, the highest determined penalty figure is applied. Alternatively, if there is more than one breach and they are in different areas then the penalty figures are added together. First time breaches, or multiple first time breaches, under the negligent category cannot exceed 5% in the first year. Three examples are provided below to help demonstrate these rules:

Example Three

During an inspection two breaches of Cross Compliance are identified.

1) Unauthorised disposal of sheep dip (SMR 3) which results in a 1% penalty.

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2) Excess Sewage Sludge application within a field (SMR 4) which results in a 3% penalty.

Both of these breaches fall within the 'Environment' area of Cross Compliance and so the highest penalty figure is used. In this case it is the 3% which is taken and applied to any claims made under the Countryside Care Scheme.

Example Four

During an inspection two breaches of Cross Compliance are identified.

- 1) Unauthorised disposal of sheep dip (SMR 3) which results in a 1% penalty.
- 2) Failure to report cattle movements (SMR 6) which results in a 3% penalty.

These breaches fall into different areas of Cross Compliance, the first into 'Environment' and the second into 'Public, animal and plant health' and as a result the two penalties must be added together. This gives 4 % which is applied to any claims made under the Countryside Care Scheme.

Example Five

During an inspection two breaches of Cross Compliance are identified.

- 1) Unauthorised disposal of sheep dip (SMR 3) which results in a 3% penalty.
- 2) Failure to report cattle movements (SMR 6) which results in a 3% penalty.

As in example two, these breaches fall into different areas of Cross Compliance, the first into 'Environment' and the second into 'Public, animal and plant health' and as a result the two penalties are added together. This gives 6 % but because both breaches are in the negligent category and are first time breaches the 5% ceiling applies. Therefore the 6% is scaled back to 5% and applied to any claims made under the Countryside Care Scheme.

ONE BREACH COVERING BOTH GAEC and SMR

In some situations one breach of the Cross Compliance rules may impact on two standards or requirements. In these situations this is considered to be one breach and only the breach with the highest determined penalty figure is used.

Example Six

At an inspection in July 2009, overgrazing on an identified wildlife site is identified. This is a breach of the Habitats Directive (SMR 2) and results in a 5% penalty but it is also a breach of the overgrazing measure under GAEC (number 11) and results in a 3% penalty. Both penalties have come from the same breach source and so only the highest determined penalty figure is used - in this case 5%.

MULTIPLE BREACHES WITH BOTH FIRST TIME AND REPEAT BREACHES

The examples above describe the penalty situation where multiple first time breaches are identified. This section explains the penalties applied when multiple breaches are a mixture of first time breaches and repeat breaches.

In cases where a repeat breach is determined together with another breach or another repeated breach the resulting percentage penalties are added together. Consideration is given to the 15% limit explained in Example 2 of the repeated breaches section. The following examples demonstrate how penalties are calculated when there are both first time and repeat breaches.

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Example Seven

During an inspection three breaches of Cross Compliance are identified.

- 1) Unauthorised disposal of sheep dip (SMR 3) is determined for the first time which results in a 1% penalty.
- 2) Failure to report cattle movements (SMR 6) is determined for the first time which results in a 3% penalty.
- 3) A stone wall is removed without authorisation (GAEC 16) for the second consecutive year, a repeat breach which results in a 3% penalty.

There are two first time breaches. Breach 1 is from the 'Environment' area and breach 2 is from the 'Public, animal and plant health' area. Because these breaches are from different areas they are added together to give 4%. This 4% is then added to the repeat breach of 3% to make the total penalty figure 7%.

Example Eight

During an inspection three breaches of Cross Compliance are identified.

- 1) Unauthorised disposal of sheep dip (SMR 3) is determined for the first time which results in a 1% penalty.
- 2) Excess Sewage Sludge application within a field (SMR 4) is determined for the first time which results in a 3% penalty.
- 3) A stone wall is removed without authorisation (GAEC 16) for the second consecutive year, a repeat breach which results in a 3% penalty.

Both of the first time breaches are from the 'Environment' area which means that the highest determined penalty figure is used, in this case 3%. This 3% is then added to the repeat breach of 3% to give a total penalty figure of 6%.

Example Nine

During an inspection three breaches of Cross Compliance are identified.

- 1) A farmer causes damage to a protected site, resulting in a 3% penalty.
- 2) Failure to report cattle movements (SMR 6) is determined for the first time which results in a 3% penalty.
- 3) A stone wall is removed without authorisation (GAEC 16) for the second consecutive year, a repeat breach which results in a 3% penalty.

Of the first time breaches, breach 1 is from the 'Environment' area and breach 2 is from the 'Public, animal and plant health' area which means they are added together to give 6%. However because they are both first time negligent breaches, the 5% penalty limit applies. Therefore the 6% is reduced to 5% and added to the repeat breach of 3% to give an overall penalty figure of 8%.

Example Ten

During an inspection three breaches of Cross Compliance are identified.

- 1) Unauthorised disposal of sheep dip (SMR 3) is determined for the first time which results in a 3% penalty.

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2) Failure to report cattle movements (SMR 6) is determined for the first time which results in a 3% penalty.

3) Chemical containers have not been disposed of appropriately (GAEC 13) for the second consecutive year. A repeat breach which results in a 15% penalty.

Of the first time breaches, breach 1 is from the 'Environment' area and breach 2 is from the 'Public, animal and plant health' area which means they are added together to give 6%. However because they are both first time negligent breaches, the 5% limit applies. Therefore the 6% is scaled back to 5% and added to the repeat breach of 15%. This gives an overall figure of 20% but because all three breaches are classified as negligent, the 15% limit for negligent breaches applies. The 20% is reduced to 15% and applied to any claims made under the direct payment schemes.

Example Eleven

During an inspection two breaches of Cross Compliance are identified.

1) Soil erosion on cropped land over the winter period (GAEC 1) is found for the 2nd time which results in a 9% penalty.

2) A stone wall is removed after consent for removal had been refused (GAEC 16) and is classified as an intentional breach resulting in a 30% penalty.

The 'Areas' of Cross Compliance do not apply for repeat negligent breaches or intentional breaches. So, in the example above, the 9% is added to the 30% to give an overall penalty figure of 39%.

STANDARD OF PROOF AND RIGHT TO APPEAL

As the SMRs are based on existing legislation, farmers who commit serious breaches could potentially be subject to legal proceedings by the relevant Statutory Authority.

Unlike criminal prosecutions, the lower, civil standard of proof will be used to decide whether or not Cross Compliance requirements have been breached.

In other words, even if there is no criminal prosecution, Cross Compliance penalties can still be applied. Civil standard of proof relates to the balance of probability.

If an inspector can provide evidence to show that on the balance of probability a breach has been committed then this is enough to allow a Cross Compliance penalty to be applied. Farmers who dispute the findings can lodge an appeal under the Appeals procedure.