Penalties for breaches of Cross Compliance

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Standards of proof

Although the 13 Statutory Management Requirements (SMRs) are based on existing European legislation, Cross Compliance operates separately from the criminal process.

This means that criminal proceedings and cross compliance can run in parallel. For example, a claimant who has falsified a cattle passport may be prosecuted by the local authority as well as having a penalty applied to their support scheme payments.

Unlike criminal prosecutions, the lower civil standard of proof is used to decide if Cross Compliance requirements have been breached.

This means that even if an enforcement agency hasn't got enough evidence to take forward a prosecution or a prosecution isn't successful, Cross Compliance penalties can still be applied.

The civil standard of proof relates to the balance of probability. If there is 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 or crofters who dispute the findings can lodge an appeal under the existing EU appeals procedure.

EU appeal procedure

If you do not understand why we have applied a penalty to your payments, staff at your local area office will be happy to explain our decision.

If you are not satisfied with the explanation or do not agree with our decision you can apply to have the decision reviewed under the EU Agricultural Subsidy Scheme Appeals Procedure.

If you want to appeal against the decision it is very important that you complete and return an appeals application to your local office within 30 days of the date on your breach letter.

Full details of the appeals process can be found on the Scottish Government website.

EU Agricultural Subsidy Scheme Appeals Procedure

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Complaining about our standards

We aim to provide a high-quality service to all our customers, but recognise that sometimes things can go wrong and these high standards may not be met.

Full details of the complaints procedure can be found on the Scottish Government website.

Complaints procedure

How are Cross Compliance penalties calculated?

If you don't meet all of the GAEC and SMR requirements we call this a breach and a penalty may be applied to your support scheme payments.

Breaches can be found during a routine inspection or following receipt of information from another source. In relation to animal welfare this could include a report of sick or injured animals from an abattoir or market.

When there is a breach the level of any penalty depends on the assessment against the following five points:

Breach assessment:

- intent – was it a negligent or intentional breach?
- extent – is the breach confined to your farm or does it have wider implications?
- severity – what is the significance of the breach?
- permanence – does it have a lasting effect?
- reoccurrence – have we found this same breach previously?

Negligent breaches

A negligent breach is where a farmer breaches a GAEC or SMR as a result of failing to take reasonable care, skill and foresight.

An example of this would be a farmer who fails to notify the movements of cattle 'onto' or 'off' their holding. Negligent breaches usually result in a three per cent penalty.

However, depending on the assessment of extent, severity and permanence, the penalty can be reduced to one per cent or increased to five per cent. If the breach is considered to be minor, we may issue a warning letter instead.

If we issue a warning letter we will tell you what you need to do to remedy the breach and give you a timescale in which to carry out the remedial action.

It is important that you carry out the remedial action. If we carry out a follow-up inspection and find the same breach, we will apply at least a one per cent penalty for the year in which the warning letter was issued and we will also consider the breach as a recurrence for the year the follow-up inspection took place.

If we find the same breach or a new breach of the same requirement within a period of three calendar years we will consider the breach to be a reoccurrence.

The penalty for a negligent first reoccurrence is worked out by assessing the breach and multiplying the related penalty by three.

The penalty for a negligent second reoccurrence is worked out by simply multiplying the penalty for the previous breach by three. This continues each time a reoccurrence breach is found until the penalty reaches 15 per cent. After that, any further reoccurrences will be treated as intentional.

Intentional breaches

An intentional breach is defined as being the same as its legal meaning within criminal and civil law.

Very broadly, an Intentional breach is where a farmer knowingly breaches a GAEC or SMR with an understanding of what he/she was doing and the likely consequences of his/her actions.

An example of this is would be a farmer who removed a hedge after an application for consent had been turned down. Intentional breaches are assessed on a case-by-case basis taking into account all of the available information.

Penalties for intentional breaches are much higher and generally result in a 20 per cent reduction in payments.

However, again, depending on the assessment of extent, severity and permanence, the penalty can be reduced to 15 per cent or increased to 100 per cent. In extreme cases a farmer may be prevented from claiming support payments the following year.

The penalty for intentional reoccurrence is worked out by simply multiplying the penalty for the previous breach by three.

Penalty tables

There are 32 different ways a breach can be assessed, 16 each for negligent and intentional breaches.

Penalty tables have been published to help you see what sort of penalty would be applied depending on how a breach has been assessed.

The 2015 penalty tables will soon be available.

Negligent (Available in 2015)

Intentional (Available in 2015)

What happens if more than one breach is found?

There are a number different of rules for working out the overall penalty if more than one breach is found during the calendar year.

For penalty purposes:

- if a breach of a requirement is both part of a GAEC and a SMR it’s only considered to be a breach of the SMR
- if there are first-time negligent and/or first-time intentional breaches within the same area of Cross Compliance (see table 1 below) they are considered to be a single breach. The overall penalty is based on the highest individual penalty
- if there are first-time negligent breaches in different areas the individual penalties are added together and capped at five per cent
- if there are first-time intentional breaches in different areas the individual penalties are added together and capped at 100 per cent
- if there are first-time negligent and first-time intentional breaches in different areas of Cross Compliance, the individual penalties are added together and capped at 100 per cent
- if there are reoccurring breaches with penalties of 15 per cent or less the individual penalties are added together and capped at 15 per cent
- if there are reoccurring breaches with penalties of more than 15 per cent the individual penalties are added together and capped at 100 per cent
- if there are only reoccurring breaches with penalties of 15 per cent or less and other first-time negligent breaches the penalty for the reoccurring breaches is added to the other individual penalties and capped at 15 per cent
- if there are only reoccurring breaches with penalties of 15 per cent or less and other first-time Intentional breaches the penalty for the reoccurring breaches is added to the other individual penalties and capped at 100 per cent

Common breaches

For more information about which requirements are commonly breached, see the 2013 inspections statistics.

2013 Cross Compliance inspections statistics

Circumvention

If you artificially create conditions to circumvent cross compliance we may reject your claims.

Table 1

Areas of Cross Compliance	Requirement
Environment, climate change, good agricultural condition of land	SMR 1, SMR 2, SMR 3 and GAECs 1-7
Public health, animal health and plant health	SMR 4, SMR 5, SMR 6, SMR 7, SMR 8, SMR 9 and SMR 10
Animal welfare	SMR 11, 12 and 13

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