**Annex 6 2024 Business Rules - Legislation**

EU Direct Payment regulations are assimilated in UK law by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and have been amended by secondary legislation made under the Direct Payment to Farmers (Legislative Continuity) Act 2020 and the Agriculture Act 2020.

References in this guidance to EU regulations and legislation are to be taken as reference to those provisions as retained in UK law.

\*The Statutory Rule – The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2023 – S.R. 2023 No 210, extended the provisions of Statutory Rule - The Direct Payments to Farmers (Cross-Compliance) (Amendment) Regulations (Northern Ireland) 2022 - S.R. 2022 No. 240 with effect from the 2024 scheme year.

These amendments remove the automatic application of intentional penalties where there is a recurrence of the same non-compliance after capping at 15%.

The change to the current regime means that penalties will remain capped at 15% unless the inspectorate deems them to have been caused intentionally.

**Administrative checks legislative basis**

*Article 96 Paragraph 2 of Council Regulation 1306/2013*

*Depending on the requirements, standards, acts or areas of cross-compliance in question, the relevant authority may decide to carry out administrative checks, in particular those already provided for under the control systems applicable to the respective requirement, standard, act or area of cross-compliance.*

*Article 71 Paragraph 4 of Commission Implementing Regulation 809/2014*

*On-the-spot check controls at farm level may be replaced by administrative controls, provided that the relevant authority ensures at least equal effectiveness of these controls.*

**On-the-spot farm inspections legislative basis**

*Article 96 Paragraph 3 of Council Regulation 1306/2013*

*The relevant authority shall carry out on-the-spot checks to verify whether a beneficiary complies with the obligations laid down in this Title.*

*Article 68 of Commission Implementing Regulation 809/2014*

**Minimum control rate**

*1. The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1% of the total number of the beneficiaries receiving direct payments and the other beneficiaries referred to in Article 92 of Regulation (EU) No 1306/2013, as amended for the purpose of agricultural support.*

*By way of derogation from the first subparagraph, in the case of groups of persons as referred to in Articles 28 (Agri-environment Climate)and 29 (Organic farming) of Regulation (EU) No 1305/2013 each individual member of these groups may be considered as beneficiary for the purpose of calculation of the control sample as specified in the first subparagraph.*

*The minimum control rate referred to in the first subparagraph may be reached at the level of each competent control authority or at the level of each act or standard or group of acts or standards. Where the checks are not carried out by the Paying Agency, this minimum control rate may however be reached at the level of each paying agency.*

*Where the legislation applicable to the act and standards already fixes minimum control rates, that rate shall be applied instead of the minimum rate mentioned in the first subparagraph. Alternatively, the relevant authority may decide that any instances of non-compliance detected in the course of any on-the-spot checks under the legislation applicable to the acts and standards which are carried out outside the sample referred to in the first subparagraph, shall be reported to, and followed up by, the competent control authority in charge of the act or standard concerned. The provisions of this Chapter and Chapters I to III of Title III of this Regulation shall apply.*

*As regards to the cross-compliance obligations in relation to Council Directive 96/22/EC,(*SMR 5 Restrictions on the use of substances having Hormonal or Thyrostatic Actions and Beta-agonists in farm animals*) the application of specific sampling level of monitoring plans shall be considered to fulfill the requirement of the minimum rate mentioned in the first subparagraph.*

*2. By way of derogation from paragraph 1, in order to reach the minimum control rate referred to in that paragraph at the level of each act or standard or group of acts or standards, the relevant authority may:*

*(a) use the results of on-the-spot checks carried out pursuant to the legislation applicable to those acts and standards for the selected beneficiaries; or*

*(b) replace selected beneficiaries by beneficiaries subject to an on-the-spot check carried out pursuant to the legislation applicable to those acts and standards provided that those are beneficiaries as referred to in Article 92 of Regulation (EU) No 1306/2013.*

*In such cases the on-the spot checks shall cover all aspects of the relevant acts or standards as defined under cross compliance. Furthermore the relevant authority shall ensure that the effectiveness of those on-the-spot checks is at least equal to that achieved when the on-the spot checks are carried out by competent control authorities.*

*3. When establishing the minimum control rate referred to in paragraph 1 of this Article the required actions as referred to in Article 97(3) (*De minimis*) of Regulation (EU) No 1306/2013, shall not be taken into account.*

*4. Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for this act or standard in the following control period shall be increased. Within a specific act the competent control authority may decide to limit the scope of these further on-the-spot checks to the most frequently infringed requirements.*

*5. When the relevant authority decides to make use of the option provided for in Article 97 (3) (*De Minimis*) of Regulation (EU) No 1306/2013, the actions necessary to verify that the beneficiaries have remedied the situation of non-compliances concerned shall apply on a sample of 20% of those beneficiaries.*

*Article 69*

**Selection of the control sample legislative basis**

*1. The selection of the sample of farms to be checked in accordance with Article 68 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk analysis appropriate to the requirements or standards.*

*That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones.*

*The risk analysis may take into account one or both of the following:*

*(a) a beneficiary’s participation in the farm advisory system established in Article 12 of Regulation (EU) No 1306/2013;*

*(b) a beneficiary’s participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.*

*The relevant authority may decide on the basis of a risk analysis to exclude beneficiaries participating in a certification system as referred to in point (b) of the second subparagraph from the risk-based control sample. However, when the certification system only covers part of the requirements and standards to be respected under cross-compliance by the beneficiary, appropriate risk factors shall be applied for the requirements or standards that are not covered by the certification system.*

*When the analysis of control results reveals that there is a significant frequency of non-compliance with the requirements of standards included in a certification system as referred to in point (b) of the second subparagraph, the risk factors related to the requirements or standards concerned shall be re-assessed.*

*2. Paragraph 1 does not apply to checks carried out as a follow up of non-compliances brought to the attention of the competent control authority in any other way. However it applies to checks carried out as follow-up under Article 97(3) (*De minimis follow up requirement*) second subparagraph of Regulation (EU) No 1306/2013.*

*3. To provide the element of representativeness, between 20% and 25% of the minimum number of beneficiaries to be subject to on-the-spot checks as provided for in the first subparagraph of Article 68 (1) of this Regulation,, shall be selected randomly. However, if the number of beneficiaries to be subject to on-the-spot checks exceeds the minimum number, the percentage of randomly selected beneficiaries in the additional sample shall not exceed 25%.*

*4. A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.*

*5. The sample of beneficiaries to be checked in accordance with Article 68(1) may be selected from the samples of beneficiaries which were already selected pursuant to Articles 30, 31,33 and 34 (see table below) and to whom the relevant requirements or standards apply.*

*6. By way of derogation from Article 68(1), the samples of beneficiaries to be checked on-the-spot may be selected at the minimum rate of 1% of the beneficiaries receiving direct payment.*

*7. Where it is concluded, on the basis of the risk analysis applied at farm level, that non beneficiaries represent a higher risk than the beneficiaries referred to in Article 92 of Regulation (EU) No 1306/2013 those beneficiaries may be replaced by non-beneficiaries. In that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in Article 68(1) of this Regulation. The reasons for such replacements shall be properly justified and documented.*

*8. It may be decided to proceed by a combination of the procedures set out in paragraphs 5 and 6 in the case where such a combination increases the effectiveness of the control system.*

**Fixing of penalties legislative basis**

*Council Regulation 1306/2013 Article 91*

***General principle***

*1. Where a beneficiary referred to in Article 92 does not comply with the rules on cross compliance as laid down in Article 93, an administrative penalty shall be imposed on that beneficiary.*

*2. The administrative penalty referred to in paragraph 1 shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned; and where one, or both, of the following additional conditions are met:*

*(a) the non-compliance is related to the agricultural activity of the beneficiary;*

*(b) the area of the holding of the beneficiary is concerned.*

*With regards to forest areas, however, this penalty shall not apply in so far as no support is claimed for the area concerned in accordance with point (a) of Article 21 (1) and Articles 30 and 34 of Regulation (EU) No 1306/2013.*

*3. For the purpose of this Title the following definitions shall apply:*

*(a) “holding” means all the production units and areas managed by the beneficiary referred to in Article 92 situated within Northern Ireland;*

*(b) “requirement” means each individual statutory management requirement referred to in Annex II within a given act, differing in substance from any other requirements of the same act.*

*Council Regulation 1306/2013 Article 97*

**Application of the administrative penalty legislative basis**

*1. The administrative penalty provided for in Article 91(of Regulation 1306/2013) 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 in the calendar year concerned.,*

*2. In cases in which the land is transferred during the calendar year concerned or the years concerned, paragraph 1 shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred. By way of derogation from the first sentence, where the person to whom the act or omission is directly attributable has submitted an aid application in the calendar year concerned or the years concerned the administrative penalty shall be imposed on the basis of the total amounts of the payments referred to in Article 92 granted or to be granted to that person.*

*For the purpose of this paragraph, "transfer" means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.*

**Application of Reductions – General Principles**

Council Regulation 1306/2013 Article 99

***Calculation of the administrative penalty***

*1. The administrative penalty provided for in article 91 shall be applied by means of reduction or exclusion of the total amount of the payments listed in Article 92 granted or to be granted to the beneficiary concerned in respect of aid applications he has submitted or will submit in the course of the calendar year of the finding.*

*For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence and reoccurrence of the non-compliance found as well as of the criteria set out in paragraphs 2, 3 and 4.*

*2. In the case of non-compliance due to negligence, the percentage of reduction shall not exceed 5% and, in the case of reoccurrence, shall not exceed 15%.*

*The relevant authority may set up an early warning system that applies to cases of non-compliance which, given their minor severity, extent and duration, shall not, in duly justified cases, lead to a reduction or exclusion. Where the relevant authority decides to make use of this option, the competent control authority shall send an early warning to the beneficiary, notifying the beneficiary of the finding and the obligation to take remedial action. In case a subsequent check establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied retroactively.*

*However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.*

*The relevant authority may give priority access to the farm advisory system to the beneficiaries who have received for the first time an early warning.*

*3. In the case of intentional non-compliance, the percentage reduction shall in principle not be less than 20% and may go as far as total exclusion from one or several aid schemes and may apply for one or more calendar years.*

*4. In any event, the total amount of reductions and exclusions for one calendar year shall not be more than the total amount referred to in the first subparagraph of paragraph 1.*

*Commission Delegated Regulation 640/2014 Article 38*

***General rules concerning non-compliance***

*1. The “reoccurrence” of a non-compliance means the non-compliance with the same requirement or standard determined more than once within a consecutive period of three calendar years, provided that the beneficiary has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance. For the purpose of determining the reoccurrence of a non-compliance, non-compliances determined in accordance with Regulation (EC) No 1122/2009 shall be taken into account and, in particular, GAEC 3, as listed in Annex II to Regulation (EU) 1306/2013, shall be considered equivalent to SMR 2 of Annex II to Regulation (EC) No 73/2009 in its version in force on 21 December 2013.*

*2. The “extent” of non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far –reaching impact or whether it is limited to the farm itself.*

*3. The “severity” of a 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.*

*4. Whether a non-compliance is of “permanence” shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.*

*5. For the purposes of this Chapter, non-compliances shall be deemed to be “determined” if they are established as a consequence of any kind of controls carried out in accordance with this Regulation or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way.*

**Application of Reductions in the Case of Negligence legislative basis**

*Commission Delegated Regulation 640/2014 Article 39*

***Calculation and application of administrative penalties in the case of negligence***

*1. Where a non-compliance determined results from the negligence of the beneficiary, a reduction shall be applied. That reduction shall, as a general rule, be 3 % of the total amount resulting from the payments indicated in Article 92 of Regulation (EU) No 1306/2013.*

*However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 38(1) to (4) (*reoccurrence, extent, severity and permanence*), decide either to reduce that percentage to 1% or to increase it to 5% of the total amount referred to in the first subparagraph or in the cases where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found not to impose any reductions at all.*

*2. Where the relevant authority decides not to apply an administrative penalty pursuant to Article 97(3) (*De minimis*) of Regulation (EU) No 1306/2013 and the beneficiary has not remedied the situation within a deadline set by the competent authority, the administrative penalty shall be applied.*

*The deadline set by the competent authority shall not be later than the end of the year following the one in which the finding was made.*

*3. Where the relevant authority makes use of the option provided for in the second (*warning letter (early warning system)) *subparagraph of Article 99(2) of Regulation (EU) No 1306/2013, and the beneficiary has not remedied the situation within a deadline set by the competent authority, a reduction of at least 1 % as provided for in paragraph 1 of this Article shall be applied retroactively in relation to the year of the initial finding when the early warning system was applied, if the non-compliance is found not to have been remedied during a maximum period of three consecutive calendar years calculated from and including that year.*

*The deadline set by the competent authority shall not be later than the end of the year following the one in which the finding was made.*

*A non-compliance which has been remedied by the beneficiary within the deadline set shall not be considered as a non-compliance for the purpose of establishing reoccurrence in accordance with paragraph 4.*

*4. Without prejudice to cases of intentional non-compliance the reduction to be applied in respect of the first reoccurrence of the same non-compliance in accordance with paragraph 1 shall be multiplied by the factor three.*

*In the case of further reoccurrences the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous repeated reoccurrence. The maximum reduction shall, however, not exceed 15 % of the total amount referred to in paragraph 1.*

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*Once the maximum percentage of 15 % has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined again, the beneficiary shall be considered to have acted intentionally within the meaning of Article 40.*

*Article 73 of the implementing Regulation 809/2014*

***General principles***

*2. Where more than one case of non-compliance with regard to various acts or standards of the same area of cross-compliance have been determined, those cases shall, for the purposes of the fixing of the reduction in accordance with Articles 39(1) and 40 of the Delegated Regulation No 640/2014 be considered as one non-compliance.*

*Article 74 of the Implementing Regulation 809/2014*

***Calculation and application of administrative penalties in the case of negligence***

*1. Where more than one negligent non-compliance with regard to different areas of cross-compliance has been determined, the procedure for the fixing of the reduction as set out in Article 39(1) of Delegated Regulation (EU) No 640/2014 shall be applied individually to each non-compliance.*

*The resulting percentages of reductions shall be added together. However the maximum reduction shall not exceed 5% of the total amount referred to in Article 73(4) of this Regulation.*

*2. Where a reoccurrence is determined together with another non-compliance or another reoccurrence the resulting percentage reductions shall be added together. The maximum reduction shall, however, not exceed 15% of the total amount referred to in Article 73(4).*

**Application of Reductions in the Case of Intentional Non-compliance legislative basis**

*Council Regulation 1306/2013 Article 99*

***Calculation of the administrative penalty***

*3. In the case of intentional non-compliance, the percentage reduction shall in principle not be less than 20% and may go as far as total exclusion from one or several aid schemes and may apply for one or more calendar years.*

*4. In any event, the total amount of reductions and exclusions for one calendar year shall not be more than the total amount referred to in the first subparagraph of paragraph 1.*

*Commission Delegated Regulation 640/2014 Article 40*

***Calculation and application of administrative penalties in cases of intentional non-compliance***

*Where the non-compliance determined has been committed intentionally by the beneficiary, the reduction to be applied to the total amount referred to in Article 39(1) shall, as a general rule, be 20 % of that total amount.*

*However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 38(1) to (4) decide to reduce that percentage to no less than 15 % or to increase that percentage to up to 100 % of that total amount.*

*Implementing Regulation 809/2014 Article 75*

***Calculation and application of administrative penalties in cases of intentional non-compliance***

*In cases of intentional non-compliance of extreme extent, severity or permanence the beneficiary shall, moreover, be excluded from all the payments listed in Article 92 of the Regulation (EU) No 1306/2013 in the following calendar year.*

**Early Warning System legislative basis**

*Article 99 Paragraph 2 of Council Regulation 1306/2013*

***Calculation of the administrative penalty***

*The relevant authority may set up an early warning system that applies to cases of non-compliance which, given their minor severity, extent and duration, shall not, in duly justified cases, lead to a reduction or exclusion. Where the relevant authority decides to make use of this option, the competent authority shall send an early warning to the beneficiary, notifying the beneficiary of the finding and the obligation to take remedial action. In case a subsequent check establishes that the non-compliance has not been remedied the reduction pursuant to the first subparagraph shall be applied retroactively.*

*However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.*

*The relevant authority may give priority access to the farm advisory system to the beneficiaries who have received for the first time an early warning.*

*Article 39 Paragraph 3 of Commission Delegated Regulation 640/2014*

***Calculation and application of administrative penalties in the case of negligence***

*Where the relevant authority makes use of the option provided for in the second subparagraph of Article 99 (2) of Regulation (EU) No 1306/2013 and the beneficiary has not remedied the situation within a deadline set by the competent authority, a reduction of at least 1% as provided for in paragraph 1 of this Article shall be applied retroactively in relation to the year of the initial finding when the early warning system was applied, if the non-compliance is found not to have been remedied during a maximum period of three consecutive calendar years calculated from and including that year.*

*The deadline set by the competent authority shall not be later than the end of the year following the one in which the finding was made.*

*A non-compliance which has been remedied by the beneficiary within the deadline set shall not be considered as a non-compliance for the purpose of establishing reoccurrence in accordance with paragraph 4.*

***Reoccurrence Breaches***

*Article 39 Paragraph 4 of Commission delegated Regulation 640/2014*

*Without prejudice to cases of intentional non-compliance, the reduction to be applied in respect of the first reoccurrence of the same non-compliance in accordance with paragraph 1 shall be multiplied by the factor three.*

*In case of further reoccurrences, the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous reoccurrence. The maximum reduction shall, however, not exceed 15% of the total amount referred to in paragraph 1.*

*Once the maximum percentage of 15% has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined again, the beneficiary shall be considered to have acted intentionally within the meaning of Article 40. [\*]*

*Article 74 of Commission Implementing Regulation 809/2014 is also relevant. This is set out on page 21 of the business rules.*