



Rialtas na hÉireann
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Conditionality Intro & Penalties

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Presentation Overview



- Conditionality Context and Outline
- Control System and Penalties
- Inspection Documentation & Advice

What is Conditionality?



As of 1st January 2023, **Conditionality** replaced **Cross Compliance** but the same principles apply.

Conditionality will link the **BISS payment, and other direct payments**, with **compliance** against the following **basic standards**:

- **Statutory Management Requirements (SMRs)** refer to **11** legislative standards relating to the environment and climate, public and plant health and animal welfare.
- **9** standards based on the European legal framework which requires the land owner to maintain the land in **Good Agricultural and Environmental Condition (GAEC)**

Legislation on Conditionality



Regulation (EU) 2021/2115 of the European Parliament and of the Council

Regulation (EU) 2021/2116

- Control system and administrative penalties in relation to Conditionality

Commission **Delegated Regulation (EU) 2022/1172**

- Application and Calculation of Administrative Penalties for Conditionality

Commission **Implementing Regulation (EU) 2022/1173**

Other Reference Document

- **Ireland's CAP Strategic Plan (CSP)**

The SMRs under Conditionality



SMR 1 Implementation of certain requirements under the Water Framework Directive*

SMR 2 Protection of waters from pollution caused by nitrates

SMR 3 Conservation of wild birds

SMR 4 Conservation of natural habitats and of wild flora and fauna

SMR 5 Food & Feed Hygiene

SMR 6 Restrictions on the use of substances having hormonal or thyrostatic action & beta-agonist in farm animals

SMR 7 Proper & safe use of Plant Protection Products

SMR 8 Sustainable use of Plant Protection Products*

SMR 9 Welfare of Calves

SMR 10 Welfare of Pigs

SMR 11 Welfare of Farm Animals

The GAECs under Conditionality



- GAEC 1** Maintenance of permanent grassland based on a ratio of permanent grassland in relation to agricultural area. **NEW**
- GAEC 2** Minimum protection of wetland and peatland. **NEW but not applicable until 2024**
- GAEC 3** Ban on burning arable stubble, except for plant health reasons.
- GAEC 4** Establishment of buffer strips along water courses.
- GAEC 5** Tillage management, reducing the risk of soil degradation and erosion, including consideration of the slope gradient.
- GAEC 6** Minimum soil cover to avoid bare soil in periods that are most sensitive
- GAEC 7** Crop rotation in arable land except for crops growing under water **(previously part of BPS Greening) but not fully applicable in 2023.**
- GAEC 8** Minimum share of agricultural area devoted to non-productive areas or features **(previously part of BPS Greening)**, retention of landscape features, ban on cutting hedges and trees during the bird breeding and rearing season & measures for avoiding invasive plant species.
- GAEC 9** Ban on converting or ploughing permanent grassland designated as environmentally-sensitive permanent grasslands in Natura 2000 sites.
(previously part of BPS Greening)

Control System for Conditionality



Selection

- At least 1% of CAP beneficiaries selected for a conditionality inspection annually
- 20% to 25% are selected at **random**, with the remainder selected on the basis of **risk** analysis
- Risks are designed to take into account the likelihood of a breach occurring, or to take into consideration the risk of a particular activity on the objective.

Cross Report

- By another DAFM Division or an External Body such as Local Authority or NPWS
- Cross Report dealt with by DAFM ICD; no additional ground inspection

Penalty System for Conditionality



Regulation (EU) 2021/2116, Article 85

- *“For the calculation of those reductions and exclusions, account shall be taken of the **severity, extent, permanence or reoccurrence and intentionality** of the non-compliance detected. The administrative penalties imposed shall be **effective, proportionate and dissuasive**”.*
- **‘Extent’** of a non compliance applies where off-farm impact
- **‘Severity’** of a non compliance takes into account the level of consequences associated with the non-compliance
- **‘Permanence’** shall depend on the length of time for which the effects lasts or the potential for terminating those effects by reasonable means

Non-Compliance under Conditionality



Non-intentional non-compliance (Negligence)

- As a general rule 3% sanction, but can be decreased to 1% and increased to 5% or 10%

Intentional non-compliances (Intent)

- The percentage reduction shall be at least 15% and can be increased to up to 100%
- Intent scale; 15%, 25%, 40%, 60%, 80%, 100%

Weighting bands for non-intentional non-compliances



Weighting	Resulting Sanction	Sanction Description
0	0%	A non-compliance has not been detected
1 – 6	0%	A non-compliance is detected but it has no consequences for the achievement of the objective and labelled as a clear with tolerance (CLT) as is currently the position
7 - 26	1%	A non-compliance is detected, and it has low consequences for the achievement of the objective
27 - 46	3%	A non-compliance is detected, and it has general consequences for the achievement of the objective
47 - 140	5%	A non-compliance is detected, and it has grave consequences for the achievement of the objective.
>=141	10%	

Reoccurrence of non-compliance



- The same non-compliance persists or reoccurs once **within 3 consecutive years**
- A graduated scale is used to determine the reoccurring sanction rather than calculated by multiplication factor of 3, for example;
 - *1% or 3% on 1st reoccurrence is a 5% sanction on 2nd reoccurrence is a 15% Intent sanction*
 - *5% on 1st reoccurrence is a 10% sanction on 2nd reoccurrence is a 15% Intent sanction*
 - *10% on 1st reoccurrence is a 15% Intent sanction*
 - *Increasing Intent scale used thereafter*
 - *Clear with Tolerance on a 1st reoccurrence is 3%*

Key Documents after Inspection



- No Remedial Action Notice (RAN)
- Notice Form (NF)
- Formal Notices
 - *Clear Inspection FN (CL/FN)*
 - *Clear with Tolerance FN (CLT/FN)*
 - *Conditionality FN (C/FN)*

Advising Clients following an Inspection



My client has recently received a sanction, what advice should I give them?

- *Inform them of reoccurrence and associated consequences*
- *Correct the issue relating to the sanction*
- *Increased chance of further inspection, be vigilant*

My client is dissatisfied with an inspection finding or decision or has new information, what should they do?

- *Present new or additional information to District Superintendent within **14 days of Notice Form***
- *Request a review from District Inspector within **28 days of sanction notification (Formal Notice)***
- *Seek to appeal decision to the Agriculture Appeal Office **within 3 months of review decision***
- *Contact DAFM Quality Service Unit if have a complaint with the manner of an inspection*

For more info on Conditionality go to
[gov.ie - Conditionality \(www.gov.ie\)](http://gov.ie - Conditionality (www.gov.ie))



Thank You