

Title: Cross Compliance in 2015

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## Cross Compliance in 2015

### Introduction

DEFRA are consulting with the NFU and others over their approach to cross compliance in 2015. We are looking for member feedback on DEFRA's approach to cross compliance in 2015 as set out below. **Of key concern to us and where we particularly need to your feedback is on 1) the proposal to restrict the hedge trimming window (GAEC 7A) which will also impact on trees (GAEC 7C) and 2) the approach to soil protection (GAECs 4, 5 & 6) and in particular cover crops.**

### Cross Compliance 2015

Under the new CAP reform legislation the framework setting out cross compliance requirements has changed. However, farmers still have to follow rules set out in both Statutory Management Requirements (SMRs) and Good Agricultural and Environmental Conditions (GAECs).

#### Statutory Management Requirements

Several SMR standards have been removed compared to the current cross compliance framework and some have been altered, with GAEC requirements becoming more aligned with SMRs in the eyes of DEFRA. DEFRA are not consulting on the SMRs applicable in 2015, this is because they are underwritten by specific European Legislation and there is little or no scope to change these. Five SMRs have been removed: sewage sludge (current SMR 3), groundwater (which has been changed to a GAEC), and three relating to animal disease (current SMRs 13, 14, 15). Two SMRs have been 'simplified' to remove some requirements (current SMRs 1 (Wild birds) and 5 (Habitats and Species)) – though we have not seen the revised wording to these yet.

#### GAECs - Engagement with the Industry

DEFRA are basing their changes on EU legislation, policy drivers, impact on the environment, rationalisation and simplification opportunities, delivery costs and impact on farmers. They also incorporate comments and suggestions from the CAP consultation published in December 2013 from a range of stakeholders, organisations and members of the public. DEFRA now want feedback on the options for implementing GAECs from 2015 and therefore we have an opportunity to influence what is included going forward. **There are a series of questions set out below that we will like your response to.** DEFRA are looking to:

1) remove some current GAEC's (due to the underpinning legislation not supporting them):

- GAEC 12 (Agricultural land not in agricultural production),
- Injurious weeds element from the current GAEC 11 (Control of weeds);

2) merge some standards together – please see following pages;

3) and altering others - the new framework has removed specific wording on the current habitats requirements; this was done in response to the addition of Greening element under the new Basic Payment Scheme. Due to this, DEFRA will lose some of the current GAECs as a specific single requirement. However, DEFRA state as these GAECs are important in preventing erosion, looking after carbon rich soils and general good soil management, it is proposed to incorporate these in to the soil standards. These are;

- GAEC 5 (Environmental Impact Assessment)
- GAEC 9 (overgrazing and unsuitable supplementary feeding)

- GAEC 10 (heather and grass burning)

**Q1. Do you agreed with this approach from DEFRA, if not, why not?**

Numbering of GAECs

The following pages will cover the new GAEC standards, DEFRA are using a new numbering system. For the current 2014 GAEC standards and numbering system please refer to the cross compliance guidance which can be found [here](#).

**New GAEC 1 – Buffer strips along water courses**

Requirement in EU framework: Establishment of buffer strips along water courses is required both within and outside NVZ areas. DEFRA are not planning on changing the current rules as this may create additional uncertainty or burden on farmers. DEFRA have however taken the opportunity to rationalise and simplify the current requirements for this GAEC, combining two current GAECs – GAEC 19 (no spread zones) and GAEC 14 (protection of hedgerows and water courses) into one GAEC in 2015.

**Q2. Are you happy with DEFRA's view to merge GAEC 14 and GAEC 19 given the legislation is clear that the content of these standards needs to be covered under cross compliance going forward in 2015? Do you have any comments that you want to make?**

NFU Initial Reaction: *We understand why DEFRA has merged these standards together. We will be looking to ensure the revised guidance is clear and that no material changes creep into the final text.*

**New GAEC 2 – Water abstraction**

Requirement in EU framework: Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures it is covered under cross compliance. DEFRA state the wording for this GAEC reflects existing legislation and are not planning on changing this standard as this may create additional uncertainty or burden on farmers. DEFRA propose to implement the current rules from GAEC 18 (water abstraction).

**Q3. Do you agree with DEFRA's view to implement the current rules for GAEC 18? Do you have any comments that you want to make?**

NFU Initial Reaction: *We understand why DEFRA has continued with this standard. We will be looking to ensure the guidance going forward does not materially change.*

**New GAEC 3 – Groundwater**

Requirement in EU framework: Protection of ground water against pollution: prohibition of direct discharge into groundwater and measure to prevent indirect pollution of groundwater through discharge on the ground and percolation through the soil of dangerous substances is required to be part of cross compliance. DEFRA state the wording for this GAEC reflects existing legislation and they are not planning on changing these as this may create additional uncertainty or burden on farmers. DEFRA propose to implement the current rules GAEC 20 (previously referred to as SMR 3).

**Q4. Do you agree with DEFRA's view to implement the current rules for GAEC 20? Do you have any comments that you want to make?**

NFU Initial Reaction: *We understand why DEFRA has continued with this standard. We will be looking to ensure the guidance going forward does not materially change.*

**New GAECs 4 / 5 & 6 – Soils**

DEFRA have been reviewing Soil Protection Review (SPR) following criticism of it being a "tick box" exercise. DEFRA are required to implement rules in respect to GAEC for soil protection and have been

using the SPR as the current process to do this. DEFRA state that around 97% of the GAEC 1 breaches found in 2012 resulted from either a failure to complete an SPR or paperwork errors. In response to these criticisms, DEFRA undertook to review the SPR, and work alongside industry and others to explore all potential options available to simplify current requirements in line with better regulation principles. The NFU has taken the view that there was scope for simplification of the current SPR arrangements and for a greater focus on improving soil outcomes, this did not include the imposing of national standards on farmers.

**DEFRA's preferred option however is one of minimum national standards of soil management to address soil erosion. Farmers would be obliged to observe the standards and guidance, and implement the required actions relevant for their farm in order to cover the three soil GAECs as set out below (extract from DEFRA documentation):**

***GAEC 4 - Minimum soil cover - Land must have protective cover (either from crops, cover crops, grass, or cereal stubble) over the winter months where the soil is at risk from rainfall causing soil erosion. Where adequate cover cannot be established due to weather conditions or due to late sowing, land should be cultivated to create a rough surface to reduce the risk of soil erosion (see GAEC 5).***

*Advice: Land that is at risk to soil erosion includes sandy and silty soils that are unstable and are at risk of the soil capping and slumping. This can then form a surface seal that causes runoff and subsequent soil erosion. Protective soil cover can be provided by crops over the winter where these are established early enough in the autumn to ensure adequate crop growth. Cereal stubbles can also provide suitable soil cover.*

***Where the soil is at risk from wind erosion, the soil must be protected by cover and / or by ensuring the soil surface is stable to limit soil loss.***

*Advice: Steps must be taken to reduce the risk of soil loss in the spring by maintaining a crop cover, planting nurse crops, or by taking other appropriate measures that help to stabilise the soil such as drilling directly into furrow pressed land or into a loosened cereal stubble.*

***GAEC 5 - Minimum land management reflecting site specific conditions to limit erosion. Where the soil is compacted following harvest and there is a risk of runoff causing soil erosion, land must be appropriately cultivated (by ploughing, discing, chisel ploughing or subsoiling) to loosen the soil to enable it to absorb rainfall.***

*Advice: This measure is aimed at dealing with runoff and soil erosion caused by compaction from wheelings created during harvesting. Loosening of the soil, for example by ploughing, cultivating or subsoiling at the appropriate depth can help rain soak into the ground. This can be targeted in badly affected areas of the field.*

***Where spring crops are grown, measures must be taken to reduce soil erosion.***

*Advice: This measure is aimed at high risk crops such as field vegetables, potatoes, salad crops, maize, sugar beet, and crops grown under plastic (including the use of field polytunnels) that can channel water causing soil erosion particularly in the spring. Appropriate measures may include planting headlands beds and rows across the slope so they intercept and capture runoff, the loosening of compacted wheelings, and use of tied ridges and barrier ditches to intercept runoff. In some cases it may be more appropriate to grow high risk crops on land at lower risk to soil erosion.*

***Do not allow stock to overgraze, trample and poach the soil where this causes soil erosion or bankside erosion along watercourses.***

*Advice: This measure is aimed where livestock are out-wintered; are kept on sacrificial fields and are grazed on forage crops. The measure includes outdoor pigs. Appropriate measures must be taken to reduce soil erosion for example, moving stock to limit soil damage, back-fencing and soil loosening. In some cases it may be more appropriate to use land at lower risk to soil erosion.*

***In woodland areas where Woodland Grants are being claimed, adhere to the UK standards for woodland management<sup>1</sup> so as to reduce the impact of soil erosion.***

*Advice: This measure is aimed at land where tree felling can damage the soils causing soil erosion. Appropriate measures must be taken to reduce soil erosion for example by avoiding clear felling in susceptible areas at risk to soil erosion. The use of brush mats on extraction routes can help to limit vehicle and machinery damage to the soil.*

***GAEC 6 - Maintenance of soil organic matter level through appropriate practices including ban on burning arable stubble, except for plant health reasons.***

- *Where burning for plant health reasons, you must comply with the Crop Residues (Burning) Regulations 1993 to avoid depletion of organic matter and carbon levels in the soil.*
- *Comply with the Heather and Grass Burning Code and Regulations 2007 to avoid depletion of organic matter and carbon levels in the soil.*
- *Comply with the Environmental Impact Assessment Regulations (EIA). Do not plough, cultivate or intensify species-rich and semi-natural habitats so as to conserve organic matter and carbon levels in soils.*
- *Appropriate measures must be taken to help stabilise the soil where soil erosion is exacerbated by low levels of organic matter.*

*Advice: This measure is aimed at land where low levels of organic matter increase the risk soil instability and soil erosion. Appropriate measures can be incorporating animal manures, incorporating crop residues and choosing an appropriate crop rotation.*

DEFRA states it is a move away from the current paper SPR measures towards a simple set of minimum standard for compliance with the new GAECs. In doing so, DEFRA's focus is to ease burdens on the industry whilst improving outcomes for managing soil. DEFRA state there will be no requirement to keep records but must adhere to their legal requirements and must have read the guidance (which we are told will taking account of 'force majeure' circumstances that are beyond the control of farmers (e.g. exceptional weather)).

DEFRA state that checks for compliance would be based on inspections involving a direct dialogue between the inspector and farmer based on visible breaches. In developing this approach further, DEFRA state that they need to demonstrate that adequate checks are in place to meet EC requirements on "controls".

Actions farmers must take are:

- Identify where soil erosion has occurred or has a high risk of occurring for each field on the holding.
- Comply with the minimum standards for GAEC 4, 5 and 6 (as set out above) and carry out sufficient land management measures to address the identified soil erosion problems and risk from occurring.

Non-compliance would occur:



- where there evidence of soil erosion and a failure to adhere to the minimum standards for GAEC 4, 5 & 6;
- where the problem is found to continue, and the problem is not a 'force majeure' circumstance.

The inspection process:

DEFRA state assessments of compliance will be based on the success of land management measures adopted for dealing with soil erosion. Fields will be walked and inspected for visible signs of significant soil erosion. Where significant soil erosion is found without adhering to minimum standards in the first visit, the RPA will issue a warning letter. Where soil erosion continues to occur in successive years, and sufficient action has not taken to prevent soil erosion, then the RPA may withhold farm payments with each incident being dealt with on a case-by case basis depending on severity and local circumstance.

#### Q5. Questions on this approach?

**Is this the right approach to achieve better outcomes for the protection of soils?**

**How easy or difficult would it be to implement our preferred approach?**

**Are the minimum standards the right ones? Please explain your views and include examples if possible.**

**Does it strike the right balance? If not, please explain how we can achieve the right balance.**

**What are the advantages and disadvantages of implementing this option?**

**If you have any other concerns, please explain them.**

NFU Initial Reaction: *In our opinion whilst this may seem appealing farmers may struggle to identify high risk areas without completing a soils map and some form of documentation is useful to understand soil history and prove a 'duty of care' to inspectors. Also a national set of GAEC standards, which we feel are very vague would be inspected by the RPA in-field. This may be very open to individual inspector's interpretation and may result in more breaches.*

#### New GAEC 7 – Retention of Landscape Features

DEFRA have split this GAEC down in order to make it easier for farmers to understand and comply with the framework. Requirement in EU framework: Retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in a line, in group or isolated, field margins and terraces, and including a ban on cutting hedges and trees during the bird breeding and rearing season and, as an option, measures for avoiding invasive plant species.

**GAEC 7A - Boundaries** – DEFRA states that legislation requires protection of hedges and field margins. DEFRA currently implement this under three different GAECs; GAEC 13 (stonewalls), GAEC 14 (protection of hedgerows and water courses), and GAEC 15 (hedgerows), DEFRA are proposing to bring the GAECs listed above together in to one GAEC (boundaries) to simplify requirements.

DEFRA state that for **GAEC 7A - Hedgerows**; the new EU wording specifically requires protection of birds during the bird 'breeding and rearing season' (it did not do this previously). Evidence suggests this season to be 1<sup>st</sup> March to 31<sup>st</sup> August inclusive, therefore meaning that the **no-cutting period should be extended to reflect that (currently 1<sup>st</sup> March to 31<sup>st</sup> July)**. DEFRA in addition are proposing to remove the rules which state the hedgerow rules do not have to be followed if; they are part of land which forms a parcel of 2 hectares or less, and to land either side of a hedgerow which was planted on or after 1 January 2005, and which is less than 5 years old. DEFRA state this is due to legal advice given from the Commission.

DEFRA state that **GAEC 7A - Earth and stone banks** have been suggested by some stakeholders (not NFU) to be included in this new GAEC requirement. DEFRA state that earth and stone banks are a characteristic landscape feature in various counties in England, and it has been questioned why farmers who use these instead of stone walls and/or hedges should not have cross compliance rules apply to them. DEFRA state that if these were to be added, rules would be simple, and be similar to those currently protecting stone walls and hedges.

DEFRA state that for **GAEC 7A - Stonewalls**, they are proposing to remove the rules which allow the removal of stone from walls in order to repair footpaths or other walls. This is again due to legal advice on disallowance risks.

**Q6 – DEFRA want to implement the current requirements for GAEC 13 (stonewalls) with the removal of the derogations; the rules pertaining to hedgerows in GAEC 14 (protection of hedgerows and water courses) with the removal of derogations; and the rules from GAEC 15 (hedgerows) with the extension of the ‘no trim’ period to the 31<sup>st</sup> August as option 1. With option 2 being as per Option 1, with the addition of rules around earth banks and stone banks. What are your views? How will the restriction of hedge cutting impact on you, for example the need to access the land for arable crop establishment in August? What about the start date of the no cutting period (1<sup>st</sup> March) what are your views on this? How will the inclusion of earth and stone banks affect you, what does this term mean to you and what rules would you not want to see with this standard?**

NFU Initial Reaction: *The inclusion of “a ban on cutting hedges and trees during the bird breeding and rearing season” within the regulations has impacted on farmers, however, a black and white, countrywide approach would add significantly to ability of farmers to manage their land.*

### **GAEC 7B – Public rights of way**

Requirement in EU framework: DEFRA state that EU legislation requires protection of landscape features and the requirements of this GAEC are existing legal requirements – the cross-compliance requirement provides an additional enforcement mechanism. DEFRA suggest farmers also benefit from reduced liability where users keep to rights of way. DEFRA have defined public rights of way as a landscape feature, as it is a characteristic of the English countryside and are not planning on changing requirements from the current rules.

**Q7 - DEFRA want to continue to implement the requirements from the current GAEC 8 (Public rights of way) with no change from the current guidance for them, but do ask the question, should this standard be included within the new 2015 GAEC framework. What are your thoughts? and do you have evidence to assist with the removal of this standard?**

NFU Initial Reaction: *There was an unsuccessful legal challenge covering the inclusion of rights of way within cross compliance, this failed as it was deemed that a right of way could be seen as a landscape feature.*

### **GAEC 7C – Trees**

Requirement in EU framework as set out above under new GAEC 7. DEFRA state the wording for this GAEC reflects existing legislation and are not planning on changing these as this may create additional uncertainty or burden on farmers. DEFRA have however taken the opportunity to rationalise and simplify the current requirements for this GAEC, combining two current GAECs – merging GAEC 16 (felling of trees), and GAEC 17 (Tree Preservation Orders (TPOs)). Given the no-cutting date change mentioned under GAEC 7A, DEFRA state this would also apply to trees under this requirement. This will prevent tree cutting from 1<sup>st</sup> March to 31<sup>st</sup> August each year.

**Q8 - DEFRA want to merge and implement the requirements from the current GAEC 16 (Felling of Trees) and the rules from the current GAEC 17 (Tree Preservation Orders (TPOs)), including the prevention of cutting trees from 1<sup>st</sup> March to 31<sup>st</sup> August each year. What are your thoughts and evidence to assist us to avoid future restriction on tree trimming?**

NFU Initial Reaction: *We understand why DEFRA has merged these standards together. We will be looking to ensure the revised guidance is clear and also no material changes creep in. We are concerned that trees that become dangerous following accidents and weather conditions should still be able to be trimmed or felled. There is also concern as to what is defined as a tree and also no consideration if a tree is not hosting any nesting birds.*

### GAEC 7D – Sites of Special Scientific Interest (SSSIs)

Requirement in EU framework as set out above under new GAEC 7. DEFRA state the EU legislation requires protection of landscape features and DEFRA currently implement this under GAEC 6 (Sites of Special Scientific Interest (SSSIs)). DEFRA have defined SSSIs as landscape features, as they are characteristic of the English countryside.

**Q9 - DEFRA want to continue to implement the requirements from the current GAEC 6 (Sites of Special Scientific Interest (SSSIs)) with no change from the current guidance for them, but do ask the question, to not include this requirement within the new framework. What are your thoughts? and do you have evidence to assist with the removal of this standard?**

NFU Initial Reaction: *Given that SSSI's are protected and well identified, we believe they should not form part of the GAEC standards going forward.*

### GAEC 7E – Historic Monuments

Requirement in EU framework as set out above under new GAEC 7. DEFRA state the EU legislation requires protection of landscape features and a suggestion from English Heritage and various archaeological groups (amongst others), is to include highly important nationally important monuments / archaeological sites into this GAEC requirement.

**Q10 - DEFRA want to continue to implement the requirements from the current GAEC 7 (scheduled monuments), adding in to these rules requirements for high importance nationally important monuments (definition not defined). However DEFRA offer two alternatives to this view, the first is to implement the requirements from the current GAEC 7 (scheduled monuments) with no change from the current guidance or second to not include GAEC 7 within the new framework. What are your thoughts? and do you have evidence to assist with the removal of this standard?**

NFU Initial Reaction: *We are concerned with the “creep” of cross compliance into features that have no inherent connection to farming and which are already*

### GAEC 7F – Control of Invasive Non-Native Weeds

Requirement in EU framework as set out above under new GAEC 7. DEFRA state the new EU Regulation framework allows an **option** to include the control of invasive plant species. DEFRA state that these invasive non-native plant species cost the economy millions of pounds each year (£166m pa for Japanese knotweed, £9m for rhododendron, £2m for giant hogweed, £1m for Himalayan balsam) therefore requiring farmers to control them is in their economic interest.

**Q11 – DEFRA's options are to not include any of these requirements within the new framework. Or to implement the requirements from the current GAEC 11 (control of weeds) for invasive plant species only, with no change from the current guidance for them or as per Option 2, with the need to consult specific advice (e.g. The Environment Agency's guidance on how to control Invasive non-native species) for control and eradication where possible. What are your thoughts? and do you have evidence to assist with the removal of this standard?**

NFU Initial Reaction: *We are concerned that DEFRA want to pursue an optional element of cross compliance from 2015 onwards. This to us is gold plating. We are also concerned that all parts of the economy should be engaged to assist with the control of such weeds, this is not just a farmer / farming problem.*

**END**