

SMR 7 Cattle ID Cross Compliance **Case for reviewing the rules**

Changes to the Penalty Matrix for Missing Cattle Tags

In January 2014 DARD revised their penalty matrix for Cattle Identification Inspections (CII). Previously if an animal at a CII was found to have a missing or illegible ear tag, no cross compliance breach was applied if the tag was replaced within 28 days. If the tag was not replaced within that timeframe an intentional breach was applied and this incurred a severe financial penalty.

However, DARD having consulted EC guidance (DS/2009/31, not legally binding) as well as take into account recommendations coming from an EC audit in England explained in their Autumn 2014 Cross Compliance Bulletin that the EC guidance suggests that instead of automatically allowing 28 days to replace a missing tag, DARD should seek to identify whether or not the keeper had an effective procedure in place to replace tags when they are found to be missing or illegible. DARD has therefore introduced a threshold for missing or illegible tags noted at a CII of 10% of animals within the herd or 20 animals with single plastic tags missing.

If the keeper reaches these thresholds, DARD will consider the keeper not to have a satisfactory replacement tag policy, i.e. does not replace missing or illegible tags within 28 days of discovery. As a consequence of not remaining below the threshold, a negligent cross compliance breach will be applied. The severity of any further action taken by DARD will depend on the DARD severity calculator.

Where missing or illegible tags are not replaced within 28 days, this will no longer be considered an automatic intentional breach as it was previously. A negligent penalty will be applied unless the inspector considers that the animal keeper deliberately did not replace the tags within 28 days.

While the UFU welcome the relaxation on the latter point relating to the risk reduction of an intentional penalty being applied, we strongly object to the introduction of the thresholds noted above.

EC guidance (DS/2009/31) – Working document on missing ear tags in the context of cross compliance

The EC guidance (DS/2009/31) has been used by DARD to assist with the changes made to the CII penalty matrix. This document is intended for purposes of general guidance only and is not legally binding. DARD have outlined that they have consulted this guidance following an EC audit completed in England in 2012.

In cases where single missing tags are identified, the Commission guidance states that *'in general no cross compliance reduction should be applied as long as the loss rate in the holding concerned is within normal limits.'* The Commission defines normal limits as taking *'into account the situation usually found in comparable herds and rearing conditions.'*

Taking this guidance into account, two points should be considered. How can DARD set a threshold of 10% or 20 animals with single missing tags, when the number of cattle within each of the 20,000 (approx.) cattle farms in Northern Ireland varies considerably? Secondly the *rearing conditions* within a closed herd and a 'flying herd (where all cattle are bought in)' are completely different. The keeper of a closed herd will have full control over their tag replacement policy from birth to slaughter; how often they are checked, where new tags are ordered, the degree of quality, when the tags are replaced, what part of the ear the cattle are tagged in. Given that the keeper of a 'flying herd' is constantly purchasing cattle from a variety of sources, they do not have any influence over where the tags have been ordered, the degree of quality and also making sure the cattle are tagged in the correct place. They are therefore at a much higher level of risk in relation to the low level thresholds which have been imposed DARD in their cross compliance matrix.

Further to this, the guidance states that *'the keeper is responsible to replace the lost ear tags in the deadline set up by the national legislation. If the keeper has taken in due time the appropriate measures to obtain replacement ear tags, this can be taken into account to support a decision of no reduction.'* Where DARD has decided that all herds that exceed the thresholds should have a breach applied, the Commission have stated that where a region can see evidence that the herd has an adequate tag replacement policy, a reduction should not apply. Given that the DARD Aphis system allows DARD to review the replacement rate of tags within a herd surely this should provide enough evidence that a herd keeper is taking sufficient action to replace missing tags rather than simply using a generic threshold?

A live case brought to the UFU by one of its members (who we will describe as Farmer A) highlights why the thresholds introduced by DARD are inappropriate and disproportionate:

On the 19th March 2014, Farmer A had a CII inspection for his herd of 674 cattle. This is a 'flying herd' of dairy cows. As noted already, as this is a 'flying herd' Farmer A is not in control of a number of factors relating to retention of the tags. At inspection Farmer A was found to have 23 single missing tags, meaning he is just over the 20 tag threshold. As a percentage of 674 cattle, this equates to just 3.4% of cattle in this herd requiring replacement tags. On the day of inspection, Farmer A asked the inspector for the tag numbers needing replaced and the tags were ordered on the same day because the farmer wanted to make sure they were ordered within 28 days. Farmer A was under the impression that he had taken all precautions to ensure that he could demonstrate that he had the correct tag replacement policy in place.

Letters from DARD on both the 22nd July and 8th August 2014 later explained that as Farmer A had 23 single missing tags at inspection he was over the threshold and would face an automatic breach of cross compliance.

The fact that Farmer A was only made aware in August 2014 of the change in policy from January 2014 is obviously a major concern. However of greater significance is the fact that Farmer A has an exceptionally low number of cattle (3.4%) with single missing tags in proportion to the considerable number of cattle on his farm (674). Under DARD's original policy at that time Farmer A would have faced financial penalties for being in breach of the

DARD thresholds and should he be inspected again within 3 years could be at risk of a repeat breach being identified which carries a much higher level of financial penalty to his Single Farm Payment.

Cases such as the one we describe highlight that the changes made by DARD are completely inappropriate and disproportionate to what the European Commission actually require to ensure that farmers have an acceptable tag replacement policy.

When DARD briefed the ARD Committee in January 2015 they made specific reference to the term 'several' and how the Commission have stated that it is only in cases where 'one or several animals' have single missing tags that no reductions should apply. The fact that DARD has used this to justify their position, we feel puts them in a very weak position.

The Oxford Dictionary definition of several is 'more than two but not many.' We do not think it is unreasonable to ask DARD what their definition of 'many' is. As we understand it, the definition of 'many' is "a large number of" and we consider similar terms in a thesaurus, we get phrases such as 'some,' 'a few,' 'a number of;' all which are vague terms much like several.

If DARD are going to be particular about the definitions in a document that is no more than guidance, the definition of 'many' is very important because it will depend on the circumstances which are presented. In the case first highlighted to the ARD Committee and DARD, the herd inspected had 674 cattle on the day of inspection with 23 missing tags. In the context of this situation it would be fairly straightforward to argue that 23 is not 'many' within a herd of 674. It is only 1.7% of the total tags inspected on the day, yet this herd found itself on the wrong side of DARD's threshold and was put in a position where it would face further sanctions.

British Isles - Regional Comparisons

- Comparisons of cattle tag cross compliance penalty matrices between NI and neighbouring regions:
 - a. **Scotland** – 16% threshold before breach.
 - b. **England** – 28 days to replace single missing tags before breach.
 - i. NFU are unaware of any thresholds.
 - c. **Wales** – NFU Cymru explained that their Government takes the same approach as England, however they are aware that if the Welsh Government does not think you have a satisfactory replacement policy they may take further action. This all looked at on a case by case basis.

When we first contacted DARD in the autumn of 2014 we asked a number of questions about the EC audit on cattle ID cross compliance in England. These questions have still not been answered properly. In a letter DARD sent the UFU in March 2015 they commented that the audit in England took place in 2012. DARD has outlined that the Commission were not satisfied with the English approach; however there are matters that remain unclear.

1. Was there a financial disallowance in England as DARD previously claimed there would be?
2. Why 3 years after the audit has England not changed their approach at all to cattle ID cross compliance?
 - i. Has DARD 'jumped the gun' in moving to introduce a threshold which isn't a requirement in England or Wales?

- d. **ROI** – Where a herd owner has more than 5% of their herd with single missing tags it is treated as a minor non-compliance and they are given 3 months to rectify the issue. If this is not done at least a 1% sanction on a farmers Single Farm Payment is applied.
- ii. Once the single tag loss rate reaches 30% of the herd it is no longer considered minor and a 1% sanction is applied.
 - iii. If the herd owner does not have a record of replacing tags in the previous 12 months, the inspector can consider further action.

The ARD Committee will be aware that the Republic of Ireland recently adopted the Farmers Charter 2015-2020 which put reducing red tape and improving customer services for farmers at the heart of its proposals. This document re-affirmed the ROI Government’s guarantee to prevent sanctions from being applied to herds which have a single tag loss rate of 30% at the time of inspection. The Ulster Farmers Union believes that similar efforts should be made by DARD to adopt the same principles that have been agreed in ROI.

Cattle tag replacements - costs to the industry

- The following figures outline the number of replacement tags ordered over a period of years; the national herd population; the tag replacement rate as a percentage of the national herd and the associated cost to the industry. The replacement cost has been derived by taking the average cost of a replacement tag (£3.95, excluding VAT). Given that many part time farms may not be VAT registered, the associated costs to the industry could be considerably higher.

<u>Tags Replaced</u>	<u>Herd Population</u>	<u>Replacement rate</u>	<u>Cost ex VAT (£)</u>
2003 – 163223.	– 1,685,254.	– 9.68%.	- £644,730.
2004 – 191232.	– 1,677,583.	– 11.39%	- £755,366.
2005 – 200302.	– 1,712,748.	– 11.69%.	- £791192.
2006 – 273002.	– 1,689,256.	– 16.16%.	- £1,078,357.
2012 – 218867.	– 1,625,446.	– 13.46%.	- £864,524.
2013 – 212742.	– 1,587,776.	– 13.39%.	- £840,330.

AFBI Cattle Tag Performance Research Project

- a. AFBI Cattle Tag Performance project –UFU understand that DARD has funded this study.
- b. At a meeting the UFU had with DARD in October 2014, we were told by DARD that this report would be complete by early summer 2015.
- c. As yet the UFU has not been made aware of the results and we believe these need to be released by DARD as soon as possible.

Conclusions:

- Farmers were not consulted with about the change in policy.
- UFU were not notified until 4 months after the change in policy.
- DARD did not make all herd keepers aware of the change until the autumn 2014 'Helping you Comply Bulletin.'
- The lack of consultation goes against the recommendations from the Agri-Food Strategy Board report which clearly identified that more needs to be done to ensure that practical and proportionate regulation is agreed with industry.
- UFU believe the threshold is too severe and is not a fair reflection of an appropriate herd tag replacement policy.
- Neighbouring regions have much more flexibility.
- UFU membership has consistently highlighted the variable quality of tags which have been approved by DARD for sale to farmers.
- DARD cannot approve poor tags and tighten their penalty matrix at the same time.

Overall, the UFU is deeply dissatisfied by the way in which DARD has handled this whole process. We would like to thank the ARD Committee for showing such a strong interest in striving to uphold the principles of Better Regulation for what is such an important issue for livestock farmers. To summarise, there are three key areas on which we would like you to focus your efforts:

1. The complete removal of the thresholds which DARD introduced for cattle ID cross compliance.
2. That DARD immediately publishes the AFBI research on cattle tag performance in Northern Ireland – this should be complete.
3. That DARD overhauls their standards for allowing companies to sell poor quality livestock tags in Northern Ireland. The current standards are not only costing farmers an unnecessary amount of money but also creating a time consuming and cross compliance burden.