CHAPTER 12
Penalty System

Guidelines for imposition of penalties under the Afforestation Grant and Premium Schemes are outlined below. The implementation date for imposition of penalties is in respect of plantations which were approved for grant aid on or after 1 January 2001.

12.1 Imposition of a Penalty

The decision relating to the proposed imposition of a penalty will be taken at Assistant Principal level by the Grants and Premiums Section of the Forest Service following the recommendation of the Forest Service Inspectorate at the level of Divisional Inspector.
The decision of the Minister will be final in all matters subject to the provisions of the appeals procedure as outlined below.

The Forest Service fully accepts the concept of partnership, co-operation, and consultation between the Forest Service Inspectorate and the approved foresters and forestry companies to achieve best forestry practice. The Forest Service Inspectorate have delegated discretionary powers to allow minor defects, or any related matter, in respect of a plantation to be remedied and no penalty shall apply at that stage.

The applicant, or his or her agent will be regarded as the principal person or body in respect of which a grant penalty will be imposed. The nominated recipient of the annual forestry premium will be regarded as the principal person or body in respect of which a premium penalty will be imposed.

As a general rule, in any case where a penalty has been imposed it will be necessary to have remedial action taken, where possible, in respect of that element of the plantation which was the subject of the penalty.

The principle of proportionality will apply. Where practical, any penalty imposed will be in direct proportion to the alleged breach of the conditions of the scheme.

The Forest Service reserves the right to offset the amount of any penalty against any subsequent payment due to the person against whom the original penalty was imposed. Such offsetting will take place not earlier than 30 days following a written request for remission of the amount due in respect of the penalty and following, where appropriate, determination of the matter under the Forest Service appeals procedure.

Compliance with any letter of approval issued by the Forest Service will not result in the imposition of any penalty.

12.2 Appeals Procedure

The principle of transparency will apply to the imposition of penalties. Where the Forest Service decides on the imposition of a penalty the applicant/agent will be advised that it is proposed to impose a penalty and given full details. He or she will be afforded an opportunity of at least a month at that stage to show cause, plead mitigating circumstances why such should not be done and/or take remedial action where possible. If it is decided to impose the penalty the applicant/agent retains the right to appeal the decision to the Forest Service Appeals Committee whose decision will be

binding, subject to any further recourse to the Office of the Ombudsman and / or use of the normal legal recourse. Records relating to decisions taken in respect of the imposition of penalties may be available for examination subject to the terms of the Freedom of Information Act 1997. The Appeals Committee was set up on an administrative basis to coincide with the introduction of the enhanced consultation procedures described in Chapter 11. Provision for a statutory-based Appeals Board is being incorporated into the Forestry (Amendment) Bill.

12.3 Forest Service Guidelines and Standards

The Forest Service undertakes to provide adequate dissemination of the information contained in the Code, the Standard, this Manual and the Guidelines in various methods to be agreed.

Compliance with the guidelines will remain a condition of grant aid. The Code of Best Forest Practice- Ireland, this manual and the guidelines outline all forest operations and the appropriate manner in which they should be carried out.

12.4 Schedule of Penalties

Area over-declared

Detailed procedures regarding the imposition of penalties with regard to area over-claimed are set out in a separate document available from the Forest Service. This document also outlines penalties as set out in EU council regulation 2419/2001 and 445/2002.

	Penalty as % of Afforestation Grant
Failure to exclude areas which are ineligible for aid	
-unplantable areas	20%
-ESB lines	20%
-gas mains	20%
Failure to identify unenclosed and enclosed area correctly	20%
Failure to comply with environmental guidelines	100%
Failure to comply with specific supplementary environmental conditions	25 %
-water/fisheries	25%
-NHAs/SACs	25%
-sites and monuments	25%
-scenic areas	25%
-distance from roads/dwellings	25%
-other	25%
Failure to comply with conditions/governing	
-chemical application	20%
-fertiliser application	20%
-disposal of waste/rubbish	20%

-hazardous fencing	20%
-mounding	20%
-silt traps	20%
Incorrect species selection	100% or replacement
Failure to maintain plantation	***as % of 2nd Installment Grant***
-at first inspection	20%
-at second inspection	100%
Failure to maintain fences beyond	***as % of Annual Premium***
the 2nd installment stage	20%
Domestic Stock damage	20%
Failure to control invasive scrub/furze past 2nd installment stage	20%
Dumping	10%

Details regarding the above penalties are explained below.

12.4.1 Area over-declared

Detailed procedures regarding the imposition of penalties with regard to areas over-claimed are available in a separate document available from the Forest Service.

12.4.2 Failure to exclude areas which are ineligible for aid

Unplantable areas
ESB Lines
Gas mains

Where it is found that there has been a failure to exclude those areas and where the Forest Service has established that mapping and ground supervision was not carried out by the approved forester or company in a professional manner the scheduled penalty shall apply.

12.4.3 Failure to identify unenclosed and enclosed lands correctly

The Forest Service is satisfied that it can be clearly indicated when a site has been improved. The climax vegetation and undisturbed soil profile will clearly indicate unenclosed land. The Forest Service is satisfied that it is only in rare cases that a misinterpretation between enclosed and unenclosed land could occur and that such cases should, in the normal course, have been the subject of consultation with the Forest Service. Where land has been incorrectly classified on a grant claim as a result of the approved forester or company not acting in a professional manner the scheduled penalty shall apply.

12.4.4 Failure to comply with environmental guidelines

In any situation where failure to comply with environmental guidelines results in permanent or

serious damage to the environment, particularly, but not exclusively, in respect of archaeological sites and monuments or river pollution the scheduled penalty of no grant or premium payments will apply.

12.4.5 Failure to comply with specific supplementary environmental conditions

The guidelines referred to above set out specific conditions, breaches of which could possibly be remedied. Examples of these breaches include :

- failure to maintain the correct buffer zone from watercourses in respect of both ground preparation and planting
- similar failure in respect of boundaries of NHAs, SACs , SPAs and archaeological sites and monuments
- failure to keep planting back the requisite distances from roads and dwelling houses
- non adherence to the development plan (Form 1) submitted with the original application or disregarding specific conditions imposed in the Forest Service letter of approval.

Where the Forest Service has established that any of the above, or similar type breaches of environmental conditions, occurred as a result of the approved forester or company not acting in a professional manner the scheduled penalty shall apply.

12.4.6 Failure to comply with conditions governing the following:-

Chemical application

Chemicals should be applied according to the manufacturers instructions and in accordance with the Forest Service Forestry and Water Quality Guidelines.

Fertiliser application

Fertiliser application should be in accordance with the Forest Service Forestry and Water Quality Guidelines.

Disposal of Waste/Rubbish

The disposal of, for example, plastic fertiliser bags, plastic plant bags and oil containers must be to the standard as specified in the Rural Environment Protection Scheme (REPS) as administered by the Department of Agriculture and Food.

Hazardous Fencing

Fencing wire should be below head height or below neck height in respect of barbed wire. All tiebacks should be placed inside the planting site.

Mounding

Mounding should be in accordance with the submitted cultivation plan or in accordance with good forestry practice in terms of direction, spacing density and depth as set out earlier in this manual (Chapter 9).

Silt Traps

Silt traps must be laid down as specified earlier in this manual (Chapter 9) and should not be left in a dangerous condition or placed in an appropriate location.

Where the Forest Service has established that failure to comply with any of the conditions governing the above was as a result of incorrect or negligent practice by the applicant/agent the scheduled penalties will apply.

12.4.7 Incorrect Species Selection

The capability of a site to produce a commercial crop should not be extended. There should not be any deviation from the listed species as set out in Chapter 9, unless approved in advance by a Forest Service Inspector. In any situation where an incorrect species has been selected as a result of the approved forester or company not acting in a professional manner the scheduled penalty of no grant or premium payments will apply to that area.

12.4.8 Failure to maintain Plantation

If, in the opinion of the Forest Service, the plantation has not been maintained to the standard as set out in this document the scheduled penalty of 20% of the second installment grant will apply. However, the Forest Service will allow for the Form 3 to be resubmitted where a specific period of time is required to allow for establishment and no penalty will apply. If remedial action is not carried out after an appropriate time the scheduled penalty of 100% i.e. non-payment of the appropriate 2nd installment grant will apply.

12.4.9 Premium Penalties

Any penalties imposed in cases after payment of the second installment grant will relate to the payment of the annual premium.

In any case where the Forest Service is satisfied that the landowner has failed to maintain fences thereby causing damage by stock, or where s(he) has failed to control invasion of scrub, and/ or furze, the scheduled penalty will apply to the annual premium until such time as the deficiency has been corrected. The scheduled penalty will similarly apply where the Forest Service is satisfied that the landowner has been responsible for dumping or causing to be dumped, for example, old machinery, plastic, old wire , or other forms of waste.

If, for the purposes of obtaining aid under the Scheme, an applicant or person acting on their behalf knowingly makes a false or misleading statement or withholds information, the aid given shall be reimbursed or withheld. The Minister reserves the right to exclude such a person from further participation in grant aided schemes.

12.5 Cross Compliance Checking Procedures and Premium and Grant Payment

As accredited EU paying agencies both the Department of Communications, Marine and Natural Resources and Department of Agriculture and Food are obliged to carry out checks and controls on all applications. These requirements are set out in EU Council Regulation 3508/92 and subsequent amendments governing the Integrated Administration and Control System (IACS). These

regulations are applicable throughout all Member States of the E.U.

An applicant may not claim forest grant or premium in respect of any area which is included in his/her claim under any other area-linked EU scheme except where applicants fulfil national scheme rules.

Under EU regulations cross checks must take place between area based schemes which involve the exchange of information between the Forest Service and DAF.