



Agriculture
Appeals Office



Agriculture Appeals Office



annual report 2006



To the Minister for Agriculture and Food, Ms. Mary Coughlan T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2006 faoi do bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talmhaíochta, 2001.

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act 2001, I submit the report of the Agriculture Appeals Office for 2006.

John Murphy
(Acting) Director of Agriculture Appeals Office

Tá an Tuarascáil seo ar fáil freisin i nGaeilge, ach é a iarraidh.

This report is also available in Irish, on request.

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1. Introduction by the Director of Agriculture Appeals Office

The Agriculture Appeals Office continues to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture and Food regarding their entitlements under certain schemes as set out in the Schedule to the Agriculture Appeals Act 2001. 427 appeals were received in 2006 across the various different schemes.

This report sets out the major developments during the year and a statistical breakdown of the Office's work. In line with recent reports, it contains a cross-section of cases determined by Appeals Officers so as to illustrate of the type of issues that gave rise to an appeal and the consideration given to them by Appeals Officers.

The report also includes recommendations to the Department of Agriculture and Food regarding certain schemes, in addition to highlighting recurring and non-compliance issues by scheme applicants that lead to penalties.

In addition to the customary functions of the Office, the Single Payment Appeals Committee continued to examine appeals arising from the Single Payment Scheme. These cases included Force Majeure, New Entrant/Inheritance, 2005 Non Applicant cases, the majority of cases being in relation to applications to the 2005 National Reserve. The Single Payment Appeals Committee comprises Appeals Officers from this Office and has an independent Chairman, Mr. John Duggan.

I hope that as well as fulfilling its primary function as a report to the Minister for Agriculture and Food, the report will be of use to farmers, the Department of Agriculture and Food and other interested parties.

The mission of the Office is to provide an independent, accessible, fair and timely appeals service for Department of Agriculture and Food scheme applicants, and to deliver that service in a courteous and efficient manner.

John Murphy,

(Acting) Director of Agriculture Appeals Office

June 2007

2. Agriculture Appeals Office 2006

The Agriculture Appeals Office was established in 2002 to provide an appeals service to farmers who may be dissatisfied with decisions of the Department of Agriculture and Food concerning their entitlements under designated schemes operated by the Department. The Agriculture Appeals Act 2001, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals.

The establishment of the Agriculture Appeals Office put the appeals process for Department of Agriculture and Food Schemes on a statutory basis. Appeals Officers are independent under the Act. In line with the Office's mission statement, the Office aims to be client friendly and to deliver its service in a courteous and efficient manner.

One of the main features of the Office is the right of an appellant to an oral hearing where an Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. Following consideration of all of the facts of a case, comprehensive decision letters are issued to both the appellant and the Department.

Procedures Manual

Under the Freedom Of Information Act 1997, this Office was legally obliged to prepare a Procedures Manual, outlining information about the Agriculture Appeals Office and details of internal rules, procedures and interpretations used by Appeals Officers. The Procedures Manual can be accessed on our website, www.agriappeals.gov.ie, and contains the following,

- Structure, Organisation and Names & Designations of Members of Staff
- Functions, Powers and Duties
- Services for the Public (and how these may be availed of)
- Rules and Guidelines
- Office Procedures
- Classes of records Held and the Arrangements for Access
- Rights of Review and Appeal including Rights of Review under FOI

Business Plan

In accordance with the Strategic Management Initiative, a 2006 Business Plan was formulated to co-ordinate with the Department of Agriculture and Food Statement of Strategy 2005 – 07. The Business Plan forms the basis for the Office's work and is subject to regular review.

Database

A database to process and record cases received by the Office and an electronic library of decisions ensures up to date information regarding the status of cases and the overall performance of the Office.

Website (www.agriappeals.gov.ie)

Conscious of the commitment to e-Government, the Office launched its website, **www.agriappeals.gov.ie** in 2003. As well as being a source of information, appellants can download the 'Information Note and Notice of Appeal' form and lodge appeals online at the following e-mail address,

appeals.office@agriculture.gov.ie.

Co-operation with the Department of Agriculture and Food

Ongoing contact with various Divisions of the Department of Agriculture and Food to discuss various issues that arise from appeal cases continued in 2006.

Meetings of Appeals Officers

11 meetings of Appeals Officers were held in 2006. The principal purpose of these meetings is to establish consistency of approach by the Appeals Officers and to discuss matters relevant to the work of the Office. These meetings are usually held monthly.

Freedom of Information

A number of formal requests were received under the provisions of the Freedom of Information Acts. All of these requests were in respect of personal information contained on file.

The Office of the Ombudsman

Under the Agriculture Appeals Act 2001, appellants to this Office may request a review of their case by the Office of the Ombudsman. To date seven cases received in 2006 have been referred to the Ombudsman. There have been no occurrences where the Ombudsman has requested this Office to amend its decision.

3. Appeals Procedure and Oral Hearings

Of the 427 appeals received in 2006, some 250 (58%) involved oral hearings. (63% in 2005).

On receipt of an appeal, this Office,

- Requests the relevant file from the Department of Agriculture and Food
- Asks that the relevant Division of the Department provide a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed.

Appeals are dealt with in the order that they are received.

On receipt of the file from the Department, the Director of Agriculture Appeals allocates the case to an Appeals Officer. At that stage the Appeals Officer contacts the appellant regarding the case and to make arrangements for an oral hearing, if one is requested by the appellant or if it is deemed necessary by the Appeals Officer.

Following examination and consideration of all of the facts of the case, the Appeals Officer makes a determination and issues a letter to the appellant, outlining the outcome of the appeal and listing the reasons for the determination.

One of the features of the Office is the right of an appellant to an oral hearing where the Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. Oral hearings are held in locations close to the appellants in order to ensure them better access to the appeals procedure. The key features of an oral hearing are,

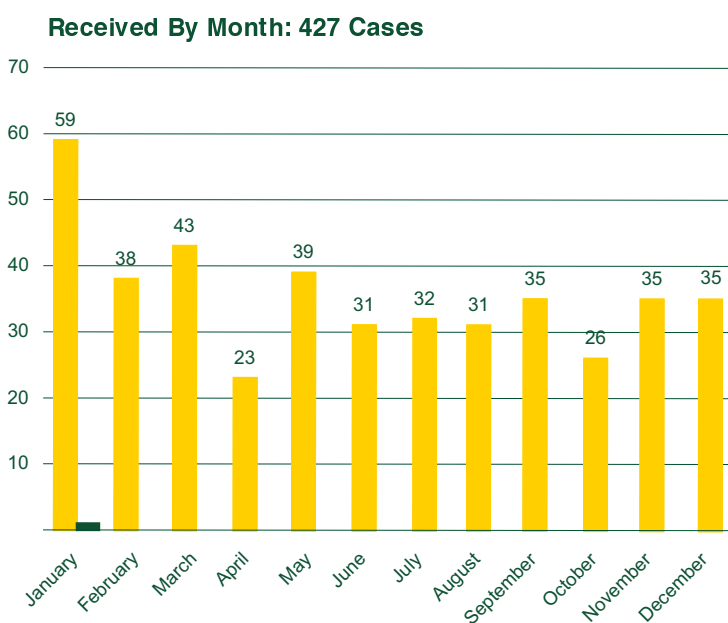
- It is held in private and is informal in format
- The appellant has a right to representation but must attend the hearing in person

Oral Hearings were held in every county. Conscious of the need to be efficient, the Agriculture Appeals Office aims to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country and these regions are rotated on a regular basis.

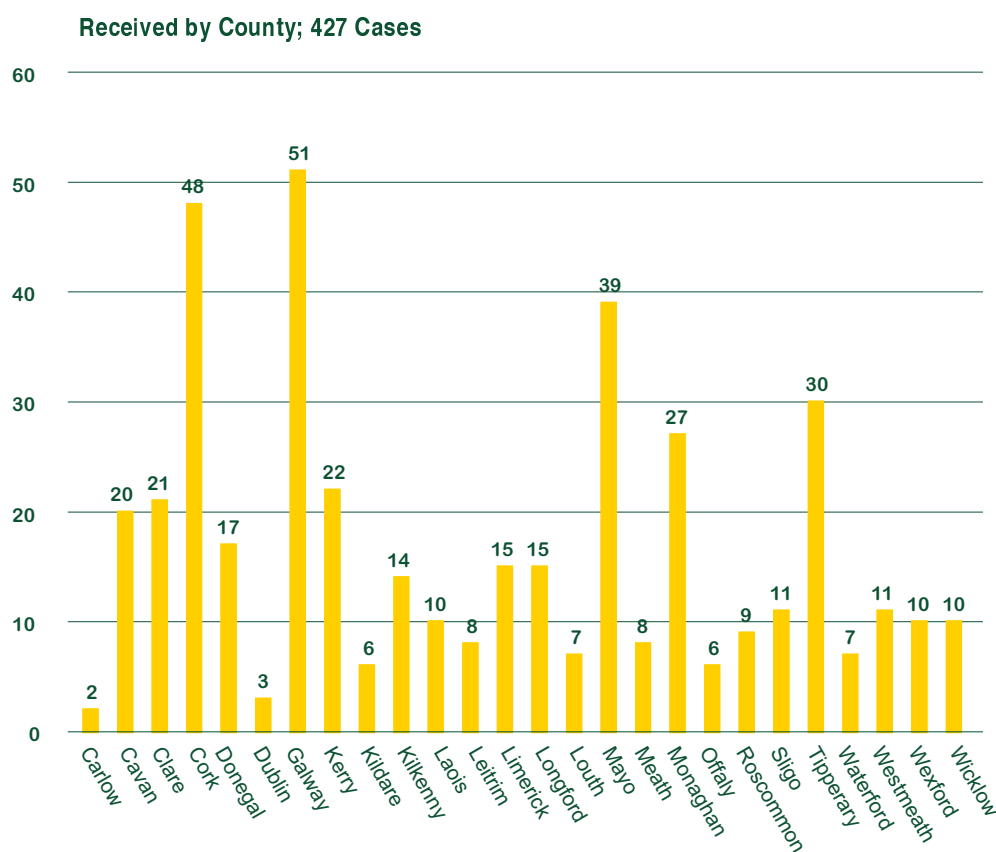
4. Statistics – 2006

427 cases were received in 2006 compared with 790 in 2005, a 46% decrease.

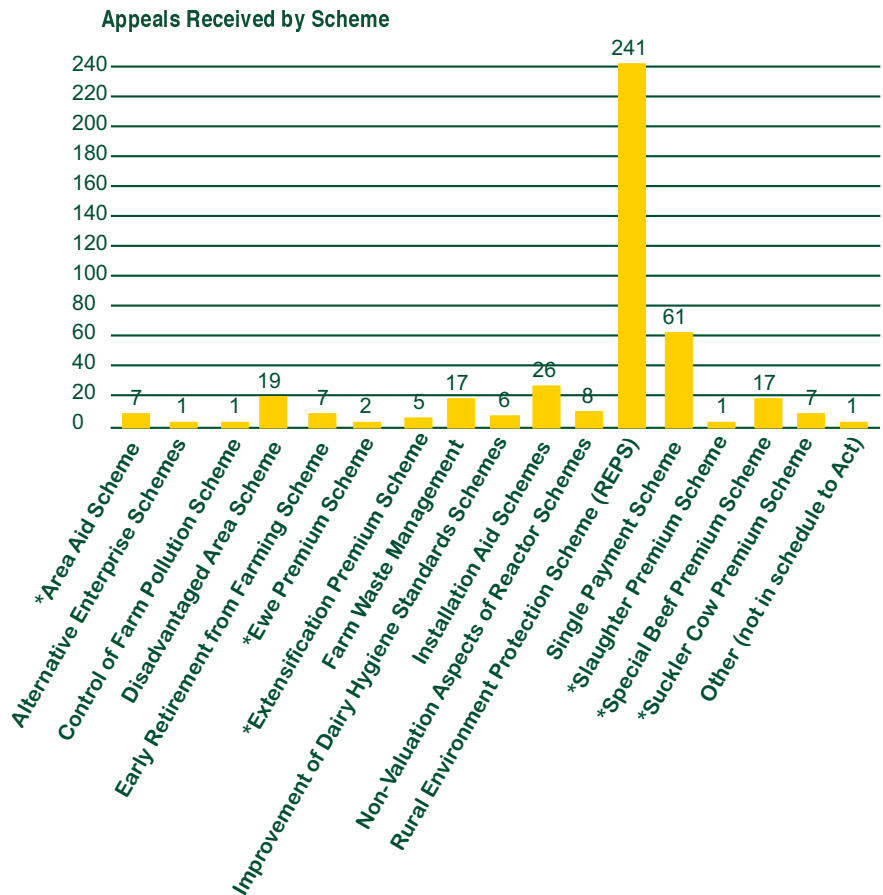
4(a) Appeals Received by Month



4(b) Appeals Received by County



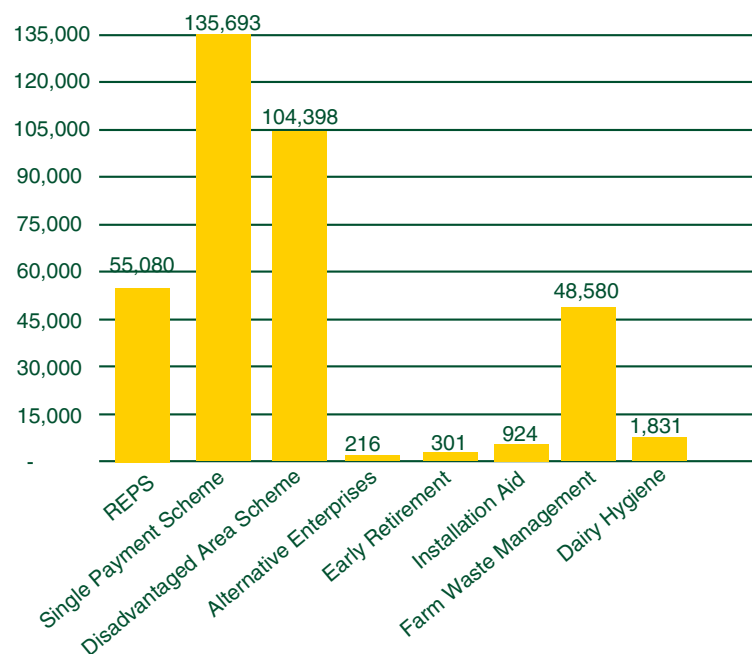
4(c) Appeals Received by Scheme



*These schemes were replaced by the introduction of the Single Payment Scheme in 2005, hence the reduction in appeals received.

4(d) Department of Agriculture and Food Applications 2006

Dept. Agriculture & Food Scheme Application



Statistics supplied by the Department of Agriculture and Food.

4(e) Outcome of Appeals Received in 2006

Comparison with previous years;	2006	2005	2004	2003
Appeals Allowed, Partially Allowed or Revised	36%	36%	33%	38%
Appeals Withdrawn, Not Valid or Out of Time and Advice Given	14%	11%	11%	7%
Disallowed	40%	49%	51%	54%
Open	10%	4%	5%	1%

Terminology

Appeal Allowed: Where the Appeals Officer accepts the case put forward by the appellant and overturns the penalty.

Partially Allowed: This category includes cases where an Appeals Officer decides that a reduced or lesser penalty should apply.

Revised by the Department: This category includes cases where the Department has revised its original decision based on new information submitted by the appellant to the Agriculture Appeals Office.

Not valid: This category includes appeals on matters not appropriate to the Office, (i.e. Schemes not listed in the Schedule to the Agriculture Appeals Act), pre-13 May 2002 cases, duplicate appeals and cases where no actual decision has been made by the Department of Agriculture and Food.

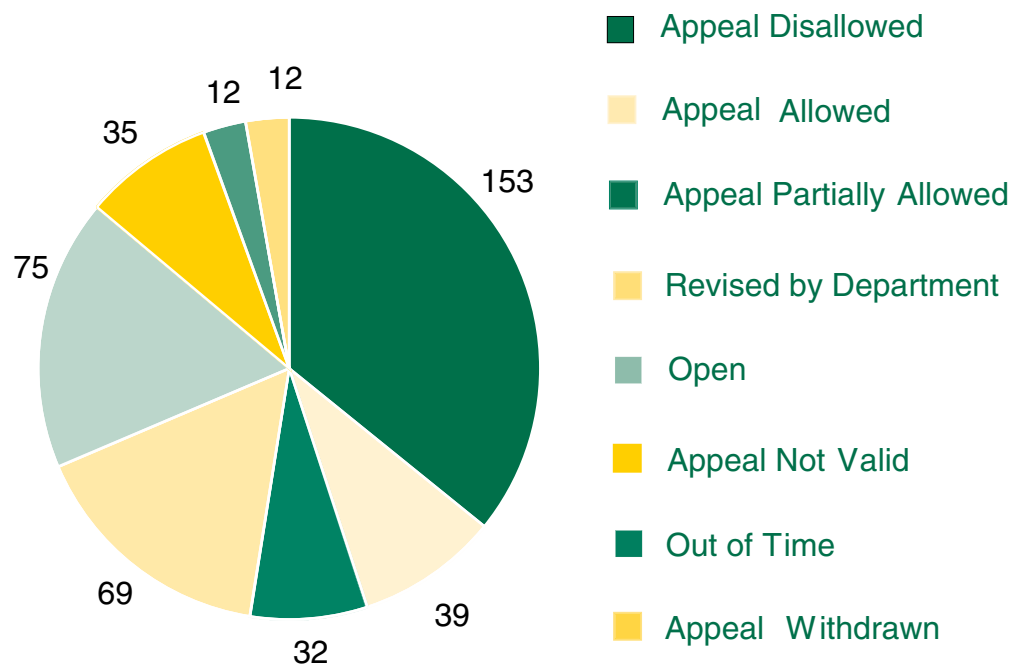
Out of time: Applicants have three months from the date of decision of the Department to appeal and appeals received after that time, are not accepted. However, where extenuating circumstances exist, the Director may allow a case to be considered where it is lodged after three months.

Advice Given: The Act allows for representations made to the Minister under the National Beef Assurance Scheme and the Scheme for the Approval and Registration of Dealers and Dealers' Premises to be referred to the Director for advice. This category refers to advice given by the Director.

Appeal Disallowed: Where the Appeals Officer does not accept the case put forward by the appellant and considers the penalty imposed by the Department of Agriculture and Food to be the correct one.

Open: 2006 cases which have still to be finalised to date.

Full Breakdown



4(f) Outcome by Scheme Received in 2006

Scheme ID	Received	Allowed	%	Partially	%	Revised	%	Withdrawn	%	Not Valid	%	Out of Time	%	Advice Given	%	Disallowed	%	Open	%
Alternative Enterprise Schemes	1	-	0.0	-	0.0	1	100.0	-	0.0	-	0.0	-	0.0	-	0.0	0	0.0	-	0.0
Area Aid Scheme	7	0	0.0	-	0.0	1	14.3	1	14.3	3	42.9	-	0.0	-	0.0	2	28.6	-	0.0
Control of Farm Pollution Schemes	1	0	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	0	0.0	1	100.0
Disadvantaged Areas Compensatory Allowances Scheme	19	3	15.8	-	0.0	1	5.3	1	5.3	1	5.3	-	0.0	-	0.0	12	63.2	1	5.3
Early Retirement from Farming Scheme	7	3	42.9	1	14.3	1	14.3	-	0.0	2	28.6	-	0.0	-	0.0	0	0.0	-	0.0
Ewe Premium Scheme	2	0	0.0	-	0.0	-	0.0	-	0.0	1	50.0	-	0.0	-	0.0	1	50.0	-	0.0
Extensification Premium Scheme	5	4	80.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	1	20.0	-	0.0
Farm Waste Management	17	2	11.8	-	0.0	5	29.4	1	5.9	-	0.0	1	5.9	-	0.0	8	47.1	-	0.0
Improvement of Dairy Hygiene Standards Schemes	6	-	0.0	1	16.7	1	16.7	-	0.0	-	0.0	-	0.0	-	0.0	4	66.7	-	0.0
Installation Aid Schemes	26	3	11.5	1	3.8	5	19.2	-	0.0	1	3.8	-	0.0	-	0.0	14	53.8	2	7.7
Non-Valuation Aspects of Reactor Scheme	8	1	12.5	-	0.0	-	0.0	-	0.0	1	12.5	-	0.0	-	0.0	5	62.5	1	12.5
Other (Not in Schedule to Act)	1	0	0.0	-	0.0	-	0.0	-	0.0	1	100.0	-	0.0	-	0.0	0	0.0	-	0.0
Rural Environment Protection Scheme (REPS)	241	24	10.0	18	7.5	48	19.9	7	2.9	3	1.2	7	2.9	-	0.0	106	44.0	28	11.6
SFPS- Over declaration of land/setaside	19	2	10.5	8	42.1	3	15.8	1	5.3	-	0.0	-	0.0	-	0.0	3	15.8	2	10.5
SFPS-Cross-compliance	11	2	18.2	1	9.1	1	9.1	-	0.0	-	0.0	-	0.0	-	0.0	5	45.5	2	18.2
SFPS-Late submission of applications	2	0	0.0	-	0.0	-	0.0	-	0.0	-	12.5	-	0.0	-	0.0	2	25.0	-	0.0
SFPS-Under declaration of land	8	-	0.0	1	12.5	2	25.0	-	0.0	1	12.5	-	0.0	-	0.0	2	25.0	2	25.0
Single Farm Payment Scheme - Other	21	-	0.0	-	0.0	-	0.0	-	0.0	21	100.0	-	0.0	-	0.0	0	0.0	-	0.0
Slaughter Premium Scheme	1	0	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	1	100.0	-	0.0
Special Beef Premium Scheme	17	0	0.0	1	5.9	6	35.3	1	5.9	1	5.9	2	11.8	-	0.0	4	23.5	2	11.8
Suckler Cow Premium Scheme	7	-	0.0	1	14.3	-	0.0	-	0.0	-	0.0	2	28.6	-	0.0	3	42.9	1	14.3

4(g) Time from Department of Agriculture and Food to Appeals Office

For 2006 cases the average time taken by the Department to return files was 27 days. The average for 2005 was 17 days. A breakdown follows by Scheme;

Scheme	2006
Area Aid Scheme	55
Disadvantaged Areas Compensatory Allowances Scheme	36
Early Retirement from Farming Scheme	17
Ewe Premium Scheme	21
Extensification Premium Scheme	27
Farm Waste Management Scheme	39
Improvement of Dairy Hygiene Standards Schemes	39
Installation Aid Schemes	21
Non-Valuation Aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors	21
Rural Environment Protection Scheme (REPS)	26
Special Beef Premium Scheme	35
Suckler Cow Premium Scheme	5
Single Payment Scheme	22

When an appeal is lodged with the Agriculture Appeals Office, this Office,

- Requests the relevant file from the Department of Agriculture and Food
- Asks that the relevant Division of the Department provide a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed.

The Office asks the Department to return files **within two weeks** of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued where the Department does not respond promptly. 68 reminders were issued in 2006.

4(h) Time taken to determine cases by the Appeals Office

For 2006 cases, the average time taken to deal with a case from the time of receipt of the Department file and statement until the issue of the decision was 71 days. The average for 2005 was 73 days.

The Appeals Office has set itself a target of three months from time of receipt of the appeal to the issue of decision letter. For 2006 cases, the average appeal took 87 days.

4(i) Position as at year end

Status (as at 31st December)	2006	2005	2004	2003
Cases Closed	288	762	821	841
Work in Progress – Appeals Office	130	13	200	181
Awaiting Department Response	9	15	95	121
Total on Hand	139	28	295	30
Overall Total	427	790	1,116	1,143

Cases closed in 2006	
2006 Cases closed in 2006	288
2004 & 2005 Cases closed in 2006	146
Total no. of cases closed in 2006*	434

***Note:** In addition to the cases closed above The Single Payment Appeals Committee closed a total of 1,068 cases pertaining to the Single Payment Scheme. Please see Section 8, page 43, for further information.

5. Selected Appeal Cases

Case 1 Single Payment Scheme

In this case, two applications were submitted under the 2005 Single Payment Scheme. An inspection was carried out on one of the holdings in late 2005. It was found that the herdowner was in control of two separate units; one dairy and one suckler herd under two separate herdnumbers. The Department view of this situation was that it contravened clause 9 of the Terms and Conditions of the Scheme. The penalty imposed was that no payment would be made on either of the two claims as the Department viewed it to be an intentional false declaration. The Department also sought a refund of monies already paid under the various suckler, special beef and extensification premia schemes for upwards of ten years.

The herdowner sought a review of the decision on the basis that each application was on behalf of a separate legal entity. He contended that a separate legal person had control of the holdings. The lands were not associated with each other under joint management. The herdowner also commented that there was no gain, financial or otherwise, from lodging the two applications.

At an oral hearing and in documentation submitted the herdowner argued that the Department had been aware of the legal status of the holdings and that he was therefore entitled to lodge the applications. He argued that farm records would show that the holdings were being treated separately and managed as two distinct businesses. The herdowner stated that the Department was aware of the manner in which the two farms were managed and that this was advised to them over the years by clarifying on applications the status of the two holdings.

There was no dispute that two applications had been lodged; what was at issue was whether or not they should have been permitted in the circumstances, as there were implications for entitlements built up over the relevant years. The Department deemed them to be two applications from one person; the appellant contended that they were two applications from two separate and distinct legal entities.

From an examination of farm records and documentation from agribusiness it was noted that the holdings were indeed being managed separately. One farm was being run by the appellant for his own benefit whereas the second farm was being managed by him in trust. He had been charged with operating the farm of his late father pending the administration of the estate. There was no effort to hide these facts from the Department. The Department had been contacted by the appellant on numerous occasions outlining the position in relation to how the second farm was held and

approval sought from it before applications under the premium schemes were submitted. The Department were aware of the appellant's position as they had retained payments while awaiting resolution of matters pertaining to the second holding. The appellant argued that they were therefore aware that he was not in full control of the two holdings and his submitting two applications was not done with the intention to defraud.

Having considered all the issues, the Appeals Officer found that the decision of the Department of Agriculture and Food was not appropriate. It was decided that there was an entitlement to submit two applications; that the herdowner had a legitimate expectation to apply for premium payments and that the entitlements built up under the Single Payment Scheme should also be retained. It was also found that there was no intentional false declaration. The appeal was allowed.

Case 2 Farm Waste Management Scheme

An application was made for grant aid under the Scheme of Investment Aid for Farm Waste Management to purchase a manure spreader (mobile equipment). This application was acknowledged by the Department on the 20th December 2005 and the appellant was advised not to commence work before written approval had been issued. On the 18th January 2006 the Department issued approval to proceed with the purchase.

On the 19th February 2006 documentation was received which included a receipt for the purchase of a manure spreader from the supplier dated 10th January 2006. This date preceded the date of issue of the approval. Contact was made with the company concerned and on 10th March 2006 further correspondence and a bank lodgement slip dated 27th January 2006 was submitted.

On the 13th March 2006 the Department notified the appellant that he was ineligible for grant aid under the Scheme as the equipment was purchased prior to the date of approval. *Paragraph 7 of the Scheme states that items invoiced, or delivered, purchased or payments made before the date of approval are not eligible for grant aid.* If it is indicated that work commenced prior to the grant of written approval, grant aid will not be paid as per paragraph 1(vi) of the Scheme. Aid will not be given for works commenced or equipment purchased before written approval has been conveyed to a farmer.

The appellant wrote to the Department indicating that the wrong date had been inadvertently put on the invoice by the supplier. A new invoice with a date of 27th January 2006 was supplied to the

Department. After consideration the Department decided that it would be in order to pay the grant subject to evidence being supplied that the spreader was delivered and paid for after the date of approval. The appellant subsequently contacted the Department and explained that because the purchase of the dung spreader had been financed under a hire purchase agreement there was no evidence to show it had been fully paid for. As the Scheme provided that grant aid would not be paid in respect of new equipment unless ownership thereof had been transferred to the applicant prior to payment of the grant, the Department notified appellant that no grant could be paid.

The appellant argued that many transactions are financed by either leasing or hire purchase so as to facilitate income tax allowances, to preserve cash flow and means that repayments are fixed for the duration of the agreement. Leasing allows the farmer to finance 100% of the machine and improves profitability. The farmer considered it very unfair that the grant could not be paid in situations where the machine was financed by way of lease, as farmers could not be expected to purchase these types of items given the returns from farming.

The Scheme Terms and Conditions are clear in relation to ownership of equipment; aid will not be paid in respect of new equipment unless ownership thereof has been transferred to the applicant prior to payment of the grant. The Appeals Officer had regard to the Terms and Conditions of the Scheme and the guidelines contained therein as set down by Regulation 1257/99 that set out the broad requirements of the Scheme. In this case where the machine had been purchased through a hire purchase agreement it was clear that ownership did not effectively pass to the purchaser until the last payment was made on the agreement. It was found that the decision made by the Department of Agriculture and Food was correct. The appeal was disallowed.

Case 3 Farm Waste Management Scheme

The farmer appealed against the refusal by the Department to grant him the young farmer top up to his grant under the revised Scheme of Investment Aid for Farm Waste Management (FWM) as introduced 23rd March 2006.

The farmer had previously lodged an application to the Department under the Investment Aid for Farm Waste Management (FWM) scheme prior to any revisions. That application was approved in February 2006 for grant aid at the rate of 55%. This rate included a 15% top-up under additional aid for young farmers. In April 2006 the Department accepted a request that the application be

withdrawn. The farmer then lodged an application for consideration under the revised FWM scheme which came into effect 23rd March 2006. Approval issued for grant aid at the rate of 60%. This grant rate did not include the additional young farmer top-up.

In his appeal the farmer stated that he was refused the additional young farmers grant rate under 'the five year rule'. The top up is open to those who commenced farming in the previous 5 years. In this case the appellant's benchmark for the five years occurred between the lodgement dates of both applications and prior to the date the revised scheme came into operation.

The date the appellant became a registered herdowner was not in dispute. The appellant stated that his investment plans were specifically formulated and budgeted with the **revised FWM scheme** in mind, that farming press had signalled the scheme well in advance. The appellant was aware of the 5 years rule and considered he was being treated unfairly in being excluded from the top-up.

The Appeals Officer noted that the Minister for Agriculture and Food had issued a press release in July 2005 outlining the planned revisions, including a 10% top-up for young farmers in disadvantaged areas. A further Ministerial press release in September 2005 stated that EU approval was being sought for the revised scheme with the hope that it could be introduced from 1st Jan 2006. However, having had to await EU approval, the Minister formally announced the scheme on 24th March 2006, with an effective commencement date of 23rd March 2006.

The Appeals Officer found that while the farmer was initially deemed to qualify for the young farmer top-up under the cancelled application, the application lodged on 6th April 2006 was a new application. The new application was subject to the terms and conditions and rates of payment applicable to the revised scheme only. The Appeals Officer found no provision available that would allow the date of application to be altered to a date prior to the scheme coming into effect or to extend the period of 5 years.

Having given due consideration to all aspects of the case, the decision of the Department of Agriculture and Food was found in keeping with the EU Regulations and the National Terms and Conditions underpinning the Scheme of Investment Aid for Farm Waste Management as effective from 23rd March 2006. The appeal was disallowed.

Case 4 Disadvantaged Areas Compensatory Allowance Scheme.

The farmer appealed against a decision by the Department to refuse him payment under the 2005 Disadvantaged Area Scheme, having deemed that he did not maintain the required minimum stocking density of 0.15 livestock units per hectare. In his scheme application the farmer declared a net forage area of 15.78 hectares, of which 12.50 hectares was disadvantaged land.

The farmer had 2 cattle in 2005 and stated he was unaware of any requirement to have 1.88 livestock units (LU) of cattle on his holding. The farmer stated that when he was made aware of the minimum stocking level required, it was 2006 and too late for him to obtain more cattle to qualify. The farmer stated that he did not understand the requirement, and could have bought extra cattle. The Appeals Officer noted that he had signed the application declaring he had read the scheme conditions and agreed to be bound by them.

The Scheme required the applicant to keep a minimum stocking level of 0.15 LU per hectare for a continuous 4 months during the calendar year. The Department stated that a computer based system checks against the applicant's herd records on CMMS for the purposes of bovine stocking density. The Department stated that the appellant had been a scheme participant over a number of years.

The scheme Terms and Conditions, which are included in the document containing the 2005 EU Single Payment Scheme Conditions, points out that to be eligible for payment under the 2005 scheme an applicant *must have a holding with a minimum stocking level of 0.15 livestock units per forage hectare, and ...that you must own, possess, hold and maintain for at least 4 continuous months of the year the livestock required to maintain the minimum stocking level.*

The Appeals Officer noted that the farmer had purchased 2 animals of 0.6 LU in May 2005 and retained them into 2006. This stocking level set against the area farmed in 2005 per scheme application of 15.78 Ha – gives a stocking density of 0.076 livestock units per hectare. The Appeals Officer noted the Department had informed the farmer in writing that he required 1.88 LUs based on the disadvantaged area of his farm. Stocking density is not only calculated on the disadvantaged forage lands but also against any non-disadvantaged forage lands, while the payment issues only on the actual qualifying disadvantaged area, this would have required that the farmer maintain 2.37 LUs.

The Appeals Officer disallowed the appeal, as the farmer had not maintained the required level of livestock on his holding.

Case 5 Rural Environment Protection Scheme

A REPS participant appealed against a decision to disallow payment on 8.21 hectares of newly leased-in land for the first year of his REPS 3 contract.

In February 2005 the farmer lodged a new REPS 3 plan. This new plan included 8.21 hectares of land leased on a 6-year lease. The REPS planner included a covering letter explaining that the REPS plan had not been submitted six weeks before the REPS anniversary date, as specified on the REPS 3 Scheme Document, but, in accordance with REPS circular 17/04, the new REPS 3 plan was lodged within the three month period following the anniversary date.

In April 2005 the Department issued notice of acceptance of the REPS plan, with a commencement date of 1st December 2004. However, the first year payment when issued was lower than expected, as no payment issued for the 8.21 ha of leased lands. The Department deemed the leased lands ineligible for payment, as the new REPS plan was not lodged six weeks prior to the anniversary date, as specified under the terms and conditions of the scheme.

On page 9 of the REPS 3 terms and conditions, dated 5th February 2004, under section 16, CHANGES IN AREA FARMED it states *'16.1 Additional land acquired: 16.1.1 Where the area is increased by more than 2 hectares and payment is required, participants must notify the Department within 6 weeks, and submit new 5-year plan during the 6 weeks period before the next anniversary date.'*

On 31st August 2004, REPS section issued a scheme circular **17/04** to Department REPS staff and all approved REPS Planning Agencies. Section 5 of the circular covered Amended & New plans. In summary it stated that amended plans are required where there is a change in the size of the holding. REPS 2 participants who opted to transform to REPS 3 by submitting a REPS 3 2X and REPS 3 DEC and required an amendment to their agri-environmental plan, had to adhere to the requirements set out in that circular. The relevant requirements were that a participant with an anniversary date between 1st June 2004 and 1st February 2005, could choose to transfer to REPS 3 provided they submitted a full consolidated new 5 year plan in the three month period following the anniversary date.

The appellant contended that he was in compliance with section 5 of circular 17/04, and had lodged the necessary documentation within the time frame allowed under the circular.

On 22nd December 2004, REPS section Wexford, issued circular **24/04** to Department REPS staff **only**. The circular, among other things, dealt with REPS 3 applications with additional land submitted after a participant's anniversary date. Section 3 of the circular stated that additional land would become eligible for payment from year 2 of the REPS 3 contract onwards, under specific circumstances outlined in the document.

The Appeals Officer found the appellant and his planner took a fair & reasonable interpretation of section 5 of circular 17/04, noting that Circular 17/04 was issued after the Terms & Conditions document and therefore took precedence over the relevant sections of Terms and Condition document. Critically, the circular was issued to approved REPS planners and was available on the Department web site, notifying REPS participants of the information and changes to the scheme. Circular 17/04, does not specifically state that the land in question was eligible for payment in year one, but likewise it does not state that it is not. If it was the Department's intention that additional land would only become eligible for payment from year 2 onwards, it should have been stated. The Appeals Officer noted that the Department clarified the issues with its own staff through circular 24/04, issued after the anniversary date in this case, but this circular was an internal Department document and was not circulated to REPS planners.

The Appeals Officer allowed the appeal, finding the appellant eligible to receive payment on the 8.21 ha of leased lands in year one of his REPS 3 contract, provided all other issues were in compliance.

Case 6 Rural Environment Protection Scheme

A farmer appealed against a 105% penalty on an annual payment under the Rural Environment Protection Scheme.

At a REPS compliance inspection, the Department's Inspecting Officer observed the following: Measure 3- watercourse not fenced 1.5 m back from the edge, a wire fence was only two to three feet back incurring a 5% penalty.

Measure 7 - an enclosure protected under section 12 of the National Monuments Act 1994 had a gravelled farm road going through it and there was no reference to this road on the REPS plan or map. Also a quantity of excavated material had been

deposited within this enclosure recently incurring a 100% penalty.

Measure 4C - Biodiversity Undertaking applicable to the plan a Nature corridor, fields were ploughed within less than 2.5m of field boundaries and this was contrary to what was stated on the relevant form REPS 32x for that measure – incurring a 5% penalty.

In the notice of appeal the farmer stated he accepted the penalty under measure 4C-Nature corridor and appealed against the other two penalties.

Measure 3 - The farmer stated that the watercourse was fenced properly; a contractor erected the fence when he joined REPS in 1999 alongside 1,300 metres of meandering watercourses and it is very difficult to have the fence the correct distance away in all places. The farmer had a REPS inspection with the same fence in place during his REPS 1 contract and no penalty or warning resulted then. Measure 3 is concerned with developing and protecting waterside / riverbank habitats. The fencing back of bovines a minimum 1.5m from the top of the watercourse is to prevent both access by bovines to waterways, but it is also to protect the vegetation along the bank / waterside and allow the bank to develop and strengthen. The Appeals Officer held that the farmer had failed to meet the objective of this measure, by not having the fence back the correct minimum distance, and disallowed this part of the appeal.

Regarding the Measure 7 penalty, the farmer stated he had constructed a farm roadway from his dwelling through the centre of the farm to facilitate better management and located the roadway so as to minimise ground disturbance. The farmer stated the roadway construction consisted laying stone directly down on top of the existing topsoil. There was no disturbance to the existing ground. The farmer stated that he followed an existing trackway and did not open up a new track, that an opening already existed in the boundary of the protected enclosure.

A report from a Senior Department of the Environment, Heritage and Local Government Archaeologist was submitted as part of the appeal evidence. This report stated *“it appears that the farm track was laid directly on existing ground surface, and has not had an impact on recorded monument enclosure”*. The report also recommended the work to be carried out by the farmer to remove spoil from the environs of the enclosure. The farmer explained that the spoil was dumped by a contractor carrying out work on a local group water scheme and it consisted of 8 to 10 loads excavated from the path of the water pipe.

The Appeals Officer found that the new roadway was laid down very close to the earthen mound of the enclosure and the spoil was dumped next to the road on the eastern side, all within the excluded area.

Under Measure 7 'Protection of Features of Historical and Archaeological Interest' the REPS plan stated *'This monument and an area of 20 metres around it shall not be interfered with through activities such as ground disturbance, excavation, construction of building or afforestation'* Page 23 of the Farmers Handbook for REPS 3 states the farmer *must avoid damaging monuments through the use of heavy machinery in their vicinity. Where a monument occurs in grass land the monument itself and an area of 20 metres around it must not be interfered with through activities such as ground disturbance, excavation, construction of building or afforestation. No material of any type can be removed or dumped on such sites.*

While accepting the findings of the Archaeologist, that the farm track had not had an impact on the Recorded Monument Enclosure, the Appeals Officer could not disregard the spoil heaps, which were located beside the monument. This was contrary to the requirement that no groundwork / material dumping of any kind should take place at or within 20 metres of the monument. The farmer had allowed the dumping of spoil within the environs of a protected archaeological feature which was contrary to the scheme requirements that he had contracted to, and the penalty applied was provided for in such circumstances. The Appeals Officer disallowed the appeal.

Case 7 Single Payment Scheme

The farmer submitted his 2005 Single payment application form on the 11th May 2005 in respect of 24.21 hectares (ha). Following an on farm inspection on the 05th July 2005, two plots were deemed by the Department of Agriculture & Food not to qualify as forage area. This resulted in an overdeclaration of forage area by more than 20%, with a penalty of nil payment under the Single payment scheme and under the Disadvantaged Area payment scheme. The herdowner sought a review of these penalties on the basis that the plots concerned are listed as habitats in his REPS plan and are available for grazing although this is not the practise. A further inspection was then carried out in December 2005 and the Department of Agriculture & Food deemed the plots, to be correctly described on the REPS plan as scrubland habitats. The Department of Agriculture & Food upheld the penalty and the herdowner then appealed the decision to this office.

At the oral hearing, it was stated that the problem seemed to have arisen when he joined REPS 2 in late 2002, when the plots concerned, located in a private SAC (Special Area of Conservation), were entered in REPS 2 as habitats. The appellant was therefore unable to interfere with them in any way. Otherwise he risked a penalty under REPS. He continued to enter them as forage on his Area Aid forms in 2003 and 2004 and did so again in 2005. It was explained that he had a different advisor for REPS and for Area Aid forms. The findings at inspection are not disputed but it was put forward that the penalty is very harsh given that all the Single payment and all the Disadvantaged Area payment is withdrawn. This represents a significant portion of his annual income. It was submitted that a reduced penalty would be more equitable.

In considering the appeal, the Appeals Officer took into account the EU Regulations governing the scheme as set out in the Terms and Conditions as issued to every applicant at the commencement of the scheme. In particular to this case is the requirement that the farmer must have one eligible hectare for each entitlement claimed. An eligible hectare is defined as **‘Land used to grow cereals, oilseeds, etc grass for silage or hay or grazing’**. Under the Disadvantaged area scheme forage is defined as land, which **‘Is used for the grazing of cattle, sheep, horses etc’**. The terms and conditions of the scheme specifically excludes **‘Areas fenced off, inaccessible areas, and areas not available for the rearing of animals under a REPS plan’**.

It was not disputed that the plots concerned were as described in the REPS plan, that is, scrubland habitats, and as found at the second inspection in December 2005. At that inspection the Inspector described one plot, as inaccessible from the public road and overgrown with bushes, scrub and young trees. For livestock to gain access to a small area adjoining the lake, they would have to cross the lake. The second plot was described as mainly made up of scrub, bushes and young furze with only 10% forage area at most. These two plots have been identified in the REPS plan since 2002 as scrubland habitats and were not deemed to require fencing as they are not being grazed by livestock. Under the REPS scheme, the herdowner was prevented from interfering with a habitat and thus any decision to leave land unused is liable to produce a situation where the land can no longer be considered as forage area for the purposes of the Single Payment scheme. Thus it was considered that the non-use of these plots since 2002, as stated in the REPS plan, has resulted in the plots not qualifying as forage area for 2005, as they were overgrown and difficult to access.

The penalty is set out in the scheme terms and conditions; 'Where the difference between the area declared and the area determined (found) exceeds 20% of the area determined, no payment shall be made for the year in question'.

The farmer declared an area of 24.27 ha and the area determined (found) was 19.51ha, giving a difference of 4.76ha (24.39%).

The Appeals Officer found that the decision of the Department of Agriculture & Food was correct and was in accordance with the terms and conditions of the scheme. Where it is found that the decision is correct, the penalty is set out in the scheme regulations and the Appeals Office has no function in deciding on the level of penalty to be applied and cannot alter or reduce the penalty as set out in EU Regulations. The appeal was disallowed.

Case 8 Rural Environment Protection Scheme

The appellant commenced participation in the REPS scheme with effect from 1st April 2004 in respect of 18.39 hectares. The annual payment application form "REPS 1C" was submitted to the Department of Agriculture & Food by his planner with a note explaining that the planner could not sign the form as the habitat in plot 17 had been removed. Following an on-farm inspection by the Department on the 9th May 2006, the herdowner was deemed to be in breach of Measure 4, in that a habitat had been removed, and a penalty of 100% was applied. He sought a review of this decision on the basis that plot 17 was comprised of spoil dumped in the field when cleaning the watercourse. In addition a site had been sold off this area and what remained was not properly a habitat. The Department of Agriculture & Food upheld the penalty in their review letter. He then appealed that decision to the Agriculture Appeals Office.

At the oral hearing and in documentation submitted, the appellant outlined the grounds of his appeal. He explained that he did not consider plot 17 to be a habitat as it contained material removed when cleaning the drains between plot 8 and 9 and included clay, galvanise and an old farm machine and contained not more than a trailer load of material. He stated that there had been a gap at the top of plot 17 which he had widened for access and had laid pipes to improve drainage.

Plot 17 had been removed in January 2004, when he was burying a water pipe, to protect it from frost. This water pipe had been realigned when a house was built locally in the summer of 2003. The appellant contended that plot 17 was more an eyesore than a

habitat. The appellant explained how he had put his trust in the professional expertise of his planners in drawing up his REPS plan.

The Department of Agriculture & Food did acknowledge that the appellant's farm was otherwise maintained to a good REPS standard.

In considering the appeal, the Appeals Officer took into account the EU Regulations governing the scheme as set out in the scheme specifications (Red book) as issued to every REPS participant at the commencement of the scheme. In particular to this case is the requirement under Measure 4,

'It shall be clearly understood that any interference with habitats, other than as part of an agri-environmental plan, shall render the applicant ineligible for the scheme'.

Habitats are identified on the map and included in the Agri-Environmental plan. It is not disputed that the area identified as a habitat on the map included with the plan had been removed, but the appellant queried whether it should have been identified as a habitat, in the first instance.

It must be stated that plot 17 had been identified as a habitat in all of the plans submitted since 1998 including a number of amended plans, all of which have been signed by the appellant. He now disputed whether plot 17 should have been considered a habitat at all. In drawing up a REPS plan, a planner is required, in consultation with the farmer, to identify by reference to the farm map the features that require to be protected, maintained and managed. Any dispute in relation to whether plot 17 should or should not have been identified as a habitat is a matter between the REPS participant and his planner(s) and is outside the remit of the Agriculture Appeals Office.

The appellant had put forward that he had extensive habitat areas on the farm, over 4 hectares of habitat in a farm of just 18.29 hectares, a disproportionate amount compared with other farms and some of which were not marked on the REPS plan. While this is noted, the onus is on the farmer, in consultation with his planner, to identify such areas on the plan. The presence of other habitats cannot be accepted as mitigating the removal of a habitat that was identified on the plan. It was available to the farmer to contact the Department of Agriculture & Food prior to removal of the habitat and to seek derogation, if considered appropriate by the Department.

The fact remains that a habitat marked on the REPS plan, which

was to be protected, maintained and managed, was removed prior to inspection on the 9th May 2006. Where it is found that the application of a penalty is correct, such penalties are set out in the terms and conditions of the scheme and this Office has no function in deciding on the level of penalty. The Appeals Officer found that the decision of the Department of Agriculture & food was correct and in accordance with the terms and conditions of the scheme. The appeal was disallowed.

Case 9 Installation Aid Scheme

The objective of the Installation Aid Scheme is to encourage young people to establish themselves in farming on a viable holding and thereby ensure the continued rejuvenation of the farming work force. The farmer applied for Installation Aid on the 2nd of June 2005. It is a requirement under the terms and conditions of the Installation Aid Scheme that **“applicants lodge an application form IAS1 with accompanying documentation within 6 months of date of set up”**. The date of set-up in farming is taken, in accordance with the Scheme terms and conditions as the later of the following dates: the date of application by the applicant for registering as a sole or joint user of a herdnumber or the date transfer documents were signed which brings the applicant’s total Installation Aid eligible lands to 5 hectares or over.

A herdnumber was transferred to the farmer in June 2002. More than 5 hectares of eligible land was transferred to him on 24th of October 2004. The Department of Agriculture & Food decided that the 24th of October 2004 should be the set-up date. Therefore, under the terms and conditions of the Scheme the farmer was required to have the Scheme application form (IAS1) lodged with the DAF by the 24th of April 2005. The farmer’s IAS1 form was lodged with the Department of Agriculture & Food on the 2nd of June 2005. This was 1 month and a part of a month late. The Department of Agriculture & Food imposed a 10% penalty.

The farmer appealed on the basis that there was a misunderstanding between his agricultural consultant and himself concerning the submission of the Scheme application form (IAS1). This had led to the delay in the submission of the IAS1 form. The appellant also made the point that the installation aid was an important source of finance to him as a new entrant to farming. As a young farmer starting up in farming he required all the financial assistance possible to assist him in the development of his farm. He believed the imposition of the 10% penalty was harsh as it was a genuine mistake, due to a misunderstanding between himself and his agricultural consultant.

The Appeals Officer acknowledged that it was a significant financial penalty on a young farmer starting up in farming. However, the Appeals Officer having examined the facts of the case found that the 10% penalty was correctly applied in accordance with the terms and conditions of the Installation Aid Scheme. According to the Scheme terms and conditions, a 5% reduction in aid is applied for each month or part of a month that the scheme application form (IAS1) is late. The Appeals Officer found that the Department of Agriculture & Food had interpreted the Scheme terms and conditions correctly. The appeal was disallowed.

Case 10 Rural Environment Protection Scheme

The farmer appealed against the Department's decision that his holding was artificially created for the purpose of claiming payments under REPS.

The appellant's REPS 3 contract commenced on 1st December 2005 for total land area of 19.61 hectares. This area included owned green land and share of owned commonage lands. The Department Inspector carried out an audit inspection of the approved REPS plan. He reported that the farmer's records show he was farming since 1996. In 1996 & 1997, the appellant declared rented commonage land in his Area Aid. In 1998 he purchased this commonage land at a cost of €6500. Invoices for fencing materials in 2005 and 2006 showed that he had fenced his share of this commonage land. In 1998 and 1999 he declared the owned commonage land and also some rented non-commonage land and rented commonage land in his area aid applications. He had 180 sheep quota rights in 1998 but the Commonage Framework Plan (CFP) destocking rules caused 137 of his quota rights to be frozen so he ceased renting land. In the period 2000 to 2004 he declared his share of owned commonage land only in his Area Aid applications.

In 2004 he purchased 2.67 hectares of non-commonage green land. This land parcel was part of the larger holding owned by an elderly farmer but not farmed by her and was offered for sale by her in three separate lots. There is a distance of 32 kilometres from his owned commonage land and a similar distance from his dwelling. He claimed he was about half an hour away from either parcel and as a part-time self employed painter he was able to make himself available at short notice to attend to whatever needs his flock may have.

In 2005 the appellant included this purchased green land as well as his owned commonage share in his Single Payment application. The appellant's REPS planner requested derogation for this green

land to facilitate his participation in REPS, as this parcel was less than 3hectares in area. On 3rd May 2005 the Department granted a derogation to enter REPS. The Inspector confirmed that the appellant had fenced this land parcel like his owned commonage land, which is stock-proof with a good fence. The present CFP allocation is 65 ewe quota based on his total owned green land and owned commonage share. This represents an acceptable stocking rate of 0.48 livestock units per hectare. There was a Department livestock inspection on the holding in March 2003 and all the 126 sheep he applied for were inspected. In his report the Department REPS Inspector concluded that in his opinion the holding was not artificially created.

The Department, however, informed the appellant by letter dated 31st July 2006 that 'On the basis of detailed assessment of his REPS application it is the Department's conclusion that this holding was artificially created for the purpose of claiming payments under REPS.'

The appellant was told his application to participate in REPS was deemed unacceptable. He was informed that his plan was being terminated and that all monies received must be refunded hence his appeal to the Agriculture Appeals Office.

The appellant was farming prior to purchase of the commonage land share in 1998 and he continued to farm and maintain a flock. He farmed leased land and subsequently owned commonage land for over a decade. This was reflected in his Area Aid applications since 1996. The appellant had bought his non-commonage land in 2004, in addition to his owned commonage land.

The Appeals Officer took account of the facts that the appellant's REPS planner submitted a request for derogation to enter the REPS, and the Department granted the derogation to enter REPS. His REPS plan commenced on 1st December 2005. The inspection finding dated 2nd May 2006 was that his holding was not artificially created and his REPS participation was valid.

Notwithstanding those facts the Department notified the appellant that his application to participate in REPS was unacceptable and was being terminated which was difficult to reconcile in the overall circumstances as outlined.

The Appeals Officer was satisfied that the Department derogation plus the Department inspector's report as well as the evidence of a longstanding farming record since 1996 and his ongoing Area Aid declarations were persuasive elements in support of his continuing in REPS. The decision was to allow this appeal.

Case 11 Non Valuation Aspects of the Reactor Scheme

Following a herd test on the 17th November 2005, 21 reactor animals were removed from the farm. After post mortem findings, 4 were deemed not to be in calf and were therefore subject to a lower compensation rate of payment. The herdowner sought a review of this decision based on the fact that the animals were scanned by a scanning company and confirmed as being in calf on the 11th November 2005, that is, prior to removal. Also submitted in this case was written evidence of visual inspection by the Veterinary Surgeon, in respect of certain identified animals, and confirmed by the valuer on the day of valuation. The Department of Agriculture & Food accepted the case put forward in respect of two animals. However, the decision not to pay the in-calf value in respect of two further animals was upheld. The herdowner then appealed that decision to this office.

In conversation with the Appeals Officer and in documentation submitted, the herdowner outlined the grounds of his appeal. He explained that 21 animals had been removed from his farm as reactors in December 2005. These animals had been scanned for pregnancy on the 11th November 2005 and all had been deemed to be in calf. Following their slaughter, at post mortem, four were deemed not to be in calf and thus resulted in a lower compensation amount being payable for the animals. Two of these animals have subsequently been accepted by the Department of Agriculture & Food as being in calf and the appropriate payment made. He stated that the post mortem consists of a visual assessment of the animals and thus given that the cows were only 6-8 weeks in calf, it is easy to make a mistake in a visual assessment. He stated that he had his animals scanned by the same company for a number of years and has always found the results 100% accurate. He said that he was aware of the condition of the scheme that the post mortem result is final, however as he had the scan results, he did not go to the factory on the day of slaughter in the belief that all animals were in calf and would be found to be so. He confirmed that the animals had not been in calf through the use of AI (Artificial Insemination) but a stock bull was used.

In considering the appeal, the Appeals Officer is required to have regard to the terms and conditions of the Reactor scheme. In particular to this case is the condition as stated on the form ER26X, Conditions for payment of Reactor Compensation,

‘Pregnant heifers/cows must be clearly identifiable as such on post mortem veterinary examination which is the final determinant in this regard’.

In respect of the two animals, the subject of the appeal, the scan results from the 11th November 2005 show these animals to be in calf with due calving dates in June 2006, while the post mortem results from 7th December 2005, some three weeks later, do not find the animals to be in calf. The Department of Agriculture & Food have confirmed that the pregnancy test in meat plants is based on visual examination of the uterus for enlargement and palpation of the uterus for the presence of a foetus, amniotic vesicle and slippage of the foetal membranes. The test can only detect a pregnancy at the earliest from 35-60 days. Based on the due dates the animals were between 60 and 70 days pregnant at the time of post mortem. It is considered relevant that a further animal with a due date in June 2006 was classified as pregnant at post mortem.

While it is clear that there is a conflict between the scan result on the 11th November 2005 and the post mortem result on the 7th December 2005, the Appeals Officer considered the appeal based on the terms and conditions of the scheme. As the herdowner declared that he had read and understood the conditions necessary to be eligible for compensation payments when he signed the ER26X on the 6th December 2005, in particular the sentence which states that the post mortem is the final determinant in this regard, the Appeals Officer found the decision of the Department of Agriculture & Food correct and in accordance with the terms and conditions of the scheme. The appeal was disallowed.

Case 12 Rural Environment Protection Scheme

The farmer appealed the decision of the Department of Agriculture and Food to seek recoupment in relation to 0.97 Ha of land listed on the REPS 2 application. The contract area of the plan was 38.37 Ha and application for the third annual payment was submitted to the Department and a declaration made that there was no change to the contract area.

The file was selected for a compliance inspection, where inspecting officer noted that a site in plot 5 should be excluded from the contract area of the plan. A REPS 1AC 2000 declaration, confirming the sale of a site less than 1 hectare of the original holding was subsequently forwarded to the Department. The area entered on this form was 0.97 Ha. The Department of Agriculture and Food found that under the Terms and Conditions of the scheme, a farmer is required to farm the area contracted for a full-unbroken period of five years. The 38.37 Ha contracted under the initial plan had been reduced to 37.40 Ha, a net reduction of 0.97 Ha. A refund of aid paid on this land over the contract period was sought.

In the notice of appeal the farmer stated that the site had been transferred to a son. There was no financial aspect associated with the transaction and the actual reduction of 0.97 Ha was made by the REPS planner. A copy of the Folio relating to the transferred land was subsequently provided.

The Terms and Conditions of the scheme required participants to notify the Department of Agriculture within six weeks of any reduction in the area farmed. Circulars 19/03 & 27/04 were issued to all approved REPS planning agencies stating that where a participant reduces the area during the course of the contract, the Department is required to clawback the aid paid on this land. Upon entering the scheme, a commitment was entered into to farm all of the lands for a full five-year period from the commencement date of the REPS contract. In this particular case, the actual contract area in the scheme was reduced when the site was transferred and the Department was not notified within the appropriate time period. It is the responsibility of an applicant to declare all lands farmed/owned /controlled and the manner in which these are held for REPS.

On examining the appeal, the form notifying the Department of Agriculture and Food of the disposal of the land was not submitted to the local office within the allocated six-week period. A cross examination of the Folio gave details of the actual area of land transferred. The area of land contained in the site is 0.4560 Ha, almost half of the deduction made by the REPS planner. The Appeals Office found that it was this smaller area that should be used to determine on any clawback penalty and not by the 0.97 Ha declared by the planner.

The appeal was partially allowed.

Case 13 Installation Aid Scheme

The farmer appealed the decision of the Department of Agriculture and Food to apply a late application penalty under the Installation Aid Scheme. The application form (IAS 1) for the scheme was received in the local Farm Development Office in August 2004. All of the land declared on the application was taken on a long-term lease. The operative date of this lease was 1st October 2003, which was also deemed to be the date of set-up for the holding.

The application was processed and subjected to a technical examination. A penalty was applied as the IAS 1 document was not submitted within six months of setting up in farming. A review of this decision was sought from the Regional Inspector on the basis of medical incapacity. A medical certificate was provided stating that

the farmer was too ill to attend to his affairs from March to September 2004. The decision in relation to the imposition of the penalty was upheld at the review stage. The Regional Inspector found that Force Majeure could not be applied as the applicant had an off-farm income over an 18-week period ending in November 2004. This employment took place during the period covered in the medical certificate. A notice of appeal in relation to the decision to apply the penalty was submitted to this office. In the notice of appeal the farmer requested that the case be considered under Force Majeure on the basis of the medical problems.

The scheme Terms and Conditions, Clause 15 define the procedure when an applicant for the scheme wishes to avail of Force Majeure, where a written application is made to the Department's On-Farm Investment Schemes Division in Wexford. The farmer did not avail of this procedure. The appeal was based on the point that the medical problems prevented the application being lodged on time.

The medical evidence provided related to an incident in 1997. This was not accepted as meeting the criteria for Force Majeure as it predates the date of set-up in farming by a number of years. In reaching a decision on the case the relevant medical evidence related to a period of ill health in the March to September 2004. The Department of Agriculture and Food received 2004 Area Aid application in March 2004 and a request to amend this application in May 2004 from the farmer. Both these dates were within the period listed in the medical certificate. Records also indicate that the farmer was engaged in off farm employment from June 2004 and until November 2004.

The medical problems did not prevent the farmer from lodging other documents to the Department of Agriculture and Food on time or prevent him from engaging in off farm employment. On this basis, the medical problems were deemed not to satisfy the criteria of Force Majeure. The Appeals Office found that the decision of the Department of Agriculture and Food to apply a 5% reduction penalty for each month or part of that the application was late was appropriate in this instance. In this particular instance the application was four and a half months late resulting in a total penalty of 25%.

The appeal was disallowed.

Case 14 Disadvantaged Areas Compensatory Allowance Scheme

The appellant was disallowed for 2005 Disadvantaged Areas Compensatory Allowance Scheme payment on grounds that he had not achieved the necessary stocking density levels. In his

appeal the appellant said that he could not have stocked his farm, as he did not have a herdnumber. He said that the Department was at fault for not issuing him with a herdnumber in sufficient time for him to stock his farm and thereby fulfil the requirements of the 2005 Disadvantaged Areas Scheme.

The appellant had purchased his land, in partnership with a family member, in 1999. They had applied for a herdnumber in their joint names in the year 2000. A Department Officer inspected the farm in 2000. The Department Officer advised the appellant of works to be carried out before a herdnumber could issue, these works to include the construction of an 'isolation house, the provision of handling facilities, the double fencing of a 'right of way' across the farm and the erection of gates and piers at both ends of the right of way.

In his appeal the appellant said that the issues identified by the Department had been addressed by late 2004. He advised the Department of the position in November 2004. He applied for a herdnumber solely in his own name in December 2004. Another Department Officer carried out an inspection of the farm on the 10th January 2005. The Officer did not identify any issues to be addressed by the farmer. The same Officer together with his supervisor carried out an inspection of the farm on the 7th February 2005. At this inspection the supervising Officer queried the authenticity of the (above referenced) right of way on the farm. The appellant advised that the right of way was in place since the eighteen hundreds and had been continuously in use since then.

On the 18th May 2005 the Department wrote to the appellant to request a copy of the deeds of the land – to establish if the deeds included a reference to the right of way. The appellant advised that the deeds did not include a reference to the right of way.

Over the following months the appellant sought to 'prove' the historical existence of the right of way. Eventually, in October 2005, he obtained a nineteenth century map that did include the right of way. The appellant submitted the map to the Department. The Department granted the appellant a herdnumber in March 2006.

In his appeal the appellant said that he had done all that was asked of him by the Department following the submission of the original (joint) application for a herdnumber. The appellant argued that the Department's concerns over the right of way should have been notified to him at that time. Had the Department sought such early proof of the right of way he would have addressed the matter as he had addressed the other issues raised by the Department at the

time. He would have found and delivered the map that led, eventually, to his being given a herdnumber. He would have delivered the map before 2005 – in sufficient time for him to acquire his herdnumber and stock his farm sufficiently to qualify for 2005 Disadvantaged Areas payment.

The Appeals Officer accepted that the Department was properly entitled to query the authenticity of the right of way. He also found, however, that there was undue delay by the Department in seeking the proofs therein and that these delays unfairly disadvantaged the appellant. The appeal was allowed.

Case 15 2006 Single Payment Scheme

The farmer appealed against a decision not to accept his late application under the 2006 Single Payment Scheme and Disadvantaged Area Scheme. The Department received the application in October 2006 with an explanation, that due to an oversight caused by a stressful period in his life that included long distance travel to off farm employment, the appellant's record keeping was in very bad disarray.

At an oral hearing of the appeal the farmer stated that in October 2006, following a conversation with neighbours, he realised that he had not received the 2006 Single Payment or the Disadvantaged Area Scheme payment. On contacting the Department he was informed that he had not submitted a 2006 application form. The farmer then discovered the unopened application form in his home and immediately lodged it with the Department including a full explanation as to the delay in submitting the form.

The appellant contended that his circumstances constituted Force Majeure and outlined how he had to undergo a very busy travel itinerary in his employment. The appellant stated that he undertakes some of the work related route planning/travel arrangements himself and confirmed that it would be reasonable to conclude that he is familiar with paperwork. The appellant stated he relied on the assistance of neighbours and some casual labour to keep his farming operations in order through this time of travel, and had actually declined to travel during the early part of March 2006, as this was lambing time for his flock of sheep. The appellant put forward how farming would be uneconomic without premia payments and that the loss of premia for 2006 is a very harsh decision in his opinion.

The Appeals Officer considered the EU Regulations governing the scheme as set out in the scheme terms and conditions as issued to every herdowner at the commencement of the scheme. Under

the 2006 Single Payment scheme, the closing date for receipt of applications was 28th April 2006, later extended to 15th May 2006. Applications were accepted after that date up to 10th June 2006 subject to a 1% penalty per working day. Applications received after 10th June 2006 receive no payment, except in cases of Force Majeure. Force Majeure is defined as **‘Circumstances which could not have been foreseen by a prudent producer and which could not have been circumvented or prevented by him/her, or, if so, could only be done at unreasonably excessive cost’**.

The Appeals Officer found no dispute in relation to the facts pertaining to the case, and the issue for consideration was whether the circumstances which led to the late submission of the 2006 Single Payment application form constituted Force Majeure and provided sufficient reason to set aside the requirement of terms and conditions of the scheme pertaining to the application period.

The farmer had submitted Area Aid forms since 2002. The Appeals Officer found that the appellant was familiar with paperwork and that in between times of travel from March 2006 to June 2006 that the he was at his home for periods of between two to ten days in which time he could reasonably have submitted the 2006 Single Payment Scheme application form, also the onus was on the herdowner to ensure that he submitted the annual form on time. The Appeals Officer gave some weight to the fact that the appellant had managed to have his farm and animals looked after when away.

While the Appeals Officer accepted that the appellant was open and honest with the Department, this did not remove the onus from the applicant to submit his application within the timeframe specified. The Appeals Officer found that the circumstances outlined did not constitute Force Majeure and the decision of the Department was correct and in accordance with the terms and conditions of the scheme. The appeal was disallowed.

Case 16 Installation Aid Scheme

The farmer appealed against a decision by the Department of Agriculture and Food to reject his application under the Installation Aid Scheme. In December 2005, he submitted an IAS 1 application form under the Installation Aid Scheme. The Department carried out an administrative check on the application following its receipt. At the end of January 2006, the appellant was notified that his application was ineligible as he was over 35 years of age at the ‘date of set up’ as defined under the Terms and Conditions of the Scheme.

According to the Terms and Conditions of the IAS (revised on 7th May 2002), paragraph 2 defines '**date of set up**' as it relates to the scheme as meaning the later of the following dates;

- Date transfer documents were signed which brings the total eligible lands to 5 hectares or over. **OR**
- Operative date of lease **OR**
- Date the applicant has obtained vacant possession of 5 Ha's or over of eligible land. **OR**
- Date of application for registering as a sole or joint user of a herdnumber/other.

And at paragraph 3(iii) states that in order to apply for Installation Aid a farmer must be between his/her 18th and 35th birthday on the date of set up.

The appellant was first registered as the owner of land (in excess of 5 hectares) in July 2005, and applied for registration as the sole user of a herdnumber in December 2005; this later date was the **date of set up**. The Department deemed that the appellant was ineligible for the scheme as he was past his 35th birthday on the date of set up, albeit by a number of months.

The appellant's grounds of appeal were that he met the scheme criteria as a young farmer and that the emphasis on a herdnumber was not consistent with his business as a tillage farmer. The appellant had completed the required training in 2001 and 2002, to ensure that under the installation Aid Scheme, and in July 2005, his father transferred a portion of his farm to him. The appellant did not apply for a herdnumber in his own name until December 2005, because as a tillage farmer the first time he required an identifier from the Department was when applying for the Single Payment Scheme. When completing the IAS 1 form, with his advisor, the set up date was stated to be within December 2005, and the appellant stated at an oral hearing he was unaware of any problem at that time.

The appellant's representative gave reference at the hearing to two Ombudsman's reports which

- 1) concluded that rules and regulations should not be applied so rigorously to result in inequity and
- 2) guidelines on proportional methods of applying penalties. The representative pointed out that in the application form, IAS 1, there was two types of identifiers provided – date of birth and a PPS number – and contended that either of these could be used and are accepted as identifiers by other Departments.

Having examining the facts of the case and information presented from both sides, the Appeals Officer was satisfied that the

Department of Agriculture and Food's decision to reject the Installation Aid Scheme application was correct. The Appeals Officer found that the Terms and Conditions of the Installation Aid Scheme are very clear, that date of set up is determined by date of application for registering for a herdnumber/other identifier. Under the section 'Definitions', it states "a herdnumber or other identifier as *issued by the Department*". As the appellant was past his 35th birthday, on the date of set up, he was ineligible under the rules of the scheme. The appeal was disallowed.

Case 17 Early Retirement Scheme

The farmer transferred her holding of 38.5 hectares on the 8th August 2005 to her son. The District Veterinary Office confirmed that the herdnumber transferred on the 18th October 2005. On the 2nd February 2006 an application was submitted to the Department of Agriculture and Food for participation in the Early Retirement Scheme.

Following on from an administrative check correspondence issued on 8th February 2006 requesting a P60/Notice of Assessment and confirmation of PPS Number for the transferee. The appellant provided this information. On 13th March 2006 the Department informed her that she was ineligible because the non-farm income of the transferee during the tax year prior to the application (y/e December 31st 2005) was €27,727.96 or 109.17 income units.

According to the Terms and Conditions (7.4) of the ERS, a person eligible to become a farming transferee shall on the date a completed application is received by the Department 'have a non-farm income not exceeding 100 income units in the tax year prior to the application being received in the Department'.

The rejection was appealed on the basis that the land was transferred in 2005 and this should be considered as 'date of set-up'. Given this and if the application had been submitted in that year, the income units for the transferee would have met the conditions of the Scheme. Following a review the appeal locally was unsuccessful.

In her grounds of appeal the appellant stated that she was unaware of the fact that her application depended on her son's income. On 5th September 2006 the Minister for Agriculture and Food announced that the off-farm income limit for transferees under the ERS was to be raised from 25,400 to €40,000. This change was to be effective from 1st September 2006. The appeal proceeded in light of this new scenario.

In reaching a decision the Appeals Officer was of the view that the Department should accept the application as being operative from the 1st September 2006 and should continue to process it with reference to that date. Whereas the Department were correct in rejecting the application dated 2nd February 2006 given the prevailing Terms and Conditions the reason for rejection was not appropriate with the changed criteria. The Appeals Officer partially allowed the appeal.

6. Recommendations to the Department of Agriculture and Food arising from Appeals Cases

These recommendations have been identified through appeals cases and are not ranked in order of importance.

On Farm Investment Schemes

- Many of the appeals under the Farm Waste Management Scheme and Dairy Hygiene Scheme, where farmers applied for grant for mobile equipment and milk cooling and storage equipment involved the purchase of the item prior to application for grant or issue of letter of approval. Sometimes this equipment is purchased on an urgent basis where the applicant is aware of the application process but feels he/she cannot manage making a grant application in the time available prior to making the purchase. A uniform procedure for such emergency works should be put in place and farmers should be made aware of it.
- The Department should consider the possibility of extending grant aid to applicants who avail of machinery and equipment through Hire Purchase arrangements rather than purchasing it under the Farm Waste Management Schemes. An increasing number of applicants choose this method of financing purchases as it can make economic sense and would demonstrate a commitment to retaining viable farming units in the country.

Single Payment Scheme

- The Department should give consideration to negotiating a reduction in the late application penalty – presently at 1% per working day - and extending the period over which the late application penalty applies beyond the present 25 days – prior to applying a full nil payment.
- The Department should annex a full explanation of the Single Payment Scheme / Cross Compliance penalties to the Single Payment Scheme terms and conditions. Detailing for each level of penalty including terminology such as ‘effect’ ‘ permanence’ etc.

Rural Environment Protection Scheme

- Habitat areas should be colour coded on the REPS maps to highlight such areas for farmers so that penalties in respect of habitat removal are reduced.
- Interest should only be charged on recoupment of amounts paid under REPS in accordance with Article 49 of Commission Regulation (EC) 2419/2001. “Interest shall be calculated for the period elapsing between the notification of the repayment obligation to the farmer and either repayment or deduction”. The

charging of interest for other periods on REPS repayments is not provided for under this regulation.

- The practice of not issuing the annual payment application REPS 1C and reminders when a REPS file is subject to audit inspection should be discontinued. Instead those forms should issue with a proviso that payment is subject to inspection outcome. Also a copy of the REPS 1C should accompany the reminder letter and subsequent warning letter.
- There should be more emphasis placed on the REPS Planner certifying that land documents are inspected and meet the requirements for all REPS plans certified by them. The REPS plan should have a schedule for folio numbers and land title of all lands claimed for payment.
- The Department should put in place a comprehensive and timely system to ensure that REPS payments are not issued after a contract has been terminated due to death of participant, and should notify the next of kin immediately on notification of death that the REPS contract has been terminated. The Department should also issue a clarifying 'circular' to all agencies as regards what actions to take on the death of a scheme participant as this may avert difficulties at a very sensitive time.

New herdowner / flockowner

- Where a herdnumber / flock number is issued to a person not previously registered a Start Up information pack should be provided as a matter of course. Such a pack should briefly outline the schemes that are age and time critical such as the Farm Waste Management Scheme, Dairy Hygiene Scheme, Installation Aid Scheme, and Single Payment Scheme National Reserve, etc.

General

- Penalties in relation to CMMS non-compliance and land over declaration should be proportionate to the offence and relative to the benefit to be gained by the herdowner. In cases of consolidation where a herdowner has applied to consolidate and is accepted, it should be highlighted to the herdowner that the basis for any future consolidation will remain the number of entitlements originally established for the reference period.

7. Recurring mistakes and non-compliance issues by scheme applicants that lead to penalties

These issues have been identified through appeals cases and are not ranked in order of importance

General

- For all Schemes, applicants should maintain comprehensive records. Proof of postage should be retained for all correspondence sent to the Department and CMMS notifications. In relation to hand delivered forms, a receipt should be obtained and stored safely.
- Farmers should be aware of time deadlines and abide by them. If exceptional circumstances arise, they should consult with the Department

Identification and Registration

- Failure to notify the Cattle Movement Monitoring System (CMMS) when animals are bought privately (farm to farm)
- Failure to tag calves in time, within 20 days of birth, and to keep other animals properly tagged
- Failure to register births within the specified time limit, i.e. within 7 days of tagging.
- Failure to keep Herd/Flock Register up to date

Rural Environment Protection Scheme (REPS)

- Applicants not examining the REPS plan in detail with the planner before submission.
- Failure to carry out scheduled works such as,
 - Keeping boundary fences stock-proof
 - Maintenance and repair of fences, stonewalls, etc as specified in plan
 - Hedgerows not planted
 - Fencing off watercourses where required
 - Painting sheds
 - Provide livestock housing as set out in the REPS plan
 - Maintaining hedgerows.

Also common among REPS applicants is the

- Failure to ensure with planner that the land is eligible for the scheme.
- Failure to amend plan to reflect changes in area farmed (i.e. non-notification of lease, rental, purchase or sale of land) within the specified timeframes.
- Failure to notify and discuss with the planner, problems in the implementation of the plan
- Neglect of administrative issues such as the timely return of forms REPS 1A and REPS 1C and scheme transformations.

- Failure to check with planner before commencing work that may interfere with the REPS plan e.g. opening a new entrance, moving boundaries or removal of habitat. REPS participants undertaking removal of hedgerows or part thereof for entrance, site works or access without first applying for and receiving prior derogation from the Department through their REPS planner.

On-Farm Investment Schemes

- Proceeding with work before the Department of Agriculture and Food has given written approval
- Late submission of Installation Aid applications, in particular IAS1 forms.
- Failure to ensure Educational Qualifications are obtained either at time of application or within two years.

Early Retirement Scheme

- Leases not being finalised and lease obligations not being fulfilled
- Failure by the transferee to farm all the pension lands.
- Applicants should have regard to REPS commitments when applying for Early Retirement Scheme

Single Payment Scheme

- Failure to declare all land parcels.
- Failure to submit amendments on time.
- Failure to manage setaside
- Failure to remove forestry from forage area when land is planted
- When applying to consolidate, failure to make application for at least 50% of the eligible area declared during the 3 reference years.
- Failure to reflect changes in land use e.g. habitats on the application form
- Failure to use 100% of entitlements allocated from the National Reserve, (including consolidated entitlements), each year for a period of 5 years from first allocation.

Disadvantaged Areas Compensatory Allowances Scheme

- Not maintaining the minimum stocking density required on disadvantaged lands submitted for payment of Disadvantaged Area Compensatory Allowance.

8. Single Payment Appeals Committee

The Single Payment Appeals Committee was established in February 2004 to deal with appeals made by farmers who are not satisfied with the decisions of his Department in relation to the implementation of the various facets of the Single Payment Scheme.

The Appeals Committee is chaired by Mr John Duggan and comprises Appeals Officers from the Agriculture Appeals Office. Mr Duggan, who is a farmer and a former Chairman of Avonmore and Glanbia Plc, has experience of all aspects of the agricultural sector. Mr Duggan has also served as a board member of both Bord Bia and the Irish Dairy Board.

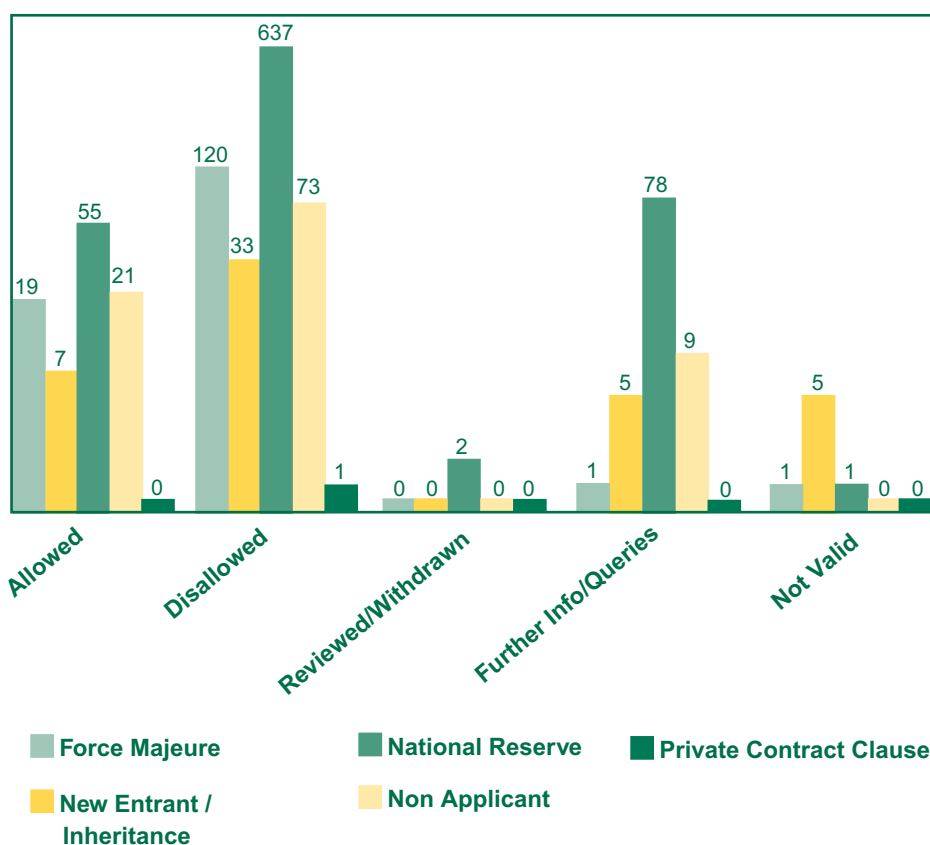
The Single Payment Appeals Committee examines appeals in relation to the decisions of the Department of Agriculture and Food under various aspects of the Single Payment Scheme. These include Force Majeure, New Entrant/Inheritance arrangements, Non Applicant cases and Private Contract Clause cases with the majority of the work making decisions on cases relating to the allocation of entitlements from the 2005 National Reserve.

There were 13 meetings of the Committee in 2006. The Committee concluded the consideration of 1,068 cases in that time and made recommendations to the Department as set out in the table below. In addition, the Single Payment Appeals Committee examined 93 cases where extra information was required before a decision could be made based on the information on hand. These cases were referred back to the Single Payment Unit and will be re-examined by the Committee when the necessary information is provided.

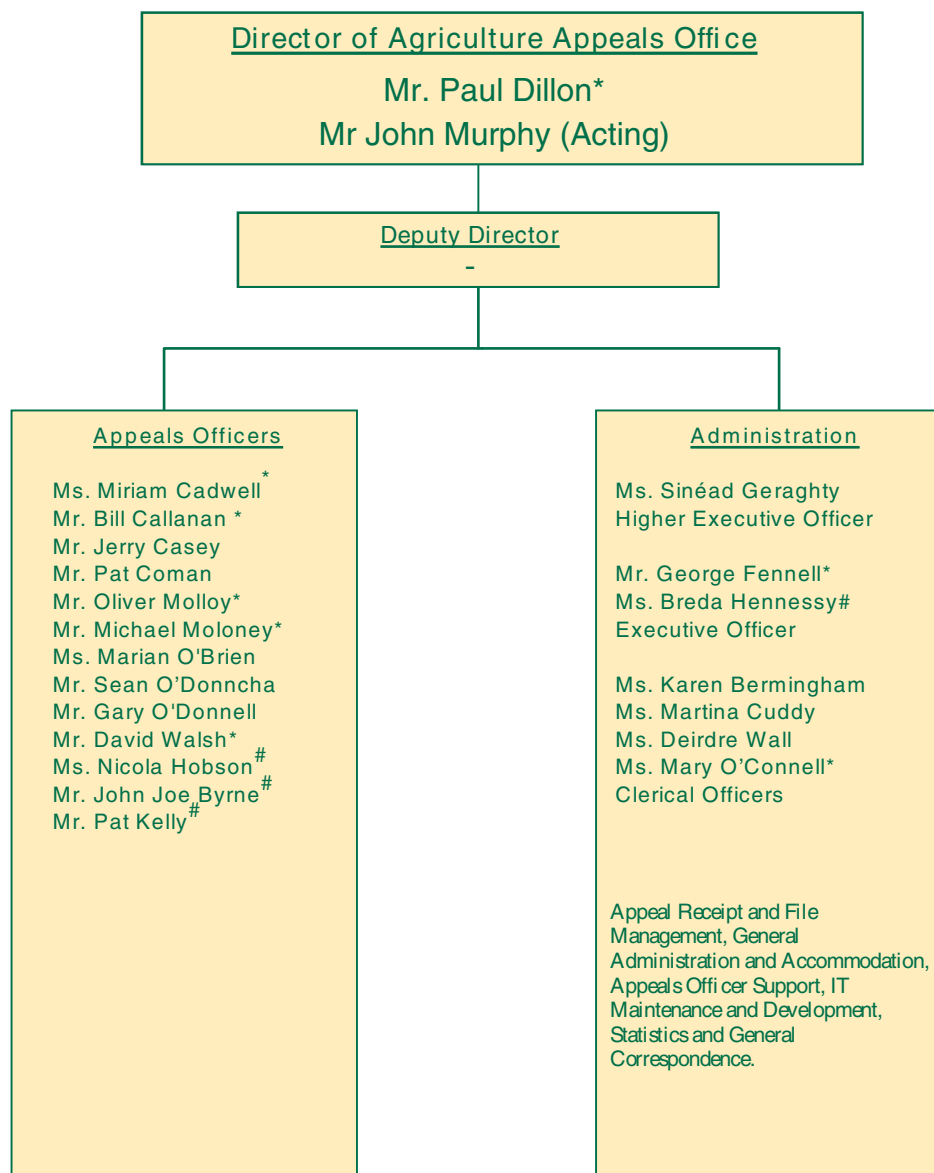
Single Payment Appeals Committee Statistics 2006

	Force Majeure	New Entrant / Inheritance	Non Applicant	National Reserve	Private Contract Clause
Allowed	19	7	21	55	-
Disallowed	120	33	73	637	1
Reviewed/ Withdrawn Further Info/ Queries	-	-	-	2	-
Not Valid	1	5	9	78	-
Total	141	50	103	773	1

Single Payment Appeals Committee Statistics 2006



9. Staff of the Agriculture Appeals Office



* Left the Office during 2006
Joined the Office during 2006



Number 29 of 2001

AGRICULTURE APPEALS ACT, 2001

AN ACT TO PROVIDE FOR THE APPOINTMENT OF APPEALS OFFICERS TO REVIEW ON APPEAL DECISIONS OF OFFICERS OF THE MINISTER FOR AGRICULTURE, FOOD AND RURAL DEVELOPMENT IN RELATION TO CERTAIN SCHEMES AND TO PROVIDE FOR CONNECTED MATTERS. [9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“appeals officer” means an appeals officer appointed under *section 2*;

“Civil Service” means the Civil Service of the Government and the Civil Service of the State;

“Director” means Director of Agriculture Appeals;

“functions” includes powers, duties and obligations;

“Minister” means Minister for Agriculture, Food and Rural Development;

“prescribed” means prescribed by regulations made by the Minister.

(2) In this Act—

(a) a reference to a section or Schedule is a reference to a section of or Schedule to this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,

(c) a reference to an enactment includes a reference to that enactment as amended or extended by or under any subsequent enactment including this Act, and

Appointment of appeals officers.

2.—The Minister may appoint such and so many of his or her officers or, following selection at competitions held by the Civil Service and Local Appointments Commissioners, other persons holding positions within the Civil Service, as he or she considers appropriate, to be appeals officers for the purposes of this Act.

Director of Agriculture Appeals.

3.—The Minister shall, following selection at a competition held by the Committee on Top Level Appointments in the Civil Service or the Civil Service and Local Appointments Commissioners, appoint a person holding a position within the Civil Service as the chief appeals officer who shall be known as the Director of Agriculture Appeals, and is in this Act referred to as the “Director”.

Deputy Director of Agriculture Appeals.

4.—One of the appeals officers shall be designated by the Minister to act as the deputy for the Director when he or she is not available.

Functions of appeals officers.

5.—(1) The functions of appeals officers shall be to consider and make determinations on appeals made by affected persons against decisions taken by officers of the Minister in respect of applications for entitlement under the schemes set out in the *Schedule*.

(2) The Minister may, from time to time, amend by regulations the *Schedule* so as to add to or delete from the *Schedule* any scheme or part of a scheme.

Independence of appeals officers.

6.—Appeals officers shall, subject to this Act, be independent in the performance of their functions.

Right of appeal.

7.—(1) Where a person is dissatisfied with a decision given by an officer of the Minister in respect of that person’s entitlement under any of the schemes set out in the *Schedule*, the decision shall, on notice of appeal being given to the Director, within the prescribed time and in the prescribed form, be referred to an appeals officer.

(2) Regulations may provide for the procedure to be followed on appeals under this Act.

(3) An appeals officer, when deciding a question referred under *subsection (1)*, shall not be confined to the grounds on which the decision of the deciding officer was based, but may decide the question as if it were being decided for the first time.

(4) An appeals officer shall determine an appeal, as soon as is practicable, having regard to any guidelines issued or regulations made in this regard by the Minister.

Oral hearings.

8.—(1) An appeals officer shall, if so requested by the appellant, hold an oral hearing for the purpose of an appeal referred to him or her under this Act.

(2) An oral hearing under this section shall be held in private.

(3) An appellant may represent himself or herself or be represented by another person at the oral hearing of his or her appeal.

(4) Where an appellant is represented by another person at the oral hearing of his or her appeal, the appeals officer hearing the

[2001.] *Agriculture Appeals Act, 2001.* [No. 29.]

appeal may examine the appellant, if the appeals officer considers it necessary. S.8

(5) An appeals officer, on the hearing of any matter referred to him or her under this Act, shall have the power to take evidence on oath or affirmation and for that purpose may administer oaths or affirmations to persons attending as witnesses at such hearing.

9.—(1) The decision of an appeals officer and the reasons for making that decision shall be notified in writing to the appellant. Decisions.

(2) A document purporting to be a decision made under this Act by an appeals officer and to be signed by him or her shall be *prima facie* evidence of the making of the decision without proof of the signature of such officer or his or her official capacity.

(3) The decision of an appeals officer on any question referred to him or her under section 7(1) shall, subject to sections 10 and 11, be final and conclusive.

10.—(1) An appeals officer may, at any time revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which it was given, or if it appears to him or her that there has been any relevant change of circumstances since the decision was given. Revised Decisions by Director and appeals officers.

(2) The Director may, at any time, revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.

(3) A revised decision given under this section shall take effect from such date as the appeals officer concerned determines or considers appropriate having regard to the circumstances of the case.

11.—Any person dissatisfied with—

- (a) the decision of an appeals officer, or
- (b) the revised decision of the Director,

Appeals to High Court.

may appeal that decision or revised decision, as the case may be, to the High Court on any question of law.

12.—(1) Where representations are made to the Minister under section 15(2) or 16(2) of the National Beef Assurance Scheme Act, 2000, the Minister shall upon receipt of such representations refer them, as soon as may be, to the Director for advice. Representations under National Beef Assurance Scheme Act, 2000.

(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.

(3) The Minister shall have regard to any advice given to him or her under this section before refusing an application for the grant of, or revoking, a certificate of approval under the aforesaid Act.

13.—(1) Where representations are made to the Minister under Article 8(1) of the Diseases of Animals Acts, 1966 to 2001 (Approval and Registration of Dealers and Dealers' Premises) Order, 2001 (S.I. No. 79 of 2001), the Minister shall, upon receipt of such representations refer them, as soon as may be, to the Director for advice. Representations by certain animal and poultry dealers.

	<p>(3) The Minister shall have regard to any advice given to him or her under this section before revoking or suspending a registration or refusing to register a person or premises under the aforesaid Article 8.</p>
Annual reports.	<p>14.—(1) As soon as may be after the end of each year, but not later than 6 months thereafter, the Director shall make a report to the Minister of his or her activities and the activities of the appeals officers under this Act during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.</p> <p>(2) A report under <i>subsection (1)</i> shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.</p> <p>(3) The Director shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as he or she may specify concerning his or her activities or the activities of appeals officers under this Act.</p>
Regulations.	<p>15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.</p> <p>(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.</p>
Laying of regulations before Houses of Oireachtas.	<p>16.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to anything previously done thereunder.</p>
Expenses of Minister.	<p>17.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.</p>
Amendment of First Schedule to Ombudsman Act, 1980.	<p>18.—Part I of the First Schedule to the Ombudsman Act, 1980, is amended by the substitution for “Department of Agriculture” of the following:</p> <p>“Department of Agriculture, Food and Rural Development Appeals Officers under the <i>Agriculture Appeals Act, 2001</i>”.</p>
Short title.	<p>19.—This Act may be cited as the Agriculture Appeals Act, 2001.</p>

[2001.] *Agriculture Appeals Act, 2001.* [No. 29.]

SCHEDULE

Section 5.

SCHEMES

Beef Cow Scheme in Less Severely Handicapped Areas and Coastal Areas with Specific Handicaps
Cattle Headage Scheme in More Severely Handicapped Areas
Equine Headage Scheme in all Disadvantaged Areas
EU Area Aid Scheme (including the Arable Aid Scheme)
EU De-seasonalisation Slaughter Premium Scheme
EU Ewe Premium Scheme
EU Extensification Premium Scheme
EU Slaughter Premium Scheme
EU Special Beef Premium Scheme
EU Suckler Cow Premium Scheme
Farm Improvement Programme (FIP)
Farm Improvement Programme (FIP) Horticulture
Goat Headage Scheme in all Disadvantaged Areas
Installation Aid Scheme (IAS)
National Scheme of Installation Aid (SIA) (introduced December 1998)
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
Rural Environment Protection Scheme (REPS)
Scheme of Early Retirement from farming
Scheme of Grant-Aid for Investment in Alternative Enterprises
Scheme of Grant-Aid for Investments in Agri-Tourism
Scheme of Installation Aid (SIA)
Scheme of Investment Aid for Farm Waste Management (FWM)
Scheme of Investment Aid for the Control of Farm Pollution (CFP)
Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
Scheme of Investment Aid for upgrading of On-Farm Dairying facilities
Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
Sheep Headage Scheme in all Disadvantaged Areas

S.I. No. 193 of 2002

AGRICULTURE APPEALS REGULATIONS 2002

I, Joe Walsh, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by sections 7 and 15 of the Agriculture Appeals Act 2001, hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Agriculture Appeals Regulations 2002.
- (2) These Regulations come into operation on 13 May 2002.

Definitions

2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

“Headage and Premia Appeals Unit” means the Headage and Premia Appeals Unit of the Department of Agriculture, Food and Rural Development pursuant to the Charter of Rights for Farmers 1995;

“notice of appeal” means notice of appeal to the Director under section 7(1) of the Act;

“REPS Appeals Committee” means the Rural Environment Protection Scheme Appeals Committee of the Department of Agriculture, Food and Rural Development.

Distribution of references to appeals officers

3. The Director shall be responsible for the distribution amongst the appeals officers of the references to them under section 7 of the Act and for the prompt consideration of such references.

Decisions which may be appealed and transitional arrangements

4. (1) The right of appeal specified under section 7 of the Act shall apply to any decision given by an officer of the Minister in respect of a person’s entitlement under any of the schemes set out in the Schedule to the Act which is notified to that person on or after the commencement of these Regulations other than appeal decisions of the Headage and Premia Appeals Unit and the REPS Appeals Committee given in respect of decisions of officers of the Minister taken prior to such commencement.

(2) Persons who before the commencement of these Regulations had a right of formal appeal by administrative arrangement to the Headage and Premia Appeals Unit or the REPS Appeals Committee shall for the period of 3 months from such commencement

continue to have that right to appeal to that Unit or that Committee, as the case may be, against decisions taken by officers of the Minister relating to the schemes concerned which were notified to those persons prior to that commencement.

Submission of appeal and information to be supplied by appellant

5. (1) Any notice of appeal shall be in writing.

(2) Subject to paragraph (3) of this Regulation, the time within which an appeal may be made shall be any time up to the expiration of 3 months from the date of the notification of the decision of an officer of the Minister to the appellant.

(3) An appeal, where the Director considers there are exceptional circumstances, may be made after the period referred to in paragraph (2) of this Regulation.

(4) A notice of appeal shall contain a statement of the facts and contentions upon which the appellant intends to rely.

(5) An appellant shall send to the Director, along with the notice of appeal, such documentary evidence as the appellant wishes to submit in support of his or her appeal, and the notice shall contain a list of any such documents.

(6) A person wishing to withdraw an appeal may do so by sending a written notice to that effect to the Director.

Notification of appeal and information to be supplied

6.(1) The Director shall notify the Minister of each notice of appeal.

(2) The Minister shall, in relation to each notice of appeal, give to the Director –
(a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and
(b) any information, document or item in the power or control of the deciding officer that is relevant to the appeal.

(3) The Director may fix the period within which any statement, information, document or item referred to at paragraph (2) of this Regulation should be given.

Notice of appeal

7. Where the Director has been given notice of an appeal he shall notify any other person he or she considers to be concerned with the appeal.

Further information to be supplied and amendment of pleadings

8. The appeals officer to whom an appeal is referred may at any time –

(a) require the appellant, the deciding officer, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,

- (b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and
- (c) fix the period for the furnishing of any such statement or particulars upon such terms as he or she may think fit.

Summary appeals

9. Where an appeals officer is of the opinion that any appeal referred to him or her is of such a nature that it can properly be determined without an oral hearing, and such a hearing has not been requested under section 8 of the Act, he or she may decide the appeal without such hearing.

Hearings

10. Where, in the opinion of the appeals officer to whom an appeal has been referred or at the request of the appellant under section 8 of the Act, a hearing is required, the appeals officer shall, as soon as may be, fix a date and place for the hearing, and give reasonable notice of the hearing to the appellant, the deciding officer, and any other person appearing to the appeals officer to be concerned in the appeal.

Failure to attend hearing

11. Where, after notice of a hearing has being given under Regulation 10 of these Regulations, any of the parties fail to appear at the hearing, the appeals officer hearing the appeal may, at his or her discretion, decide to proceed with the hearing or defer it to a later date and place fixed by him or her.

Appeal may be decided despite failure to comply with Regulations

12. An appeals officer may decide any appeal referred to him or her under the Act, notwithstanding the failure or neglect of any person to comply with any requirement of these Regulations.

Procedure at hearing

13. (1) The procedure at a hearing under the Act shall be such as the appeals officer hearing the appeal may determine.

(2) An appeals officer hearing an appeal may postpone or adjourn the hearing as he or she may think fit.

(3) An appeals officer may, at the hearing of an appeal, admit any duly authenticated written statement or other material as *prima facie* evidence of any fact in any case in which he or she thinks it appropriate.

Decision of Appeals Officer

14. (1) The decision of an appeals officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question.

(2) The decision of an appeals officer shall be in writing and shall include the reasons for the decision which shall be notified as soon as may be to the appellant, the Minister and any other person concerned.

GIVEN under my Official Seal,

8 May 2002

JOE WALSH,
Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE

These Regulations, which come into effect on 13 May 2002 prescribe the functions of the Director, the decisions which may be appealed and the procedures to be followed in respect of agriculture appeals.

PN 11579
Published by the Stationery Office, Dublin
Price €2.03

S.I. No. 558 of 2002

Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 5(2) of the Agriculture Appeals Act 2001 (No. 29 of 2001) (as adapted by the Agriculture, Food and Rural Development (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 306 of 2002)), hereby make the following regulations:

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002.
2. The Schedule to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended -
 - (a) by deleting the following schemes -

“Beef Cow Scheme in Less Severely Handicapped Areas and Coastal Areas with Specific Handicaps”,

“Cattle Headage Scheme in More Severely Handicapped Areas”,

“Equine Headage Scheme in all Disadvantaged Areas”,

“Goat Headage Scheme in All Disadvantaged Areas”, and

“Sheep Headage Scheme in All Disadvantaged Areas”,

and
 - (b) by adding the following schemes -
 - (i) “Disadvantaged Areas Compensatory Allowances Scheme”
before mention of “EU Area Aid Scheme (including the Arable Aid Scheme)”, and

- (ii) “Scheme of Grant Aid for the Development of the Organic Sector” after mention of “Scheme of Early Retirement from farming”,

and the said Schedule, as so amended, is set out in the Table to this Regulation.

TABLE
SCHEDULE
Schemes

Disadvantaged Areas Compensatory Allowances Scheme
EU Area Aid Scheme (including the Arable Aid Scheme)
EU De-seasonalisation Slaughter Premium Scheme
EU Ewe Premium Scheme
EU Extensification Premium Scheme
EU Slaughter Premium Scheme
EU Special Beef Premium Scheme
EU Suckler Cow Premium Scheme
Farm Improvement Programme (FIP)
Farm Improvement Programme (FIP) Horticulture
Installation Aid Scheme (IAS)
National Scheme of Installation Aid (SIA) (introduced December 1998)
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
Rural Environment Protection Scheme (REPS)
Scheme of Early Retirement from farming
Scheme of Grant Aid for the Development of the Organic Sector
Scheme of Grant-Aid for Investment in Alternative Enterprises
Scheme of Grant-Aid for Investments in Agri-Tourism
Scheme of Installation Aid (SIA)

Scheme of Investment Aid for Farm Waste Management (FWM)
Scheme of Investment Aid for the Control of Farm Pollution (CFP)
Scheme of Investment Aid for the Improvement of Dairy Hygiene
Standards (DHS)
Scheme of Investment Aid for upgrading of On-Farm Dairying
facilities
Scheme of Investment Aid in Alternative Enterprises (Housing and
Handling Facilities) (AES)

GIVEN under my Official Seal,

6 December 2002

JOE WALSH,
Minister for Agriculture and Food.

PN 12452
Published by the Stationery Office, Dublin
Price €2.03

S.I. No. 507 of 2004
Agriculture Appeals Act 2001 (Amendment of Schedule)
Regulations 2004

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 5(2) of the Agriculture Appeals Act 2001 (No. 29 of 2001) (as adapted by the Agriculture, Food and Rural Development (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 306 of 2002)), hereby make the following regulations:

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004.
2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002 (S.I. No. 558 of 2002)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by adding after the mention of “Installation Aid Scheme (IAS)” the following scheme:

‘Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo’

and the said Schedule, as so amended, is set out in the Table to this Regulation.

TABLE
SCHEDULE
Schemes

Disadvantaged Areas Compensatory Allowances Scheme
EU Area Aid Scheme (including the Arable Aid Scheme)
EU De-seasonalisation Slaughter Premium Scheme
EU Ewe Premium Scheme
EU Extensification Premium Scheme
EU Slaughter Premium Scheme
EU Special Beef Premium Scheme
EU Suckler Cow Premium Scheme
Farm Improvement Programme (FIP)
Farm Improvement Programme (FIP) Horticulture
Installation Aid Scheme (IAS)
Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
National Scheme of Installation Aid (SIA) (introduced December 1998)
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
Rural Environment Protection Scheme (REPS)
Scheme of Early Retirement from farming
Scheme of Grant Aid for the Development of the Organic Sector
Scheme of Grant-Aid for Investment in Alternative Enterprises
Scheme of Grant-Aid for Investments in Agri-Tourism
Scheme of Installation Aid (SIA)
Scheme of Investment Aid for Farm Waste Management (FWM)
Scheme of Investment Aid for the Control of Farm Pollution (CFP)
Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)

Scheme of Investment Aid for upgrading of On-Farm Dairying facilities

Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)



GIVEN under my Official Seal, this 3rd day of August, 2004.

Joe Walsh TD,
Minister for Agriculture and Food

(Pn. 3375)

Price: €0.76

Statutory Instruments

S.I. No. 65 of 2006

**Agriculture Appeals Act 2001 (Amendment of Schedule)
Regulations 2006**

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S.I. No. 65 of 2006

**Agriculture Appeals Act 2001 (Amendment of Schedule)
Regulations 2006**

- I, Mary Coughlan, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 5(2) of the Agriculture Appeals Act 2001 (No. 29 of 2001) (as adapted by the Agriculture, Food and Rural Development (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 306 of 2002)), hereby make the following regulations:
1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006.
 2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004 (S.I. No. 507 of 2004)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by adding -
 - (a) after the mention of “Scheme of Grant Aid for the Development of the Organic Sector” the following scheme:
“Scheme of Grant Aid for Improvements in Animal Welfare Standards (Sow Housing)”,
 - (b) after the mention of “Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities)(AES)” the following part of a scheme:

“Single Payment Scheme, insofar as it relates to the following -

- (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005) of Commission Regulation (EC) No 796/2004 ,
- (b) Article 21 of Commission Regulation (EC) No 796/2004,
- (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
- (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,
- (e) Article 34.3 of Council Regulation (EC) No 1782/2003 , and
- (f) Article 8 of Commission Regulation (EC) No 795/2004 .”,

and the said Schedule, as so amended, is set out in the Table to this Regulation.

\TABLE

SCHEDULE

Schemes

Disadvantaged Areas Compensatory Allowances Scheme

EU Area Aid Scheme (including the Arable Aid Scheme)

EU De-seasonalisation Slaughter Premium Scheme

EU Ewe Premium Scheme

¹ O.J. No. L42/3, 12.02.2005

² O.J. No. L141/18, 30.4.2004

³ O.J. No. L270/1, 21.10.2003

⁴ O.J. No. L 141/1, 30.4.2004

EU Extensification Premium Scheme

EU Slaughter Premium Scheme

EU Special Beef Premium Scheme

EU Suckler Cow Premium Scheme

Farm Improvement Programme (FIP)

Farm Improvement Programme (FIP) Horticulture

Installation Aid Scheme (IAS)

Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo

National Scheme of Installation Aid (SIA) (introduced December 1998)

National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)

National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)

Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors

Rural Environment Protection Scheme (REPS)

Scheme of Early Retirement from Farming

Scheme of Grant-Aid for the Development of the Organic Sector

Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)

Scheme of Grant-Aid for Investment in Alternative Enterprises

Scheme of Grant-Aid for Investments in Agri-Tourism

Scheme of Installation Aid (SIA)

Scheme of Investment Aid for Farm Waste Management (FWM)

Scheme of Investment Aid for the Control of Farm Pollution (CFP)

Scheme of Investment Aid for the Improvement of Dairy Hygiene

Standards (DHS)

Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities

Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)

Single Payment Scheme, insofar as it relates to the following -

- (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005¹) of Commission Regulation (EC) No 796/2004²,
- (b) Article 21 of Commission Regulation (EC) No 796/2004,
- (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
- (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,
- (e) Article 34.3 of Council Regulation (EC) No 1782/2003³, and
- (f) Article 8 of Commission Regulation (EC) No 795/2004⁴.

¹ O.J. No. L42/3, 12.02.2005

² O.J. No. L141/18, 30.4.2004

³ O.J. No. L270/1, 21.10.2003

⁴ O.J. No. L 141/1, 30.4.2004

GIVEN under my Official Seal,

_____ 2006.

Minister for Agriculture and Food

Statutory Instruments

S.I. No. 584 of 2006

**Agriculture Appeals Act 2001 (Amendment of Schedule)
(No. 2) Regulations 2006**

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Price: €1.27

S.I. No. 584 of 2006
Agriculture Appeals Act 2001 (Amendment of Schedule) (No. 2)
Regulations 2006.

I, Mary Coughlan, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 5(2) of the Agriculture Appeals Act 2001 (No. 29 of 2001) (as adapted by the Agriculture, Food and Rural Development (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 306 of 2002)), hereby make the following regulations:

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) (No. 2) Regulations 2006.
2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006 (S.I. No. 65 of 2006)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by inserting after “Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)” the following:

“Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities”,

and the said Schedule, as so amended, is set out in the Table to this Regulation.

TABLE

SCHEDULE

Disadvantaged Areas Compensatory Allowances Scheme

EU Area Aid Scheme (including the Arable Aid Scheme)

EU De-seasonalisation Slaughter Premium Scheme

EU Ewe Premium Scheme

EU Extensification Premium Scheme

EU Slaughter Premium Scheme

EU Special Beef Premium Scheme

EU Suckler Cow Premium Scheme

Farm Improvement Programme (FIP)

Farm Improvement Programme (FIP) Horticulture

Installation Aid Scheme (IAS)

Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo

National Scheme of Installation Aid (SIA) (introduced December 1998)

National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)

National Scheme of Investment Aid for the Improvement of Dairy

Hygiene Standards (introduced May 1999)

Non-valuation aspects of the On-Farm Valuation Scheme for TB and

Brucellosis Reactors

Rural Environment Protection Scheme (REPS)

Scheme of Early Retirement from Farming

Scheme of Grant-Aid for the Development of the Organic Sector

Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)

Scheme of Grant-Aid for Investment in Alternative Enterprises

Scheme of Grant-Aid for Investments in Agri-Tourism

Scheme of Installation Aid (SIA)

Scheme of Investment Aid for Farm Waste Management (FWM)

Scheme of Investment Aid for the Control of Farm Pollution (CFP)

Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)

Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities

Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)

Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities

Single Payment Scheme, insofar as it relates to the following -

- (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005) of Commission Regulation (EC) No 796/2004 ,
- (b) Article 21 of Commission Regulation (EC) No 796/2004,
- (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
- (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,

¹ O.J. No. L42/3, 12.02.2005

² O.J. No. L141/18, 30.4.2004

(e) Article 34.3 of Council Regulation (EC) No 1782/2003 , and

(f) Article 8 of Commission Regulation (EC) No 795/2004 .

GIVEN under my Official Seal,

16th November 2006.

Minister for Agriculture and Food

Agriculture
Appeals Office



Appeal Procedure & Notice of Appeal Form

The Agriculture Appeals Office

The Agriculture Appeals Office is an independent agency established to provide an appeals service to farmers who are unhappy with decisions of the Department of Agriculture and Food regarding their entitlements under certain schemes. The Agriculture Appeals Act 2001, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals. Please see attached schedule regarding the current list of schemes that are covered.

How To Make an Appeal

Every appeal must be made in writing and addressed to: The Director, Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois. A standard 'Notice of Appeal' form is attached. Please note:

- The notice must be lodged **within 3 months** of notification of the decision under appeal. An appeal received after three months will only be accepted if the Director considers that there are exceptional circumstances.
- Before submission of an appeal to the Appeals Office, all internal review procedures within the Department of Agriculture and Food must be exhausted.
- The notice of appeal should contain a statement of all the facts and contentions upon which it is intended to rely in the appeal. Documentary evidence submitted in support of the appeal should be enclosed along with the notice of appeal.
- A copy of the Department's final decision letter should be enclosed.
- Proof of postage must be obtained. Claims of appeals being lost in the post cannot be accepted.
- There is no charge for lodging an appeal.
- Each appeal is given a reference number and this number should be quoted when contacting the Agriculture Appeals Office.
- All appeals are acknowledged within 10 days of receipt.
- If you do not receive an acknowledgement letter within that time you should contact the office.

Appeals Process

When a final decision issues from the Department of Agriculture and Food (i.e. after internal Department review), you will be notified of your option to appeal.

- The scheme applicant (appellant), dissatisfied with the decision, must complete a 'Notice of Appeal' form and submit it to the Agriculture Appeals Office.
- The Appeals Office requests from the Department of Agriculture and Food, the relevant file and a statement regarding the appellant's grounds of appeal. **Your Grounds of Appeal will be forwarded to the Department of Agriculture & Food for their comments and observation.**
- On receipt of the file and statement, the Director assigns the case to an Appeals Officer.
- Appellants are entitled to an oral hearing as part of their appeal.
- The Agriculture Appeals Office contacts the appellant to arrange an oral hearing if required, or if deemed necessary by the Appeals Officer.
- It is the policy of the office to discuss the appeal with the appellant. If no oral hearing takes place, the Appeals Officer will contact the appellant to discuss the appeal.
- The Appeals Officer considers all the evidence in full (including any evidence presented at an oral hearing if there was one). The Appeals Officer makes a determination on the appeal and notifies the appellant of the decision in writing, setting out the reasons for that decision. The Department will also be notified of the decision.

Oral Hearings

Appellants are entitled to an oral hearing as part of their appeal.

- Oral hearings are held at a number of locations at a place and time convenient for appellants.
- Each case is assigned to an Appeals Officer, who will conduct the hearing.
- The Office will contact the appellant about the arrangements for the oral hearing.
- Hearings are held in private and will be as **informal** as possible. The purpose of the hearing is to allow the appellants to put forward their case and to hear the case being put forward by the Department.
- An appellant may be represented by another person at the oral hearing, however **the appellant must attend the oral hearing in person.**
- A Department official(s) familiar with the case will also attend the hearing.
- The appellant must notify the Appeals Office 3 working days in advance of anyone accompanying them at the oral hearing.
- The Appeals Officer will decide the format of the oral hearing on the day.
- The Appeals Officer may postpone or adjourn the hearing if deemed necessary.
- The Appeals Officer may admit any duly authenticated written statement or other material or document as prima facie evidence of any fact in any case in which he or she thinks appropriate.
- An Appeals Officer has the power to take evidence on oath or affirmation if deemed necessary.

Right of Review

Please note that a decision of an Appeals Officer is final and conclusive, except in the following four circumstances,

- An Appeals Officer may change a decision where there is new evidence, new facts or a relevant change in circumstances.
- On request, from either party, The Director of Agriculture Appeals may revise a decision where there has been a mistake made in relation to the law or the facts of the case.
- An appellant may wish to appeal the decision to the Office of the Ombudsman, 18 Lower Leeson Street, Dublin 2 (01 6395600).
- The High Court may revise a decision on a point of law.

Contact Details

Address: Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois

Lo- Call: 1890 671671 **Tel:** (057) 8667167 **Fax:** (057) 8667177

e-mail: appeals.office@agriculture.gov.ie

Web: www.agriappeals.gov.ie

Checklist before submission

- | | |
|---|--------|
| 1. Scheme is covered by the Agriculture Appeals Office
(Please check list of schemes overleaf) | Yes/No |
| 2. Decision is within the last three months | Yes/No |
| 3. Internal review by the Department of Agriculture and Food completed, informing you of your right to appeal | Yes/No |
| 4. All information requested has been provided (including a copy of the decision) | Yes/No |

You should have answered yes to all of the above

Schedule of Schemes Covered

The Office deals with appeals under the following schemes;

- Disadvantaged Areas Compensatory Allowances Scheme
- EU Area Aid Scheme (including the Arable Aid Scheme)
- EU De-seasonalisation Slaughter Premium Scheme
- EU Ewe Premium Scheme
- EU Extensification Premium Scheme
- EU Slaughter Premium Scheme
- EU Special Beef Premium Scheme
- EU Suckler Cow Premium Scheme
- Farm Improvement Programme (FIP)
- Farm Improvement Programme (FIP) Horticulture
- Installation Aid Scheme (IAS)
- Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
- National Scheme of Installation Aid (SIA) (introduced December 1998)
- National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
- National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
- Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
- Rural Environment Protection Scheme (REPS)
- Scheme of Early Retirement from Farming
- Scheme of Grant-Aid for the Development of the Organic Sector
- Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)
- Scheme of Grant-Aid for Investment in Alternative Enterprises
- Scheme of Grant-Aid for Investments in Agri-Tourism
- Scheme of Installation Aid (SIA)
- Scheme of Investment Aid for Farm Waste Management (FWM)
- Scheme of Investment Aid for the Control of Farm Pollution (CFP)
- Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
- Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities
- Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
- Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities
- Single Payment Scheme, insofar as it relates to the following;
 - under-declaration of land by omitting parcels:
Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005) of Commission Regulation (EC) No 796/2004,
 - Late submission of applications:
Article 21 of Commission Regulation (EC) No 796/2004,
 - Penalties arising from eligibility criteria such as over-declaration of land or setaside:
Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
 - Cross-compliance penalties:
Chapter II of Title IV of Commission Regulation (EC) No 796/2004
 - Surrender of entitlements to National Reserve where farmer fails to apply for Single Payment
Article 34.3 of Council Regulation (EC) No 1782/2003
 - Surrender of unused payment entitlements to the National Reserve:
Article 8 of Commission Regulation (EC) No 795/2004.



Notice of Appeal Form

The Director
Agriculture Appeals Office
Kilminchy Court
Portlaoise
Co. Laois
 Tel: (057) 8667167
 Lo-Call: 1890 671671
 Fax: (057) 8667177

Official use only

Eligible Scheme:	Yes/No
In time:	Yes/No
Dept Review carried out:	Yes/No

Appeal No: _____

Checked by: _____

Please complete parts 1 and 2 (overleaf) in full

Part 1 – Application Details (Please use block capitals)

1. Name: _____
2. Herd / REPS / Application Number: _____
3. Address: _____

4. Telephone Number: _____
5. Scheme under appeal: _____
 (e.g. REPS, Early Retirement Scheme, Single Payment Scheme, On-Farm Investment Schemes, etc.)
6. Department Office that issued the decision: _____
7. Date of Department decision: _____
8. Do you wish to have an oral hearing in relation to your appeal: Yes ☐ No ☐
9. **Please list and enclose any relevant documents that you wish to have considered. A copy of the Department's final decision should be enclosed.**
 (If you are unable to make a copy please send the original, which we will copy and return.)
 A. _____
 B. _____
 C. _____

Please outline the facts and contentions in support of the appeal in part 2 overleaf.

Name: Herd / REPS / Application No:

Part 2 – Grounds Of Appeal

Please set out all the facts that you wish to have considered; attach additional sheets if necessary. Please write your name and Herd / REPS / Application Number on each additional sheet.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Signed: _____ Date: _____

<u>Checklist before submission</u>	
1. Scheme is covered by the Agriculture Appeals Office	Yes/No
2. Decision is within the last three months	Yes/No
3. Internal review by the Department of Agriculture and Food completed	Yes/No
4. All information requested has been provided (including a copy of the decision)	Yes/No
You should have answered yes to all of the above	

- | | |
|---|--------|
| 1. Scheme is covered by the Agriculture Appeals Office | Yes/No |
| 2. Decision is within the last three months | Yes/No |
| 3. Internal review by the Department of Agriculture and Food completed | Yes/No |
| 4. All information requested has been provided (including a copy of the decision) | Yes/No |

You should have answered yes to all of the above

