



Agriculture
Appeals Office



agriculture appeals office



annual report 2003



To the Minister for Agriculture and Food, Mr. Joe Walsh T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2003 faoi bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talamhaíochta, 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 2003.

The Agriculture Appeals Office was established on 13th May 2002 and this is the first report covering a full year of operations.

Paul Dillon

Director of Agriculture Appeals
June 2004

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

This report is also available in Irish, on request.

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Contents

Introduction by Director of Agriculture Appeals	2
Agriculture Appeals Office 2003	3
Appeals Procedure and Oral Hearings	5
Statistics	6
Appeals Cases	11
Recommendations to the Department of Agriculture and Food	24
Recurring mistakes by scheme applicants that lead to penalties	25
Agriculture Appeals Office Staff	26

Appendices

Agriculture Appeals Act 2001	27
Agriculture S.I. No. 193 of 2002, Agriculture Appeals Regulations 2002	34
S.I. No. 558 of 2002, Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002	38

1. Introduction by the Director of Agriculture Appeals

2003 was the first full year of operations and an important one in terms of the development of the Office and its functions. 1,143 appeals were received across 18 different schemes. This report sets out the major developments during the year and a statistical breakdown of the Office's work. A cross-section of the cases handled during the year is included in the report, as well as recommendations to the Department of Agriculture and Food and a reminder to Scheme applicants of the recurring mistakes that lead to penalties.

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 all 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.

Paul Dillon

Director of Agriculture Appeals

2. Agriculture Appeals Office 2003

The Agriculture Appeals Office was established on 13 May 2002 on the introduction of the Agriculture Appeals Regulations 2002. The Office is an independent agency providing an appeals service to farmers who may be unhappy with decisions of the Department of Agriculture and Food concerning their entitlements under designated schemes operated by the Department. The Agriculture Appeals Act, along with the Regulations, 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

A Procedures Manual, outlining information about the Agriculture Appeals Office and details of internal rules, procedures and interpretations used by Appeals Officers, was first drafted in 2002 and further developed during 2003. This is a legal requirement of the Freedom Of Information Act 1997. It 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 2003 Business Plan was formulated to coordinate with the Department of Agriculture and Food Statement of Strategy 2003 – 05. 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

Conscious of the commitment to e-Government, the Office began development of a website in 2002. In 2003 the website went live at www.agriappeals.gov.ie. As well as being a source of information, appellants can download the 'Notice of Appeal' form and lodge appeals online at the following e-mail address, appeals.office@agricluture.gov.ie.

Accommodation

In conjunction with the Office of Public Works (OPW), the fit-out of permanent accommodation for the Agriculture Appeals Office was completed in 2003. These Offices are in Kilminchy Court, Portlaoise. The Office moved to its new premises in October.

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 2003.

Meetings of Appeals Officers

Regular meetings of Appeals Officers are held. 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 held monthly.

3. Appeals Procedure and Oral Hearings

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.

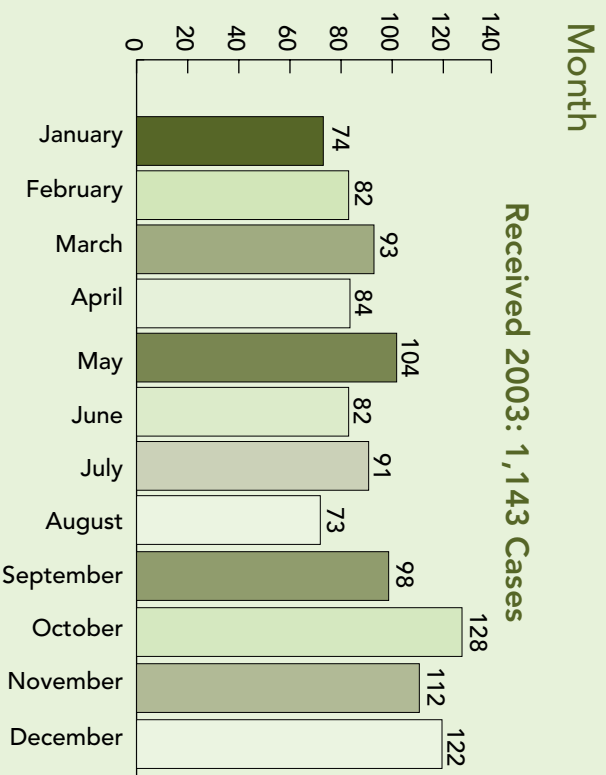
One of the features of the Office is the right of an appellant to an oral hearing where the Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. **Of the 1,143 appeals received in 2003, some 663 (58%) involved oral hearings.** Oral 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

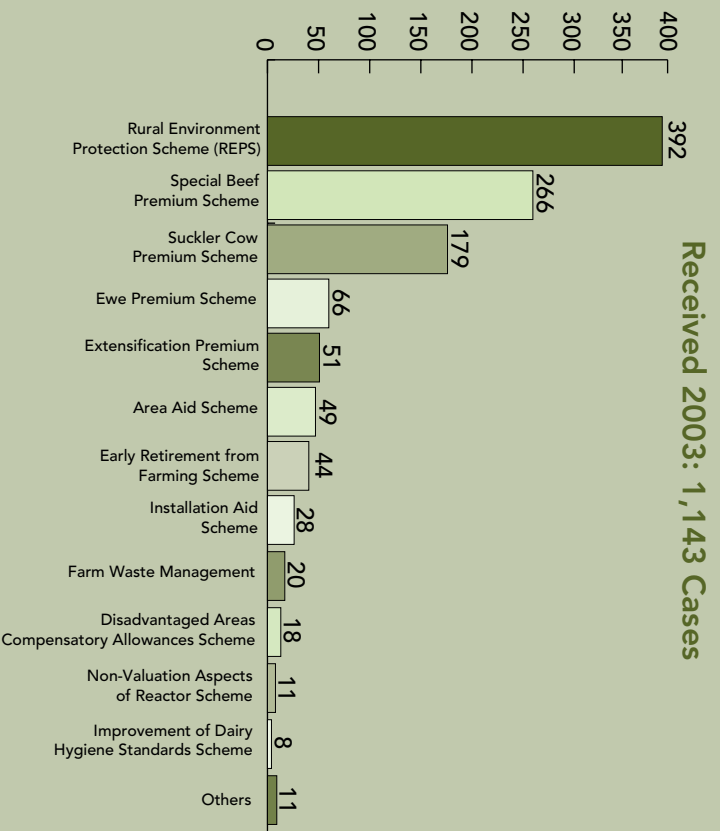
Oral Hearings were held in every county in the country. Conscious of the need to be efficient, the Agriculture Appeals Office aims to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country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

4. Statistics – 2002

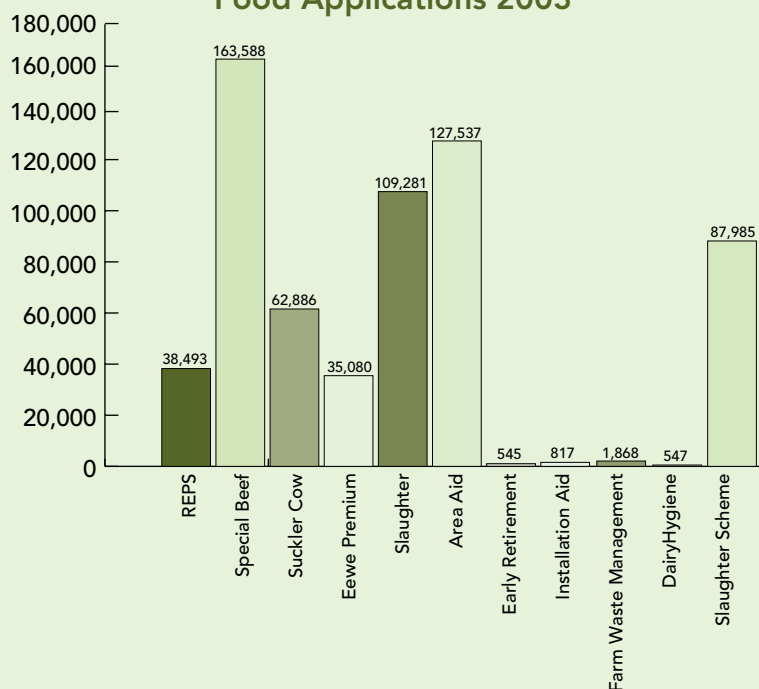
4(a) Appeals Received by Month



4(b) Appeals Received by Scheme



Department of Agriculture and Food Applications 2003



Note: REPS figures refer to number of participants at the year-end. Extensification figure is number of payments in 2002. Statistics supplied by the Department of Agriculture and Food.

Terminology

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

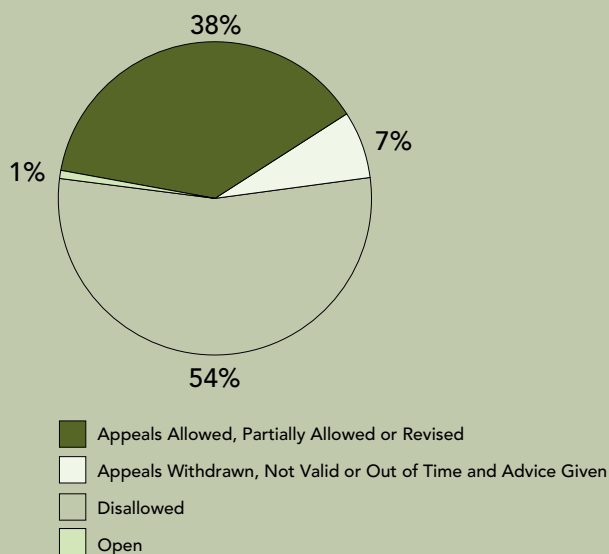
Partially Allowed: This category includes cases where an Appeals Officer recommends a reduced or lesser penalty.

Revised by the Department: The Department must review its decision before forwarding to the Office for consideration. *This often leads to a revision of an original decision based on the 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.

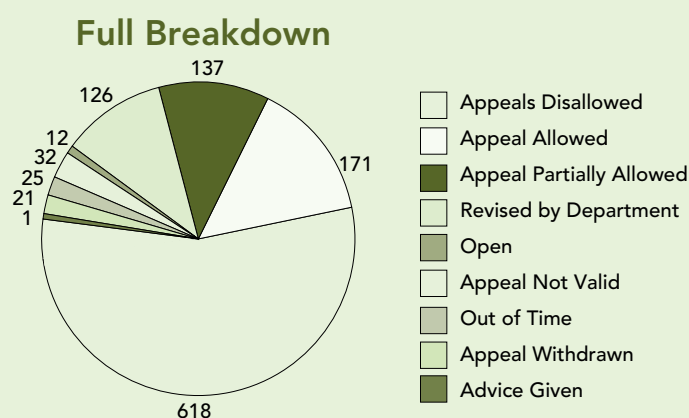
4(c) Outcome of Appeals Received in 2003

Summary



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: 2003 cases which have still to be finalised to date.

4(d) Outcome by Scheme Received in 2003

Received	Received	Allowed	%	Partially	%	Received	%	Withdrawn	%	Not Valid	%	Out of Time	%	Advice Given	%	Disallowed	%	Open	%
Rural Environment Protection Scheme (REPS)	392	66	16.8	47	12.0	41	10.5	6	1.5	10	2.6	13	3.3	-	-	207	52.8	2	0.5
Special Beef Premium Scheme	266	37	13.9	31	11.7	24	9.0	6	2.3	2	0.8	1	0.4	-	-	163	61.3	2	0.8
Suckler Cow Premium Scheme	179	24	13.4	32	17.9	15	8.4	1	0.6	5	2.8	5	2.8	-	-	96	53.6	1	0.6
Ewe Premium Scheme	66	8	12.1	17	25.8	1	1.5	2	3.0	2	3.0	3	4.5	-	-	32	48.5	1	1.5
Extensification Premium Scheme	50	17	34.0	3	6.0	9	18.0	3	6.0	1	2.0	1	2.0	-	-	14	28.0	2	4.0
Area Aid Scheme	50	5	10.0	4	8.0	11	22.0	2	4.0	2	4.0	-	-	-	-	25	50.0	1	2.0
Early Retirement from farming	44	2	4.5	3	6.8	11	25.0	-	-	1	2.3	1	2.3	-	-	26	59.1	-	-
Installation Aid Scheme	28	-	-	-	-	5	17.9	-	-	2	7.1	1	3.6	-	-	20	71.4	-	-
Farm Waste Management	20	4	20.0	-	-	5	25.0	-	-	1	5.0	-	-	-	-	10	50.0	-	-
Disadvantaged Areas Compensatory Allowances Scheme	18	4	22.2	-	-	1	5.6	-	-	2	11.1	-	-	-	-	10	55.6	1	5.6
Non-Valuation Aspects of Reactor Scheme	12	2	16.7	-	-	2	16.7	-	-	4	33.3	-	-	-	-	3	25.0	1	8.3
Improvement of Dairy Hygiene Standards	8	1	12.5	-	-	-	-	-	-	-	-	-	-	-	-	6	75.0	1	12.5
Slaughter Premium Scheme	5	1	20.0	-	-	-	-	-	-	-	-	-	-	-	-	4	80.0	-	-
Development of the Organic Sector Scheme	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	100.0	-	-
Alternative Enterprise Schemes	1	-	-	-	-	-	-	1	100.0	-	-	-	-	-	-	-	-	-	-
Headage Scheme	1	-	-	-	-	1	100.0	-	-	-	-	-	-	-	-	-	-	-	-
Registration of Dealers	1	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	-	-

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

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 promptly and considered as soon as possible.

For 2003 cases the average time taken by the Department to return files was 25 days. A breakdown follows by Scheme;

Scheme	Average
Area Aid Scheme	33
Disadvantaged Areas Compensatory Allowances Scheme	29
Early Retirement from Farming Scheme	18
Ewe Premium Scheme	22
Extensification Premium Scheme	42
Farm Waste Management	41
Improvement of Dairy Hygiene Standards Schemes	30
Installation Aid Schemes	26
Non-Valuation Aspects of Reactor Scheme	39
Rural Environment Protection Scheme (REPS)	29
Special Beef Premium Scheme	16
Suckler Cow Premium Scheme	23
Others	47

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

For 2003 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 49 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 2003 cases, the average appeal took 74 days.

4(g) Position as at 31 December 2003

2003 Cases		
Status		Number of cases
Cases Closed in 2003		841
Cases On Hand		
Work In Progress—Appeals Office	181	
Awaiting Department Response	121	
Total on Hand	302	302
Total		1143

2002 and 2003 Cases		
Status		Number of cases
2003 Cases Closed in 2003		841
2002 Cases carried forward and closed in 2003		205
Total number of cases closed in 2003		1046

5. Appeal Cases

Case 1 – Rural Environment Protection Scheme

The appellant commenced participation in the Rural Environment Protection Scheme on the 1st June 1996 with a contracted area of 59.86 hectares. The Department of Agriculture & Food were advised through the submission of an amended plan on the 19th May 2000 that the contracted area had been reduced to 54.19 hectares. The Department of Agriculture & Food sought a percentage reimbursement of monies plus interest in respect of aid already paid and aid to be paid in future years.

The Appeals Officer found firstly that the EU Regulation 746/96 provided only for reimbursement of aid paid, and not in respect of aid yet to be paid. Secondly there is no provision for the reimbursement of monies except in the case of wrongful payment. As the appellant had maintained in excess of 40 hectares in all years, and would therefore qualify for the maximum payment, the amount of wrongful payment was nil. The appeal was allowed.

Case 2

The appellant entered REPS with a contracted area of 47.07Ha. After 4 years in REPS he submitted a new 5-year plan as he had leased an additional 8.11Ha. His new contracted area in REPS was 53.82 Ha. He continued in REPS for a further 3 years at which time he had a rent review on the leased land and subsequently was not able to

continue with the lease. He notified the Department of the problem. The Department sought recoupment of monies for the first 3 years of the new plan and applied a proportionate reduction in the area for payment for the remaining 2 years of the REPS contract. He also submitted an amended plan to take account of the changes in the area farmed. The appellant felt that as he had 45Ha of owned land, therefore he did not receive any additional payment on the leased land and it was unfair to recoup money that he was entitled to receive.

Article 20 (1) of Commission Regulation (EC) No. 746/96 relates to the reimbursement of aid and penalties and states that “ *In cases of wrongful payment, the farmer concerned shall be required to reimburse the amount in question plus interest for the period between payment and the reimbursement by the beneficiary.*” The Appeals Officer determined that the amount of aid wrongfully paid was zero, as he was entitled to receive the level of payment that he had received in the first 3 years of the REPS plan. In relation to the reduction of his REPS payment for the 2 remaining years the Appeals Officer’s decision was that the regulation referred to aid paid and as the appellant had not received the last 2 years payments, the reduction by the Department of his REPS payment going forward constituted a penalty, which is not provided for in the Regulation. The appeal was allowed.

Case 3

An applicant under REPS appealed a decision to apply a 25% penalty. A compliance inspection carried out on the holding on the 15th January found that spreading of slurry had occurred outside the designated spreading period under REPS. The first designated date for spreading is set down as the 15th January (the date of inspection) but spreading had already occurred 4 days previously and the applicant was deemed not in compliance with the requirements of Measure 1 of his Agri-Environmental plan with a consequent application of a 25% penalty.

The grounds of appeal were that the slurry spreading had only occurred 4 days before the commencement date for allowable spreading. The weather conditions were favourable and storage tanks had filled more quickly over the winter due to the earlier housing of animals and the collection of silage effluent the previous year from a silage crop that was quite wet.

The appeal was disallowed. The appeals officer found that there was no dispute that slurry had been spread outside the period allowed. The scheme document provided to all applicants was clear in its requirement that slurry must not be spread in the period, 1st October to the 15th January. Indeed the Agri-Environmental plan drawn up by the REPS planner for the farm also set out under 'Key adjustments for the holding', that slurry should not be spread in this restricted period.

In considering the other elements of the appeal, it was not deemed that the earlier housing or the cutting of wet silage mitigated the spreading of

material early. Silage had been cut the previous July and it was deemed that any effluent collected could have been land-spread before the commencement of the winter period. The REPS plan for the holding also indicated that there was 16 weeks storage capacity on the farm and if properly managed, this should have allowed for storage beyond the 15th January even with an early housing date.

On considering all elements of the appeal, the decision of the appeals officer was to uphold the imposition of the penalty.

Case 4

A Department compliance inspection carried out on a farm in December found that the farmer was in breach of Measure 1 of the scheme conditions (25% penalty), as a slurry tank in the farmyard was not emptied to REPS specifications. The REPS specifications state that it is a requirement in each year of the plan that all slurry produced during the winter housing period is land spread by 31st August.

The applicant had two tanks in the farmyard, one shallow tank (3 feet deep) and a connecting channel to another larger tank (8 feet deep). The applicant explained that during the Summer months he had a problem emptying the 3 foot tank as the liquids in this tank tended to flow into the deeper tank leaving the solids behind in the small tank. The appellant asked a local contractor to lift out the slats in the small tank but the contractor was unable to do this before the spreading period had

elapsed. He then informed his Planner that he could not empty this tank and following consultation with him he reduced livestock numbers to such an extent that the remaining waste storage facilities in the farmyard were adequate to cater for stock numbers housed during the winter months. In March the following year the slats were lifted and the slurry was spread from the small tank.

This appeal was allowed. The Appeals Officer found that when the farmer could not empty the small tank, he should have contacted the Department, through his Planner, to see if a derogation could be granted. Notwithstanding this fact he found that the problem experienced by the farmer in emptying the small tank was due to its design and this was outside the farmer's control. In reaching a decision to allow the appeal the Appeals Officer deemed it significant that the farmer reduced the livestock numbers housed over the winter period and this meant that he stayed within the guidelines contained in the REPS specifications in relation to winter housing of animals.

Case 5

Following a farm visit and plan check by the Department of Agriculture and Food, a REPS application was deemed contrary to the terms and conditions of the scheme because the application was based on a land unit that was artificially created. The Department held that lands, which had little or no agricultural value, had been split into a number of different units to obtain maximum payments under the scheme.

The appellant argued that the unit did have an agricultural use and that it had not been artificially created. The appellant stated that he was unaware that the lands had been split and that the other units were for sale, despite the fact that some of the owners of these were related to the applicant.

The Appeals Officer found that the applicant had contravened the Terms and Conditions of REPS, which specifically forbid the splitting of holdings, i.e. the artificial creation of farming units for the purposes of drawing down or increasing payments. He held that the Department, in carrying out a number of checks to determine the applicant's eligibility, had correctly concluded the purchase of the unit would be uneconomical and impractical in the absence of REPS payments. He disallowed the appeal.

Case 6

A REPS applicant was penalised under measure 1 of REPS for failing to carry out necessary pollution control work as specified on his REPS plan. As the appellant had been penalised by the Department a few years earlier for the same offence, the Department decided to double the penalty. The relevant REPS document allows for the doubling of a penalty in the case of a repeat non-compliance under the same measure.

The appellant's appeal regarding the imposing of a penalty under measure 1 of REPS was disallowed. The farmer had a number of years to carry the required works and he failed to do so.

However, the decision to double the penalty was overturned. The farmer commenced a new 5-year REPS contract in the period between the two penalties. REPS specifications only allow for the doubling of penalties where the non-compliance relates to the same REPS contract. As the non-compliance occurred in two different REPS contracts, the doubling of the penalty was overturned. REPS specifications does not allow for the carrying of penalties from one contract to another.

Case 7

A REPS applicant died between the period that his REPS plan was prepared and the commencement date of his REPS contract. The applicant's widow (the appellant) notified the local Department office of her husband's death and cancelled an application for grant aid under a different scheme. The same section of the Department was dealing with both applications. Having notified the Department, the appellant received no notification that her husband's REPS plan was cancelled. Instead she received the first year REPS payment. She continued farming, with the understanding that she was participating in REPS under her late husband's plan.

The Department carried out a REPS compliance inspection a year later. The inspector carrying out the inspection only discovered on the day that the appellant's husband had passed away. Following the inspection, the Department sought recoupment of the first year REPS payment. The REPS contract between the applicant and the Department

was not valid, as the applicant had died before the commencement of the REPS contract.

This appeal was disallowed on the grounds that the REPS contract was not valid, as the applicant had died before the commencement date of the plan. However, the Appeals Officer noted that the matter had caused stress and annoyance to the family concerned.

Case 8 – Special Beef Premium Scheme

An application under the above scheme included an animal that injured itself during the two-month retention period. Following Veterinary advice, the applicant had the animal slaughtered and notified the loss of the animal to the Special Beef Premium Unit. The Department deemed the animal to have died through Natural Circumstances and deleted the animal without penalty from this application. The applicant appealed this decision on the grounds that he considered the animal's death to have been 'unforeseen, unavoidable and beyond the producers control', and should therefore be considered a 'Force Majeure' loss with consequent payment of the premium.

Force Majeure is defined in the terms and conditions of the scheme as 'circumstances unforeseen, unavoidable and outside the producers control such as the slaughter under the disease eradication scheme, death or long term incapacity of the farmer, but not such as financial difficulties'.

Natural Circumstances is described as 'death of the animal following an accident or disease but not sale'.

While the appeals officer accepted that the death of the animal was in fact 'unforeseen and unavoidable and outside of the producers control', as a result of the injury, it was ruled that this part of Condition No 17 should not be considered in isolation from the remainder of the Condition which clarifies the type of circumstances which may be considered under each heading. The clarifying example for 'Force Majeure' is the removal of the animal under the disease eradication scheme while the clarifying examples under 'Natural Circumstances' includes the death of the animal following an accident or disease.

The appeals officer deemed that the death of the animal while unforeseen and unavoidable most broadly equated to 'death of an animal following an accident' and should therefore be considered as 'Natural Circumstances' and not eligible for premium. The appeal was disallowed.

Case 9

The appeal was against having the milk quota held on 31st March 2002 used in 2002 stocking density calculations. The appellant made 6 applications for Special Beef Premium in 2002 for 71-1st age and 84-2nd age. The appellant had temporarily leased out his milk quota of 66,607 gallons for the 2002/2003 milk quota year. The quota was included in stocking density calculations by the Department against 2002 applications because the applicant held that quota on 31st March 2002. This prevented

the payment of Special Beef Premium and subsequently Extensification Premium on 57.02 animals due to the stocking density restrictions calculated against forage area on the 2002 Area Aid application.

The applicant ceased milk production in February 2002, sold all dairy cows and stocked with beef cattle. He contended that he made purchasing and application decisions unaware the milk quota would count against stocking density for 2002. He also stated that the Department did not inform him of the stocking density limit applying in his case in good time so as to avoid further losses.

The Department stated that it is not in a position to advise of individual stocking density restrictions on an ongoing basis for each applicant.

Each year creameries supply milk quota details for suppliers and quota holders to the Department of Agriculture and Food. The relevant quota in this case was the milk quota held at 31 March 2002, as that quota was in the applicants possession on that date and was not surrendered to the 2002/2003 Milk Quota Restructuring Scheme nor was it involved in any sale or lease of milk quota with land during the 2002/2003 quota year. The milk quota involved was in fact subsequently surrendered to the 2003/2004 Milk Quota Restructuring Scheme. This was following its temporary lease in the 2002/2003 milk quota year.

The appeal against having the milk quota as held on the 31st March 2002 counted for 2002 stocking density was disallowed.

The Appeals Officer found no requirement in the terms of the scheme to consider applications chronologically and found that the Special Beef Premium Unit should take consideration of surplus eligible animals contained in later unpaid application(s) that were of 0.6 Livestock Units in preference to any paid on animals of 1.0 Livestock Units. This had the effect of allowing on 2 more eligible animals at 0.6 LU.

The appellant had practised milk recording while in milk production. The Appeals Officer queried the reference year used for average milk yield per cow used to calculate the stocking density equivalent of milk quota. The average yield that had been used was the recorded average for 2000 of 1,292 gallons, where in fact the option of using the average yield of 1,445 gallons as recorded for 2001 was available for calculating stocking density under the terms and conditions. This allowed approximately 9 more of the applied on eligible animals at 0.6LU to be paid on.

Case 10

One of the animals listed on the application was found to be a female at a validation check and the appellant was informed that this animal would be rejected from the application and a reduction penalty imposed on the eligible animals declared for bovine premium for the year.

In the notice of appeal the herdowner said that the holding was restricted with T.B. from November 2002 until October 2003. He had no cattle identity cards when completing the application and completed the application form on the basis of the Bovine Herd Register. A transcription error occurred when completing the application and a female animal was inadvertently listed on the application. He became aware of this problem when the cattle identity cards were returned in November 2003 and contacted the Special Beef Unit in relation to the problem. A number of the cattle identity cards were missing from the bunch of cards returned to the farmer after the restriction notice on the herd was removed.

The Terms and Conditions state that each applicant must ensure that each animal submitted for Special Beef Premium is a castrated male animal. After examining the evidence of this case, the appeals officer found that the herdowner had made an innocent error by listing this animal on the application. This animal would not have been recorded on the application if the cattle identity cards were available to the applicant at the time of application. The animal was born in the herd, was registered as a female and always listed as a female animal on the Cattle Movement Monitoring System (CMMS). There was no risk of payment being issued for this animal.

The Appeals Officer found that the animal should be deleted from the application and counted for stocking density purposes. The appeal was partially allowed. If the herd had not been restricted and the card

submitted to the Special Beef Premium Unit the animal would have been deleted from the application. The same principle should apply to restricted and non-restricted herds.

Case 11– Suckler Cow Premium Scheme

A holding was declared a restricted holding under Bovine Tuberculosis order in October 2002. A number of bovine suckler breeding animals were removed from the herd before the restriction was lifted by the Department in the last few days of the 2003 Suckler Cow application period. During the period of restriction it was not permitted to sell or buy in replacements for the animals removed so the number of eligible animals for the appellant's 2003 Suckler Cow application was reduced below the normal quota.

The Department advised the farmer to submit a 2003 Suckler Cow Premium application in respect of the animals on the holding before the scheme closing date. An application was submitted for premium to fill the Suckler Cow quota and the farmer consulted with the Department local office with a view to buying in suitable replacement cows now that the restriction on the holding was lifted. The Department gave no undertaking in respect of premium eligibility or penalties for animals bought in after the scheme closing date and would not recognise the exceptional circumstances that obtained in the case.

On 12 August the farmer forwarded to the Department cattle identity cards in respect of cows that were purchased and moved onto the holding in the period 07 July to 12 August 2003. In processing the application the Department took the decision that the purchased animals were not on the holding at the time of application and were therefore not eligible for Suckler Cow Premium in 2003.

The appellant stated he had contacted the Department and said he would replace the animals removed for disease control purposes while the holding was restricted as soon as possible. He had set about obtaining suitable breeding animals immediately the restriction notice was withdrawn and made all reasonable efforts to replace the animals as quickly as possible having regard to the difficulty of locating suitable stock available for purchase once the Suckler Cow Premium application period has closed.

The 2003 Suckler Cow Premium Terms and Conditions at paragraph 29 provide for late applications to be accepted by the Department up to and including 22 July subject to a 1% penalty for each working day the application is late. Five scheme animals were replaced within the 'late application' period and one after late application deadline of 22 July.

The appeals officer found that the circumstances giving rise to the holding being restricted could not have been foreseen, were beyond the control of the farmer and the consequences of the event could not have been avoided by him. The decision was that he be allowed a reasonable period to replace the

scheme animals removed while the holding was restricted, all the eligible scheme animals on the on holding on 16 July 2003 be accepted for premium and that the penalty for late application should not apply in these circumstances.

Case 12 – Bovine Premium Schemes

A Department cross compliance inspection carried out on the appellant's holding on 24/7/03 found that 4 unclaimed animals were not compliant with the requirements of the CMMS. As a result of the findings of this inspection the Department imposed a reduction penalty on applications made by this farmer under the 2003 Bovine Premium Schemes as laid down in paragraphs 42 & 43 of the 2003 Suckler Cow Premium Schemes and paragraphs 29 & 30 of the 2003 Special Beef Premium Scheme.

The appellant stated that he bought these 4 cattle privately in April 2003 and they were moved to his holding under the required FMD 9 form issued by the Department. The farmer omitted to tear off the bottom section of the form and forward it to CMMS in Bandon. The farmer also made the point that the penalty being applied was very severe, as he did not claim any premium on these animals.

This appeal was disallowed. In the context of identification and registration requirements under the 2003 Bovine Premium Schemes there is a clear responsibility on farmers to immediately notify the CMMS database of any animal movements

into and out of the herd and any births and on-farm deaths.

Paragraph 32(c) of the terms and conditions of the 2003 Suckler Cow Premium Scheme and paragraph 16(c) of the terms and conditions of the Special Beef Premium Scheme set down this requirement. It is also a requirement of Council Regulation (EC) No.1760/2000.

Case 13 – Early Retirement Scheme

The appellant was unable to find a replacement transferee to remain compliant with the terms and conditions of the scheme and was requested by the Department to refund all monies paid since entry into the scheme.

The appellant entered the Early Retirement from Farming Scheme in June 1999. He sent a letter to the Department of Agriculture and Food in December 2000, informing the Department that the transferee was not paying the rent for the land or complying with the conditions of the lease. The appellant stated that it would be difficult to get another tenant for the land and sought advice from the Department regarding the best course of action to pursue.

The local inspector with the Department wrote to the appellant in April 2001 advising that in the event of the agreement between both parties remaining unresolved, another transferee would be required to lease the lands in order to satisfy the regulations of the scheme. The inspector visited the lands in May 2001 and noted that the lands were not farmed for some time and the

dispute had not been resolved. He concluded that the pension should be suspended pending a resolution of the dispute or having a new transferee installed. The Early Retirement Scheme section of the Department informed the appellant that the payment of the pension would be suspended from August 2001. The details of the documentation required to put in place a substitute transferee were also outlined.

The appellant informed the Department in November 2001 of the outcome of the court case instigated against the transferee. The Circuit Court ordered in October 2001 that the transferee vacate the lands and that the lease be terminated as of that date. The Department of Agriculture and Food requested an up to date position from the termination of the lease and asked if a replacement transferee had been found for the lands and what effort had been made to find a substitute transferee. The appellant replied in June 2002 stating that he was of the opinion he was finished with the scheme as the judge in the court case ordered it to be stopped.

In June 2002 the appellant was informed that his participation in the scheme was terminated and a refund of all monies paid under the scheme was required. He was told that when the lease ended by court order, the onus is on the transferor to find a replacement eligible transferee. The Department said that there was no provision to allow a participant in the scheme to terminate their involvement in the scheme prior to the ten-year period or their 70th birthday, whichever is sooner.

In his notice of appeal, the appellant said that the decision taken by the Department of Agriculture and Food was unfair and unjust and would result in undue hardship. He stated that he kept the Department informed at all times regarding the problems with the transferee and the legal route was required to evict the transferee from the lands. He could not obtain a replacement transferee to satisfy the Terms and Conditions of the scheme as the transferee left the lands in such a poor condition that they could not be rented out. Potential tenants were reluctant to take the lands on a long-term lease when they became aware that legal proceedings had taken place with the previous tenant.

The Appeals Officer found that the appellant has been compliant with the scheme throughout the period during which aid was paid under the scheme. The requirement to find a new eligible transferee within the required time period was not fulfilled. The appellant made the initial contact with the Department of Agriculture and Food in relation to the problem with the transferee and kept the Department informed of the developments with the case.

The Appeals Officer found that a claw back of aid received should not be required in this instance and no further monies granted in the absence of a substitute transferee. The appeal was partially allowed.

Case14

The appellant in this case commenced participation as a transferee under the Early Retirement

Scheme in June 2002. Following an on farm inspection in April 2003, the farmer was found to be non compliant with Good Farming Practice in that the conditions in the farmyard were poor, creating a significant risk of pollution for which a 10% penalty was imposed on the annual payment.

At the oral hearing of this case, the appellant confirmed the findings of the Department of Agriculture & Food inspector in relation to the slurry pit, where part of the walls were broken down, the soiled water tank overgrown with grass and the unlined pit for collection of soiled water/dairy washings. He stated that he intended to construct a new slurry pit. No repairs had been carried out on the structures since he took over the farm under the Early Retirement Scheme.

A dairy inspection also took place on the 30th April 2003, in respect of areas directly related to the production of milk, that is, the milking parlour, dairy, animal housing and the immediate surrounding areas.

Although the appellant was accepted for the supply of milk, this inspection did not concern itself with issues relating to animal waste collection/storage structures. It was therefore not considered relevant to the appeal.

It is a condition of the scheme that the transferee must comply with Good Farming Practice in that a penalty will apply where there is evidence of farm waste material being collected or stored in a manner that creates a significant risk of pollution. As the appellant had confirmed his acceptance of the conditions of the scheme at the time of entry into the scheme and did not

dispute the findings of the inspector in relation to the condition of the waste storage facilities, the appeal was disallowed.

Case 15 – Extensification Premium

The appellant applied for the 2002 EU Extensification Premium Scheme and he opted for the Census System for calculating his stocking density. He submitted both the forms containing the numbers of animals in the 2 age categories for the 5 census dates throughout 2002. He calculated his stocking density at 1.7986LU/Ha. When querying the delay in payment of the Premium the appellant was informed that his stocking density was in fact 1.8002LU/Ha. He discovered that one animal's date of birth was recorded on his computerised Herd Register as the 03/04/2002 but the actual date of birth on the animal passport was the 04/03/2002. This error had caused the miscalculation of the stocking density.

The Appeals Officer found that the Department was correct in its calculation of the stocking density but was incorrect in its interpretation of one of the EU Commission Regulations governing the Extensification Premium Scheme. He allowed the appeal. Article 32 Paragraph 10 of Commission Regulation (EC) No. 2342/1999 states *"For the purpose of calculating the stocking density pursuant to this Article, account shall be taken of the first two decimal places only"*. The Appeals Officer found that in calculating an applicant's stocking density **the first 2 decimal places**

only will be used. He found that as the appellant's stocking density was 1.80LU/Ha, the appellant was deemed eligible to receive payment under the 2002 EU Extensification Premium at the lower rate of payment (€40/qualifying animal).

Case 16 – Non-Valuation Aspects of Reactor Schemes

A dairy farmer bought in heifers over twelve months of age. Under the On-Farm Valuation Scheme for TB & Brucellosis Reactors, farmers are obliged to carry out post movement blood test on females brought into the holding if they wish to maximise their payments under the Scheme and this blood test must be conducted within 30 days. It had been arranged by the farmer and his Veterinary Surgeon to carry out the voluntary post movement Brucellosis Blood Test at the same time as a Contiguous Herd Brucellosis Blood Test that had been scheduled for the herd. This test would fall within the required thirty-day period.

Due to adverse weather conditions in the summer of 2002 the scheduled Contiguous Herd Brucellosis Blood test was delayed. The test was carried out over forty days after the purchase of the heifers. Test results showed animals in the herd had a positive reaction to the blood test. A subsequent Brucellosis Blood test identified further reactors and the Department decided to depopulate the herd. With the herd owner's agreement the Department removed the animals from the holding in

accordance with the terms of the On-Farm Valuation Scheme.

The Department, in calculating payment under the terms of the On-Farm Market Valuation Scheme decided to deduct 2% of the Gross Differential Amount of the herd valuation as provided for in the valuation scheme document on the grounds that the post movement Brucellosis Blood test was not carried out within the thirty days of the inward movement of the purchased heifers.

In the appeal the farmer contended that the penalties imposed were out of proportion taking all the circumstances of the Brucellosis breakdown in the herd into account especially as the purchased animals remained clear.

The Appeals Officer found that the On-Farm Market Valuation Scheme document provides for and sets out the rate of penalty to apply in the case of non-compliance with the Voluntary Brucellosis Post Movement Test. The farmer agreed to the terms of this scheme by signing the form 'Depopulation proposal / agreement form' and accepted the live valuation, as completed.

However, as keeper of the animals the farmer had responsibilities and was the sole person in a position to arrange a post movement Brucellosis Blood Test within thirty days of the inward movement of the animals thereby avoiding deductions under the terms of the On-Farm Valuation Scheme. The appeal was disallowed.

Case 17 – Ewe Premium Scheme

A farmer applied for ewe premium on 48 ewes on 31st December 2003. On 13th of January the Department received a telephone call from his neighbour advising that the applicant had sold some of the sheep applied on for personal health reasons and intended to sell more of them. The applicant visited the Department office in person on the 24th of January and reported that he had sold 40 ewes off the application and had 8 ewes left. A medical letter followed on the 30th January 2003 briefly explaining that he was hospitalised on a date in November 2002.

On the 10th February 2003 the Department carried out a compliance inspection. On this date 12 ewes were presented for inspection. The Department decided that the applicant was in breach of the terms and conditions of scheme and the resultant penalty was the loss of 2003 Ewe Premium with a further monetary amount offset against any future aid payments- *irregularities committed intentionally*.

The appellant claimed he had 48 sheep on the application date and did not make a false claim. He disputed the date of application and was of the opinion that he lodged the application in mid-December 2002 rather than the 31st of December 2002 as maintained by the Department. He claimed he had sold 20 ewes on the 30th of December 2002.

An oral hearing was held and the appellant supplied both oral and

written evidence relating to serious illness. He explained the factors that caused him to sell 38 ewes. The medical evidence provided confirmed that the applicant was actually hospitalised on 28th of December 2002 and discharged on the 7th of January 2003. It was accepted by all parties that while an application form had been completed no application form had been submitted to the Department in mid- December 2002.

The Appeals Officer decided the appeal on the basis that 31st of December 2002 was the application date. The Appeals Officer found that the Department received the application on a date when the applicant was incapacitated in hospital. The sale dispatch docket for the 20 ewes sold was dated the 28th December 2002 and thereby confirmed that these 20 ewes were not on the holding on the application date.

Prior to any contact from or checks by the Department the applicant made an indirect and a direct attempt to inform the Department that the application was or had become incorrect.

In light of the medical evidence, the Appeals Officer accepted that the application was completed in good faith on a date prior to the date of lodgement or on the date of lodgement while the applicant was hospitalised. EU funds were not at risk in this case following the contact to the Department informing them that sheep applied on were sold. Medical evidence was provided and the applicant received no further contact until an on-the-spot inspection was carried out.

On the date of inspection 12 female sheep were accepted as eligible and 38 were verified as sold from a total flock of 50. Therefore on the date of application (31/12/2003) there were 30 female sheep owned and possessed on the holding. The Appeals Officer accepted that the applicant had 50 female sheep on his holding on the date hospitalised (28/12/2002).

The Appeals Officer decided that the applicant had retained 12 eligible ewes for the entire retention period and should be paid premium on these. The remaining 36 ewes applied on were deleted without penalty.

The possibility of allowing payment under force majeure on the absent sheep was examined and disallowed. The Appeals Officer found that the circumstances that led to the sale of the sheep were not unforeseen, as the applicant was in medical care and had already taken action to sell some of the animals applied on prior to the date of lodgement of the application.

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

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

It is noted that a number of the recommendations listed in the 2002 Annual Report have not been acted upon or, where action has been taken, were not implemented fully or satisfactorily.

Livestock Schemes

1. Examine the possibility of issuing confirmations of CMMS transactions.

The Department has ruled out the possibility of acknowledging transactions on the grounds of prohibitive cost. However, they will consider continuing to issue herd profiles throughout the year.
2. Department officials responsible for issuing Formal Notices (FNs) should ensure that they are clear and comprehensible.
3. In some cases, the Department quotes Terms and Conditions relating to the wrong year or EU Regulations that do not apply. Greater care should be taken when drafting decision letters.
4. For the purposes of the Extensification Scheme, when stocking density is above the limit but within two decimal places (e.g. 1.804 livestock units), the Department should use the discretion allowed under the EU Regulation.
5. There is an inconsistency of treatment between restricted and non-restricted herds for Special Beef Premium. With non-restricted herds, submitting female animals for payment is treated as obvious error and with restricted herds the animal is rejected.
6. Examine cases where milk quota is double counted for stocking density purposes.

REPS

1. Where planners are notified of changes in the Scheme, participants should also be notified, either at the same time or the next anniversary date of their plan.
2. The Department should define what time-lapse is acceptable for notification and submission of amended plans in cases where land is transferred and a new applicant is submitting a new plan.
3. The Department should examine the delays in notifying the results of compliance aspects of 5% audit inspections.
4. The Department should re-examine its policy relating to claw-back.

7. Recurring mistakes by scheme applicants that lead to penalties

(These 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.

Livestock Schemes

- Failure to check that the Cattle Movement Monitoring System (CMMS) has been notified when animals are bought privately (farm to farm)
- Selling animals within the retention period
- Failure to check animals through a crush before applying
- Failure to tag calves in time and to keep other animals properly tagged
- Failure to keep Herd/Flock Register up to date
- Failure to check the Herd/Flock Register before applying for grants
- Failure to submit applications on time
- Failure to observe the cow/heifer ratio for the Suckler Cow Premium.

These failures and omissions lead to cases where the applicant may,

- Apply for grants on dead animals or animals that were sold
- Apply for Special Beef Premium on female animals.

Rural Environment

Protection Scheme (REPS)

- Applicant not examining the plan in detail with the planner before submission.

Failure to carry out scheduled works such as,

- Keeping boundary fences stock-proof
- 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 amend plan to reflect changes in area farmed (i.e. non-notification of lease, rental, purchase or sale of land)
- 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.

On-Farm Investment Schemes

- Proceeding with work before the Department of Agriculture and Food has given written approval
- Failure to get planning permission before reaching the age of 35 – failing to qualify for 15% top-up
- Late submission of Installation Aid applications.

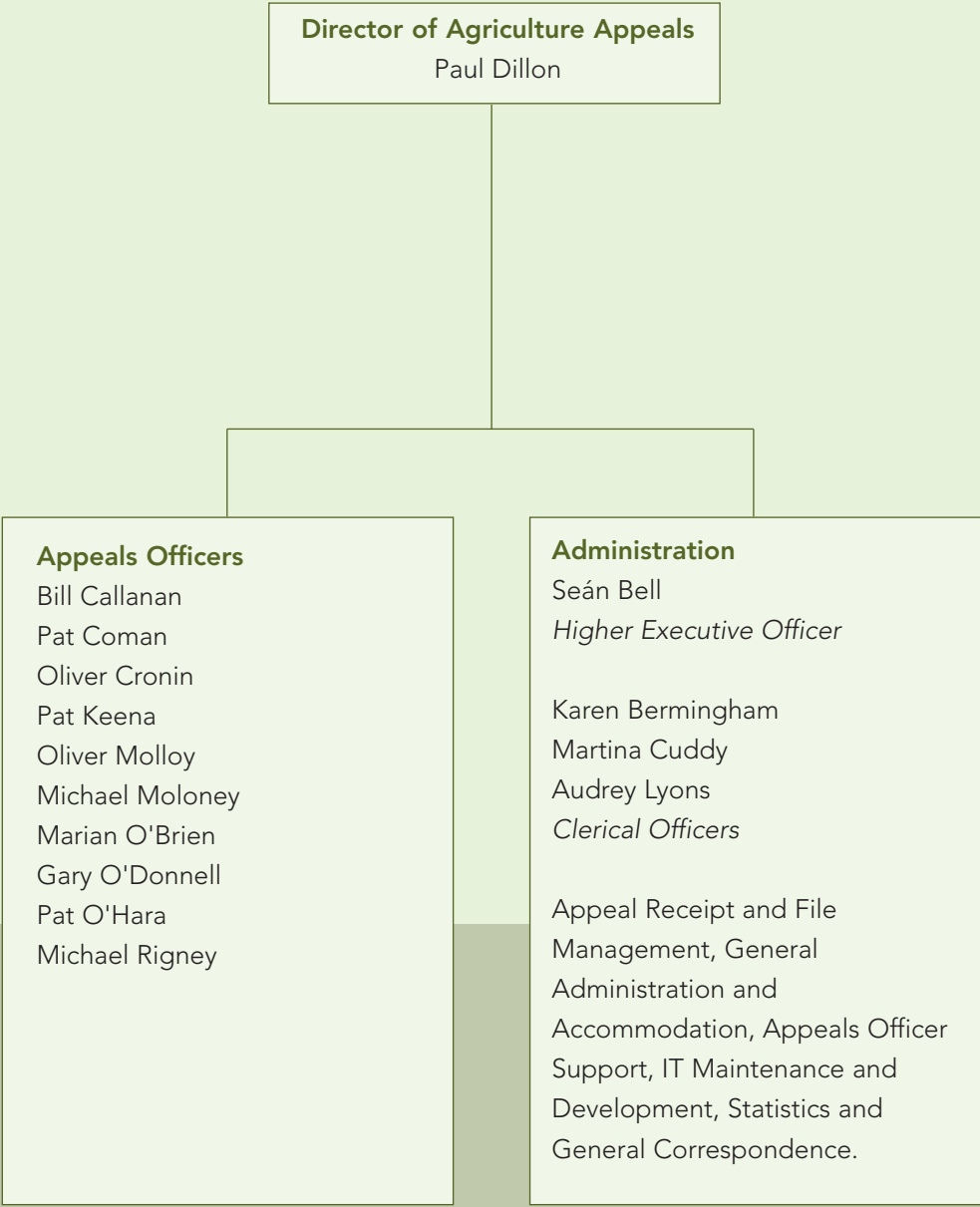
Early Retirement Scheme

- Leases not being finalised and lease obligations not being fulfilled
- Failure by the transferee to farm all the pension and enlarged lands.

Area Aid

- Failure to submit amendments in time.

8. Agriculture Appeals Office Staff



Appendices

Appendix A

Agriculture Appeals Act 2001



Number 29 of 2001

AGRICULTURE APPEALS ACT, 2001

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Appointment of appeals officers.
3. Director of Agriculture Appeals.
4. Deputy Director of Agriculture Appeals.
5. Functions of appeals officers.
6. Independence of appeals officers.
7. Right of appeal.
8. Oral hearings.
9. Decisions.
10. Revised Decisions by Director and appeals officers.
11. Appeals to High Court.
12. Representations under National Beef Assurance Scheme Act, 2000.
13. Representations by certain animal and poultry dealers.
14. Annual reports.
15. Regulations.
16. Laying of regulations before Houses of Oireachtas.
17. Expenses of Minister.
18. Amendment of First Schedule to Ombudsman Act, 1980.
19. Short title.

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

SCHEDULE

SCHEMES

ACTS REFERRED TO

Diseases of Animals Acts, 1966 to 2001	
National Beef Assurance Scheme Act, 2000	2000, No. 2
Ombudsman Act, 1980	1980, No. 26



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

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

S.1	(d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.
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 <i>Schedule</i> . (2) The Minister may, from time to time, amend by regulations the <i>Schedule</i> so as to add to or delete from the <i>Schedule</i> 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 <i>Schedule</i> , 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 S.8 necessary.

(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 Decisions. making that decision shall be notified in writing to the appellant.

(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—

Appeals to High Court.

(a) the decision of an appeals officer, or

(b) the revised decision of the Director,

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.

	[No. 29.] <i>Agriculture Appeals Act, 2001.</i> [2001.]
S.13	<p>(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.</p> <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.	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.
Expenses of Minister.	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.
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.	19. —This Act may be cited as the Agriculture Appeals Act, 2001.

[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

Appendix B

Agriculture S.I. No. 193 of 2002

Agriculture Appeals Regulations 2002

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 been 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

Appendix C

Agriculture S.I. No. 558 of 2002

Agriculture Appeals Act 2001 (Amendment of Schedule)
Regulations 2002

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

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