

An Oifig Achomhairc
Talmhaíochta

Agriculture
Appeals Office



AGRICULTURE APPEALS OFFICE



ANNUAL REPORT 2017

To the Minister for Agriculture, Food and the Marine, Mr. Michael Creed T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2017 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, the report of the Agriculture Appeals Office for 2017 is hereby submitted.

Angela Robinson
Director of Agriculture Appeals
30 May 2018

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

I am pleased to introduce the Agriculture Appeals Office Annual Report for 2017. The primary function of this report is to fulfill the requirements of Section 14 of the Agriculture Appeals Act 2001, as amended, by reporting the activities of the Office to the Minister for Agriculture, Food and the Marine. The report also endeavors to provide useful information to scheme applicants, the Department of Agriculture, Food and the Marine and other interested parties.

The mission of the Office is *“to provide an independent, accessible, fair and timely appeals service for Scheme applicants under designated Department of Agriculture, Food and the Marine Schemes, and to deliver that service in an efficient and courteous manner.”*

This annual report provides

- a statistical breakdown of the appeals dealt with by the Office in 2017
- an overview of appeal related activities undertaken by the Office during 2017
- a description of some cases determined by Appeals Officers in 2017
- suggestions for consideration of the Department of Agriculture, Food and the Marine that might assist in improving processes, and,
- suggestions for consideration by scheme participants that might assist in improving an understanding of scheme issues arising.

A total of 638 appeals were received in 2017, an increase of 6.7% on 2016. The total number of appeals closed in 2017 was 707 which was 5% higher than the number of appeals closed in 2016. The highest number of appeals received in 2017 was for the Beef Data Genomics Programme.

The outcome of all appeals closed in 2017 was as follows:

- 37% of appeals were allowed, partially allowed, or revised by the Department following input from the Agriculture Appeals Office,
- 52% of appeals were disallowed, and
- 11% of appeals that were withdrawn, invalid or received after the 3 month deadline.

Of the 52% appeals disallowed, 22% comprised decisions concerning allocation of entitlements under the Basic Payment Scheme.

The agriculture appeals legislation requires Appeals Officers to be independent in the performance of their functions, to comply with any relevant legislation, terms, conditions and guidelines relating to the schemes and to have regard to the principles of natural justice. I welcome the specific finding of the Report on the Review of the Agriculture Appeals Act, 2001 and operations of the Agriculture Appeals Office that the evidence would suggest that Appeals Officers do act independently in the performance of their functions. I would like to acknowledge the work of my colleagues in the Appeals Office who throughout the year continued to demonstrate commitment to their work and to providing a quality customer service.

This report is available on the Agriculture Appeals Office website:
www.agriappeals.gov.ie

Angela Robinson
Director of Agriculture Appeals
29 May 2018

2. Overview of Agriculture Appeals Office

2.1 Overview of Appeals Service

The Agriculture Appeals Office was established in 2002 to provide an independent appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine concerning designated Schemes operated by the Department. The appeals process provided by the Agriculture Appeals Office has a statutory basis: the Agriculture Appeals Act 2001, as amended, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the scheme decisions that may be appealed and the procedures to be followed. Appeals Officers are independent under the Act.

In line with its mission statement, the Office aims to be client friendly and to deliver the service in a courteous and efficient manner. One of the main features of the appeals service is the right of an Appellant to an oral hearing whereby an Appeals Officer brings the Appellant and the Department official(s) together to hear both sides of a case and to ask questions. Following consideration of all of the facts of a case, comprehensive decision letters are issued by the Appeals Officer to both the Appellant and the Department.

2.2 Procedures Manual

Under the Freedom of Information Act 2014, the Agriculture Appeals Office is legally obliged to prepare a Procedures Manual outlining information about the Agriculture Appeals Office with details of internal rules, procedures and interpretations used by Appeals Officers. The Procedures Manual can be accessed on the website, www.agriappeals.gov.ie and contains the following:

- Structure, organisation, names and designations of members of staff
- Functions, powers and duties
- Rules and guidelines
- Office procedures
- Classes of records held and the arrangements for access

- Rights of review and appeal including rights of review under the Freedom of Information Act.

2.3 Appeals Procedure

- Scheme applicants who are dissatisfied with a scheme decision by the Department must complete a 'Notice of Appeal' form and submit it to the Agriculture Appeals Office.
- Applicants have three months from the date of the Department's decision to lodge an appeal to the Office. An appeal received after three months will only be accepted if there are exceptional circumstances for failure to meet the deadline.
- Appeals are generally dealt with in the order that they are received.
- On receipt of an appeal, the Appeals Office requests the relevant file and a statement regarding the Appellant's grounds of appeal from the Department of Agriculture, Food and the Marine. The Department's statement on the Appellant's grounds of appeal is subsequently forwarded to the Appellant.
- On receipt of the Department 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 key features of an oral hearing are that:
 - it is held in private.
 - it is informal.
 - the Appellant may bring representatives.

The Agriculture Appeals Office aims to hold oral hearings in a convenient location for the Appellant, where possible, and to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region.

- 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.
- An Appeals Officer may revise a decision of an Appeals Officer if it appears 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 the decision was given.

- On request from either party the Director of Agriculture Appeals may revise a decision by an Appeals Officer where it has been established by him or her that there has been a mistake made in relation to the law or the facts of the case.
- An appeal to the Agriculture Appeals Office does not preclude an Appellant from raising an issue with either the Office of the Ombudsman or with the High Court on a point of law.

2.4 Business Plan

The 2017 Business Plan forms the basis for the work of the Office and is subject to regular review.

2.5 Website and e-mail

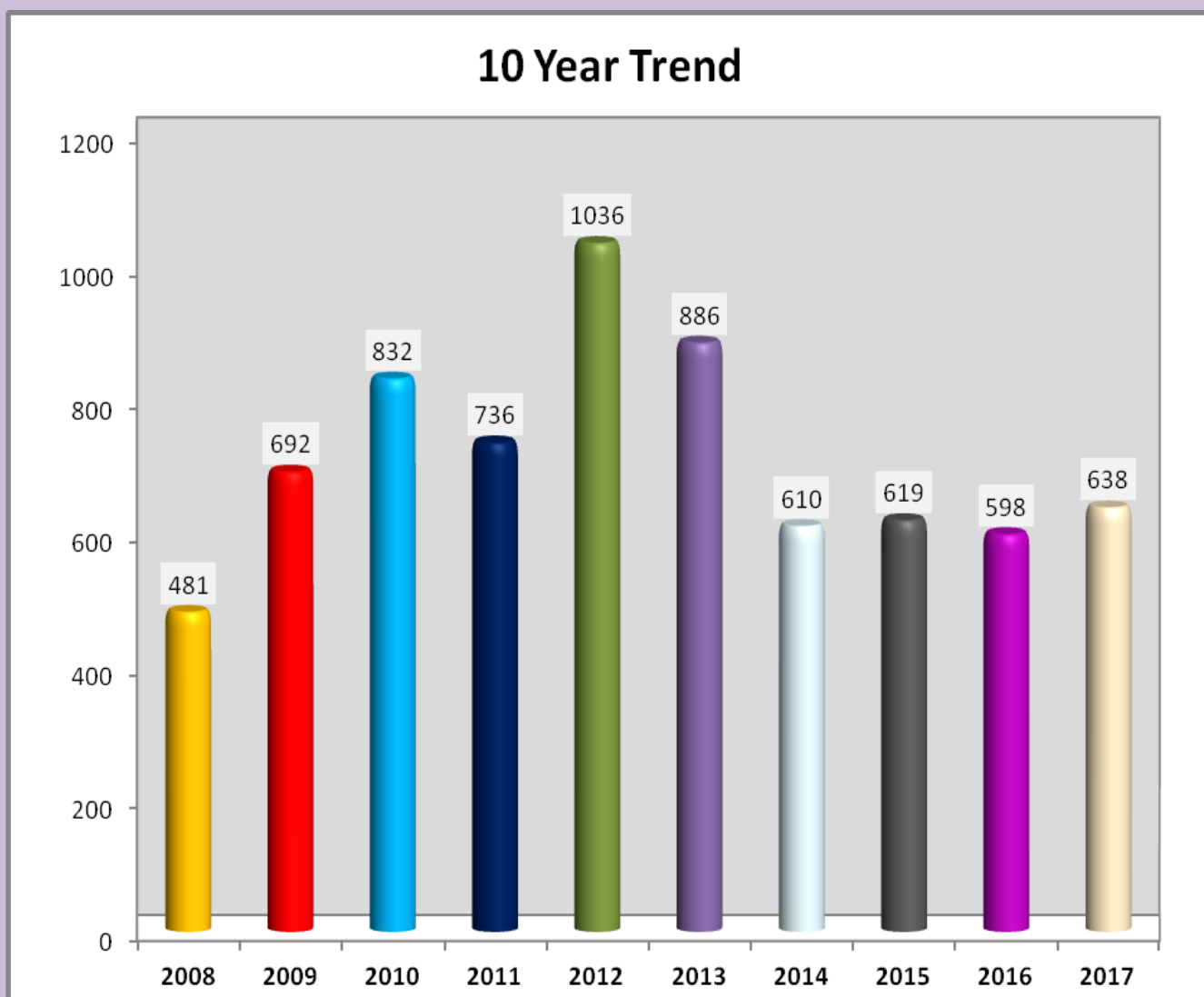
Useful information is available at the Agriculture Appeals Office website: www.agriappeals.gov.ie where Appellants can download the Appeals Procedure Information Note and the “Notice of Appeal” form. Appeals may be lodged online to the e-mail address: appeals@agriappeals.gov.ie

3. Statistics – 2017

The tables and graphs set out below provide a number of appeal statistics.

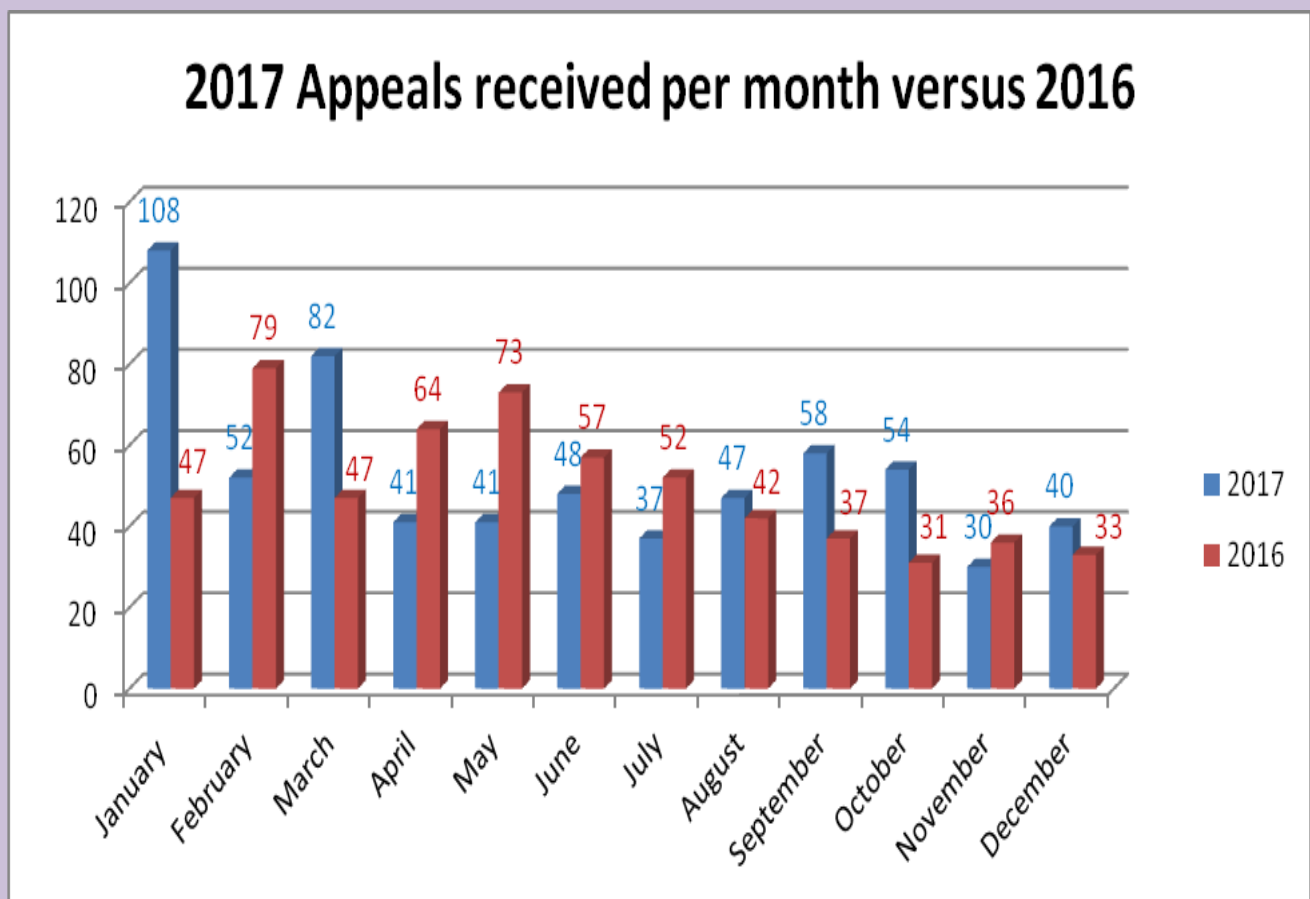
3.1 APPEALS RECEIVED PER ANNUM

A total of 638 appeals were received in 2017 compared with 598 in 2016, an increase of 6.7% on 2016. The number of appeals received in 2017 is lower than the 10 year annual average of 713 appeals, as indicated in the following table:



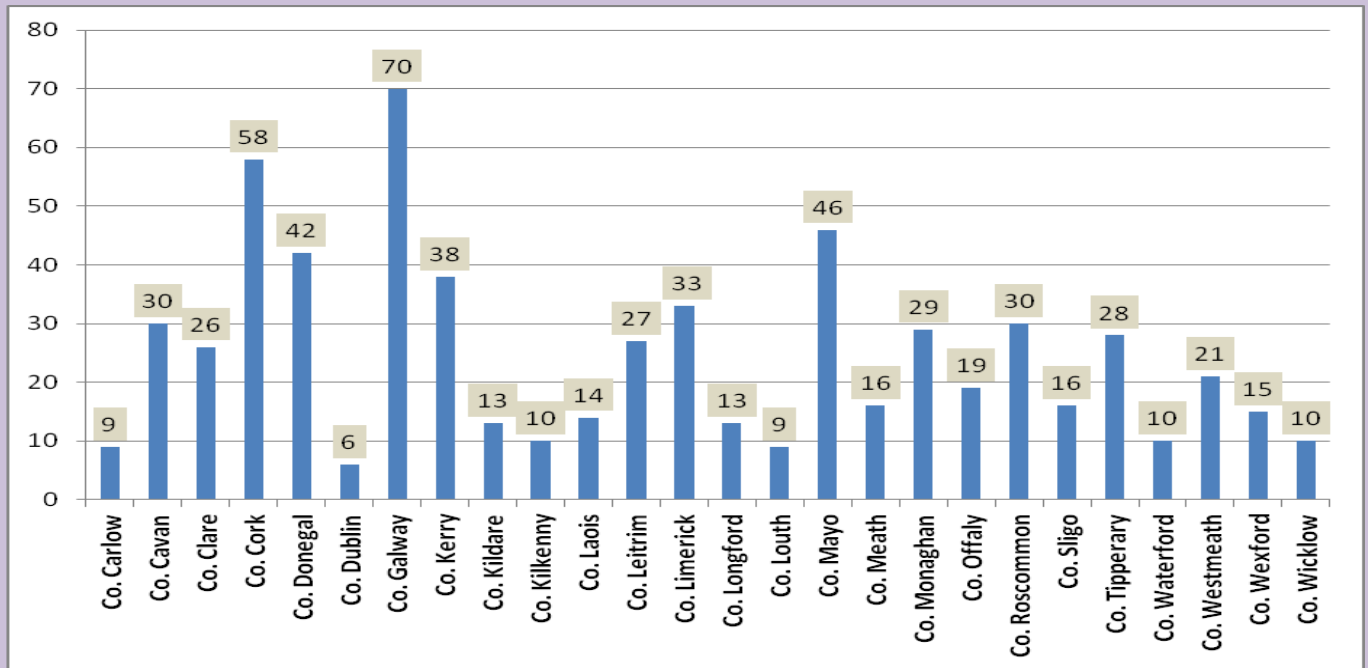
3.2 APPEALS RECEIVED PER MONTH DURING 2017.

With regard to the timing of receipt of appeals for other schemes throughout the year, this is generally linked to a number of variables including the date of the Department inspection, date of Department review and final decision and the date of receipt of scheme applications. However, with regard to the number of appeals received in January 2017, the Agriculture Appeals Act was amended that month to allow the acceptance of appeals against Department decisions concerning the allocation of entitlements under the Basic Payment Scheme. The majority of the appeals received in January 2017 concerned such appeals.



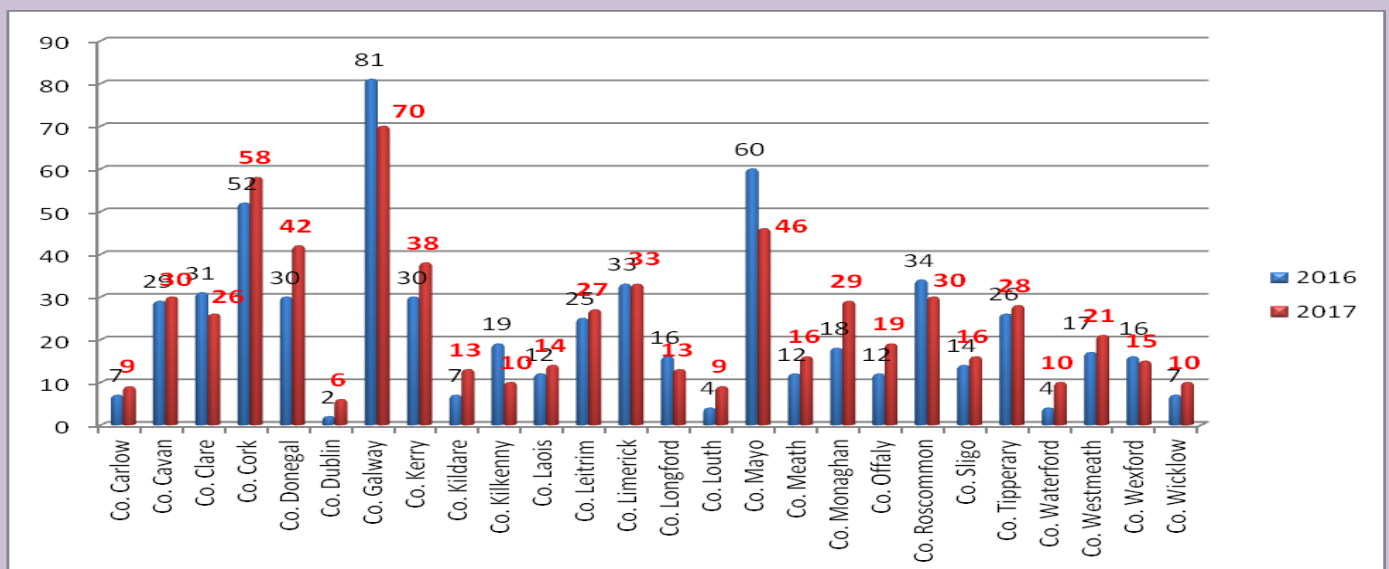
3.3 APPEALS RECEIVED BY COUNTY IN 2017 (638)

The number of appeals received per county varies for a number of reasons including the size of the population of applications and timing and number of inspections.



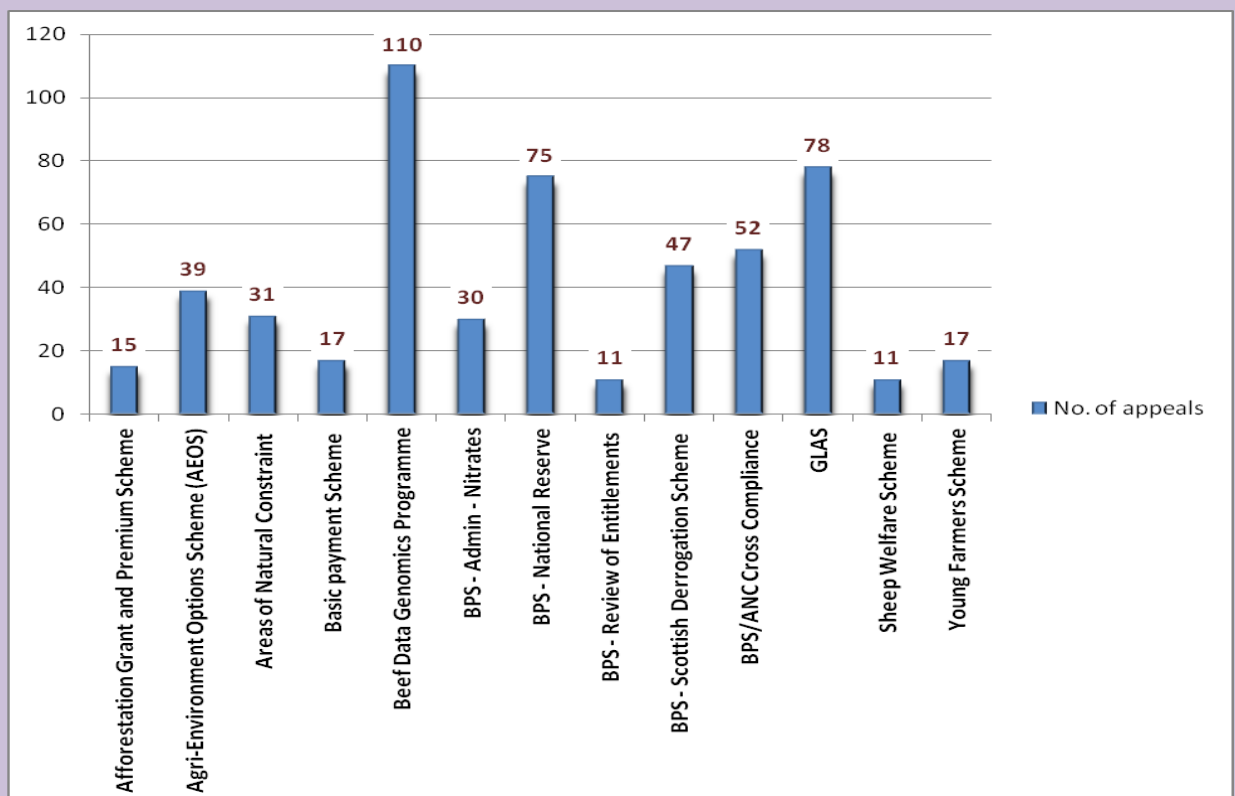
3.4 COMPARISON OF NUMBER OF APPEALS RECEIVED PER COUNTY FOR 2016 AND 2017

The numbers of appeals received per county for 2017 and 2016 were highest in County Galway, County Cork and County Mayo reflecting the size of these counties and the timing and number of inspections.



3.5 APPEALS RECEIVED BY SCHEME IN 2017

This table below refers to Schemes where more than 10 appeals were received (533). The highest number of appeals received in 2017 concerned the following schemes: Beef Data Genomics (17.24%), GLAS (12.23%), Basic Payment National Reserve applications (11.75%) and Basic Payment Scheme/Areas of Natural Constraints Cross compliance (8%). With regard to appeals received for the Beef Data Genomics scheme, the issues arising related mostly to non compliance with Bovine Viral Diarrhoea requirements and the registration of animals. A variety of issues were evident in appeals received for the GLAS Scheme including land not in forage for the previous 8 years, slurry not spread as required, non registration of rare breeds with a breed society, watercourse protection and other actions not completed, heather present on low input permanent pasture land and issues with hedges for coppicing. In regard to the BPS National Reserve, the applications included decisions in years 2015, 2016 and 2017 due to the fact that the Office could not accept appeals prior to January 2017 when the legislation was changed. The BPS National Reserve accounted for a significant number of disallowed appeals related to specific income, age or educational requirements



3.6 COMPARISON OF NUMBERS OF APPEALS RECEIVED PER SCHEME FOR 2017 AND 2016.

The reasons for difference in appeal numbers per scheme each year may be dependent on a number of factors including the introduction of new schemes, the ending of older schemes, the timing and volume of applications, the timing and volume of inspections and date of final Department decision.

2017 Top 10 Schemes		2016 Top 10 Schemes	
Scheme ID	No. of appeals	Scheme ID	No. of appeals
Beef Data Genomics Programme	110	Agri-Environment Options Scheme (AEOS)	114
Basic Payment Scheme - National Reserve	79	Basic Payment Scheme/Areas of Natural Constraint	70
GLAS	79	GLAS	59
Basic Payment Scheme/Areas of Natural Constraint Cross Compliance	58	Areas of Natural Constraint	52
Basic Payment Scheme - Scottish Derogation Scheme	47	Beef Data Genomics Programme	51
Areas of Natural Constraint	41	Single Farm Payment - Nitrates	37
Agri-Environment Options Scheme	39	Single Farm Payment – Cross Compliance	30
Basic Payment Scheme	30	Basic Payment Scheme	28
Basic Payments Scheme – Admin - Nitrates	30	Young Farmers Scheme	28
Young Farmers Scheme	17	Organic Farming Scheme	18

3.7 Appeals Closed

There were 707 appeal cases closed in total. This compares with 615 cases that were closed in 2016. Of the 707 cases closed, a number of those related to appeals that were received in previous years as set out in the following Table:

Year in which appeal was received	Number of Appeals Closed in 2017
2017	462
2016	225
2015	14
2014	2
2013	3
2012	1
Total	707

As noted in the table, of the 707 appeals closed, there were 462 appeals received in 2017 that were closed in 2017. The reasons for carry-over of appeals from previous years can include the timing of receipt of the appeal (towards the previous year end), delay on the part of appellants reverting with additional information requested, availability to attend any oral hearing requested, the need to obtain legal advice on matters linked to the appeal and court proceedings relating to the subject of the appeal.

3.8 OUTCOME OF APPEALS CLOSED IN 2017

The Agriculture Appeals legislation requires Appeals Officers to be independent in the performance of their functions and to comply with any relevant legislation, terms, conditions and guidelines relating to the schemes and to have regard to the principles of natural justice when making a decision. There are a number of possible outcomes to appeals which are described below.

3.8.1 Terminology for outcome of appeals

The breakdown of the outcome of appeals is categorised using the following terminology:

Appeal Allowed Where the Appeals Officer, having considered the case put forward, decides that the Department's decision to impose a sanction should be overturned.

Partially Allowed This category includes cases where an Appeals Officer decides that a lesser or revised penalty/sanction should apply.

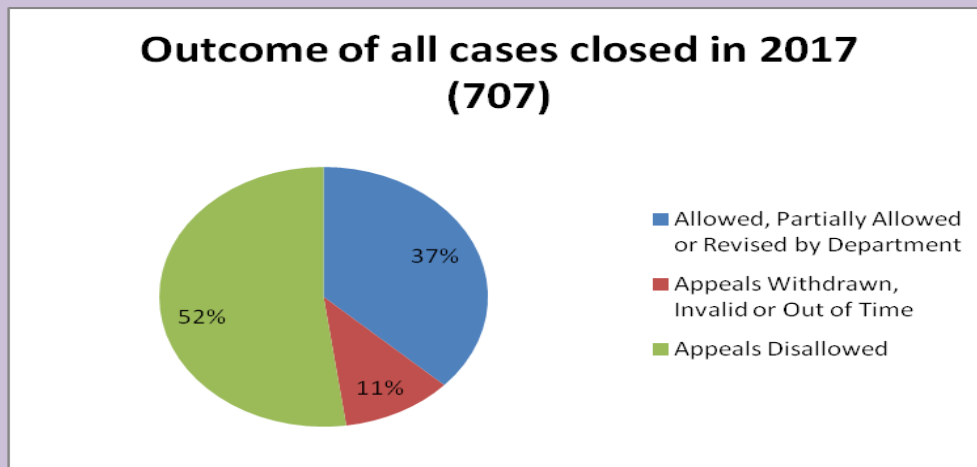
Revised by the Department This category includes cases where the Department has revised its original decision based on information submitted by the Appellant to the Agriculture Appeals Office, and/or, based on information provided at oral hearing. This can arise following substantial input by the Appeals Office.

Invalid This category includes appeals on matters not appropriate to the Agriculture Appeals Office, e.g. Schemes not listed in the Schedule to the Agriculture Appeals Act, duplicate appeals and cases where no decision was made by the Department of Agriculture, Food and the Marine.

Out of time Applicants have three months from the date of decision of the Department to submit an appeal. Appeals that are received after the three month deadline are not accepted. However where exceptional circumstances exist for the delay in appealing, a case setting out the reasons for the delay in the appeal may be submitted to the Director for consideration.

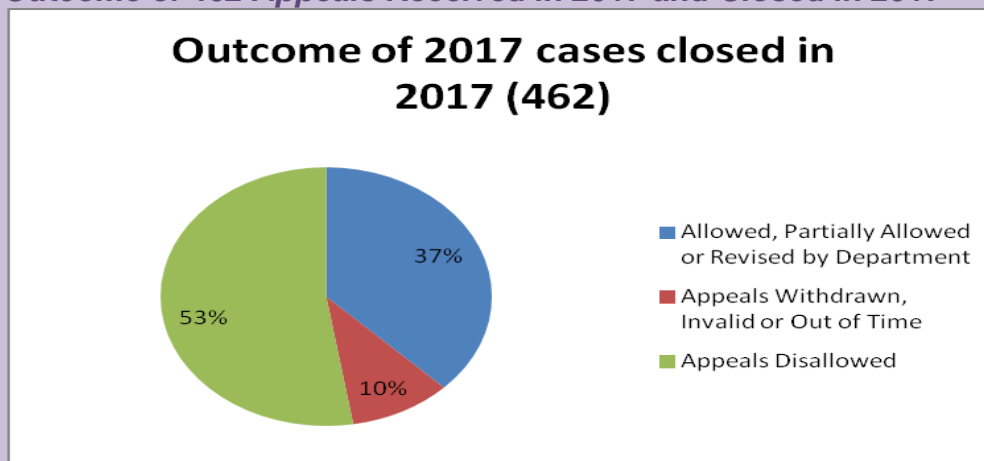
Appeal Disallowed This category includes cases where the Appeals Officer, following consideration of the case and all relevant information, decides that the grounds of appeal do not warrant overturning the sanction imposed by the Department of Agriculture, Food and the Marine.

3.8.2 Outcome of all 707 Appeals Closed in 2017



The outcome for 2016 was 45% disallowed, 41% allowed and 14% withdrawn/invalid/out of time.

3.8.3 Outcome of 462 Appeals Received in 2017 and Closed in 2017

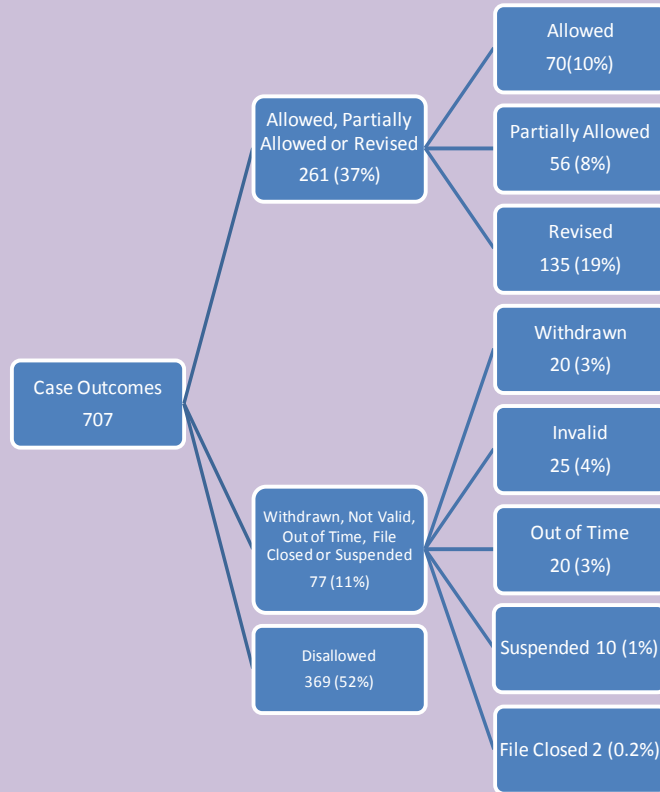


The table below includes the number of appeals for each category of outcome for all appeals closed in 2017. From January 2017, for the first time, appeals against decisions concerning applications to the Basic Payment Scheme National Reserve and Scottish Derogation Scheme were submitted to the Agriculture Appeals Office. Of all appeals received in 2017 and disallowed, 22% concerned appeals for both of those schemes with regard to specific income, age or educational requirements.

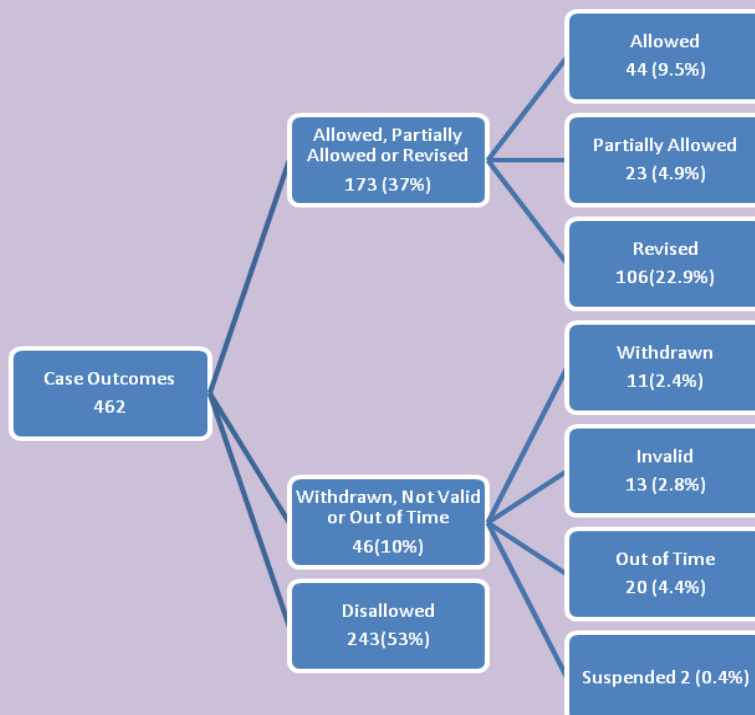
<i>Appeal Decision Results</i>	<i>Number of all appeals closed in 2017 (707)</i>	<i>Percentage</i>
Allowed, Partially Allowed or Revised by the Department (all Appeals closed in 2017)	261	37%
Appeals Withdrawn, Invalid and Out of Time (all Appeals closed in 2017)	77	11%
Disallowed (all Appeals closed in 2017)	369	52%

The charts below gives a further breakdown of the individual categories for outcomes referred to in the preceding Table and Graphs.

3.8.4 Breakdown of outcomes of all appeals closed in 2017



3.8.5 Outcome of all Cases Received in 2017 and Closed in 2017

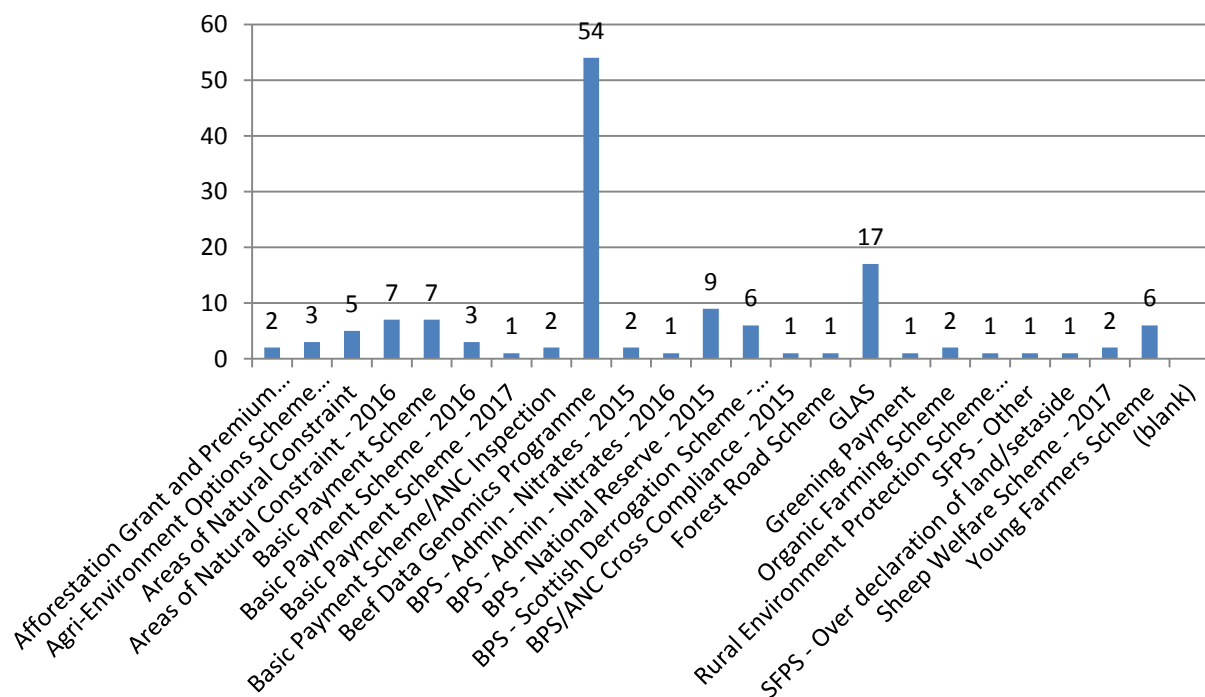


3.8.6 Breakdown Of Appeals That Were Allowed/Partially Allowed Revised By Department – All Appeals Closed In 2017

3.8.6.1 Decisions Revised by the Department

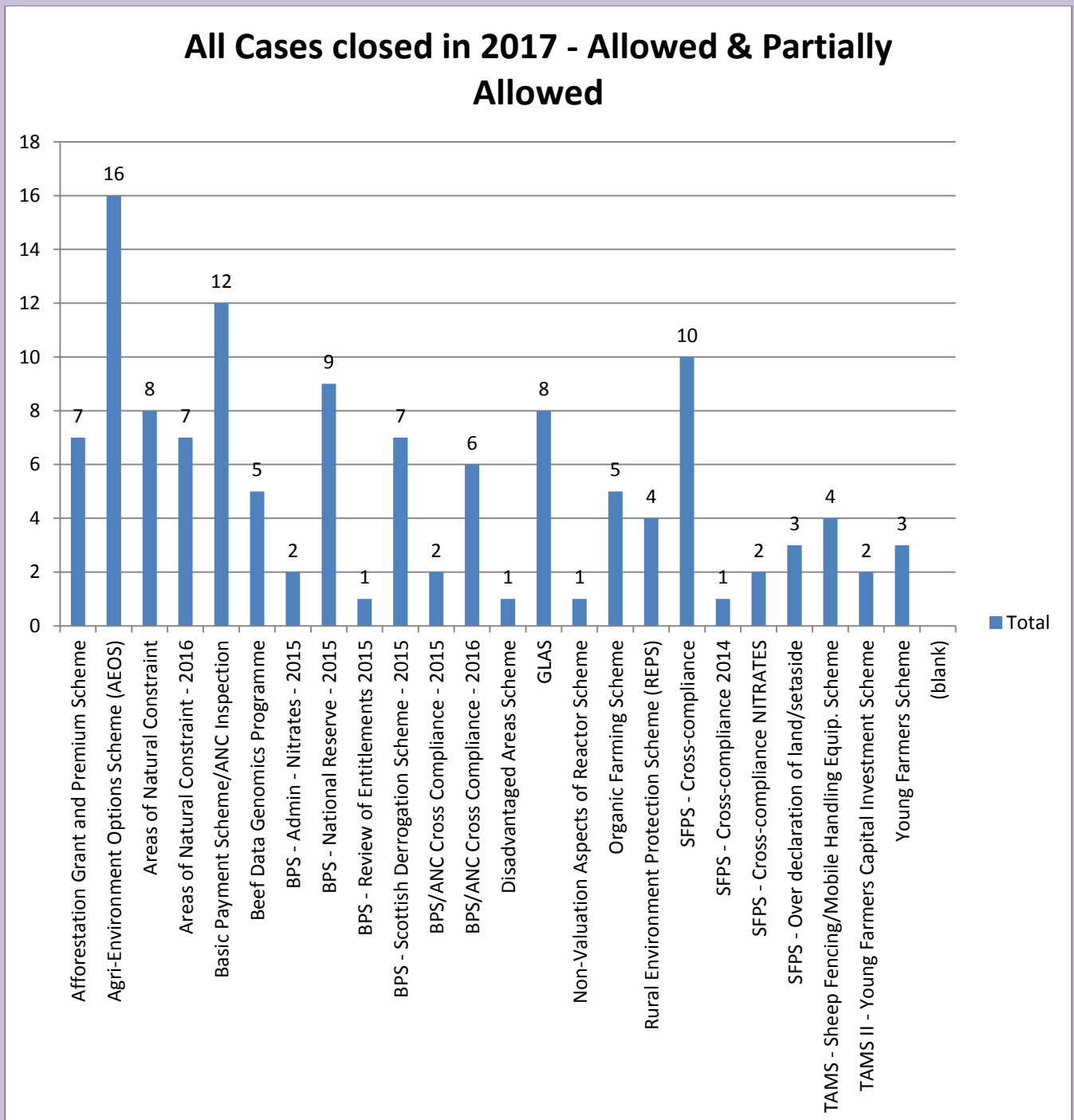
The highest percentage in the *appeal allowed, partially allowed or revised by the Department* category for all appeals closed in 2017 was for decisions that were subsequently revised by the Department of Agriculture, Food and the Marine after the appeal was received by the Appeals Office. The reasons for such revisions can vary but in most cases concerned additional information not previously made known to the Department or issues involving interpretation of the terms and conditions raised by the Appeals Office that subsequently led to a change by the Department of the decision. A breakdown of the appeals revised by the Department is included below. The scheme with the highest number of appeals that were revised by the Department in that category was the Beef Data Genomics Scheme.

2017 Revised by the Dept for all cases closed in 2017



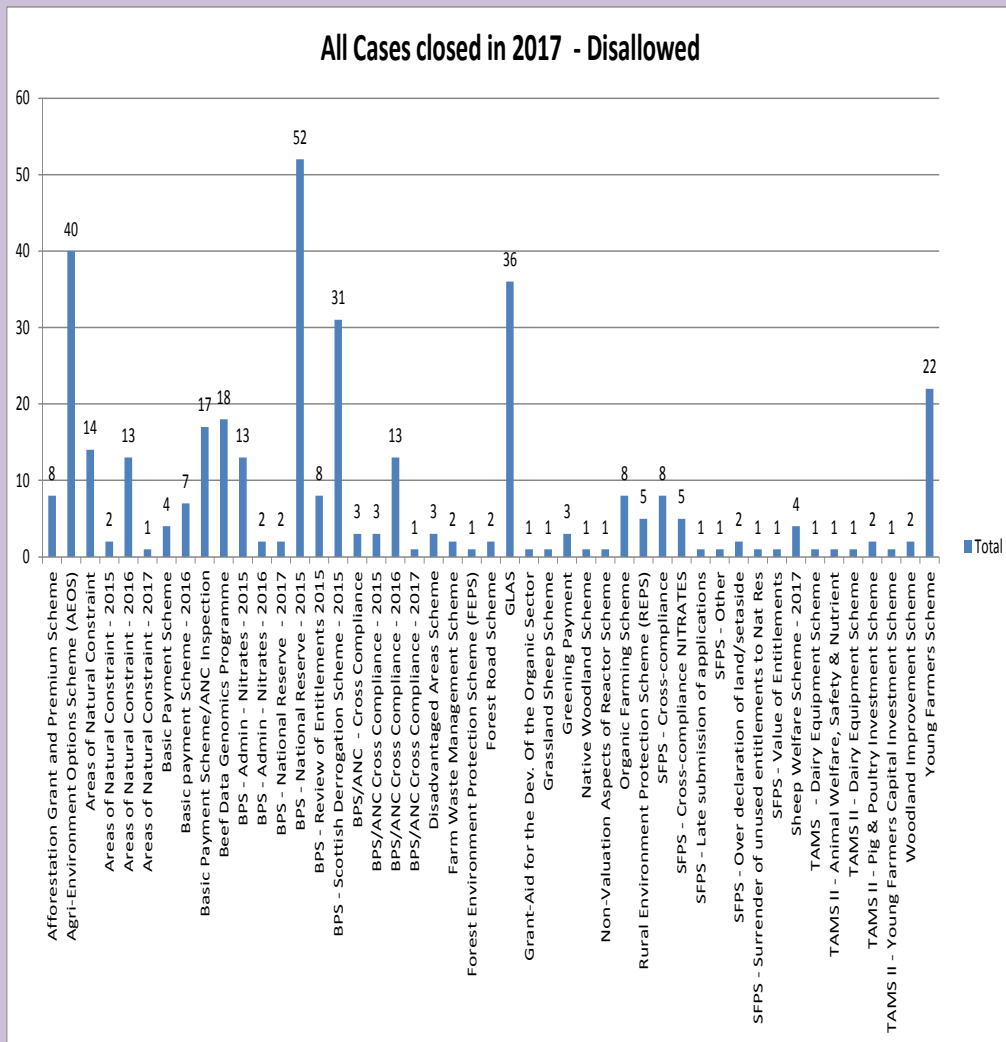
3.8.6.2 Appeals Allowed and Partially Allowed

In regard to appeals allowed or partially allowed, the scheme with the highest number of appeals in that category was the Agri-Environment Options Scheme. The graph below shows the breakdown.



3.8.6.3 Breakdown Of Appeals Disallowed – All Appeals Closed In 2017

The scheme with the highest number of disallowed appeals was the Basic Payment Scheme National Reserve accounting for 14.63% of all disallowed appeals and 22% of all appeals disallowed that were received in 2017 and closed in 2017.



3.8.6.4 Table showing RECEIPT and OUTCOME by SCHEME at 31 December 2017 for APPEALS RECEIVED in 2017 which were CLOSED in 2017 (462).

Scheme	Received	Closed	Appeal Allowed	%	Appeal Partially Allowed	%	Appeal Revised by Department	%	Appeal Withdrawn	%	Appeal Not Valid	%	Out of Time	%	Appeal Disallowed	%	Appeal Suspended	%	Open	%
Afforestation Grant & Premium Scheme	15	10	2	20%	1	10%	2	20%			1	10%			4	40%			5	33 %
Agri-Environment Options Scheme (AEOS)	39	28	5	18%	2	7%	1	4%					1	4%	19	68%			11	28 %
Areas of Natural Constraint	41	33	7	21%			7	21%	1	3%			2	6%	16	48%			8	20 %
Basic Payment Scheme	30	20					5	25%			2	10%	3	15%	9	45%	1	5 %	10	33 %
Beef Data Genomics Programme	110	78	4	5%	1	1%	51	65%	3	4%	1	1%	5	6%	13	17%			32	29 %
BPS - Admin - Nitrates	30	21	1	5%	1	5%	3	14%			1	5%			15	71%			9	30 %
BPS - National Reserve	79	75	9	12%			9	12%	3	4%					54	72%			4	5%
BPS - Review of Entitlements	11	10	1	10%							1	10%			8	80%			1	9%
BPS - Scottish Derogation Scheme	47	45	1	2%	6	13%	6	13%	1	2%					31	69%			2	4%
BPS/ANC - Cross Compliance	58	32	2	6%	6	19%	1	3%	1	3%	2	6%			20	63%			26	45 %
GLAS	79	50	5	10%	2	4%	14	28%			2	4%			27	54%			29	37 %
Non-Valuation Aspects of Reactor Scheme	6	2			1	50%									1	50%			4	67 %
Organic Farming Scheme	6	5	1	20%	1	20%	1	20%							2	40%			1	17 %
Rural Environment Protection Scheme (REPS)	7	5	1	20%	1	20%					1	20%	2	40%					2	29 %
SFPS - Cross-compliance	12	6	3	50%									1	17%	2	33%			6	50 %
Sheep Welfare Scheme	11	6					2	33%							4	67%			5	45 %
TAMS II - Young Farmers Capital Investment Scheme	9	4	1	25%					1	25%			1	25%	1	25%			5	56 %
Young Farmers Scheme	17	14	1	7%			3	21%	1	7%	1	7%	2	14%	6	43%			3	18 %
Other*	31	18	0		1	6%	1	6%			1	6%	3	11%	11	61%	1	6 %	12	39 %
Total	638	462	44		23		106		11		13		20		243		2		176	

* Refers to schemes where less than 5 appeals were received

3.9 Time period for Receipt of Documents from Department of Agriculture, Food and the Marine

On receipt of an appeal, the Agriculture Appeals Office requests the Department of Agriculture, Food and the Marine to provide the relevant documentation/file and any relevant information to the Office within two weeks of the request. This is to ensure that appeals can be allocated to an Appeals Officer without delay. Reminders are issued where required. A number of reminders and repeat reminders were issued by the Appeals Office to the Department in 2017. The average number of days for the return of file documents from the Department was 23 days for appeals received in 2017. This compares with an average of 35 days in 2016. A breakdown of the average number of days for receipt of the Department file documents from the date of request by the Appeals Office is set out below for a selection of schemes (*Statistics in the examples below refer only to a selection of schemes where more than 10 appeals were received*).

Scheme	No. of appeals	Average number of days for return of Department documents
Beef Data Genomics Programme	110	12
GLAS	79	38
Basic Payment Scheme - National Reserve - 2015	75	1
Basic Payment Scheme – National Reserve - 2017	4	5
Basic Payment Scheme - Scottish Derogation Scheme – 2015	47	7
Agri-Environment Options Scheme	39	4
Areas of Natural Constraint - 2016	31	32
Basic Payment Scheme/Areas of Natural Constraint Cross Compliance - 2016	28	15
Basic Payment Scheme - Admin - Nitrates – 2015	18	16
Basic Payment Scheme - 2016	17	53
Young Farmers Scheme	17	30

3.10 TIME TAKEN by the AGRICULTURE APPEALS OFFICE to DETERMINE APPEALS

The Agriculture Appeals Office has set itself a target of three months (90 days) for closure of an appeal from the time of receipt of the Department of Agriculture, Food and the Marine file documents until the issue of an appeal decision letter. Due to circumstances outside of the control of the Agriculture Appeals Office, appeals may not be completed within the target time frame. The reasons for failure to close an appeal within the three months from receipt of the Department file can vary and can include delays in obtaining agreement on dates for oral hearings by all parties and legal issues. For appeals received in 2017, the average time taken to deal with an appeal was 79 days from date of receipt of the Department file. This includes cases that were revised by the Department following intervention by the Appeals Office, prior to assignment of the case to an Appeals Officer. In 2016 the time period was 88 days.

Appeals received in 2017 that were closed in 2017 took an average of 99.5 days to close the appeal from date of receipt of the appeal. This compares with an average of 108 days for closing 2016 cases in 2016.

3.11 NUMBER of ORAL HEARINGS HELD in 2017

There were 422 oral hearings held in 2017. The total number of oral hearings in 2016 was 319. The 422 appeals that had an oral hearing in 2017 concerned appeals that were received in 2017 and appeals received in previous years. A total of 71 oral hearings that were scheduled to take place in 2017 were cancelled / postponed (17% of all hearings held in 2017). Of the 422 appeals that had an oral hearing in 2017, the breakdown of appeal years is as follows:

Number of oral hearings held in 2017 (422)	Year in which appeal received
294	2017
123	2016
4	2015
1	2013

3.12 OUT OF TIME

Current records indicate that in 2017 in the region of 40 appeals were received outside of the three month deadline. In the case of appellants who submitted exceptional circumstances for the delay, 21 were accepted and 6 were rejected. 12 appellants did not submit exceptional circumstances and in 1 case which the Director sought additional information from the appellant, the Department revised the decision and the appeal was withdrawn.

3.13 POSITION AT YEAR END

The status at 31 December 2017 of appeals received in 2017 is set out below, together with, for comparison purposes, the position at 31 December 2016 in respect of appeals received in 2016. The Office will continue to endeavor to further improve numbers of appeals closed and reduce processing times.

	Position at 31 December 2016 <i>Appeals received in 2016</i>	Position at 31 December 2017 <i>Appeals received in 2017</i>	Percentage difference
Cases closed	367	462	+ 20.5%
Work in progress – Agriculture Appeals Office	127	97	- 23%
Awaiting Department response	104	79	- 24%
Total Appeals received	598	638	+ 6.7%
Remaining appeals received in the year to be processed	231	176	- 24%

3.14 THE OFFICE OF THE OMBUDSMAN

Under the Agriculture Appeals Act 2001, appellants to the Agriculture Appeals Office may request a review of their case by the Office of the Ombudsman. The appeal file and documents in respect of 15 appeal cases were requested by the Office of the Ombudsman in 2017. This compares with twenty five appeal cases which were requested by the Office of the Ombudsman in 2016. Of the 15 cases in 2017 cases, two complaints resulted in reviews by the Director. One of the reviews resulted in the appeal decision being revised to allow the appeal. The appeal decisions in respect of the other 14 cases are currently unchanged.

3.15 FREEDOM OF INFORMATION

The Agriculture Appeals Office received 5 formal requests under the provisions of the Freedom of Information Act in 2017.

3.16 LITIGATION

In 2017, one appeal case was the subject of a judicial review. An appeal of a decision of the High Court is on-going in respect of a separate agriculture appeal.

3.17 REQUESTS for REVIEWS of APPEAL DECISIONS (Section 10 (1) and Section 10 (2) of the Agriculture Appeals Act, 2001)

The legislation provides for reviews of Appeals Officer decisions as follows:

- an Appeals Officer may revise a decision 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 (Section 10 (1));
- the Director of Agriculture Appeals may 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. A request for

such a review of a decision may be submitted by an appellant and/or by the Department of Agriculture, Food and the Marine (Section 10 (2)).

Both 2016 and 2017 experienced a 100% increase in requests for reviews of appeal decisions by the Director (S. 10 (2)). The Director is required to determine whether the Appeals Officer made an error in fact or in law following a detailed examination of each case and this can, depending on the case and other exigencies, take some time. There is currently a number of reviews yet to be finalised and every effort is being made to ensure the reviews are completed on a timely basis

A total of 18 reviews of Appeals Officer decision were completed in 2017. Of those cases, the Appeals Officer(s) had disallowed the appeal in 12 cases: in 2 of those cases, the Director revised the decision to allow the appeal and the remaining 10 decisions were unchanged. In 6 cases, the Appeals Officer had allowed the appeal and these were the subject of a request for a review by the Department. Following review of the 6 cases, 4 of the decisions were unchanged remaining as allowed and 2 were changed to disallow.

4. Other Activities Undertaken by the Agriculture Appeals Office

4.1 *Engagement with the Department of Agriculture, Food and the Marine*

The Department of Agriculture, Food and the Marine is required to provide certain information to the Agriculture Appeals Office. Ongoing contact with various Divisions of the Department of Agriculture, Food and the Marine occurred in 2017 to ensure all relevant information was made available to the Agriculture Appeals Office for appeal cases on a timely basis. Some discussions also took place with regard to scheme terms and conditions which in certain cases resulted in decisions being revised by the Department in favour of the appellant.

4.2 *Legislation and new processes – New Forestry appeals Committee*

The Office was engaged in preparations for taking on additional work relating to a new Forestry appeals service. Section 35 of the Forestry Act 2014 which was commenced in May 2017 amended the Agriculture Appeals Act, 2001 by providing for a new Forestry Appeals Committee to deal with appeals against a decision of the Minister or of an officer of the Minister concerning applications to the Minister to *inter alia* approve licences for the following: (i) the felling or otherwise removing of a tree or trees and the thinning of a forest, (ii) afforestation, (iii) forest road works, and (iv) aerial fertilisation of forests. This change required the introduction of a Statutory Instrument to amend the Schedule to the Agriculture Appeals Act 2001. Consequently SI No. 219 of 2017 (Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017) introduced a new Schedule 1 for Agriculture Appeals Schemes to be dealt with under the Act and a new Schedule 2 for the appeal decisions to be dealt with by the Forestry Appeals Committee.

4.3 *Review of the Agriculture Appeals Act, 2001, and Appeals Office operations*

The Programme for Partnership Government provided for a review of the Agriculture Appeals Act, 2001, to ensure the independence and efficiency of the Office in dealing with appeals from farmers. In 2017, the Minister established a Review Committee to carry out the review. The Appeals Office cooperated fully with the review process in 2017. The Report on the Review of the Agriculture Appeals

Act, 2001 and operations of the Agriculture Appeals Office was published in February 2018 and is to be subject to a consultation process. One of the findings of the report that is relevant to note was that the evidence would suggest that Appeals Officers do act independently of the Department of Agriculture, Food and the Marine¹.

4.4 Meetings

- The Office held fourteen meetings of Appeals Officers in 2017. The main purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the Office. Separately, internal working groups were established to deal with specific matters related to the work of the Office including the new Forestry appeal service.
- The Office met once in 2017 with representatives of Farming Organisations.
- The Director attended an informal meeting of the Joint Oireactas Committee for Agriculture Food and the Marine to discuss the agriculture appeals service.

4.5 IT system amendments

The IT database used by the Office to record and track all appeals and their outcomes was created in 2002 with some minor updates since then. The system now requires development to allow for the availability of improved management information to facilitate reporting appeal information in a more timely manner. Work commenced on the re-development of the system in Quarter 4 of 2017 and it is hoped that the required enhancements will be fully implemented in 2018.

¹ Recommendation 8.1 page 55- Report on the Review of the Agriculture Appeals Act, 2001 and operations of the Agriculture Appeals Office

5. Selection of Examples of Agriculture Appeals Cases dealt with in 2017

5.1 Case 01 - 2016 Areas of Natural Constraints scheme

The Appellant applied to the 2016 Areas of Natural Constraint scheme. A decision by the Department of Agriculture, Food and Marine was that the scheme requirement to return the 2015 Sheep/Goat census form by the 29 January 2016 had not been met. The Appellant sought a review and provided a certificate of postage in support of their case that the Sheep/Goat Census was posted on time. On review of its decision, the Department upheld the decision to refuse an Areas of Natural Constraint payment stating that a certificate of postage is no longer acceptable as proof of postage. The decision was appealed.

At the oral hearing of the appeal, the Appellant stated their Sheep/Goat census form was completed at the same time as another family member's Sheep/Goat census form and that both were posted in separate pre-addressed envelopes sent to the Department in January 2016. The Appellant stated separate stamped certificates of postage had been obtained for both envelopes. The Appellant provided details of the number of sheep that would have been in their flock.

The Appellant stated that they received a reminder letter for the Sheep/Goat Census during May 2016 and returned this to the Department on the 22 May 2016 and this caused the Appellant to enquire from the Post Office about the original form, and was advised that it was not a registered item and could not be traced.

From the additional evidence provided, the Appeals Officer found the Appellant had sheep on their farm at the census date and the basis of the decision under appeal was solely concerned with the submission of the 2015 Sheep/Goat census form. The Appeals Officer found the other family member's Sheep/Goat Census was received by the Department before the 29 January 2016 closing date.

The Appeals Officer had regard to the legal requirement for all flock owners and sheep keepers to count the Sheep/Goats present in their flock on their holding, record this number in the flock register and return this number to the Department

via the annual Sheep/Goat Census return. The Appeals Officer found it a clear requirement of the 2016 Areas of Natural Constraint scheme Terms and Conditions that the 2015 Sheep/Goat census must have been returned to the Department by 29 January 2016. The Appeals Officer found the Department had no record of receipt of the Appellant's 2015 Sheep/Goat form by the closing date.

The Appeals Officer also found that an information letter that issued to the Appellant with the Sheep Census form in 2015 clearly set out the position in relation to proof of postage as follows: *"In the event of a census form being posted to and not received by the Department, please note the only acceptable proof of postage in respect of the 2015 Sheep Goat Census is: Registered post receipt or Express post receipt."* The letter also informed the Appellant in bold capitalised writing that a certificate of posting is no longer acceptable as proof of postage.

The Appeals Officer found the postage certificate was not an acceptable proof of postage under the terms of the 2015 Sheep/Goat Census and found no evidence that the 2015 Sheep Census form was received by the Department by the 29 January 2016 closing date. The appeal was disallowed.

5.2 Case 02 - 2016 Areas of Natural Constraints Scheme

The Appellant applied to the 2016 Areas of Natural Constraint (ANC) scheme and was advised by the Department of Agriculture, Food and Marine that they did not meet the eligibility requirements because the minimum stocking density of 0.15 livestock units per hectare calculated over the twelve months of the calendar year had not been met. The Appellant required a minimum 4.21 livestock units over the area declared. The Appellant submitted passports for six donkeys, however the Department considered two ineligible as they were not registered within 6 months of birth or by 31 December of the year of their birth in accordance with EU Commission Regulation 504/2008.

This decision was appealed. The Appellant stated that the animals declared ineligible for the 2016 scheme were accepted as eligible in 2014 and 2015 by the

Department. The Appellant stated that the animals were on their property and registered in their name prior to their holding being declared as an “equine premises”. In addition, only 5 of the animals were required to meet the stocking density requirements. The Department explained that the two ineligible donkeys in question were born in 2010 and 2013 and not registered until April 2014 and October 2015. The Department explained that the requirement under EU Commission Regulation (EU) 504/2008 is that the donkeys should be registered within six months of birth or the 31 December of the year of birth. The Appellant had purchased 6 donkeys in spring 2014, 3 of which were already registered and the Appellant registered the remaining 3 in order to comply with the Areas of Natural Constraint Terms and Conditions.

The Appeals Officer considered the 2016 Areas of Natural Constraints Terms and Conditions Stocking Requirements, in particular Paragraph 7.vi – Donkeys: *Donkeys are eligible for inclusion in the stocking density calculation. They must be owned by the applicant and appropriately registered in the name of the applicant in accordance with EU Regulation 504/2008 and maintained on his/her holding. S.I. 357 of 2011, European Communities (Equine) Regulations 2011, and S.I. 189 of 2014 Equidea (Transfer of Ownership) Regulations 2014 and S.I. No. 8 of 2013, Diseases of Animals Act 1966 (Registration of Horse Premises) Order 2013 refer.*

The Appeals Officer noted that the donkeys had been accepted for stocking density purposes in previous years and there was no notification of major change to the rules in relation to registration of donkeys in the Terms and Conditions that would result in a lifelong ban of animals previously accepted for the purposes of stocking density. The Appeals Officer noted that animals must be appropriately registered in the name of the applicant in accordance with EU Regulation 504/2008 however found that the term appropriately registered was not defined or explained so therefore lacked clarity for Applicants.

In the absence of an explanation or clarity in the 2016 ANC Terms and Conditions for the term *appropriately registered* the Appeals Officer found that the donkeys in

question were registered by the Irish Donkey Register before the end of 2015, in so doing became registered animals so therefore should be included in the stocking density calculation for ANC 2016. The Appeal was allowed.

5.3 **Case 03 - Beef Data Genomics Scheme 2015-2020**

The Appellant joined the Beef Data Genomics Scheme (BDGP) 2015-2020. In May 2017 the Department of Agriculture, Food and the Marine notified the Appellant that a penalty of one year's full payment was applied due to non compliance with a Bovine Viral Diarrhoea (BVD) requirement set out in the BDGP Terms and Conditions. The decision was upheld by the Department at review on the basis that a 2015 born calf was not BVD tested until 45 days old and that under the Scheme all animals must be BVD tested within 20 days of birth. In this case the calf was a Positive Indicator for BVD. The decision was appealed.

The Department based the decision on part 9(g) of the BDGP Terms and Conditions;

All animals must be tested for BVD within twenty days of birth and the sample sent to a designated laboratory as soon as possible. Those animals with a positive or inconclusive test result must be removed to the knackery and have a date of death recorded on the Animal Identification Movement (AIM) system within seven weeks of the date of the initial test in order to be eligible for payment in the subsequent year.

The Appeals Officer noted section 4 of the original Terms and Conditions states that *where BVD requirements are not complied with on 'an ongoing basis' the applicant will be ineligible for payment in the subsequent year*, and this appeared to be the basis for the Department's decision not to grant 2016 payments to the Appellant.

The Appellant stated this single sample was mislaid in their fridge during a stressful time due to farming and financial pressure. The Appeals Officer noted the remainder of the Appellant's calves was fully compliant in 2015. The tissue sample for the calf at issue was provided to the laboratory at 45 days and proved suitable to

test. The BVD test was carried out in July 2015 and the May born calf was euthanized within 5 days. A period of 49 days is allowed to remove a BVD calf following the initial test. The Appeals Officer found this was not non-compliance on 'an ongoing basis'.

The Appeals Officer found the wording at 9(g) of the Terms and Conditions to be unclear (*must be tested for BVD within twenty days of birth and the sample sent to a designated laboratory as soon as possible*). The Appeals Officer considered 'testing' to be done at the laboratory, so the testing and return to the laboratory appeared to be one and the same thing as regards timing. The Appeals Officer acknowledged the Terms and Conditions may well have intended to reflect the legal requirement that all animals be tissue sampled for BVD within 20 days of birth and the sample sent to a designated laboratory 'as soon as possible'. However, the Appeals Officer found the period 'as soon as possible' was not set down in days or weeks and was open to interpretation, and in this case it was the sending to the laboratory at 45 days that had been the basis for the decision appealed.

The Appeals Officer found the Appellant complied with the BVD requirement submitting the sample to the laboratory 'as soon as possible' and with the subsequent timely removal of the calf. The appeal was allowed.

5.4 Case 04 - Cross Compliance - Statutory Management Requirement 4 (Nitrates)

Following receipt on the 17 June 2016 of a Cross Report from the County Council of non compliance under Statutory Management Requirement 4 (Nitrates) the Appellant was notified by the Department that an intent penalty of 20% would be applied to his 2016 scheme payments. It was found that there was inadequate collection of livestock manure, soiled water and silage effluent which was allowed to enter another property with the possibility of indirect discharge into groundwater.

The Appellant sought a review of the Department's decision on the basis a drain was put in place along the cement base and connected to the slurry tank and has solved the problem. Three inspections had been carried out by the County Council

in which non compliance had been found and was cross reported to the Department in June 2016. The Department considered that the Appellant had failed to remedy the situation found at any of the inspections and therefore had knowingly not complied with the requirements of Statutory Management Requirement 4 (Nitrates) and an intent penalty of 20% was applied. Upon review by the Department, the intentional non compliance penalty was reduced to 15% as there was no watercourse close to where the discharge of effluent occurred.

The Appellant did not dispute the inspection findings but put forward reasons why the non compliance had not been remedied immediately. The Appellant submitted that there was severe flooding in 2016, there was effluent produced where silage bales were stored and it was not possible to remedy this situation until May 2016. The Appellant stated that there was a pipe under the bales to collect run off, no pollution was caused, all had been fixed and a new cattle shed built. The Appellant accepted that the County Council officials had told him in March 2016 that the remedial action must be done immediately. The Appellant acknowledged that there was a long standing hole in a boundary wall through which seepage had occurred, but submitted that discharge to the neighbour's property only occurred due to the neighbour's removal of a ditch on their side of the wall.

The Appeals Officer considered the first inspection findings of 25 January 2016 which were notified to the Appellant in writing by letter dated 29 January 2016. This letter included 7 photographs outlining the effluent discharge point, and outlined 6 required conditions. The appellant was requested to *'put in place whatever measures you can to immediately address these issues which will include the following....'* At the third inspection in April 2016 it was reported that no attempt had been made to seal up the discharge point, as agreed by the Appellant. At this point, the non compliance was cross reported to the Department.

The Appeals Officer considered that the Appellant had been required to seal up the discharge point with immediate effect. This did not require the movement of any silage bales and therefore was within his ability to comply with, but the Appellant did

not to remedy this fault as required. The Appeals Officer did not accept that weather conditions would interfere with the completion of this requirement. On this basis the Appeals Officer found the intent penalty was correct. It was clear that the Department had applied the lower penalty possible under this category on the basis that there was no watercourse nearby. The appeal was disallowed.

5.5 Case 05 - Cross Compliance - Statutory Management Requirement 4 (Nitrates)

A Cross-compliance inspection was carried out on Appellants holding in 2012. The inspection resulted in a 5% sanction being imposed under Statutory Management Requirement (SMR) 4 in relation to Nitrates. Nitrates records were requested and not submitted by appellant. A slurry storage deficit of 19% was found. A review was sought and the 5% sanction was originally upheld. Further information was then supplied and the slurry storage capacity element of the sanction was removed, a 3% sanction for not submitting nitrates records remained.

The Appellant appealed against the decision on the grounds of dissatisfaction with the way the inspection was carried out and that they were never requested to submit nitrate records. The Appellant informed the Appeals Officer that they were not aware of the nitrates problem for nearly 2 years, that Nitrates records were not requested by the inspecting officer, or by the Department following the inspection.

In considering this case, the Appeals Officer enquired with the Department what their policy is in regards to the request for information on nitrates records following an inspection. The Department outlined that their manual instructs officers to inform the farmer on the day of the inspection to forward records - and on the day their officers would also provide the farmer with a list of the specific records required and with details on the record submission deadline. The Department outlined that the Integrated Controls Division also has a policy of issuing reminder letters to those farmers who have not submitted any of the requested records.

The Appeals Officer noted that this issue of non-submission of records had never occurred in relation to any of Appellant's previous inspections. The Appeals Officer

inspected the records submitted as part of Appellant's request for a review by the Department and found that they appeared in good order. It was noted that Appellant's Agricultural Consultant stated that he had finalised the Nitrates records for 2011, but did not receive any request from the Department for such records and had there been so the records would have been forwarded immediately.

The Appeals Officer concluded that all nitrates documentation was on hand and would have been forwarded to Department if requested. The Appeals Officer found there was no written request made by the Department for the submission of Nitrates records on a handwritten Notice Form given to the Appellant on the day of inspection and there was no reference to the submission of Nitrates records on a Remedial Action Notice or any follow-up inspection. The Appeals Officer also took into consideration the almost 2 years delay between the inspection and the penalty letter being issued. The appeal was allowed.

5.6 Case 6 - Forest Roads Scheme

An application for forest road construction approval was received by the Forest Service (DAFM) on the 26 January 2015. Pre-approval consultation was held with the local County Council with regard to planning permission for an entrance off a county road. The road entrance traversed a roadside stream. The stream was not in an area designated sensitive for fisheries so the application was not referred to Inland Fisheries by the Department's Forest Service. The Appellant did not seek any consultation with Inland Fisheries but had engineering input into the project. The Approved length of road was 370 linear metres (LM) while the Maximum Grant Aided length approved was 340 (LM). An approval letter was issued on 14 September 2015 in respect of the above contract.

Following a Forest Service certification inspection, the District Inspector recommended reduction of payable road length by 67 LM because of environmental issues. This reduced the payable length to 273 LM. (Max Grant aided length 340 LM — 67 LM equals 273 LM). A penalty letter issued to the Appellant outlining reasons for the penalty and advising the Appellant of the right to request a review.

The Appeals Officer considered the conditions of aid for the Forest Road Scheme, in particular the following section:

- 7.5 Payments shall be made in respect of applicants who make valid applications prepared by a registered forester and who have constructed their forest road in accordance with the pre-approval and in compliance with: All relevant EU requirements and national legislation for the time being in force including,*
- ii. The terms and conditions of this Scheme as set out in this document (and any revisions thereof), any circulars amending the scheme requirements, the application forms, letters of approval and, where appropriate, remedial works notifications;*
 - iii. Forestry Standards and Procedures Manual;*
 - iv. Forest Road Manual (COFORD 2005);*
 - v. Code of Best Forest Practice – Ireland;*
 - vi. National Forest Standard;*
 - vii. Forest Service Environmental Guidelines.*

The Appeals Officer considered that the conditions documentation clearly stated that applications must comply with the conditions set down. The roadside drains were found on the day of inspection by the Department to drain directly into the watercourse while the culvert traversing the forest road was found to be not properly imbedded into the stream bed and therefore potentially restricted the migration of fish contrary to *The Forestry and Water Quality Guidelines*. This finding was upheld. The appeal was disallowed.

5.7 Case 7: GLAS Tranche 1 Scheme

An application under the GLAS Tranche 1 Scheme was received in the Department of Agriculture Food and the Marine. The Appellant was advised that only actions chosen, mapped and submitted in the application may be accepted into the Scheme. The Appellant had submitted through his/her advisor a parcel of land with two actions listed namely Low Input Permanent Pasture and Traditional Hay

Meadow. It was also submitted that the maps were misinterpreted when completing the application and that areas were incorrectly assigned to these actions and an amendment to the application was requested.

Particular to this Scheme are the requirements set out in Section 8 of the Terms & Conditions on Application Procedure, 8.2 which states

‘All applications must be made via the Department’s online system and will be made under notified Tranches advertised by the Department. Applications must be prepared by a registered GLAS advisor in accordance with these Terms and Conditions and the Specification. It is in the farmer’s own interests to satisfy him or herself that the advisor they engage has current Professional Indemnity insurance’.

Circular 22/2015, issued by the GLAS Division on 8th May 2015 to all GLAS Advisors states:-

‘Before choosing to submit an application, please ensure you are satisfied that all the actions you wish to include are chosen and mapped, where applicable. You are strongly urged to save and validate applications before submitting, but please note that inbuilt system validations will not of themselves guarantee that all aspects of the Terms and Conditions or the Specification have been adhered to..Once an application is submitted, it will not be possible to make changes and Department staff will not have access to retrieve, amend or delete submitted applications’.

In addition, when completing an application on the Department’s online system there is a clear warning to the user before pressing the “Submit” button highlighting that changes cannot be made once the application has been submitted.

It was acknowledged that the information provided by the Appellant to his/her advisor was not entered correctly via the Department’s on-line system. Notwithstanding this, the Department clearly outlined that there would be no opportunity to change the plan once submitted in Circular 22/2015, and similarly in

the text that appeared when selecting the “Submit” button on the on-line system. The appeal was disallowed.

5.8 Case 08 - 2017 National Reserve (New Entrant)

An Appellant submitted an online application to the 2017 National Reserve – New Entrant Category. The application was rejected by the Department on the grounds that the Appellant did not complete a recognised course of agricultural education by 15 May 2017 in accordance with the Terms and Conditions of the scheme.

The Appellant was over 40 years of age and considered a new farmer. The Appellant had no agricultural qualifications contending that he was advised there was no real benefit in completing the ‘green cert’ due to age and that fees of €4,000 would have to be paid in order to do so. The Appellant claimed to be not in a position to pay the fees as was only getting established on the farm. The Appellant was receiving a Farm Assist payment of €30 per week, but contended an enquiry had been made to the Department of Social Protection and was refused payment of the ‘green cert’ course fees on the basis it was not considered the course would lead to employment. The Appellant stated they sought to join a Knowledge Transfer group but was told by the facilitator that there were no vacancies. The Appellant alleged there were no incentives or help for new farmers who are over 40 years old.

The Appeals Officer found the National Reserve Terms and Conditions required that in order for an applicant to be considered eligible under the New Entrant Category they must have successfully completed an agricultural qualification at FETAC Level 6 or its equivalent by 15 May 2017 and have submitted a copy of such qualification/Teagasc letter of equivalence in support of their application. The Appeals Officer found the Appellant had not completed the required agricultural qualification by 15 May 2017 and did not meet the requirement. The Appeals Officer found the age of the appellant was not a factor in the determination of the decision and that the Terms and Conditions were a policy matter for the Minister and that any views on these would have to be raised directly with the Department. The appeal was disallowed.

5.9 Case 09 - Cross Compliance - Nitrates Regulations

Participants in the Basic Payment Scheme (BPS) are obliged to ensure that the total amount of nitrogen (N) from livestock manure applied to their land (including that deposited by the animals themselves) does not exceed an amount containing 170 kg N/hectare per year, or 250 kg N/hectare per year in the case where an application for a Nitrates Derogation has been approved. The Appellant held a Nitrates Derogation for 2015.

Department records indicated that the total amount of nitrogen from livestock manure applied on the Appellant's farm in 2015 was 259 kg N/hectare which exceeded the permitted level of 250 kg N/hectare. As a result a 5% penalty was applied.

The Appellant appealed the decision on the basis of a salmonella outbreak which occurred on his farm some years back. Appellant submitted that a vaccine is used each year to prevent salmonella but because of this there have been ongoing fertility problems with their cows. The Appellant stated that the fertility issue meant a lot more cows had to be carried in order to produce the required amount of milk, with the result there are a higher number of dry cows in the herd annually.

The Appellant sought the Nitrates calculations allow for dry cows which each contribute 65 kg of Nitrogen rather than the 85 kg of Nitrogen allocated for milking cows. The Appeals Officer requested the data and details for the milk supplied on the holding and the number of cows held for 2015. The Appeals Officer subsequently found sufficient reason to query the calculations with the Department and the figures were revised for the holding with the reclassification of 16 cows from dairy to dry cows for the purposes of the Nitrates calculation. The outcome of the revised calculation was a farm Nitrates level of 240 kg per hectare, meaning that the 250 kg N/ha/year threshold was not breached. The appeal was allowed.

5.10 Case 10 – Non-Valuation Aspects of the On-Farm Valuation Scheme for TB & Brucellosis Reactors

A herd test was carried out on the Appellant's herd. The Appellant was subsequently issued with a notice declaring their holding as a restricted holding under the Animal Health and Welfare (Bovine Tuberculosis) Regulations 2016 (SI No 58 of 2015).

The Appellant applied for payment of reactor compensation under the On-Farm Valuation Scheme, and to be considered for the Income Supplement Scheme. The appellant was informed by the Department how a notional milk yield had been calculated for the purpose of valuation of the reactor animals, and furnished the Appellant with the figure.

The decision was appealed. The Department stated that the herd test showed the presence of reactors, and that the appellant was entitled to compensation. The Department stated that for calculation of the compensation payment allowed for dairy herds, the milk yield for a herd is considered based on 2 options

- (i) milk recording data
- or
- (ii) notional milk yield.

Notional milk yield had been used in the Appellant's case as the Appellant did not have milk recording data. The Appellant stated that there was no argument with the calculations but contended salmonella was the issue in the herd and had caused reduced milk yield. The Appellant's advisor queried what happened when the principles of natural justice collided with the scheme Terms and Conditions.

The Appeals Officer found that as the Appellant did not milk record their herd they were correctly classed as a non milk recording herd under the On-Farm Market Valuation Scheme.

The Appeals Officer found that while accepting that the Appellant's herd had a problem with Salmonella amongst other issues, there were no provisions in the scheme Terms and Conditions to take account of such issues when calculating the notional milk yield of the herd. The Appeals Officer found that the most beneficial calculation of notional milk yield had been used by the Department as provided for in the scheme Terms and Conditions. The Appeals Officer found that the appellant was afforded his rights under the principles of natural justice. The appeal was disallowed.

5.11 Case 11 - Organic Farming Scheme

The Appellant's Organic Farming Scheme contract commenced in June 2011 and was due to run for a part year 2011 and five full calendar years thereafter. Additional land was incorporated into the contract area in December 2013 and higher payments issued accordingly.

In August 2016 the Department of Agriculture, Food and Marine sought recoupment of approximately €7,600 due to overpayment under the scheme. The Appellant sought a review by the Department of its decision and at review the Department overturned the decision to seek claw back of €7,600 but deemed the land added in December 2013 was ineligible for payment.

The appeal concerned the land added to contract in December 2013 within year 2 of the contract using the correct scheme form. The Appellant stated a reduced scheme payment received for 2015 gave rise to a query to the Department. The Appellant had received full payment on this added land for 2014.

The Department side stated the decision arose as the Organic Farming Scheme was not open in 2014 and no new land should therefore have been accepted into the scheme. The Appellant disputed that the Terms and Conditions provided for such a position and appealed that the €3,100 approximately be allowed as a valid payment.

The Appeals Officer had regard to Paragraph 11 of the Organic Farming Scheme, Terms & Conditions, under the heading Changes in Contract Area Farmed are very specific, section it states;

To qualify for payment on the additional land if in year one or two of the original commitment, the participant may submit an Application Amendment Form (OFS 1 AM) and receive payment on the additional land for the remaining period of the existing commitment.

To qualify for payment on the additional land if in the third or later year of the original commitment, the participant must submit a new Application Form (OFS 1 Rev 1) between 1 January and 15 May to qualify for additional payment for the current year.

The Appeals Officer found that even though the scheme was not opened to new applications in 2014, the Appellant complied with the requirements of the Terms and Conditions for adding more land to the contract area in year 2 and found this did not create a new application. The Appeals Officer found the Terms and Conditions bore no content on which to disallow this additional land from being added to an existing contract within year 2 of that contract. The Appeals Officer allowed the appeal.

5.12 Case 12 - Young Farmers Scheme

The Appellant made a late application to the 2015 Young Farmer Scheme (YFS) on 6 January 2016 and submitted a request to the Young Farmer Section of the Department of Agriculture, Food and the Marine in April 2016 to allow the late application. A decision issued from the Department that the application was unsuccessful. The decision was appealed.

The Appellant explained the late application on the grounds that they were in hospital on the date of application. The Department outlined that originally a rejection letter had not issued as no application was made to the 2015 scheme. The Department stated such a late application could only be considered where *force majeure* circumstances existed. The Department outlined that the medical certificate

submitted for the Appellant indicated 29 May 2015 as the first day they were incapacitated from work and this was the last day of application to the scheme but that the scheme had been open for applications from 5 January 2015. The Appellant clarified that they were hospitalised from 29 May 2015 but was ill from late March/early April.

The Appellant outlined there was correspondence with the Department regarding a registered farm partnership request in 2015 and into 2016. The Appeals Officer accepted the Appellant was in contact with the Farm Partnership Unit of the Department in 2015 with correspondence submitted in May, September and October 2015. However the Appeals Officer found no responsibility for that Unit to inform the National Reserve Section of the Department of the farm partnership agreement application. In addition the Appeals Officer found no evidence of the Appellant instructing the Farm Partnership Unit to notify the National Reserve Section of their intention to apply to the YFS.

The Appeals Officer found the 2015 National Reserve (Young Farmer/New Entrant) and Young Farmer Scheme Terms and Conditions state that *“applications under the Young Farmer scheme must be submitted on or before 15 May 2015”* and that *“applications under the National Reserve Priority categories of Young Farmer and New Entrant must be submitted on or before 31 March 2015. Furthermore they found that the Terms and Conditions state that “penalties are applicable to late applications and applications received 25 calendar days after that date are inadmissible”* and that *“responsibility for the submission of applications to the Department by the closing date rests with the applicant concerned.”*

The Appeals Officer noted that the Minister had announced the opening of both the 2015 National Reserve (NR) and YFS on the 6 January 2015, therefore found there was a period of over two and four months to prepare and submit an application before the closing date. The Appeals Officer considered Regulation (EU) 1306 of 2013 of the European Parliament and of the Council which defines cases of *force majeure*, however, found that it could not be applied in this case given there was an

opportunity to submit an application to the Scheme from early January until 31 March 2015 (YFS and NR) or 15 May 2015 (YFS only).

The Appeals Officer noted that the Appellant made a BPS application in 2015, which was submitted on line on 29 May 2015, submitted a request farm partnership herd number on 15 May 2015 and a farm partnership application on 19 May 2015 and therefore found that this negated the contention that the Appellant could not also submit a YFS or NR application in this period. The Appeals Officer found that the application form for the 'Priority Categories of Young Farmer and New Entrant under the 2015 National Reserve and associated Young Farmer Scheme' was not submitted and the request for acceptance of their late application was after the Scheme closing dates and outside the period for acceptance of late applications set out in the Scheme terms and conditions. The appeal was disallowed.

5.13 Case 13 - Basic Payment Scheme – land eligibility

The Appellant submitted a 2015 Basic Payment Scheme (BPS) application. The Department subsequently notified the Appellant that during validation of the application an over-declaration was determined on one of the claimed land parcels.

The Appellant requested that the parcel be measured. The parcel was subject to a Rapid Field Visit (RFV) where the inspector deemed the parcel to be traditionally unfenced with public access and the Appellant had no written lease or rental agreement in place for the land. The Appellant contended grass was cut and baled for silage in 2015. The grass was deemed to be long at the time of the RFV and had not been cut at the time of the visit. The inspector had found the land parcel was in use as a public park as evidenced by people out walking on the day of the RFV. The Department deemed the parcel ineligible for area based payments.

At the oral hearing of the appeal the inspector stated that for a parcel to be eligible one had to have control of the land. The inspector stated this land was public amenity lands and the use was not predominantly agriculture. The Appellant stated that the land parcel was suitable for the cutting of silage and this was an agricultural

activity. The Department accepted silage had been cut from the land parcel in 2015 but stated the issue was the parcel ineligibility through the BPS Terms and Conditions. The Department stated the land parcel was not fenced and did not have a defined external boundary. The Appellant confirmed there was no lease or rental agreement in place for the land but did have a receipt for money paid to the landowner.

The Appeals Officer accepted that silage was cut on the land but also found a number of the BPS Terms and Conditions were not complied with for this land parcel, namely, the requirement for land being used and managed by the herd owner as it was open to the public at all times, there was no lease or rental agreement in place with the owner of the land and available at the time of inspection, the land was not appropriately fenced as specified in the terms and conditions, and was not stockproof. The appeal was disallowed.

6. Suggestions by the Agriculture Appeals Office for Consideration by the Department of Agriculture, Food and the Marine

- 6.1 All Schemes:** With due regard to the EU legislation governing schemes, it would be helpful if appellants and the Appeals Office were advised by the Department on any provisions on proportionality that were considered before determining the penalty, taking into account the severity, extent, duration and reoccurrence of the non compliance where provided for in the governing rules. For example, in regard to a scheme that requires multiannual commitments, where there is a failure to meet a commitment, the relevant penalty provisions might, where possible and within the rules, allow for consideration of commitments fulfilled to date and the length of time remaining for adherence to that commitment – the communication to appellants concerning the penalty should indicate whether there was scope for such consideration under the rules.
- 6.2 All Schemes:** Where online facilities in relation to Scheme applications or document uploads are not fully operational and available for all applicants (including partnerships) at the time of application, alternative methods of receiving and processing applications or documents should be put in place and applicants advised in sufficient time about such alternatives.
- 6.3 All Schemes:** The statistics on appeals received and closed by the Appeals Office show that almost 23% of appeals received in 2017 and closed in 2017 were revised by the Department over the course of the appeal but prior to completion of an Appeals Officer's decision. In most of those cases, an internal review of the case had already been undertaken by the Department prior to the submission of the appeal and the Department had not changed its original decision based on the information available to it at that time. It is not always abundantly clear why the revision of the decisions did not occur prior to appeal but reasons can include that the appellant provided more information to the Appeals Office than was made available to the Department and/or that the Appeals Office queried a position taken by the Department in respect of the published rules. It is suggested therefore that when Applicants request the Department to perform an internal review of the original decision they might be encouraged by the Department to submit any additional and all information that may assist their case.
- 6.4 All Schemes:** In regard to field inspections and with due regard to the governing rules, the Appeals Office believes it is necessary to mention the importance of

applicants or their representatives being present during field inspections. It is suggested that every effort should be made by the Department to contact the applicant or their representative when carrying out field inspections and that the applicant or his representative is advised of the key findings and possible consequences immediately once the findings have been identified and in writing in the week following the inspection. Photographs of areas that are indicated to be potential findings of non compliance should be taken by both parties.

6.5 *All Schemes:* As mentioned in last year's annual report, when providing information on reasons for penalties/non-payment of amounts claimed, the appropriate terms and conditions and, where relevant, specific EU rules, should be stated in writing.

6.6 *AEOS:* As mentioned in last year's report, given the importance of the land availability rule for certain scheme conditions, the Department terms and conditions should emphasise the risk of penalties arising for applicants leasing land where the land lease might expire in the period before the end of their AEOS contract.

6.7 *Area based schemes:* Given that the Basic Payment Scheme application is also the application for other Area Based Schemes that would also, separately, have been the subject of approval of area size and use, there is a need to more clearly state in the terms and conditions for all such schemes the practical effect of an inconsistency in information presented in the annual application and the applications approving the measures, given that significant penalties can arise for applicants where inconsistencies is identified.

In addition, it appears to the Appeals Office that there continues to be an absence of awareness by applicants of the full extent of the consequences of a reduction in eligible area under the BPS scheme on the other area based schemes and the fact that the decision on the BPS land eligibility is the key decision when considering appeals that concern penalties that arose for other on schemes due to a land eligibility issue. A 'Frequently Asked Questions' section of the terms and conditions issued, with practical examples, might assist in this regard.

- 6.8 Nitrates:** Without prejudice to the EU governing rules, where a breach is identified and the penalty to be applied in the year of the finding, if possible within the EU rules, due consideration might be given where possible to the monetary scale of the penalty when compared to the applicable amount if applied in the year of application and safeguards/thresholds/ceilings devised to ensure proportionality and avoidance of unintended excessive sanctions.
- 6.9 Compensation arrangements for TB Eradication Scheme:** Consideration might be given to the On Farm Valuation assessment for cases where an in-calf reactor becomes classified as a 'fallen animal' in transit to the factory and has to be removed to knackery where post mortem results are not available to determine the pregnancy status of animal.
- 6.10 Department decisions:** Not all Department decision letters or statements issued to the Appeals Office identify the scheme that is the subject of the appeal. All Department decision letters issued to appellants must clearly state the specific scheme name and year of the scheme concerned.

7. Suggestions by the Agriculture Appeals Office for Consideration by Scheme Applicants

- 7.1 All Schemes:** *Force majeure* on medical grounds featured regularly in appeal grounds. Appeals Officers must abide by the rules governing the schemes which provide very limited circumstances for allowing appeals on *force majeure* grounds. The principle of *Force majeure*, or, 'exceptional circumstance' is not a means of providing an on-going facility to relieve applicants of their obligations under the terms and conditions of schemes. A key principle when applying *force majeure* is to consider if the circumstances that give rise to the non compliance can be regarded as unforeseeable and outside of the control of the applicant. In particular, when there is a risk identified, applicants would be expected to take action without delay and exercise all due care in order to comply with the requirements. It should therefore be understood that medical conditions that are known to exist prior to submitting an application are not considered to be unforeseen at the time of application and, while health conditions may render certain activities outside of the control of the applicant, to avail of *force majeure*, the circumstances must ordinarily not only have been outside of the control of a person but should also have been unforeseen when the application and relevant declaration was made.
- 7.2 All Schemes:** All applicants who receive a Department decision against the entitlement applied for may request an internal review by the Department of that decision before appealing to the Appeals Office. When requesting such a review, applicants should ensure that all relevant information supporting their case is submitted as part of their request to the Department. Ensuring the Department is fully informed of all of the circumstances may result in the original decision being overturned by the Department prior to an appeal being submitted, thereby saving time for the applicant.
- 7.3 All Schemes:** In regard to field inspections and with due regard to the governing rules, it is suggested that applicants or a representative on their behalf remain present during field inspections. Where an applicant cannot be present they should make every effort to ensure a representative is present. In the case of joint herd

owners and partnerships, appropriate nominated representation on behalf of all parties making the application should be considered. Photographs should be taken where possible of areas that are indicated as potential findings of non compliance

In regard to field inspections following up on the results of a Remote Sensing inspection, applicants should note that such field inspections can result in a significantly higher reduction in the eligible area than reductions identified as a result of the Remote Sensing inspection.

7.4 Area Based schemes: The application for the Basic Payment Scheme (BPS) is also the application for other Area Based Schemes. There is therefore an intrinsic link between certain scheme conditions already approved under Area Based schemes (other than BPS, such as GLAS and AEOS) and the annual BPS application. Consequently a declaration of area size and use must be consistent in the BPS application with information in applications and approvals already issued and approved for those Schemes (such as GLAS and AEOS). A difference in area size or usage declared on the BPS or found on inspection can have a direct effect on commitments and actions already approved for other Area Based Schemes resulting in significant penalties and claw back of previous year payments. Applicants therefore need to ensure that the information declared on their Basic Payment Scheme application is consistent with whatever commitments they have made and have been approved in respect of the other related schemes. Applicants need to familiarise themselves with the consequential effect of a non-compliance with a requirement of one scheme on other Area Based Schemes.

Issues arising regarding compliance with land eligibility under the Basic Payment Scheme in a given year can have significant consequences for commitments or actions applied for on other Area Based Schemes resulting in penalties and claw back of payments already made concerning previous years. In addition, on receipt of notification of a proposed penalty/reduced area/non compliance on any scheme, Applicants should immediately ascertain from the Department what the

consequences are, if any, for other schemes before a final decision is made by the Department and when considering appealing such decisions.

- 7.5 TAMS II: Young Farmers Capital Investment Scheme.** One of the eligibility requirements of this scheme is that the farmer must set-up for the first time within 5 years of the date of receipt of an application under this Scheme. One of the criteria used for the date of set-up is the date of application for registering as a sole or joint user of a herd number/other Department identifier. Some young farmers use the date that they received their herd number rather than the date they applied. Farmers should check with the Department for the date they applied for their herdnumber.
- 7.6 Schemes that require multi-annual commitments/actions:** As referred to in the 2016 annual report, applicants should ensure any land leases are for a period equal to or later than their AEOS contract term. Before taking any decisions in respect of approved commitments/actions (including but not limited to sale of land, non renewal of leases or decisions not to commence or complete actions included in their multi-annual contract), applicants should check the details of their contract including expiry dates, the terms and conditions of the scheme and/or obtain the Department's view in writing prior to proceeding with such decisions.
- 7.7 Areas of Natural Constraints:** As mentioned in the 2016 report, applicants need to familiarise themselves with the penalties that may arise arising for failure to submit the Sheep Census form by the appropriate deadline.
- 7.8 All Schemes:** Issues continue to arise regarding proof of postage: applicants should as far as possible use the recommended postal facility when posting important documents.
- 7.9 Appeal submission:** When submitting appeals outside the three month deadline for receipt of appeals, appellants should state and provide supporting documents to explain why the appeal was submitted late – these reasons are not necessarily the same grounds of appeals submitted against the Department's decision.

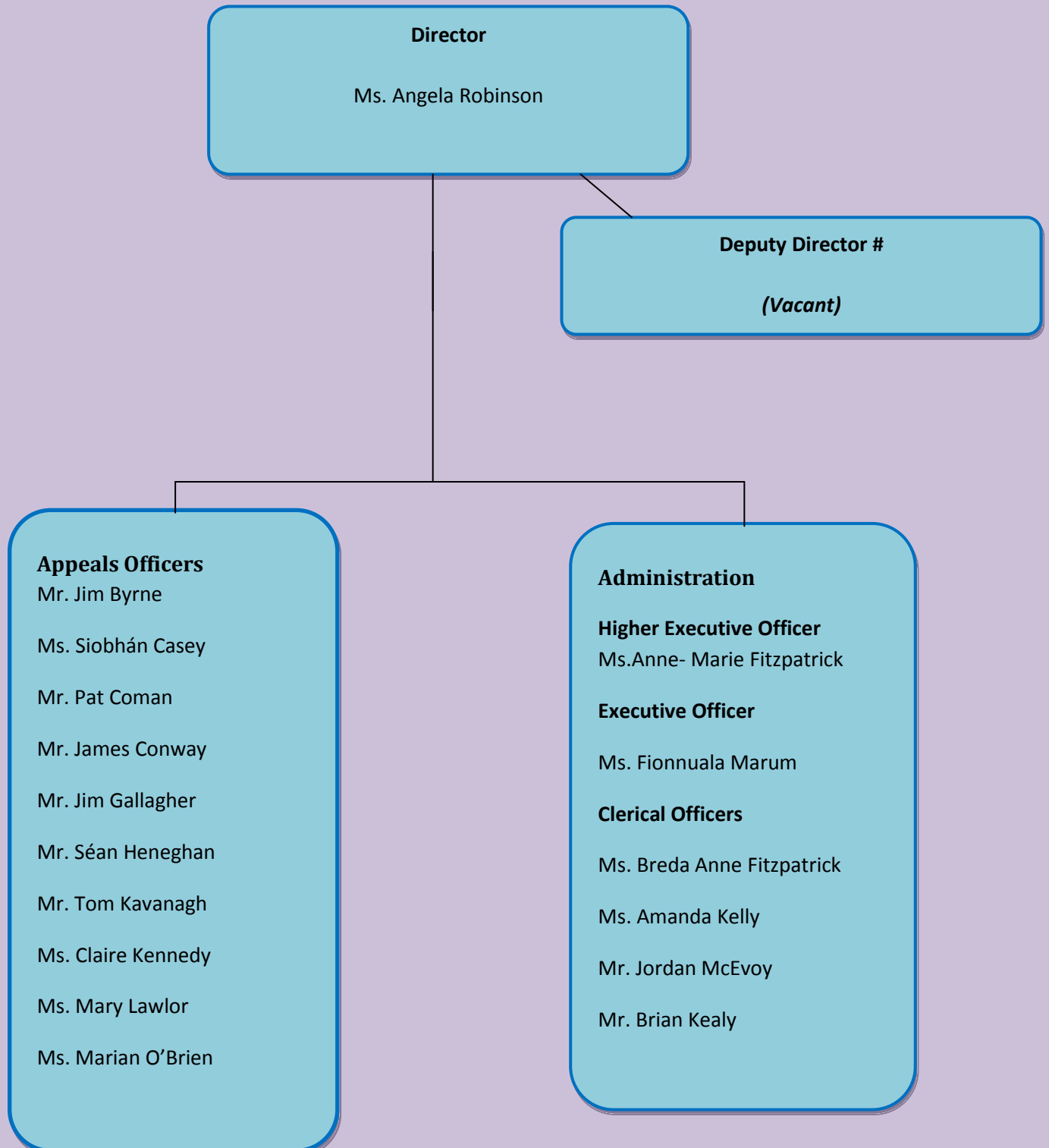
7.10 Appeal submission: When submitting an appeal, Appellants should always include a copy of the Department decision which is the subject of their appeal. This will assist in expediting the appeal and determine if the appeal is valid

Appendices

Appendix 1	Organisation Chart
Appendix 2	Agriculture Appeals Act 2001 and Section 35 of the Forestry Act 2014 amending the Agriculture Appeals Act 2001
Appendix 3	Sl. 193/2002, Agriculture Appeals Regulations 2002
Appendix 4	Reference to other relevant legislation

Appendix 1

Organisation Chart as at 31 December 2017



Appendix B



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, No. 2

Ombudsman Act, 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—

“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

(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 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 appeal may examine the Appellant, if the appeals officer considers it 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.

Decisions.

9.—(1) The decision of an appeals officer and the reasons for 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.

Revised Decisions by Director and appeals officers.

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.

(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.

Appeals to High Court.

11.—Any person dissatisfied with—

- (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.

Representations under National Beef Assurance Scheme Act, 2000.

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.

(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.

Representations by certain animal and poultry dealers.

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.

(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 revoking or suspending a registration or refusing to register a person or premises under the aforesaid Article 8.

Annual reports.

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.

(2) A report under subsection (1) 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.

(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.

Regulations.

15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.

(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

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.

18.—Part I of the First Schedule to the Ombudsman Act, 1980, is amended by the substitution for “Department of Agriculture” of the following:

“Department of Agriculture, Food and Rural Development Appeals Officers under the Agriculture Appeals Act, 2001”.

Short title.

19.—This Act may be cited as the Agriculture Appeals Act, 2001.

SCHEDULE (as amended by SI 638 of 2016)

Schemes

Afforestation Grant and Premium Scheme

Agri-Environment Options Scheme (AEOS)

Animal Welfare, Recording and Breeding Scheme for Suckler Herds (AWRBS)

Areas of Natural Constraint

Basic Payment Scheme (BPS)

Beef Data Programme (BDP)

Beef Genomics Scheme (BGS)

Beef Data Genomics Programme (BDGP)

Bio Energy Scheme

Burren Farming for Conservation Programme

Dairy Efficiency Programme

Disadvantaged Areas Scheme (DAS) excluding Land Parcel Identification System Review 2013 (LPIS Review 2013)

Farm Improvement Scheme

Forest Environment Protections Scheme (FEPS)

Forest Road Scheme

Green, Low-Carbon, Agri-Environment Scheme (GLAS) Traditional Farm Buildings

Green, Low-Carbon, Agri-Environment Scheme (GLAS)

Greening Payment

Grassland Sheep Scheme (GSS)

Installation Aid Scheme (IAS)

Native Woodland Scheme

Neighbourwood Scheme

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

Organic Farming Scheme

Protein Aid Scheme

Reconstitution of Woodland Scheme

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 Investment Aid for Farm Waste Management (FMW)

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

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, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003² and Land Parcel Identification System Review 2013 (LPIS Review 2013)

Sow Housing (Animal Welfare) Scheme

Targeted Agricultural Modernisation Scheme (TAMS), including – (RDP 2007-2013)

- (a) The Dairy Equipment Scheme
- (b) The Poultry Welfare Scheme
- (c) The Sheep Fencing/Mobile Handling Equipment Scheme
- (d) The Sow Housing Welfare Scheme
- (e) The Rainwater Harvesting Scheme, and
- (f) The Farm Safety Scheme

Targeted Agricultural Modernisation Scheme II (TAMS II) RDP 2014 - 2020

- a) The Animal Welfare, Safety and Nutrient Storage Scheme
- b) The Dairy Equipment Scheme
- c) The Low-Emission Slurry Spreading (LESS) Equipment Scheme
- d) The Organic Capital Investment Scheme
- e) The Pig and Poultry Investment Scheme, and
- f) The Young Farmers Capital Investment Scheme

Upland Sheep Payment Scheme

² OJ L270, 21.10.2003, p.1

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme.

Extract from Number 31 of 2014

FORESTRY ACT 2014

PART 11

Amendment of Agriculture Appeals Act 2001

35. The Agriculture Appeals Act 2001 amended—

(a) in section 5—

(i) in subsection (1), by substituting “Schedule 1” for “the Schedule”, and

(ii) by substituting for subsection (2) the following:

“(2) The Minister may, for the purpose of—

(a) the reorganisation of schemes,

(b) deleting spent schemes,

(c) giving persons an appeal in respect of applications under schemes that may come into existence, or

(d) in the case of any enactments or statutory instruments, giving persons an appeal in respect of applications under enactments or statutory instruments that may be passed or made (and not for the time being set out in Schedule 2),

amend by regulations Schedule 1 or 2, as appropriate, by adding an item to, or deleting an item from, either of those Schedules.”,

(b) in section 7(1) by substituting “Schedule 1” for “Schedule”,

(c) by inserting the following after section 14:

“Establishment of Forestry Appeals Committee and its function

14A. (1) The Minister shall establish a committee, which shall be known and is in this Act referred to as the Forestry Appeals Committee, consisting of a chairperson and such and so many other members (not being less than 2) as the Minister determines.

(2) The function of the Forestry Appeals Committee shall be to hear and determine appeals specified in subsection (4).

(3) An officer of the Minister shall be eligible for appointment as a member (including as chairperson) of the Forestry Appeals Committee but, in a case where a majority (or all) of the members of the Committee are such officers, a majority of such officers shall be of a grade senior to the grade of the officer who made the decision, the subject of the appeal to the Committee.

(4) Where a person is dissatisfied with a decision made by the Minister or an officer of the Minister under an enactment or statutory instrument set out in Schedule 2, he or she may appeal to the Forestry Appeals Committee against the decision and, on the hearing of the appeal, the Committee may confirm, cancel or vary the decision as it thinks fit.

(5) The decision of the Forestry Appeals Committee on such an appeal shall, subject to subsection (6), be final and conclusive.

(6) Any person dissatisfied with a decision of the Forestry Appeals Committee may appeal that decision to the High Court on any question of law.”,

(d) by renumbering the Schedule as Schedule 1 and inserting the following Schedule after it:

“Schedule 2

Section 7 of the Forestry Act 2014

Regulation 3 of the European Communities (Forest Consent and Assessment)

Regulations 2010

(S.I. No. 558 of 2010)

Regulation 3 of the European Communities (Aerial Fertilisation) (Forestry)

Regulations 2012 (S.I. No. 125 of 2012).”

SCHEDULE (as amended by S.I. No. 219 of 2017)

“SCHEDULE 1

Section 7

Schemes

Afforestation Grant and Premium Scheme

Agri-Environment Options Scheme (AEOS)

Animal Welfare, Recording and Breeding Scheme for Suckler Herds
(AWRBS)

Areas of Natural Constraints (ANC)

Basic Payment Scheme (BPS)

Beef Data Programme (BDP)

Beef Genomics Scheme (BGS)

Beef Data Genomics Programme (BDGP)

Bio Energy Scheme

Burren Farming for Conservation Programme

Dairy Efficiency Programme

Disadvantaged Areas Scheme (DAS) excluding Land Parcel Identification
System Review 2013 (LPIS Review 2013)

Farm Improvement Scheme

Forest Environment Protections Scheme (FEPS)

Forest Genetic Resources Reproductive Material: Seed Stand & Seed Orchard
Scheme

Forest Road Scheme

Green, Low-Carbon, Agri-Environment Scheme (GLAS)

Greening Payment

Grassland Sheep Scheme (GSS)

Innovative Forest Technology Scheme — Central Tyre Inflation

Installation Aid Scheme (IAS)

Native Woodland Conservation Scheme

Native Woodland Scheme

Neighbourwood Scheme

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

Organic Farming Scheme

Prevention and Restoration of Damage to Forests: Reconstitution of Woodland Scheme (Windblow)

Protein Aid Scheme

Reconstitution of Woodland Scheme

Reconstitution Scheme (Chalara Ash Dieback) 2014-2020

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 Investment Aid for Farm Waste Management (FWM)

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

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

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

Sheep Welfare Scheme

Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No 1782/2003 and Land Parcel Identification System Review 2013 (LPIS Review 2013)

Sow Housing (Animal Welfare) Scheme

Support for Collaborative Farming Grant Scheme

Targeted Agricultural Modernisation Scheme (TAMS), including — (RDP 2007-2013)

(a) The Dairy Equipment Scheme

(b) The Poultry Welfare Scheme

(c) The Sheep Fencing/Mobile Handling Equipment Scheme

(d) The Sow Housing Welfare Scheme

(e) The Rainwater Harvesting Scheme, and

(f) The Farm Safety Scheme

Targeted Agricultural Modernisation Scheme II (TAMS II) RDP 2014–2020)

(a) The Animal Welfare, Safety and Nutrient Storage Scheme

(b) The Dairy Equipment Scheme

(c) The Low-Emission Slurry Spreading (LESS) Equipment Scheme

(d) The Organic Capital Investment Scheme

(e) The Pig and Poultry Investment Scheme

(f) The Young Farmers Capital Investment Scheme, and

(g) Tillage Capital Investment Scheme

Upland Sheep Payment Scheme

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme.

10J L270, 21.10.2003, p.1

SCHEDULE 2

Section 14A

Section 7 of the Forestry Act excluding grants arising under the schemes mentioned in Schedule 1.

The Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to a licence for afforestation, felling of trees, forest road construction or aerial fertilisation of forests.

Appendix C



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 statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed, and
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 –
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,
allow the amendment of any notice of appeal, statement, or particulars at any
stage of the proceedings, and
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 TD

Minister for Agriculture, Food and Rural Development

Appendix D

See also other relevant references:

S.I. No. 558 of 2002 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002

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

S.I. No. 65 of 2006 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006

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

S.I. No. 169 of 2008 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2008

S.I. No. 106 of 2012 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2012

S.I. No. 10 of 2014 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2014

S.I. No. 276 of 2015 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2015

S.I. No. 638 of 2016 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2016

Copies of all legislation are available on the website www.agriappeals.gov.ie.