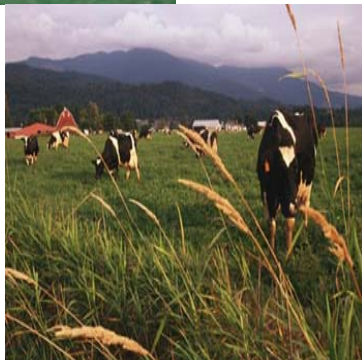
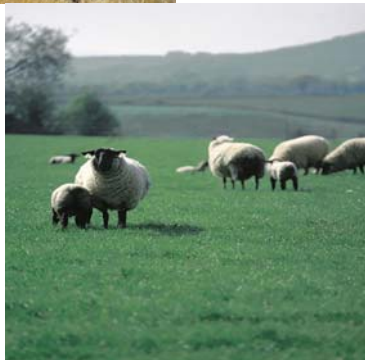




Agriculture Appeals Office Annual Report 2009



To the Minister for Agriculture, Fisheries and Food, Mr. Brendan Smith T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2009 faoi do bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talmhaíochta, 2001.

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act 2001, I submit the report of the Agriculture Appeals Office for 2009.

John Murphy
(Acting) Director of Agriculture Appeals Office

Tá an Tuarascáil seo ar fáil freisin i nGaeilge, ach é a iarraidh.
This report is also available in Irish, on request.

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1. Introduction by the Director of Agriculture Appeals Office

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

The function of the Agriculture Appeals Office is to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Fisheries and Food regarding their entitlements under certain schemes as set out in the Schedule to the Agriculture Appeals Act 2001. Six hundred and ninety-two appeal cases were received in 2009 across the various different schemes. This represents an increase of 44% on 2008 figures.

This report sets out the major developments during the year and a statistical breakdown of the office's work. The statistical tables are based on end date of 31/12/09 and are not directly comparable with previous years. In line with recent reports, it contains a cross-section of cases determined by Appeals Officers so as to illustrate the type of issues that gave rise to an appeal and the consideration given to them by Appeals Officers.

In addition, this report also gives a breakdown of the work carried out by the Single Payment Appeals Committee which continues to examine appeals arising from the Single Payment Scheme. The Single Payment Appeals Committee comprises Appeals Officers from this office and has an independent Chairman, Mr John Duggan.

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

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

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

John Murphy
(Acting) Director of Agriculture Appeals Office

June 2010

2. Agriculture Appeals Office

The Agriculture Appeals Office was established in 2002 to provide an appeals service to farmers who may be dissatisfied with decisions of the Department of Agriculture, Fisheries and Food concerning their entitlements under designated schemes operated by the Department. The Agriculture Appeals Act 2001, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals. The establishment of the Agriculture Appeals Office put the appeals process for Department of Agriculture, Fisheries and Food Schemes on a statutory basis. Appeals Officers are independent under the Act. In line with the office's mission statement, the office aims to be client friendly and to deliver its service in a courteous and efficient manner. One of the main features of the office is the right of an appellant to an oral hearing where an Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. Following consideration of all of the facts of a case, comprehensive decision letters are issued to both the appellant and the Department.

Procedures Manual

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

- Structure, organisation and names & designations of members of staff
- Functions, powers and duties
- Services for the public (and how these may be availed of)
- Rules and guidelines
- Office procedures
- Classes of records held and the arrangements for access
- Rights of review and appeal including rights of review under FOI

Business Plan

In accordance with the Strategic Management Initiative, a 2010 Business Plan was formulated to co-ordinate with the Department of Agriculture, Fisheries and Food Statement of Strategy 2008–10. The Business Plan forms the basis for the office's work and is subject to regular review.

Database

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

Website (www.agriappeals.gov.ie)

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

Co-operation with the Department of Agriculture, Fisheries and Food

Ongoing contact with various divisions of the Department of Agriculture, Fisheries and Food to discuss various issues that arise from appeal cases continued in 2009.

Meetings of Appeals Officers

Eleven meetings of Appeals Officers were held in 2009. The principal purpose of these meetings is to establish consistency of approach by the Appeals Officers and to discuss matters relevant to the work of the office. These meetings are usually held monthly.

Freedom of Information

The office did not receive any formal requests under the provisions of the Freedom of Information Acts.

The Office of the Ombudsman

Under the Agriculture Appeals Act 2001, appellants to this office may request a review of their case by the Office of the Ombudsman. To-date, twenty cases received in 2009 have been referred to the Ombudsman. There have been no occurrences where the Ombudsman has requested this office to amend its decision.

3. Appeals Procedure and Oral Hearings

Of the 692 appeals received in 2009, 202 involved oral hearings. In addition, 74 oral hearings were dealt with in respect of cases from years 2006, 2007 and 2008.

Appeals are dealt with in the order that they are received. On receipt of an appeal, this office

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

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

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

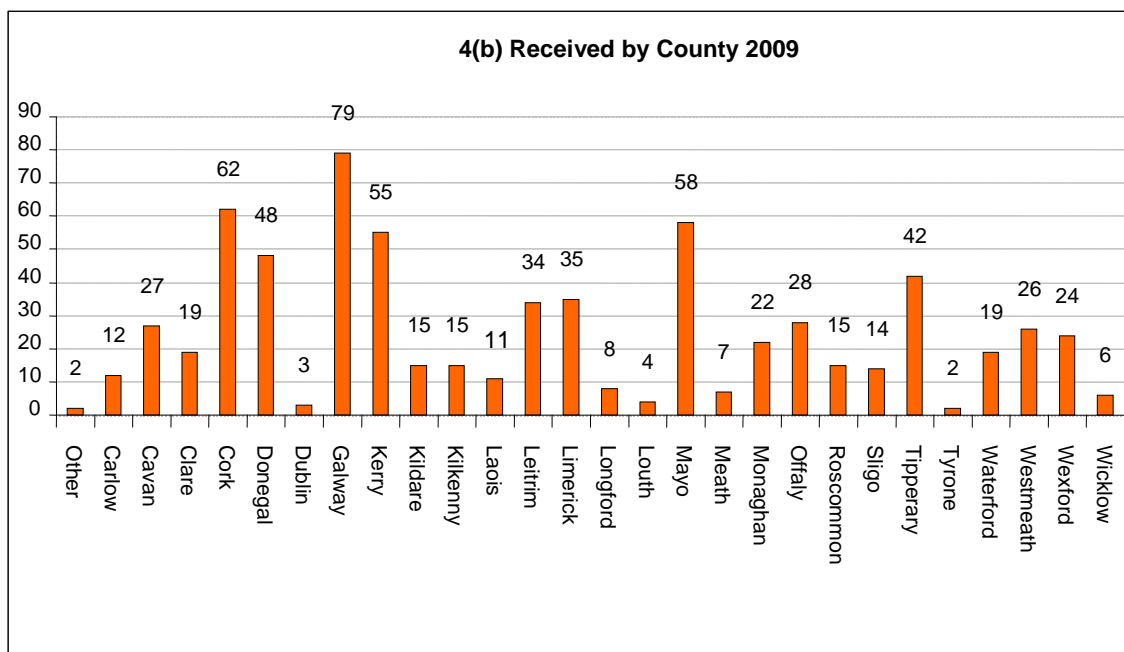
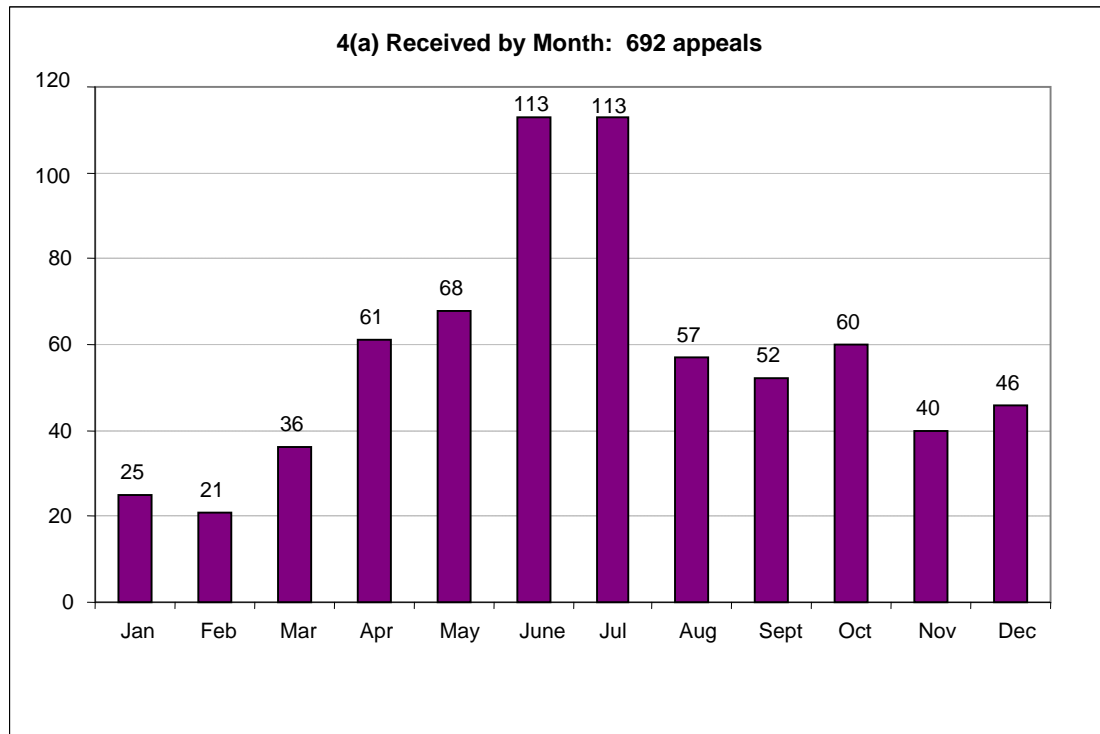
One of the features of the office is the right of an appellant to an oral hearing where the Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. Oral hearings are held in locations close to the appellants in order to ensure them better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

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

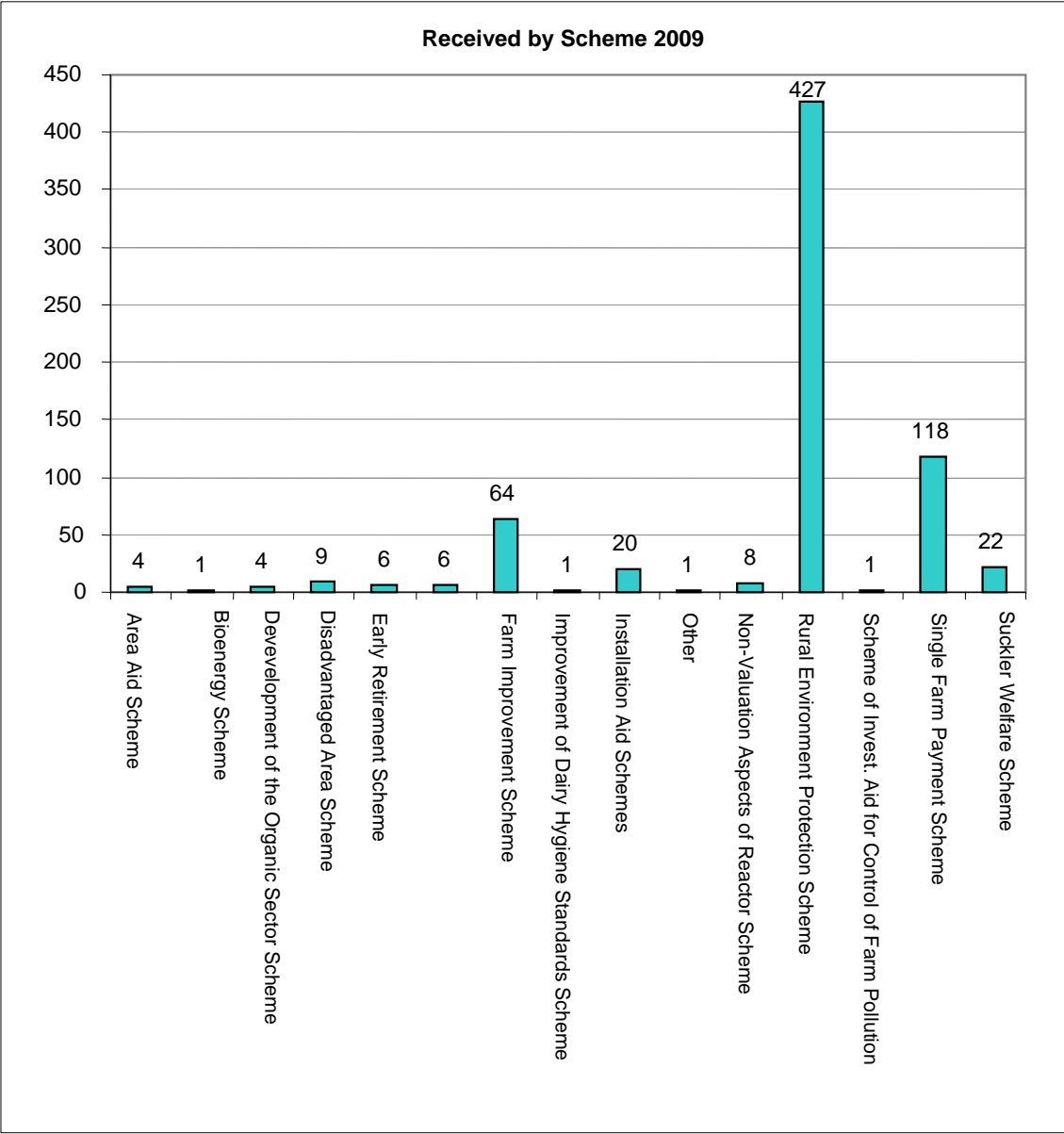
Oral hearings were held in every county. Conscious of the need to be efficient, the Agriculture Appeals Office aims to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country and these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

4. Statistics – 2009

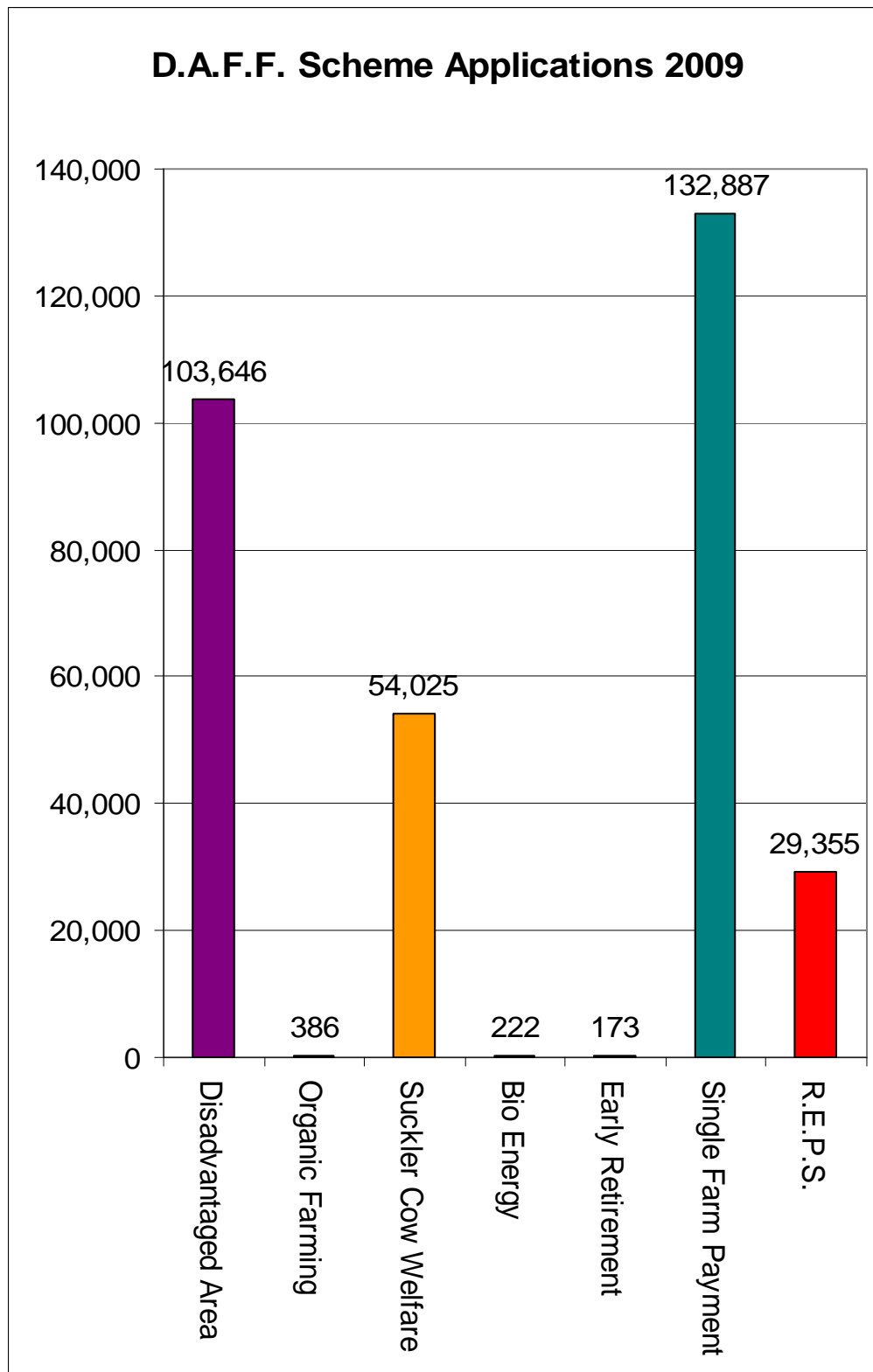
692 cases were received in 2009 compared with 481 in 2008, an increase of 44%.



4(c)



4(d)



Statistics supplied by the Department of Agriculture, Fisheries and Food.

4(e) Outcome of appeals received and completed in 2009

Outcome of 2009 Appeals	2009
Appeals Allowed and Partially Allowed	39%
Revised by the Department	19%
Appeals Withdrawn, Invalid and Out of Time	13%
Disallowed	29%

*This figure represents the position at y/e 31/12/09, and not end of 2nd quarter as in previous reports.

Terminology

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

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

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

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

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

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

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

4(f) Outcome by scheme received at 31/12/09.

SCHEME	Received	Allowed	%	Partially	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
Area Aid Scheme	4	-	-	-	-	-	-	-	-	-	-	-	-	4	100.0%	-	-
Bio Energy Scheme	1	-	-	-	-	-	-	1	100.0%	-	-	-	-	-	-	-	-
Development of the Organic Sector Scheme	9	-	-	-	-	-	-	-	-	-	-	-	-	6	66.7%	3	33.3%
Disadvantaged Areas Compensatory Allowance Scheme	4	-	-	-	-	-	-	-	-	1	25.0%	-	-	-	-	3	75.0%
Early Retirement from Farming Scheme	6	1	16.7%	-	-	-	-	-	-	-	-	-	-	3	50.0%	2	33.3%
Farm Improvement Scheme	6	-	-	-	-	-	-	-	-	-	-	-	-	2	33.3%	4	66.7%
Farm Waste Management Scheme	64	2	3.1%	-	-	3	4.7%	-	-	8	12.5%	-	-	11	17.2%	40	62.5%
Improvement of Dairy Hygiene Standards Scheme	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100.0%
Installation Aid Scheme	20	3	15.0%	-	-	-	-	1	5.0%	-	-	-	-	6	30.0%	10	50.0%
Non-Valuation Aspects of Reactor Scheme	8	-	-	-	-	-	-	-	-	1	12.5%	-	-	3	37.5%	4	50.0%
Other	1	-	-	-	-	-	-	-	-	1	100.0%	-	-	-	-	-	-
Rural Environment Protection Scheme	427	113	26.5%	30	7.0%	60	14.1%	14	3.3%	8	1.9%	9	2.1%	53	12.4%	140	32.8%
Investment aid for Control of Farm Pollution	1	-	-	-	-	-	-	-	-	-	-	-	-	1	100.0%	-	-
SFPS - Cross Compliance	34	2	5.9%	2	5.9%	1	2.9%	-	-	1	2.9%	-	-	13	38.2%	15	44.1%
SFPS - Late Submission of Applications	13	-	-	-	-	8	61.5%	-	-	1	7.7%	-	-	-	-	4	30.8%
SFPS – Other	20	1	5.0%	1	5.0%	3	15.0%	-	-	1	5.0%	1	5.0%	4	20.0%	9	45.0%
SFPS - Over Declaration of Land/Setaside	46	6	13.0%	3	6.5%	3	6.5%	2	4.3%	4	8.7%	-	-	8	17.4%	20	43.5%
SFPS - Surrender of unused entitlements to National Reserve	1	1	100.0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SFPS – Under Declaration of Land	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	100.0%
Suckler Cow Welfare Scheme	22	-	-	-	-	4	18.2%	-	-	-	-	2	9.1%	7	31.8%	9	40.9%

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

For 2009 cases the average time taken by the Department to return files was 34 days. A breakdown follows by scheme;

SCHEME	2009
Bio Energy Scheme	17
Development of the Organic Sector Scheme	40
Disadvantaged Areas Compensatory Allowance Scheme	38
Early Retirement from Farming Scheme	25
Farm Improvement Scheme	43
Farm Waste Management Scheme	35
Improvement of Dairy Hygiene Standards	53
Installation Aid Scheme	26
Non-Valuation Aspects of Reactor Scheme	23
Rural Environment Protection Scheme	34
Single Farm Payment Scheme	30
Suckler Cow Welfare Scheme	69

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

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

The office asks the Department to return files within two weeks of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued where the Department does not respond promptly – 208 reminders were issued in 2009.

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

For 2009 cases, the average time taken to deal with a case from the time of receipt of the Department file and statement until the issue of the decision was 102 days. The Appeals Office has set itself a target of three months from time of receipt of the appeal to the issue of decision letter. Some cases, due to circumstances outside the control of the Appeals Office may not be completed within the set time frame.

4(i) Position at year end

Status at 31/12/09	2009 Cases	2008 Cases	2007 Cases
Cases closed in 2009	424	121	3
Work in Progress – Appeals Office Awaiting Department Response	187 81		
Total on Hand	270		
OVERALL TOTAL	692	121	3

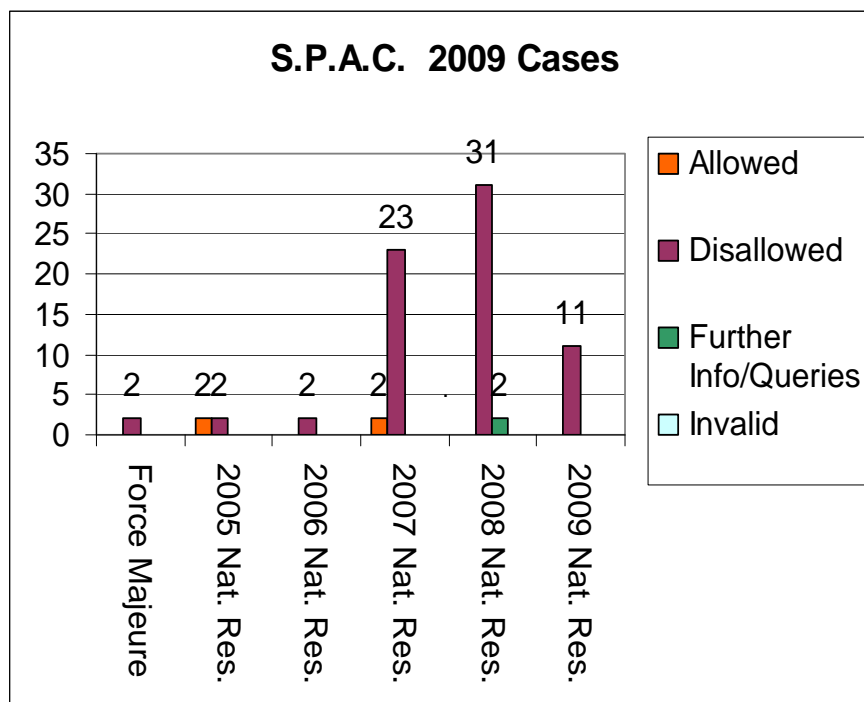
In addition to the cases closed above, the Single Payment Appeals Committee closed a total of 77 cases pertaining to the Single Payment Scheme. Please see the following section for further information.

5. Single Payment Appeals Committee

The Single Payment Appeals Committee was established in February 2004 to deal with appeals made by farmers who are dissatisfied with the decisions of the Department in relation to the implementation of the various facets of the Single Payment Scheme. The Appeals Committee is chaired by Mr John Duggan and comprises Appeals Officers from the Agriculture Appeals Office. Mr Duggan, who is a farmer and a former Chairman of Avonmore and Glanbia Plc, has experience of all aspects of the agricultural sector. Mr Duggan has also served as a board member of both Bord Bia and the Irish Dairy Board. The Single Payment Appeals Committee examines appeals in relation to the decisions of the Department of Agriculture, Fisheries and Food under various aspects of the Single Payment Scheme. These include Force Majeure, New Entrant/Inheritance arrangements, Private Contract Clause with the majority of the work making decisions on cases relating to the allocation of entitlements from the 2005, 2006, 2007, 2008, 2009 National Reserve. There were two meetings of the Committee in 2009 and it concluded the consideration of seventy-seven cases in that time and made recommendations to the Department as set out in the table below.

5(a) SPAC Cases dealt with in 2009

SPAC	Force Majeure	2005 National Reserve	2006 National Reserve	2007 National Reserve	2008 National Reserve	2009 National Reserve	Overall Totals
Allowed	-	2		2		-	4
Disallowed	2	2	2	23	31	11	71
Further Info/Queries	-	1	-	-	2	-	2
Not Valid	-	-	-	-	-	-	-
Total	2	4	2	25	33	11	77



6. Selected Appeal Cases

Case 1 Single Payment Scheme

An application was made under the 2007 Single Payment Scheme. At an inspection carried out by the Department, the eligible area found was less than that declared on the application and consequently the ineligible land was rejected and a penalty applied in accordance with the terms and conditions. As the over-declaration was greater than 20%, the penalty applied was loss of payment for the reference year. This decision was appealed to the Agriculture Appeals Office.

At the oral hearing the Department of Agriculture, Fisheries and Food stated that some of the area declared was found to be ineligible on inspection as there were no defining boundaries, no fencing, the land was not maintained in GAEC (Good Agricultural and Environmental Condition) and there were accessibility problems. The Department found that the land in question was not farmed or managed by the applicant during the reference period. The applicant had leased the land that was found to be ineligible and the Department deemed it to be failed forestry.

The applicant agreed with the Department concerning the eligibility of the land in question, however, he appealed the severity of the penalty. He argued similar land was included in applications by other farmers in the past and they received payment on same. The land was leased by the applicant so he could draw down his full entitlements as it was not an option for him to stack his entitlements. The applicant submitted it was difficult to obtain good land in 2006 and consequently he leased this land which was deemed ineligible for farming.

In considering the appeal, the Appeals Officer had regard to the Terms and Conditions that govern the Scheme. With particular regard to this case are the following provisions of the 2007 SPS Terms and Conditions.

Chapter 16 defines an eligible hectare to include “*land used to grow cereals, oilseeds, short rotation coppice, miscanthus sinensis, protein crops, sugar beet, maize, fodder, beet, turnips, mangolds, kale, grass for silage or hay or grazing. In the case of each hectare declared, the eligible area excludes any areas under buildings; farmyards; woods; rivers; streams; ponds; paths; farm roads; expanses of bare rock; dense scrub or boglands that are unfit for grazing*”. It further provides that “*all forage areas must be adequately fenced*”.

Chapter 23 defines a holding as “*all the production units within the territory of the State managed by a farmer*”. Agricultural activity is defined as “*the production, rearing or growing of agricultural produce including harvesting, milking, breeding animals and keeping animals for farming purposes or maintaining the land in good agricultural and environmental activity*”.

Chapter 25 provides that “*under Cross Compliance requirements, a farmer receiving direct payments, including SPS, DAS etc., must respect the various statutory management requirements set down in EU legislation (Directives and Regulations) on the environment, food safety, animal health and welfare, and plant health and must maintain the farm in good agricultural and environmental conditions (GAEC)*”.

The applicant accepted that the land was ineligible for agricultural activity as provided for in the Terms and Conditions but appealed the severity of the penalty, i.e. loss of payment for the year. In considering the facts, the Appeals Officer noted that there was no fencing on the plots in question, there was no defined access and the area was not maintained in GAEC. With regard to the severity of the penalty, where over-declaration is greater than 20%, the penalty is loss of payment for the year in question and the Appeals Officer cannot alter penalties as provided for in the Terms and Conditions.

Case 2 Farm Waste Management Scheme

A summary Farm Waste Management Scheme (FWM) application was received on time by the Department of Agriculture, Fisheries and Food in January 2007, with specific sections not completed. Full grant of planning permission was granted on 24th January 2007. The Department issued an acknowledgement letter in March 2007 informing the applicant that it was not possible to establish the eligibility of the application as all documentation required had not been submitted. The appellant did not recall receiving this letter. The slurry tank applied on was completed around Easter 2007 and it was when completing the Single Payment form that he and his advisor became aware that the tank was completed before written approval had been issued. The fully completed FWM application was received in May 2007 and the advisor submitted a letter explaining the situation. He stated that the appellant had made a genuine error in starting before receiving approval, and refusal to pay grant aid on the tank would be a disaster for the appellant.

At an on-farm pre-approval inspection in May 2007, the Inspector found that the tank had been constructed. He recorded on the inspection report that the appellant informed him he thought work could start once he had received full planning permission from the County Council. The Department informed the appellant that he was not eligible for aid on the tank because it was constructed without prior written approval.

The terms and conditions of the scheme clearly state “*Aid will not be given for works commenced or equipment/items purchased before written approval has been conveyed to a farmer.*”

By signing the application form, farmers confirm that they have read and understood the Terms and Conditions and agree to observe and be bound by all the conditions. The Appeals Officer understood that the appellant was very busy with his job during 2007 and did not realise the potential financial consequences of not complying with the scheme conditions. The Appeals Officer acknowledged people do not always read DAFF scheme application forms before they sign and thereby agree to be bound by the scheme conditions. However, the Appeals Officer cannot allow appeals on the basis of empathy for an appellant’s situation. There must be legitimate grounds for allowing an appeal. In the Appeals Officer’s view there were no procedural problems with the Department’s processing of the FWM application. The appeal was therefore disallowed.

Case 3 Rural Environment Protection Scheme

The appellant transformed from REPS 2 to REPS 3 in November 2004 and a new contract was approved to commence for a five year period from the 1 November 2004, with a contracted area of 25.01ha. In November 2006, when submitting the REPS 1C form, the appellant notified the Department that they had sold 1.92ha in May 2008 to another REPS participant reducing their contract area to 23.31ha.

In March 2009, the Department decided that as a result of a reduction of 1.92ha, a clawback of €1267.00 plus interest would be deducted from the next scheme payment. This decision was appealed on the basis the purchaser's father was to have the land included in his REPS plan for his next anniversary date which was 1 February 2009. However, his REPS 3 contract concluded on 31 January 2009 and he was applying to participate in REPS 4. The appellant concluded they had fulfilled their obligation and therefore should not be penalised.

At the oral hearing the Department confirmed they were satisfied that the appellant had followed the correct procedure following disposal of land. It was noted that the purchaser's father had included the land in his 2008 Single Farm Payment (SPS) application and his REPS anniversary date coincided with the conclusion of his REPS 3 contract. It was clarified that the purchaser and his father, had submitted a joint REPS 4 plan which was prepared on 31 March 2009 and had a commencement date of 1 April 2009. This plan included the purchased land. The Department identified the only issue they had with this case was that the purchaser did not notify them within 6 weeks of acquiring land as per the Terms and Conditions section 16.1.3.

The appeal was allowed as it was accepted by the Department that the appellant had followed the correct procedure where land is disposed of i.e. the land was sold to a REPS participant and the Department was notified of the disposal on REPS form A at the time of submission of the REPS 1C 'Application for Payment'. It is noted that on these forms the appellant provided details of the land sold, the purchaser's name and their REPS reference number. In Section 16 of the Terms and Conditions, regarding reduction of area, paragraph 16.2.3 details cases where re-imbursement of aid will not be required - *"Where the land disposed of is included in another REPS plan of an existing REPS participant and continues to be farmed in compliance with the Scheme."* At the time of sale the purchaser was a REPS participant and the Terms and Conditions required him, in order to get paid, to notify the Department within 6 weeks and submit an amended plan with the accompanying 1C within 2 months of the next anniversary date (paragraph 16.1.3 of the Terms and Conditions). The Department has accepted the REPS 4 plan, which has a commencement date of 1 April 2009 and includes the land purchased from you, meets the requirements of the amended plan.

The issue of the purchaser not notifying the Department of the additional land acquired has been identified by the Department as the non-compliance resulting in the clawback. In this case the purchaser did not apply to get paid on this land. It is noted there is no formal form, similar to REPS form 1A, for a REPS participant to notify the Department of acquiring additional land. As per REPS Circular 12/04, REPS forms A, G H and W replace REPS 1A. However, none of these replacement forms facilitate notifying the Department of acquiring additional land. REPS Circular 12/04 also refers that there will be no late penalty applied for submission of these replacement forms but payment will be withheld. On the other hand, the REPS 1C and an amended REPS plan do facilitate changes that may have occurred to be formally recorded. Therefore, as the purchaser did not seek payment, it was the Appeals Officer's decision that no clawback should be applied as the appellant acted in good faith in disposal of the land to a REPS applicant and their submission of the REPS 4 plan met the requirement of the amended plan. In addition, it is not clear in the Terms and Conditions whether the Department required notification of the additional land within 6 weeks where the purchaser did not require payment. In conclusion the appeal was allowed.

Case 4 Single Payment Scheme

An application was made under the Single Payment Scheme. Following an on-farm inspection, the Department of Agriculture, Fisheries and Food deemed the appellant to be in breach of Statutory Management Requirement (SMR) 4, Nitrates, as there was insufficient green cover established within 6 weeks after the ploughing of arable land between 1st July and the 15th January. A penalty of 5% was imposed. The appellant sought a review of this decision on the basis that he had ploughed the field but failed to get the grass seed sown due to the amount of stones thrown up after ploughing and the prevailing weather conditions. The Department did allow a concession in respect of the weather conditions and reduced the penalty to 3%. This decision was appealed to the Agriculture Appeals Office.

At the oral hearing, the appellant outlined the grounds of his appeal. He explained the plot, subject of the penalty, is a particularly wet area being reclaimed land. It was the appellant's intention to sow grass in this plot as part of the rotational system used on the farm. The plot was ploughed in August 2008, however, a large amount of stones were thrown up and needed to be collected before grass seed could be sown. However, due to the extraordinary amount of rainfall, the contractor was unable to get into the plot concerned to sow any seed with the result that no green cover was to be seen on the day of inspection. The appellant explained he had purchased the grass seed and it was his intention to sow this plot. He had no control over this situation and the resulting penalty was very harsh.

The Appeals Officer had regard to the EU Regulations governing the scheme as set out in the Terms and Conditions. In particular to this case is the requirement as set out in the Nitrates Regulation as explained in the booklet 'Explanatory Handbook for Good Agricultural Practice Regulations' issued by the Department in November 2006. Page 15 states in relation to ploughing and using non-selective herbicides *"Arable land ploughed between 1 July and 15 January must have a green cover from a sown crop within 6 weeks of ploughing"*.

It was not disputed that half of the plot, which had been arable land, was ploughed in August 2008 and it did not have green cover from a sown crop on the day of inspection. Therefore, the issue for the appeal was whether the circumstances submitted were sufficient to warrant the removal of the penalty.

It was explained that the nature of the land farmed and in particular the plot subject of the penalty is low-lying, peaty and prone to being wet. It had been used for cereal production and in 2008, it was intended to sow grass as to rotate the crop as part of good farming practice. Therefore, it was considered the Appellant was aware of the nature of the plot and its predisposition to being a soft wet soil. As the scheme requirement to establish green cover within 6 weeks of ploughing has been present since 2006, any decision to plough the land must be taken with this requirement in mind.

The appellant stated that the weather conditions were a major factor in preventing the sowing of the grass seed. Notwithstanding all the rain and the nature of the soil and the scheme requirements, the appellant ploughed this particular plot in late August 2008, was unable to sow the grass seed and thus no green cover was established at the date of inspection some 12 weeks later. As the scheme conditions were not complied with, the appeal was disallowed.

Case 5 2008 Disadvantaged Areas Scheme

On the 2008 Single Payment Scheme application, the appellant included a parcel which the Department of Agriculture, Fisheries and Food found on inspection to be ineligible for Disadvantaged Areas Scheme (DAS) payment. The Department found this parcel had no defined boundary, was not fenced, and there was no independent access into the parcel. A penalty was imposed. On review, the decision was upheld and the Department stated that they were satisfied that no agricultural activity was carried out on the parcel during 2008. This decision was then appealed to the Agriculture Appeals Office.

The grounds of appeal were that the land had been rejected because it was not occupied or farmed by the appellant in 2008. An environment report was submitted as the area was deemed a Special Protection Area (SPA) in 2008. The report stated the land parcel was unsuitable for grazing on environmental grounds as it is part of a large area of open peat land habitat, that the area should be left unfenced from neighbouring lands as the erection of a fence would interfere with hunting. Due to this report, the Appellant was precluded from farming the land.

The Terms and Conditions of the 2008 Disadvantaged Area Scheme state that;

A “To be eligible for payment under the 2008 DAS you must in your own right:

B “ Occupy and farm in your own right and at your own risk a minimum of 3 hectares of forage land in an area within the State designated as a Disadvantaged Area by the Minister.

C. Areas ineligible for DAS - Areas under roads, paths,... inaccessible areas and areas not available for the rearing of animals under a REPS plan etc...”.

The Appeals Officer’s interpretation of these specific 2008 DAS Terms and Conditions as they apply to this appeal is that the parcel, the subject of the appeal, was ineligible for the purposes of the 2008 Disadvantaged Area Scheme. The land was not occupied and farmed by the appellant in 2008. According to the Environmental Report submitted, the parcel which is part of a Natura 2000 site was unsuitable for grazing i.e. not available for the rearing of animals. As the Terms and Conditions of the scheme had not been complied with, the appeal was disallowed.

Case 6 Single Payments Scheme/Disadvantaged Area Scheme.

The appellant's 2008 Single Payment Scheme application was selected for a land eligibility check by Remote Sensing. A follow up ground inspection took place in December 2008. Discrepancies were found in three land parcels leading to a reduction in area of 10.20 hectares in total. The appellant was informed of this by letter in December 2008. He sought a review from the District Inspector, who re-inspected these land parcels in March 2009 and upheld the original decision. The appellant was also informed that no payment would be made to him on his 2008 Application for the Single Farm Payment Scheme or the Disadvantaged Area Scheme, as there was an over claim in area of more than 20%.

His appeal was received at Agricultural Appeals Office in May 2009. The appeal was on the grounds of severity of the penalty imposed as it would amount to most of his income for the year. He had been grazing these lands for years and if he did not get his money he would also lose his REPS payments and he would be unable to pay his lease.

At the oral hearing, the Department of Agriculture, Fisheries and Food stated it was inspected first by remote sensing where a discrepancy showed up and this led to a field inspection. There was a difference of 10.20ha between the eligible land found, and eligible land claimed. This was a shortfall of over 20% which led to a nil payment under the Single Farm Payment Scheme for 2008. Reductions were made in three land parcels. The reductions were made due to dense growth of trees and scrub, and an area round a dwelling house not removed, inaccessible to graze, and no farming activity being carried out in these areas.

The appellant stated that this land was accessible and was grazed, the word inaccessible did not appear in the Single Farm Payment Scheme Terms and Conditions. He displayed remote sensing photographs from the year 2000 which showed less dense area of scrub than was present in the 2008 photographs. He spoke of pre-printed reference area sent by the Department to the applicant which identified the area of land to claim as eligible and permanent pasture. He read a section from the information leaflet; 'Guidelines for Completing the 2008 Single Payment Scheme Application Form' which referred to the reference area on the pre-printed form. He accepted some reduction would have to be made, but he felt the deductions made following the inspection were unfair and excessive.

In arriving at a decision in the case the Appeals Officer had regard to the Terms and Conditions of the scheme and the relevant EU legislation. The Appeals Officer did not accept the appellant's argument that as the net eligible area of the land parcel is given on the pre-printed form provided by the Department of Agriculture, Fisheries and Food, it makes the area eligible to claim.

The Appeals Officer accepted remote sensing photographs from 2000 did show less dense tree and scrub growth than the 2008 version showed. It may have been possible to graze some of the land which was rejected back in 2000 as scrub and trees would have naturally spread out and thickened in the space of eight years. The Appeals Officer pointed out the decision must be based on the condition of the land in 2008 not in 2000, and the appellant was not penalised on the remote sensing photographs of 2008 which led to having a field inspection carried out. It was as a result of this field inspection that a penalty was imposed. Detailed measurements of the ineligible land were carried out by the Inspecting Officer which was accepted by the District Inspector when he re-inspected and reviewed the case.

The Appeals Officer quoted from Terms & Conditions for the 2008 EU Single Payment Scheme (SPS) and for The 2008 Disadvantaged Areas Scheme under the paragraph heading; '*Land eligible for SPS*' which states; "*The land must be maintained in good agricultural and environmental condition. In the case of each hectare declared, the eligible area excludes any inaccessible areas and any areas under buildings; farmyard; woods; rivers; streams; ponds; paths; farm roads; expanses of bare rock, dense scrub and bog lands that are unfit for grazing*". The appeal was disallowed.

Case 7 Animal Welfare, Recording and Breeding Scheme

The appellant is a participant in the Animal Welfare, Recording and Breeding Scheme for Suckler Herds. In April 2009, the Department informed the appellant that as 30 of the calves applied on were sold at less than 2 weeks after weaning they did not qualify for payment under the scheme. No rejection penalty was notified and the Department clarified the animals are deleted from payment and it did not affect other payments under this scheme.

The appellant stated with supporting evidence that the practice was to sell at a particular mart show and sale for the last 10 years. The mart's show and sale was held on the first Monday in October in each previous year but in 2008 the sale was brought forward by one week to 29th Sept and this was only made known to the Appellant just prior to the new date. The appellant had weaned the animals on the 19th Sept under the impression that the sale would be on the 6th Oct. The appellant had been successful at the sale and show in previous years and regarded it integral to his farming business. Also it would be November before the next sale and creep feeding in the interim would prove expensive.

The Department accepted the appellant was a traditional customer at the particular sale, but by signing up to the scheme agreed to be bound by the scheme conditions, which include holding the animals for 14 days after weaning. The Department acknowledged the appellant had fed meals for more than the required 4 weeks prior to weaning but the requirement pertained to the period post weaning.

The Appeals Officer noted a participant in the scheme undertakes to implement specific measures set out in the Terms and Conditions. The scheme requirements at 8.5.1 and 8.5.3 of the Terms and Conditions require that meal feeding must be continued through the weaning process for a minimum period of 2 weeks after weaning, and that all animals must have been weaned a minimum of 2 weeks before they can be sold.

The mart confirmed the special show and sale was brought forward by the Mart Committee to the 29th Sept 2008 and normally sellers might have expected the sale on the 5th Oct 2008. The Appeals Officer accepted the appellant had planned the meal feeding and weaning with the Oct date in mind. The Appeals Officer also examined the case under force majeure but could not conclude that the decision to sell on the 29th Sept was outside of the appellant's control. Instead a management decision was made that caused the 30 animals to be at variance with the scheme requirement entered into by the appellant. The appeal was disallowed.

Case 8 Rural Environment Protection Scheme (REPS) 4

The appellant applied to join REPS 4 on 6th November 2007. On 17th April 2008 he was accepted into REPS 4 with a plan commencement date of 1st December 2007. On 31st March 2009 the appellant was informed by letter that a full administrative check on his plan had identified that chemical P had been incorrectly planned, and that he had received a 5 % penalty as a result. An adjusted plan was requested before 31st July 2009. The appellant appealed to the Agriculture Appeals Office and no oral hearing was sought.

In considering the appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions as issued to every herdowner at the commencement of the scheme.

Paragraph 13 of the Terms and Conditions for REPS 4 is titled Amendments to Plans. Paragraph 13.1 states; *“Amendments to plans shall be in accordance with the scheme Terms and Conditions and Specification for Planners for the time being in force. Appropriate amendments shall be made to existing plans in the following situations:- Where the approved plan is found to be deficient”*.

The Appeals Officer found the appellant’s plan was deficient as provided for in Paragraph 13 of the Terms and Conditions for REPS 4. The appropriate solution in this instance was for an amended plan to be submitted by the appellant.

The Appeals Officer found that the only listed penalty for chemical P in Annex 1 of the Terms and Conditions for REPS 4 is for *“Planned Chemical P exceeded”*. The Appeals Officer found that there was no evidence that the planned chemical P was exceeded in this case, and that a penalty was not warranted. The appeal was allowed.

Case 9 Rural Environment Protection Scheme

The appellant was a participant in REPS 3 and the plan consisted of owned land and leased land. Following inspections carried out by the Department of Agriculture, Fisheries and Food, the applicant was notified that their participation in REPS was being terminated and that all monies paid under the contract would be recouped as the Department deemed there to be issues concerning the artificial creation of a holding. The applicant appealed this decision to the Agriculture Appeals Office.

An oral hearing was held concerning the appeal at which the Department stated the determination that this was a case of artificial creation of a holding was made following findings at a number of inspections. The Department noted that on joining REPS the applicant included an area of owned and leased land on the plan. The contract for the leased land was for a 6 year period. In 2006, two new leases were drawn up dividing the leased land between the applicant and a family member. The division of the leased land resulted in the applicant's payment being reduced; however, it also resulted in an increase in payment in respect of the other family member. The increase in payment for the other family member was significant over a 5 year period when compared to the reduction borne by the applicant as a result of splitting the lease. Furthermore, during an inspection the Department found that the other family member did not have machinery or sheds and his animals were housed with the applicants.

The applicant disputed the findings on the basis that the other person in question had purchased land previous to applying to join REPS and in order to assist in meeting loan commitments the appellant had transferred some of their entitlements to a family member. In order to draw down all of the entitlements the family member required additional land and therefore the appellant split the lease for this reason. The appellant stated that there were separate receipts in respect fertiliser and the animals were only housed together for one day due to the bad weather. The Department further stated that the leased land was ineligible as there was difficulty with accessibility and there were no defined boundaries. The leased land is not fenced and therefore not stock-proof. The appellant stated that there were no accessibility problems and sheep can be taken to the plots. Furthermore, the appellant stated the land is not over-grazed and therefore it is maintained in GAEC.

In reaching a decision on the appeal, the Appeals Officer had regard to the relevant EU legislation and Terms and Conditions that govern the scheme. With particular regard to this case Annex 2 of the REPS 3 Terms & Conditions refer;

- Paragraph 1 provides *"An application shall not be accepted if, in the opinion of the Minister or his officials, the holding concerned has been artificially created for the purpose of drawing down or maximising benefits under the Scheme. New farm units created by dividing or enlarging existing holdings will be examined."*
- Paragraph 2 provides *"In determining eligibility applications will be examined by reference to (a) the creation/enlargement of the holding and/or (b) the management of the holding as a separate unit"*.
- Paragraph 3 provides inter-alia *"The factors that may be considered when examining the creation/enlargement of holding include: (a) the planned benefit to the environment, (b) the income foregone and expenditure by reference to the plan, (c) the farming activity....."*
- Paragraph 4 provides inter-alia *"The factors that may be considered when examining the management of the holding as a separate unit include: (a) separate herd numbers, (b) herds maintained separately, (c) herds handled separately in separate handling facilities...."*

The appeal was disallowed as it was the Appeals Officer's finding that the dividing of the leased land between the appellant and the family member constituted the artificial creation of a holding for the purpose of maximising benefits under REPS. This was based on factors such as the financial gain to be derived from splitting the leased land, the animals housed together on the day of inspection and the leased land not being fenced and not stock-proof. Also, there was no significant environmental benefit to accrue in respect of the leased land, no income was forgone or no additional costs other than the leasing costs were incurred by the appellant in respect of the leased land.

Case 10 Organic Farming Scheme

In August 2007, the Department of Agriculture, Fisheries and Food launched a new stand alone Organic Farming Scheme (OFS). In late March 2008, new EU rules came into effect governing the operation of all agri-environmental schemes. The new rules stipulated that applications for all such schemes including the Organic Farming Scheme must be submitted to the Department not later than 15th May annually. Following the coming into effect of the new rules, the Minister issued a press release illustrating the closing date of 15th May 2008 for the Organic Farming Scheme. The new closing date was also widely carried in the farming press at the time and on the internet.

On 20th May 2008 the appellants Organic Farming Scheme application was received by the Department. In a letter dated 27th May 2009, the appellants were notified by the Department that as they had missed the 2008 application deadline, they would have a commencement date of 1st January 2009 for their Organic Farming Scheme contract. The appellants appeal was received in the Agriculture Appeals Office on 17th August 2009.

At the oral hearing, the appellants stated they were not aware of the closing date of 15th May 2008 for the Organic Farming Scheme, and had not seen it anywhere in the documentation. The appellants felt the Department had waited a long time in informing them that they were not receiving payment for 2008 under the Organic Farming Scheme. The appellants stated on receipt of a letter dated 12th May 2008 from the Department enquiring as to whether they were applying for organic status, they had met with their planner who had undertaken to deliver their Organic Farming Scheme application to the Department on 15th May 2008. This had not happened.

In considering the appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions. Paragraph 19 of the Terms and Conditions of the Organic Farming Scheme states that; *“Every approval under this scheme shall be subject to conditions laid down by the Minister, which must be complied with in full by the applicant.”* Paragraph 22 states; *“The Minister may at any time alter or lay down further conditions under these Scheme.”*

The Organic Farming Scheme was launched in August 2007, and was open for applications until 15 May 2008, a period of approximately 8.5 months. Once a definitive closing date was set for the scheme, it was widely publicised. The onus was on the appellant as a potential applicant to familiarise themselves with the closing date for the scheme. It is regretted that the Department took so long to inform the appellants that their start date was 1st January 2009, but this does not alter the facts of the matter. The appeal was disallowed.

Case 11 Rural Environment Protection Scheme

The Department undertook a farm and REPS 4 plan inspection of the appellant's farm in Dec 2008 and notified the appellant of the findings and penalties.

- Bovines not excluded from watercourses/water bodies marked blue on the map (watercourses not fenced) – 25%.
- Failing to maintain stock-proof external farm boundaries, no animals present on parcel – 3%.
- Pesticides applied within prescribed distances from hedgerows – 2%.
- Non-compliance with nature corridor – 1%.

In the appeal, the appellant stated a temporary electric fence was used during the summer of 2008 and taken down when cattle were housed on the 1st of Dec. The REPS plan only stated the watercourses were to be fenced when cattle were present on the land. Receipts were provided of temporary fencing materials.

The appellant had moved to REPS 4 from REPS 3 a number of months prior to the inspection. The Department stated there was no evidence found of ungrazed margins that one might expect where temporary fences were used. However, the penalty related to a requirement that watercourses be permanently fenced. The inspection took place during the first REPS 4 year.

The appellant's REPS 4 plan stated to *"fence off (watercourses) 1.5m from the top of bank when bovines are present"*. The Specification for REPS Planners in the Preparation of REPS 4 Plans states at page 48 *"for first time REPS participants access by bovines to within 1.5m of watercourses must be prohibited before the end of the first year of the plan and thereafter. All other REPS participants, at whatever stage of their REPS contract, must prevent bovine access at all times."*

The Department's position in REPS 2 and 3 was previously not to apply a penalty where watercourses were unfenced if there were no bovines present. The Department stated a letter issued to all REPS 3 participants in late 2008 and to REPS 4 participants with their record sheets clarifying that watercourses were to be fenced at all times. The appellant's REPS 4 record sheets issued in Feb 2009 and the inspection took place in Dec 2008, and no evidence was presented showing the appellant was notified of the requirement to erect a permanent fence by the watercourses prior to the inspection.

The Appeals Officer found that the wording on the scheme documents was reflected in the REPS 4 plan as regards prevention of access by bovines to within 1.5m of watercourses, and this coupled with the fact that the appellant were only issued a clarification in 2009 under REPS 4 that a permanent fence was required at all times, were mitigating grounds. The Department had also found cattle had gone though a farm boundary in numerous different places. The appellant stated the stock-proofing issue involved neighbours cattle breaking in and dragging the fence. The Appeals Officer noted that the REPS specifications states *"first time participants in REPS have until the end of the first year of the plan to stock-proof all external boundaries"* but found the appellant could not be termed a first time REPS participant due to a previous REPS 3 contract. The Appeals Officer found the scheme requirement to keep stock-proof at all times pertained.

The Department's finding that grass beneath the hedgerow at one side of a plot 14 was wilted by pesticide for a distance of 150m was not disputed by the appellant, but the appeal was made on the grounds that wind drift was responsible. While the Appeals Officer accepted from the evidence that wind drift was the causal factor, the scheme requirements specified that pesticides not be applied within certain margins and that precautions be taken against drift when spraying. This was a penalty issue under both measure 6 (field margins) and Option 4C (Nature Corridors).

The Appeals Officer allowed the appeal in respect of unfenced watercourses and disallowed the appeal in respect of stock-proofing, field margins and nature corridors.

Case 12 Farm Waste Management Scheme

The Farm Waste Management scheme application was received in the Department of Agriculture, Fisheries and Food in December 2006 in respect of a slatted house and tank and a concrete apron around same. The application was approved and the appellant accepted the offer of grant aid and works commenced in April 2008. The application for payment of the grant, including invoices and receipts were lodged with the Department in December 2008 and a pre payment inspection took place later that month. In December 2008, grant aid was sanctioned at the 60% rate of the Department's standard costs of €51,000 for the structures. The appellant subsequently sought a breakdown of the calculation of grant aid and following re-examination by the Department, the amount of grant aid was confirmed as correct in September 2009. The appellant then appealed that decision to the Agriculture Appeals Office.

At the oral hearing held the appellant outlined the grounds of his appeal. He explained how he had spent in excess of €80,000 on the building of the new slatted shed and tank, but had received less than 50% of the cost in grant aid. The appellant was very unhappy with the amount and had hoped to recoup at least 50% of the final cost. The appellant had selected the most suitable contractor for the project based on reputation and price and was very happy with the finished building. The appellant explained that the site for the new building was difficult and brought an additional cost to the project. The appellant stated he was unaware that the Department calculate grant aid based on standard costings, and the advisor had not told him or provided him with any such calculation. The appellant stated that as he did not have access to broadband, information contained on the Department website was unavailable to him.

In considering an appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the terms and conditions, and must also have regard to the principles of natural justice. In particular to this case is the requirement under Paragraph 6 that states “*The maximum grant available is calculated in accordance with the Department's Standard Costs applicable at the date of approval*”.

Under Paragraph 19, the terms and conditions state “*If during excavation work, rock or other unforeseen site problems are encountered then the Department must be contacted in advance so that an inspection can be arranged to determine the amount of extra work and grant aid*”.

In submitting an application under the Farm Waste Management Scheme, the appellant confirmed that he had read the Terms and Conditions of the scheme and agreed to be bound by all the conditions of the scheme. The Terms and Conditions clearly state that grant aid will be calculated based on standard costs applicable at the date of approval. In this case the standard costs were those in effect from 1st January 2007. Notwithstanding any increase in the cost of building in the interim, these were the standard costs in place when approval was issued in February 2008. While the appellant had stated that he did not have access to the Department website due to having no access to broadband, the onus was on him to get clear information from his advisor about the expected cost of the building and the amount of grant aid likely to be available based on the standard costs.

The appellant had experienced costs due to encountering rock on the site but had not contacted the Department at the time as he was not aware that this was required. The Terms and Conditions clearly state that it is necessary to contact the Department to evaluate the additional work required so that provision can be made if necessary in the grant aid. It is not possible to carry out this assessment after the work has been completed. As the Terms and Conditions of the scheme clearly set out the basis on which grant aid was calculated in advance, the appeal was disallowed.

Case 13 Rural Environment Protection Scheme (REPS3)

An appeal was submitted against the decision to clawback REPS payments and to make no payment for year 5 under REPS 3 as a result of an over-declaration of area under REPS.

The appellant's 5 year REPS contract commenced on 1st September 2004 on a contracted area of 19.53ha. In each of the following 2 years, the REPS 1C form was submitted advising there was no change to the areas. An on-farm inspection and audit were carried out on the 4th September 2008 and it was identified the REPS area had been over claimed. On request, an amended plan was received on the 28th October 2008 detailing a contract area of 15.14ha. A REPS 1C form, signed on the 21st October 2008, was received by the local Department of Agriculture, Fisheries and Food office and this also reflected a reduction in the contract area farmed in REPS.

On the 17th June 2009, the appellant was informed, as a result of a reduction of 4.39ha in the contract area, a clawback of €2634.00 plus interest was to be deducted from their next Scheme payment. On the 23rd September 2009, another letter was received advising that as the percentage over claim was more than 20% of the area found, no aid would be paid for year 5. This penalty was appealed to the Agriculture Appeals Office.

In the grounds of appeal, the appellant accepted there was an overclaim in REPS payment as a result of forestry area and a site not deducted, that was included in error by the REPS planner. The Appeals Officer noted the appellant signed the REPS 3 1C Forms, 'Application for second or subsequent payments', accepting the areas detailed reflected their current farming activities. It was also noted the 2005 Single Payment Scheme (SPS) application form was amended. It was considered there was opportunity for the appellant and/or planner to identify the area over claimed on a number of occasions and therefore, it could not be considered as obvious error.

However, the appeal was partially allowed in relation to the amount of clawback. The Department sought a clawback at a rate of €200 per hectare. However, the Appeals Officer applied Paragraph 16.5 of the Terms and Conditions, which only provides for reimbursement at the rate of €175 per hectare in such a case.

The Appeals Officer found the Department's decision in not paying the Appellant's REPS payment for year 5 was correct as the over claim was greater than 20% (*4.39ha over claim of 15.14ha area found*). Although this is not set out in the penalty table, Section 1.2 of the Terms and Conditions, advises that Commission Regulation (EC) No 445/2002 and Commission Regulation (EC) 817/2004 should be read in conjunction with the Specification for REPS planners and/or REPS Farmer's Handbook which are published separately. The penalty is set out within these Regulations.

In summary, the Appeals Officer upheld the Department's decision that no payment should be made in Year 5 and a clawback should apply but at the rate of €175 per hectare.

Case 14 Rural Environment Protection Scheme 4

The REPS 4 contract commenced 1st May 2008 with a contract area of 12.47ha. Following additional validation checks in early 2009, the Department notified the appellant that a 1% penalty was applied to the REPS payment and an adjusted plan was required prior to 31st July 2009. The basis for the 1% penalty was stated as the bio-diversity options/mandatory environmental undertaking were incorrectly planned. In the original plan, the Category 1 Bio-Diversity Option 5A was chosen with 185m of hedgerow planned for planting. The Department stated that the minimum required under the option in this case was 187.05m.

The REPS planner stated that the e-REPS mapping system gave rise to the problem as it consistently produced the figure of 184.95m for hedgerow planting.

The REPS 4 Specification for REPS Planners in the preparation of REPS 4 Plans states for Option 5C: - ***“Requirement – farmers participating in Option 5C must plant a minimum of 3 metres of hedgerow per hectare annually on a maximum of 20 hectares of their holding. Half of the work must be completed by the end of the second year of the REPS contract with the remainder completed by the end of the 4th year”.***

The ‘Farmer’s Handbook’ for REPS 4 states the requirements under Measure 5 – Option 5C – New Hedgerow Planting at page 22 – *“plant new hedgerows in locations set out in your plan. Half of the work must be done by the end of the second year of your REPS plan with the remainder completed by the end of your fourth year. You must plant at least 3m / Ha to a maximum of 60m a year. For example a farmer with 20ha must plant 60m x 5 years = 300m as part of his REPS plan ”.*

The onus is on each REPS planner to ensure that the planned requirement at least meets the scheme requirement. An adjusted plan was submitted to the Department on 28th July 2009 to remedy the deficiency under the Option 5C, page 7 of the adjusted plan states 188m of hedgerow planned under Option 5C.

The Minister for Agriculture, Fisheries and Food introduced the Terms and Conditions of the Rural Environment Protection Scheme and the Natura 2000 Scheme dated 11th Aug 2007 in implementation of Council Regulation (EC) No. 1698/2005. The Terms and Conditions constitute the framework for the application of the detailed rules contained in Commission Regulations (EC) No 1974/2006 and 1975/2006. In the matter of the penalty the Appeals Officer examined the penalty schedule of the REPS 4 Terms and Conditions for Measure 5. It states – *biodiversity undertaking – non-compliance with each of the planned specific requirements under the measures: penalty range 1% - 3%.*

In this case the plan did not inform the appellant in full of the scheme requirement with a shortfall of 2.05m of planned hedgerow planting. Having regard to the evidence and the fact that an adjusted plan was submitted remedying the matter prior to the year 2 deadline for compliance, as well as the fact that there is not a clear provision in the REPS 4 Terms and Conditions for the 1% penalty as applied by the Department, the Appeals Officer’s decision was to allow the appeal.

Case 15 Non-Valuation of Reactor Scheme (Income Supplement Grant)

An application was made for the Income Supplement Grants 2008. It was decided by the Department that the appellant was ineligible. The stated reason being the failure to facilitate a specified second test. It was pointed out that Section 15 of the 'Important Information for Farmers' stated that *'...Income Supplement eligibility will also cease in the event of: the owner/keeper failing to co-operate with Veterinary Inspectors or authorised officers in carrying out their duties under the Diseases Eradication Schemes...'* The resultant penalty was that there was no payment of income supplement which was appealed. It was stated in mitigation that there had been full co-operation with the Department since the initial breakdown including testing all animals at the recommended intervals. The purpose of the test was to reduce the length of time of restriction. The appellant's view was that it was grossly unfair to be penalised for not having a second test done. It was also stated that the payment was a long way short of the actual income loss incurred. The Department reiterated their view that eligibility ceased if there was failure to cooperate. Also proper notification of the test had issued in a timely manner and that the veterinary staff had advised of the importance of carrying out tests to facilitate earlier identification of infected animals and by removing them thereby shorten the restriction period on the herd. When the Veterinary Inspectors called the appellant refused them permission to test. Entitlement to compensation was conditional on owners/keepers complying with the provisions of the Diseases of Animals Act, 1966 and any Orders made thereunder as regards movement, identification and other controls laid down under the Disease Eradication Schemes and other national/EU legislative requirements and controls relating to bovine animals administered by the Minister for Agriculture, Fisheries and Food. Also that the Minister may refuse payment of compensation, in whole or in part, where an owner/keeper does not satisfy the aforementioned provisions or where the Minister is satisfied that the owner/keeper has failed to cooperate with authorised officers or Veterinary Inspectors of the Department in carrying out their duties under the schemes. The Department noted statements that there had been full cooperation with the Department since the commencement of the disease breakdown and that the appellant did not understand the logic of carrying out another test. They were cognisant also that there had been full information given by them about the importance and relevance of tests where there was a disease breakdown in a herd and the consequences of failing to allow the test to be carried out. The implications for Income Supplement eligibility were also explained. Failure to carry out the test had meant the Appellant was ineligible for payment of Income Supplement grant.

An appeal was lodged against the Department decision. The appellant noted that while a letter had been received scheduling a retest it did not refer to any other test. The appellant had agreed to a test being done in early 2008. It also dealt with the possibility of doing other tests if required. The appellant was of the view that he had honoured the agreement; that no rules had been broken and that extra testing would not have resulted in earlier de-restriction.

The Diseases of Animals Act, 1966 at Section 25 defines an authorised person and the extent of their powers in connection with the furtherance of eradication of disease or for the administration of any order under the Act. It was found by the Appeals Officer that there was a requirement pursuant to the 1966 Act that assistance be given Veterinary Inspectors in the carrying out of their statutory functions. In this case such assistance would include the facilitating of testing regardless of the type of test being undertaken. Notification had issued in advance of testing. In regard to proper information, it was found that adequate notice was given. The Department's view was also that they were not precluded from carrying out any number of tests where there was a chronic breakdown. It was clear that the test does fall within the duties expected of Veterinary Inspectors under the Disease Eradication schemes. It was also clear that co-operation with such inspections is of great importance. It was found that there was a failure to cooperate with the request to test and that the penalty imposed i.e. the non-payment of income supplement was correct in the circumstances. It was also apparent that the consequences of non-compliance were conveyed by the Department both verbally and in the documentation issued in the 'Important Information for Farmers'. The appeal was disallowed.

Case 16 Installation Aid Scheme

An application was lodged for the Installation Aid Scheme on the 26th May 2005 (form IAS1) with the application for payment (form IAS2) being lodged on the 28th May 2008. The date of set up 1st December 2005 was taken as the date more than 5ha of land was acquired. Consequently the applicant had two years from that date to complete the agricultural experience and training requirement. The qualification was not received until the 27th June 2008. The application was rejected by the Department on the 12th January 2009. The decision was reviewed locally wherein the submitted grounds of an inability to submit three reports to Teagasc by the 1st December 2007 for reasons outside his control were cited. The Department denied that force majeure applied and advised the applicant of his right of appeal to the Agriculture Appeals Office.

An appeal was lodged on 11th June 2009. In the grounds of appeal it was stated that all terms and conditions of the scheme had been satisfied. It was posited that while the educational qualifications, as per clause 9 of the scheme document, had not been officially awarded, the requirements of the Certificate in Agriculture had been fulfilled. It was further stated that within the two year limit requirement from the date of set up to 1st December 2007 all the examinations, practicals had been passed and completed as well as work placement and furthermore all attendance requirements at Agricultural College had been finalised by that date. The last remaining requirement was to submit various reports. However, it was not possible to submit these before the deadline for reasons of force majeure. It was set out how the second half of 2007 was a very difficult time for the appellant for personal reasons to do with serious illness within the family circle and also that proceedings pertaining to family law matters had been initiated in late 2006 and were ongoing in 2007 with a consequential disruptive effect on the him and the associated uncertainty created about a viable future in farming. It was contended that these external pressures left him unable to adequately complete the reports to the standard required by the 1st December 2007. It was stated that it would be totally unjust to deny the support provided by the Installation Aid Scheme and that but for the circumstances outlined the requirements would have been completed in 2007.

An oral hearing was requested. In summary the Department position was that the date of completing the educational requirements was outside the time frame set down i.e. within 2 years of set up. While very serious consideration had been given to the arguments put forward that there were force majeure circumstances the Department was of the view that it could not accept the application for payment. Also, audit requirements precluded them from issuing a favourable response. The appellant outlined the background to the application for the scheme and how the required paperwork was outside the 24 months time frame but within 30 months. The previously cited force majeure grounds were reiterated and how all bar the outstanding reports had been completed. Also, it was stated that all examinations had been passed, practicals had been completed and all attendance requirements had been fulfilled. It was emphasised that a greater part of the educational work was completed.

Clause 9 of the Terms and Conditions sets out the requirements pertaining to agricultural experience and training. At part (a) it states that *'...an eligible person born on or after 1 January 1975 must have obtained one of the following at the date of setting up or at the latest within two years from that date...'* and at indent (i) it states the *'...Teagasc Certificate in Farming...'* as being one qualification satisfying the requirement. The scheme document sets out at clause 15 the instances where an intending applicant – unable to meet certain scheme conditions – may make a case for force majeure. The various circumstances that may fall under the heading of force majeure were itemised. It was clear from the application that set-up took place on the 1st December 2005. Therefore, educational requirements were to be attained by the 1st December 2007. It was not disputed that this did not occur. They were not fulfilled until the 27th June 2008. What was for decision was whether the factors outlined as force majeure circumstances were sufficient to mitigate the requirements. It was noted that the circumstances outlined did not fit exactly with clause 15. However, it was clear that they combined to impact upon the appellant's ability to finalise the necessary paperwork for the application to be deemed valid.

Case 16 (Contd) Installation Aid Scheme

It was found that the circumstances were such as to militate against the capacity to discharge the obligations under the scheme.

It was also found that a certain level of credits were required to pass the course. It was stated in the submitted papers that this comprised coursework and placement. It was considered that as placement had been done in or around 2003 the necessary paperwork attendant on such it would have by its very nature have been written up contemporaneously. Substantively the work required was done but not submitted. In keeping with natural justice favourable consideration should be given for that work. It was also found that the appellant found himself in exceptional circumstances and was dealing with great uncertainty as to the future of the farming enterprises and the availability of land. It is therefore axiomatic that this uncertainty would have been foremost in his mind and would have led to the risk of missing deadlines as instanced.

Taking all the facts presented it was clear that the circumstances did impact upon him and caused the deadline to be missed. However, they were of such magnitude that they warranted the setting aside of the normal timeframe and the acceptance of the application as a valid one. The appeal was allowed.

Case 17 Rural Environment Protection Scheme (REPS 3)

An application to REPS 3 was made in 2006. The farm was the subject of an audit inspection in 2008 and non-compliance with measure 6 was noted in that pesticides were applied within prohibited distances of walls. A penalty of 10% was indicated. In the grounds of appeal it was stated that (1) pesticides were not applied where stated; (2) that measure 3 stated that 'herbicides, pesticides and chemical fertilisers must not be applied 'within 1.5 metres of a watercourse'. The appellant contended that this rule was observed and quoted the relevant provisions of measure 5 which stated that pesticides and fertilisers must not be applied within 1.5 metres of a boundary; a boundary being defined as to include a stonewall. It was also stated that there was no reference to herbicides. The Department's finding that pesticides had been applied was disputed. Herbicide had been applied to protect an electric fence. If not allowed it would have been reasonable to assume that they would have been specifically excluded. It was also noted that if the regulation had been breached the size of the penalty suggested was seriously disproportionate to the scale of the offence. The Department maintained the position that the penalty originally applied should stand as pesticide had been applied within the prohibited zone and that the term pesticides included herbicides and insecticides. It was also noted that an exemption had been granted to use a selective herbicide to control weeds during hedgerow establishment but that a non-selective herbicide was used in the case under discussion. The penalty was confirmed.

An appeal was lodged. It was stated that the rules were followed; that there was a different interpretation put on the measure 3 and measure 6 rules and that a penalty had been applied despite those rules being followed. The definition of what constituted a pesticide was also raised. An oral hearing was requested. In that forum, the Department outlined why the penalty was applied and how a herbicide did come under the heading of a pesticide. The overall objective of the measures not to upset the balance of flora and fauna was referred to and how training courses would have highlighted this. It was stated that advice had been taken and that reliance was placed on the 'Farmer's Handbook'. The appellant also drew a distinction between measure 3 and measure 6 noting that herbicides were not included under measure 6 and so a reasonable person would conclude that herbicides were not prohibited under measure 6. Reference was also made to the lack of clarity in the documentation.

Upon joining the scheme, participants were required to sign a declaration which stated, inter alia, that they '*...have read and agree to observe and be bound by the terms and conditions of the Rural Environment Protection Scheme...*' and that they '*...have read and understand [their] obligations under the scheme detailed in the Department's Farmer Handbook...*' and also that they '*...undertake to carry out [their] farming activities in accordance with [their] Agri-environmental Plan and the Department's Farmer Handbook...*'. Under measure 6 of the inspected plan, it was stated that noxious weeds which could not be dealt with mechanically could be spot treated with a suitable herbicide; that fertilisers and pesticides should not be deposited within 1.5m of any hedgerow or watercourse and that during the first three years of hedgerow establishment, the use of selective herbicides was allowed to control weeds. What was for determination in the appeal was whether the herbicides used fell under the general heading of pesticide and if so did their use contravene the terms and conditions of the scheme. Evidence provided indicated that the product used did fall into the pesticide category in that it covered plant protection products and biocidal products. Directive 91/414 was set down as the relevant legislation and it stated, inter alia, that '*...plant protection products....destroy undesired plants... [or]... destroy parts of plants, check or prevent undesired growth of plants...*' The point was made that products containing Glyphosate were non-selective herbicides which killed plants and hence fell under the definition of a plant protection product and the definition of a pesticide under Irish and EU legislation. Despite the apparent lack of clarity in the measures 3 and 6, it was noted that there remained an onus on participants to be fully aware of their obligations under the scheme especially in the context of using chemicals on or around the farm. It was found that the product in question was used in a manner contrary to the spirit and letter of the scheme; that its use was within the distances prohibited by the scheme and that it did not come in under the exceptions set out in measure 6. It is also found that herbicides fell under the general heading of pesticides. The appeal was disallowed.

7. Recommendations to the Department of Agriculture, Fisheries and Food arising from appeal cases.

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

General

- That ERAD information booklet “**Compensation Arrangements for TB and Brucellosis – Important Information for Farmers**” should issue with every restriction notice. The present system is to issue only when a reactor is notified. However, the restriction period often pre-dates this due to inconclusive animals at test or lesions detected at slaughter. A receipt of the booklet’s issue should be retained by the DVO on the herd file – registered post receipt or signed form.

Rural Environment Protection Scheme

- In line with Government policy generally, the Department should give consideration to reviewing the rate of recoupment in REPS where land is both purchased and sold for the purposes of consolidating the holding, in particular where Revenue Stamp Duty relief is given.
- All changes to the scheme should be notified to the participants.

Single Payment Scheme

- That the Department would investigate the extension of the late application period for the Single Payment Scheme to 50 working days subject to penalties.
- That the Department would investigate the possibility of putting in place a database acknowledgement system in respect of the receipt of Single Payment Scheme applications. A reminder notice would be issued within the late application period where the pre-printed form was not returned by the closing date. The Agriculture Appeals Office acknowledges that such receipts are issued to all on-line applicants.
- Notification form NF should only be signed by the farmer when complete and being issued to the farmer.
- Information regarding ‘Notice’ at inspection should be given to the farmer in writing on the day of the inspection and recorded. This could be dealt with if specified in the Terms and Conditions of the scheme.
- Penalties in relation to the Animal Welfare, Recording and Breeding scheme for Suckler Herds (Suckler Welfare Scheme) should be clearly stated in the Terms and Conditions of the scheme.
- All SPS amendment forms should be reflected on the database where payment eligibility is impinged upon regardless of date of receipt.
- A comprehensive secure date stamp system should be in place compliant with audit standards.

8. Recurring mistakes by scheme applicants that lead to penalties.

General

- Applicants not ensuring that they have read and examined the scheme Terms and Conditions relevant to their application, i.e. must be aware of any revised and new scheme versions.
- Farmers not keeping a record of all contacts with the Department, and not requesting the name of the person they speak with. Where possible farmers should ask for written or electronic confirmation of matter discussed. Equally any posted correspondence should be through registered post and the farmer should retain copy documents.

REPS

- REPS farmers not keeping the Department updated on changes to farming activities and lands farmed when deviating from those in their REPS plan.
- REPS farmers should ensure that any amendments to plans, particularly rates of application of chemical fertilizer, should be reflected in their farming practice.
- When considering selling or leasing land that is part of the REPS contract, farmers should consult with their REPS planner or the Department prior to any such disposal to examine the potential claw back of REPS monies, where for example the sale is to a non-REPS farmer.
- Applicants not ensuring all plots/parcels farmed are included in their Single Payment Scheme application, also not ensuring that plots/parcels no longer farmed are deleted out by drawing a line through them. Applicants should check and recheck again their Single Payment application prior to submission to ensure that the most up-to-date information only is declared.
- The Agriculture Appeals Office experience is that many penalties relate to REPS undertakings not carried out within the planned timeframe – especially lime spreading, hedgerow cutting and planting, stone wall maintenance, fencing of watercourses and wells, painting of farm sheds, tidying of farm and farmyard, stock-proofing boundaries and provision of animal housing and related matters.
- REPS participants not returning the REPS 1C – annual application for payment – on time.

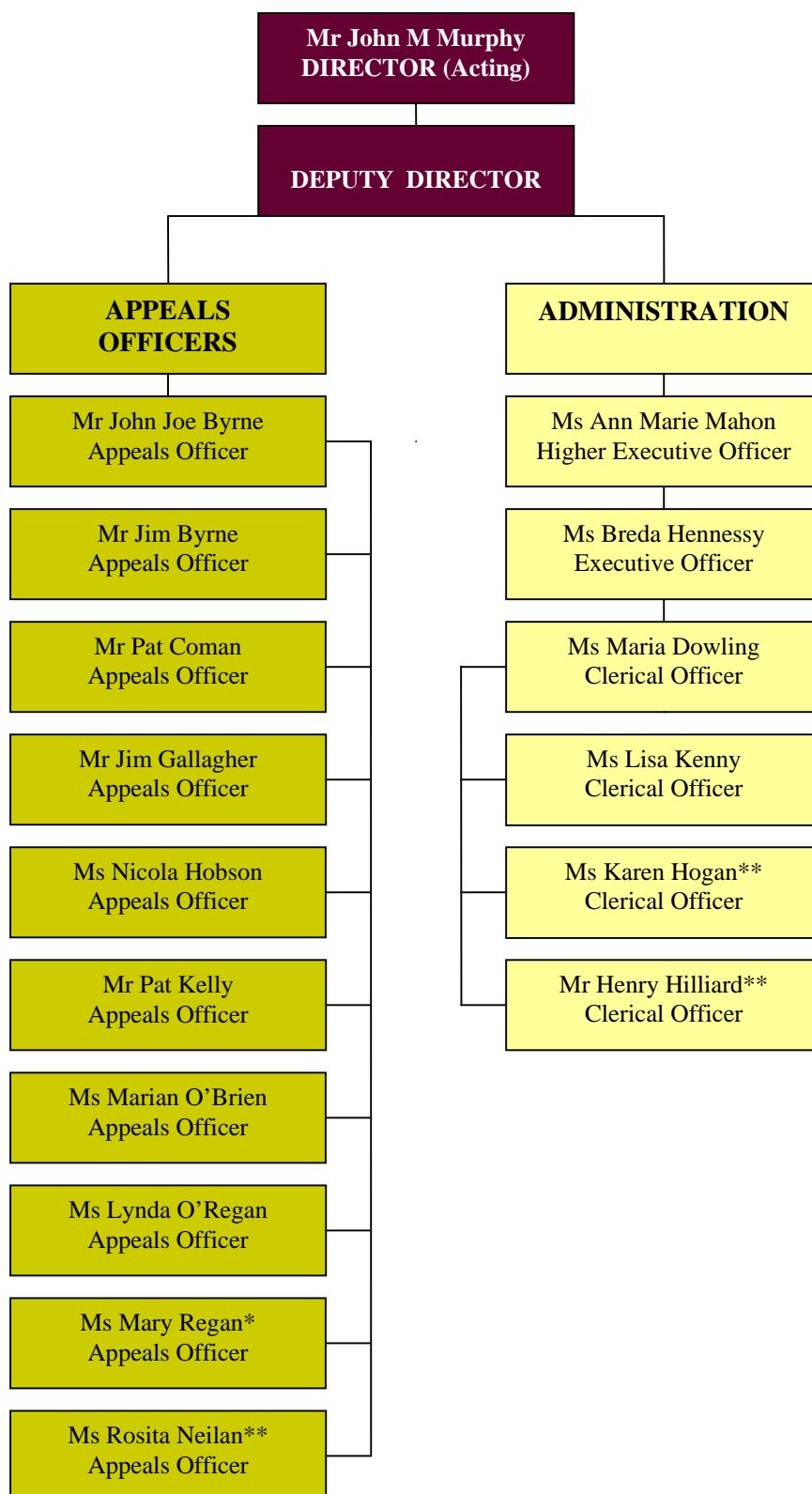
Single Payment Scheme

- SPS applicants with more entitlements than hectares of eligible land should investigate their options for the surplus entitlements such as leasing, selling or consolidation where that is an option, prior to the scheme or activity closing dates that are available from the Department.
- In order to avoid cross compliance penalties SPS applicants with cattle must;
 - ensure all cattle are properly tagged
 - regularly crosscheck the animals in their herd with the animals listed on the CMMS herd profile for their herd issued by the Department
 - immediately rectify any inconsistencies between their CMMS herd profile and the cattle on farm; have animals removed from or added to their herd profile
 - ensure all farm to farm cattle movements are properly notified
 - ensure each animal has a passport and that you have no surplus passports.
- Applicants should notify any land changes to the Department, the amendment form is available for this purpose; penalties can result where the area farmed is reduced but not notified.
- Applicants must exclude ineligible areas of land from scheme applications.
- Applicants should note the requirements of stock proofing boundaries.

Disadvantaged Area Scheme

- Applicants should remain conscious of the continued stocking density requirement under the Disadvantaged Area Scheme.

9. Organisation Chart 2009



*Left the office during 2009,

** Joined the office during 2009

Administration staff are responsible for appeal receipt/file management, general administration/accommodation, Appeals Officer support, I.T. maintenance/development, statistics and general correspondence.

APPENDICES



**Number 29 of 2001
AGRICULTURE APPEALS ACT, 2001
ARRANGEMENT OF SECTIONS**

Section

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

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

SCHEDULE

Schemes

Acts Referred to

Diseases of Animals Acts, 1966 to 2001

National Beef Assurance Scheme Act, 2000 2000, No. 2

Ombudsman Act, 1980 1980, No. 26



**Number 29 of 2001
AGRICULTURE APPEALS ACT, 2001**

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

1.—(1) In this Act—

- “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 Schemes

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



S.I. No. 193 of 2002
AGRICULTURE APPEALS REGULATIONS 2002

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

Citation and Commencement

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

Definitions

2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

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

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

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

Distribution of references to appeals officers.

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

Decisions which may be appealed and transitional arrangements.

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

(2) Persons who before the commencement of these Regulations had a right of formal appeal by administrative arrangement to the Headage and Premia Appeals Unit or the REPS Appeals Committee shall for the period of 3 months from such commencement continue to have that right to appeal to that Unit or that Committee, as the case may be, against decisions taken by officers of the Minister relating to the schemes concerned which were notified to those persons prior to that commencement.

Submission of appeal and information to be supplied by Appellant

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

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

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

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

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

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

Notification of appeal and information to be supplied.

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

(2) The Minister shall, in relation to each notice of appeal, give to the Director –

- (a) a statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed, and

- (b) any information, document or item in the power or control of the deciding officer that is relevant to the appeal.

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

Notice of appeal.

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

Further information to be supplied and amendment of pleadings.

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

- (a) require the Appellant, the deciding officer, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,
- (b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and
- (c) fix the period for the furnishing of any such statement or particulars upon such terms as he or she may think fit.

Summary appeals.

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

Hearings.

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

Failure to attend hearing.

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

Appeal may be decided despite failure to comply with Regulations.

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

Procedure at hearing.

13. (1) The procedure at a hearing under the Act shall be such as the appeals officer hearing the appeal may determine.
- (2) An appeals officer hearing an appeal may postpone or adjourn the hearing as he or she may think fit.
- (3) An appeals officer may, at the hearing of an appeal, admit any duly authenticated written statement or other material as prima facie evidence of any fact in any case in which he or she thinks it appropriate.

Decision of Appeals Officer.

14. (1) The decision of an appeals officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question.
- (2) The decision of an appeals officer shall be in writing and shall include the reasons for the decision which shall be notified as soon as may be to the Appellant, the Minister and any other person concerned.

GIVEN under my Official Seal,
8 May 2002

JOE WALSH TD

Minister for Agriculture, Food and Rural Development



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

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

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

“Beef Cow Scheme in Less Severely Handicapped Areas and Coastal Areas with Specific Handicaps”,
“Cattle Headage Scheme in More Severely Handicapped Areas”,
“Equine Headage Scheme in all Disadvantaged Areas”,
“Goat Headage Scheme in All Disadvantaged Areas”, and
“Sheep Headage Scheme in All Disadvantaged Areas”,
and
 - (b) by adding the following schemes -
 - (i) “Disadvantaged Areas Compensatory Allowances Scheme” before mention of “EU Area Aid Scheme (including the Arable Aid Scheme)”, and
 - (ii) “Scheme of Grant Aid for the Development of the Organic Sector” after mention of “Scheme of Early Retirement from farming”,
- and the said Schedule, as so amended, is set out in the Table to this Regulation.

**TABLE
SCHEDULE
Schemes**

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

GIVEN under my Official Seal,
 6th December 2002

JOE WALSH TD

Minister for Agriculture and Food



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

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004.
2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002 (S.I. No. 558 of 2002)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by adding after the mention of “Installation Aid Scheme (IAS)” the following scheme:
‘Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo’ and the said Schedule, as so amended, is set out in the Table to this Regulation.

**TABLE
SCHEDULE
Schemes**

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

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

JOE WALSH TD

Minister for Agriculture and Food



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

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006.
 2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004 (S.I. No. 507 of 2004)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by adding -
 - (a) after the mention of “Scheme of Grant Aid for the Development of the Organic Sector” the following scheme:
“Scheme of Grant Aid for Improvements in Animal Welfare Standards (Sow Housing)”,
 - (b) after the mention of “Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities)(AES)” the following part of a scheme:
“Single Payment Scheme, insofar as it relates to the following -
 - (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/20051) of Commission Regulation (EC) No 796/20042,
 - (b) Article 21 of Commission Regulation (EC) No 796/2004,
 - (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
 - (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,
 - (e) Article 34.3 of Council Regulation (EC) No 1782/20033, and
 - (f) Article 8 of Commission Regulation (EC) No 795/20044.”,
- and the said Schedule, as so amended, is set out in the Table to this Regulation.

¹ O.J. No. L42/3, 12.02.2005

² O.J. No. L141/18, 30.4.2004

³ O.J. No. L270/1, 21.10.2003

⁴ O.J. No. L 141/1, 30.4.2004

**TABLE
SCHEDULE
Schemes**

Disadvantaged Areas Compensatory Allowances Scheme
 EU Area Aid Scheme (including the Arable Aid Scheme)
 EU De-seasonalisation Slaughter Premium Scheme
 EU Ewe Premium Scheme
 EU Extensification Premium Scheme
 EU Slaughter Premium Scheme
 EU Special Beef Premium Scheme
 EU Suckler Cow Premium Scheme
 Farm Improvement Programme (FIP)
 Farm Improvement Programme (FIP) Horticulture
 Installation Aid Scheme (IAS)
 Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
 National Scheme of Installation Aid (SIA) (introduced December 1998)
 National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
 National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May '99)
 Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
 Rural Environment Protection Scheme (REPS)
 Scheme of Early Retirement from Farming
 Scheme of Grant-Aid for the Development of the Organic Sector
 Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)
 Scheme of Grant-Aid for Investment in Alternative Enterprises
 Scheme of Grant-Aid for Investments in Agri-Tourism
 Scheme of Installation Aid (SIA)
 Scheme of Investment Aid for Farm Waste Management (FWM)
 Scheme of Investment Aid for the Control of Farm Pollution (CFP)
 Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
 Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities
 Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
 Single Payment Scheme, insofar as it relates to the following ;
 (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005¹) of Commission Regulation (EC) No 796/2004²,
 (b) Article 21 of Commission Regulation (EC) No 796/2004,
 (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
 (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,
 (e) Article 34.3 of Council Regulation (EC) No 1782/2003³, and
 (f) Article 8 of Commission Regulation (EC) No 795/2004⁴.

GIVEN under my Official Seal,
 3rd February 2006

MARY COUGHLAN TD

Minister for Agriculture and Food

¹ O.J. No. L42/3, 12.02.2005

² O.J. No. L141/18, 30.4.2004

³ O.J. No. L270/1, 21.10.2003

⁴ O.J. No. L 141/1, 30.4.2004



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

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

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

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

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

TABLE SCHEDULE

Disadvantaged Areas Compensatory Allowances Scheme

EU Area Aid Scheme (including the Arable Aid Scheme)

EU De-seasonalisation Slaughter Premium Scheme

EU Ewe Premium Scheme

EU Extensification Premium Scheme

EU Slaughter Premium Scheme

EU Special Beef Premium Scheme

EU Suckler Cow Premium Scheme

Farm Improvement Programme (FIP)

Farm Improvement Programme (FIP) Horticulture

Installation Aid Scheme (IAS)

Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo

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

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

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

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

Rural Environment Protection Scheme (REPS)

Scheme of Early Retirement from Farming

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

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

Scheme of Grant-Aid for Investment in Alternative Enterprises

Scheme of Grant-Aid for Investments in Agri-Tourism

Scheme of Installation Aid (SIA)

Scheme of Investment Aid for Farm Waste Management (FWM)

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

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

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

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

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

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

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

GIVEN under my Official Seal,
16th November 2006.
MARY COUGHLAN TD

Minister for Agriculture and Food

³ O.J. No. L270/1, 21.10.2003

⁴ O.J. No. L 141/1, 30.4.2004



S.I. No. 169 of 2008
AGRICULTURE APPEALS ACT 2001 (AMENDMENT OF SCHEDULE) REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 5(2) of the Agriculture Appeals Act 2001 (No. 29 of 2001) (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order 2007 (S.I. No. 705 of 2007)), hereby make the following regulations:

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2009.

2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) (No. 2) Regulations 2006 (S.I. No. 584 of 2006)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended—

(a) by inserting before “Disadvantaged Areas Compensatory Allowances Scheme” the following:

“Animal Welfare, Recording and Breeding Scheme for Suckler Herds”,

“Bio Energy Scheme (excluding Willow)”,

(b) by deleting “Farm Improvement Programme (FIP)”,

(c) by inserting “Farm Improvement Scheme” after “EU Suckler Cow Premium Scheme”,

(d) by inserting “Organic Farming Scheme” after “Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors”,

and

(e) by substituting for all the matter from “Single Payment Scheme”, down to and including “Article 8 of the Commission Regulation (EC) No. 795/2004”, the following:

“Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003”, and the Schedule, as so amended, is set out in the Table to this Regulation.

**TABLE
SCHEDULE
Schemes**

Animal Welfare, Recording and Breeding Scheme for Suckler Herds
 Bio Energy Scheme (excluding Willow)
 Disadvantaged Areas Compensatory Allowances Scheme
 EU Area Aid Scheme (including the Arable Aid Scheme)
 EU De-seasonalisation Slaughter Premium Scheme
 EU Ewe Premium Scheme
 EU Extensification Premium Scheme
 EU Slaughter Premium Scheme
 EU Special Beef Premium Scheme
 EU Suckler Cow Premium Scheme
 Farm Improvement Scheme
 Farm Improvement Programme (FIP) Horticulture
 Installation Aid Scheme (IAS)
 Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
 National Scheme of Installation Aid (SIA) (introduced December 1998)
 National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
 National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
 Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
 Organic Farming 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 Grant-Aid for Investment in Alternative Enterprises
 Scheme of Grant-Aid for Investments in Agri-Tourism
 Scheme of Installation Aid (SIA)
 Scheme of Investment Aid for Farm Waste Management (FWM)
 Scheme of Investment Aid for the Control of Farm Pollution (CFP)
 Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
 Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities
 Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
 Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities
 Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/20032.

GIVEN under my Official Seal,
 29 May 2009

BRENDAN SMITH TD

Minister for Agriculture, Fisheries and Food.



Appeal Procedure & Notice of Appeal Form

The Agriculture Appeals Office

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

How To Make an Appeal

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

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

Appeals Process

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

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

Oral Hearings

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

- Oral hearings are held at a number of locations at a place and time convenient for Appellants.

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

Right of Review

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

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

Contact Details

Address: Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co Laois.
 Lo-Call: 1890 671671
 Tel: (057) 8667167
 Fax: (057) 8667177
 email: appeals.office@agriculture.gov.ie
 Web: www.agriappeals.gov.ie

Checklist before submission

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

Schedule of Schemes Covered

The Office deals with appeals under the following schemes;

- Animal Welfare, Recording and Breeding Scheme for Suckler Herds
- Bio Energy Scheme (excluding Willow)
- Disadvantaged Areas Compensatory Allowances Scheme
- EU Area Aid Scheme (including the Arable Aid Scheme)
- EU De-seasonalisation Slaughter Premium Scheme
- EU Ewe Premium Scheme
- EU Extensification Premium Scheme
- EU Slaughter Premium Scheme
- EU Special Beef Premium Scheme
- EU Suckler Cow Premium Scheme
- Farm Improvement Scheme
- Farm Improvement Programme (FIP) Horticulture
- Installation Aid Scheme (IAS)
- Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
- National Scheme of Installation Aid (SIA) (introduced December 1998)
- National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
- National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
- Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
- Organic Farming 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 Grant-Aid for Investment in Alternative Enterprises
- Scheme of Grant-Aid for Investments in Agri-Tourism
- Scheme of Installation Aid (SIA)
- Scheme of Investment Aid for Farm Waste Management (FWM)
- Scheme of Investment Aid for the Control of Farm Pollution (CFP)
- Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
- Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities
- Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
- Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities
- Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003².



Notice of Appeal Form

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

Official use only

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

Appeal No: _____

Checked by: _____

Please complete parts 1 and 2 (overleaf) in full

Part 1 – Application Details (Please use block capitals)

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

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

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

Name:

Herd / REPS / Application No:

Part 2 – Grounds Of Appeal

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

[illegible]

Signed: _____

Date: _____

Checklist before submission

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

You should have answered yes to all of the above