



AGRICULTURE APPEALS OFFICE

ANNUAL REPORT

2012

To the Minister for Agriculture, Food and the Marine, Mr. Simon Coveney T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2012 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 2012.

Miriam Cadwell
Director

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

“The mission of the office is to provide an independent, accessible, fair and timely appeals service for Department of Agriculture, Food and the Marine 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, Food and the Marine in relation to the schemes set out in the Schedule to the Agriculture Appeals Act 2001. One thousand and thirty six appeals were received in 2012 across the various different schemes. This represents an increase of 40% on 2011 figures.

This report sets out the major developments during the year and provides a statistical breakdown of the office’s work up to 31 December 2012. To illustrate the type of issues that gave rise to appeals and the consideration given to these issues by Appeals Officers, it contains a cross-section of cases determined by Appeals Officers.

In 2012, this Office also took responsibility for the Disadvantaged Area Scheme Committee which examines appeals from applicants whose stocking density under the 2011 Disadvantage Area Scheme was less than 0.3 livestock units per hectare, for reasons outside their control. The Disadvantaged Area Scheme Committee is comprised of Appeals Officers and has an independent Chairperson, Mr Pdraig Gibbons.

The work carried out by the Single Payment Appeals Committee which continued to examine appeals arising from the Single Payment Scheme during 2012 is also outlined. The Single Payment Appeals Committee chaired by Mr John Duggan is also comprised of Appeals Officers from this office.

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

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

Miriam Cadwell
Director
June 2013

2. Agriculture Appeals Office

The Agriculture Appeals Office is an independent agency established in 2002 to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine concerning designated schemes operated by the Department. The 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, Food and the Marine 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 is 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
- Rules and guidelines
- Office procedures
- Classes of records held and the arrangements for access
- Rights of review and appeal including rights of review under the Freedom of Information Act.

Business Plan

The 2012 Business Plan forms the basis for the work of the office and is subject to regular review.

Website

Useful information is available at the Agriculture Appeals Office website: www.agriappeals.gov.ie where appellants can download the 'Information Note and Notice of Appeal' form and lodge appeals online to the e-mail address: appeals.office@agriculture.gov.ie.

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

Ongoing contact with various divisions of the Department of Agriculture, Food and the Marine to discuss various issues that arise from appeal cases continued in 2012.

Meetings of Appeals Officers

Nine meetings of Appeals Officers were held in 2012. The principal purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the office.

Freedom of Information

The office received four formal requests under the provisions of the Freedom of Information Act.

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. Twelve appeals received during 2012 were referred to the Ombudsman in 2012, of which four decisions have been received back. There were no occurrences in 2012 where the Ombudsman requested this office to amend its decision.

3. Appeals Procedure and Oral Hearings

298 oral hearings were held in 2012. 189 of these dealt with appeals submitted in 2012, 108 with appeals submitted in 2011 and one was in relation to an appeal submitted in 2010.

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, Food and the Marine
- 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 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. The key features of an oral hearing are:

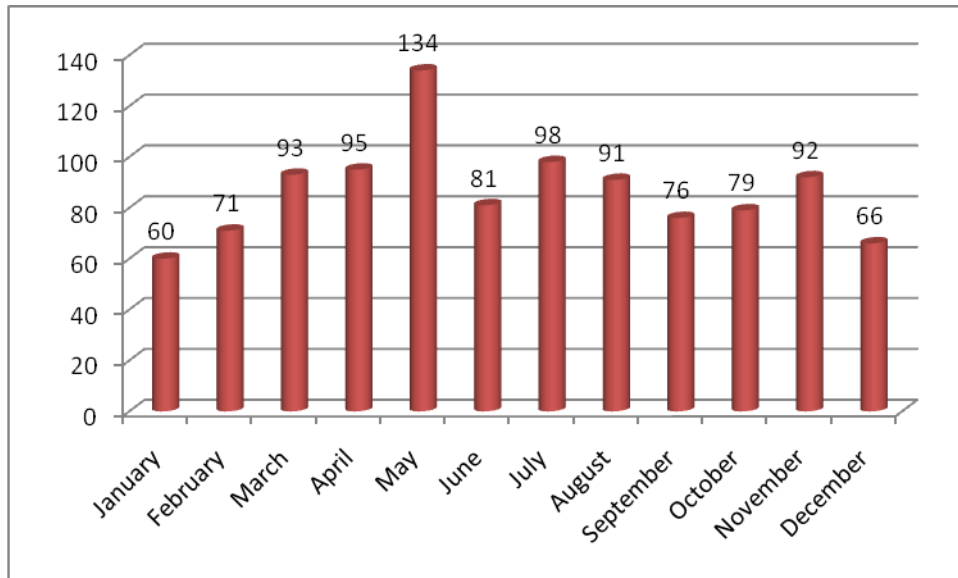
- It is held in private and is informal in format.
- The appellant has a right to representation but must attend the hearing in person.

Oral hearings were held in every county in 2012. Conscious of the need to be efficient, the Agriculture Appeals Office aims to hold oral hearings in a convenient location for the appellant, where possible, and to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country and these regions are rotated on a regular basis.

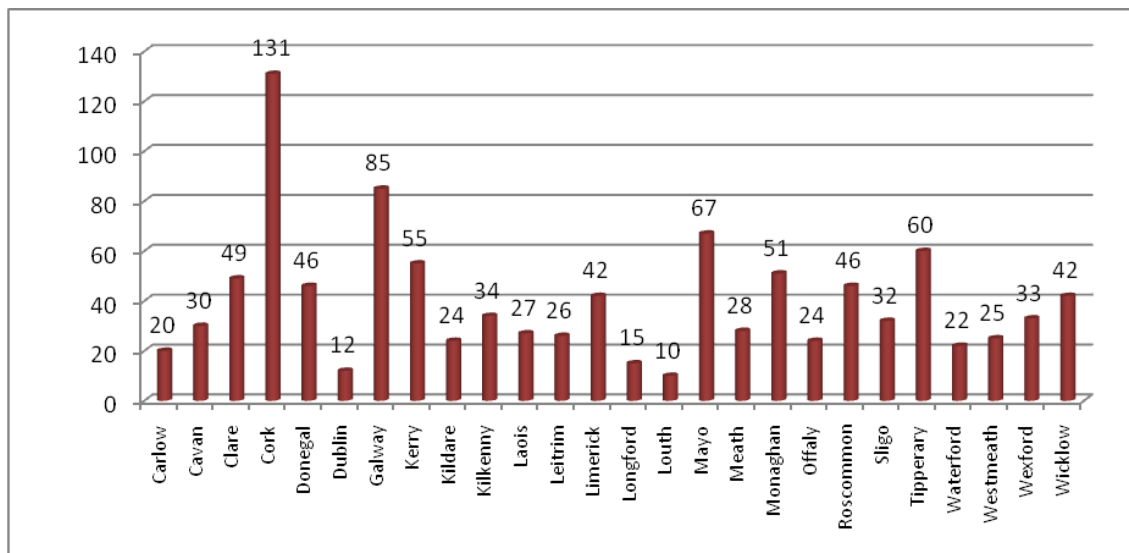
4. Statistics – 2012

1036 cases were received in 2012 compared with 736 in 2011, an increase of 40%.

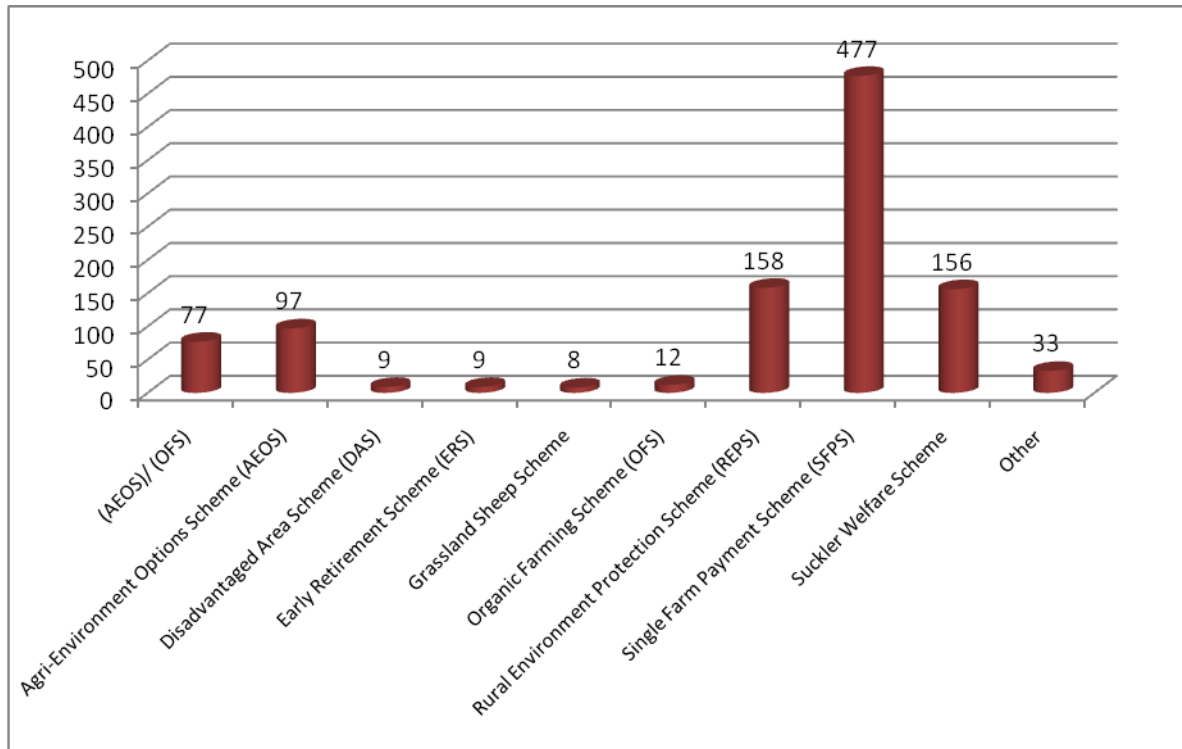
4(a) Appeals received by month



4(b) Appeals received by County

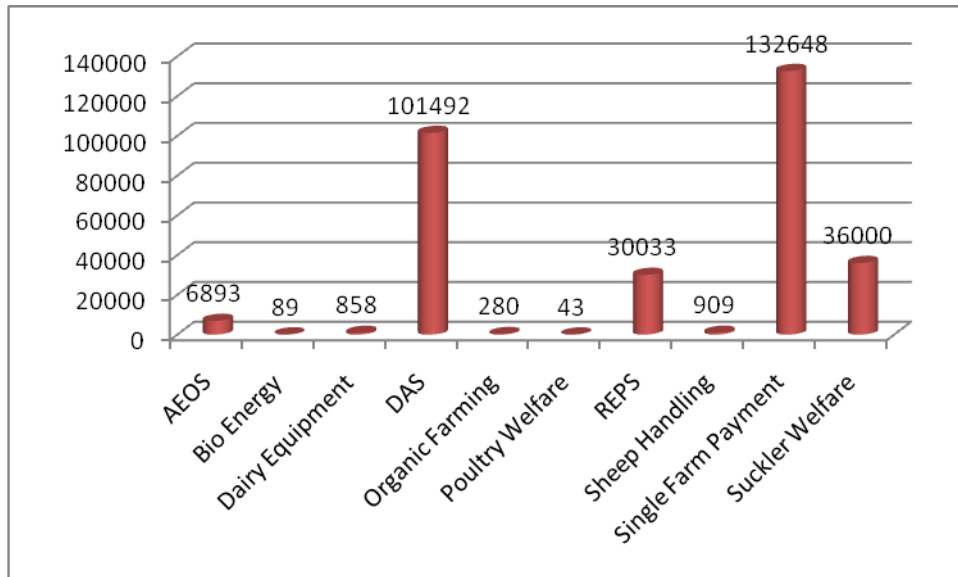


4(c) Appeals received by scheme 2012



4(d) Department of Agriculture, Food and the Marine scheme applications in 2011

Information regarding 2012 Schemes operated by the Department was not available when finalizing this report. For information purposes 2011 figures have been included.



4(e) Outcome of appeals received in 2012.

Outcome	Percentage
Appeals Allowed and Partially Allowed	7%
Revised by the Department on receipt of appeal	25%
Revised by the Department after Appeals Officer input	6%
Appeals Withdrawn, Invalid and Out of Time	15%
Disallowed	15%
Awaiting decision on 31st December 2012	32%

Terminology**Appeal Allowed**

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

Partially Allowed

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

Revised by the Department on receipt of appeal

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.

Revised by the Department after Appeals Officer input

This category includes cases where the Department has revised its original decision following Appeals Officer input which may be based on new information provided at oral hearing.

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, Food and the Marine.

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.

Appeal Disallowed

Where the Appeals Officer, following consideration of the case, decides that the grounds of appeal do not warrant overturning the decision and that the penalty imposed by the Department of Agriculture, Food and the Marine was the correct one.

4(f) Outcome by scheme received at 31 December 2012

SCHEME	Received	Allowed	%	Partially Allowed	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
Agri-Environment Options Scheme	97	7	7.2%	3	3%	5	5.1%	2	2%	3	3%	6	6.1%	15	15.4%	56	57.7%
AEOS/OFS	77	-	-	1	1%	65	84%	2	3%	-	-	7	9%	2	3%	-	-
Bio Energy Scheme	3	-	-	-	-	-	-	1	33.3%	-	-	-	-	1	33.3%	1	33.3%
Development of the Organic Sector Scheme	3	-	-	-	-	-	-	-	-	-	-	-	-	1	33.3%	2	66.6%
Disadvantaged Areas Compensatory Allowance Scheme	9	-	-	1	11%	-	-	-	-	3	33.3%	1	11%	-	-	4	44.4%
Early Retirement from Farming Scheme	9	1	11%	-	-	1	11%	-	-	-	-	1	11%	-	-	6	66%
Farm Improvement Scheme	6	1	16.6%	-	-	-	-	1	16.6%	-	-	-	-	1	16.6%	3	50%
Farm Waste Management Scheme	2	-	-	-	-	-	-	-	-	-	-	1	50%	1	50%	-	-
Grassland Sheep Scheme	8	-	-	-	-	1	12.5%	-	-	1	12.5%	-	-	3	37.5%	3	37.5%
Installation Aid Scheme	2	-	-	-	-	-	-	-	-	1	50%	1	50%	-	-	-	-
Non-Valuation Aspects of Reactor Scheme	6	1	16.6%	1	16.6%	-	-	-	-	-	-	-	-	3	50%	1	16.6%
Organic Farming Scheme	12	2	16.6%	-	-	2	16.6%	1	8.3%	-	-	-	-	3	25%	4	33.3%
Rural Environment Protection Scheme (REPS)	158	7	4.4%	9	5.69%	17	10.7%	5	3.16%	6	3.7%	13	8.2%	28	17.7%	73	46.2%
Single Farm Payment Scheme (SFPS) – Consolidation	4	-	-	-	-	-	-	-	-	-	-	-	-	1	25%	3	75%
SFPS - Cross Compliance	161	10	6.2%	6	3.7%	33	20.5%	2	1.2%	16	9.9%	9	5.5%	15	9.3%	70	43.4%
SFPS - Late Submission of Applications	17	-	-	-	-	5	29.4%	-	-	1	5.8%	-	-	1	5.8%	10	58.8%
SFPS – Nitrates	216	3	1.4%	2	.9%	118	54.6%	11	5%	9	4.2%	15	6.9%	23	10.6%	35	16.2%
SFPS - Over Declaration of Land/Setaside	40	1	2.5%	1	2.5%	7	17.5%	2	5%	5	12.5%	-	-	4	10%	20	50%
SFPS - Surrender of Unused Entitlements to National Reserve	29	-	-	-	-	9	31%	1	3.4%	1	3.4%	3	10.3%	8	27.5%	7	24%
SFPS – Transfer of Entitlements	3	1	33.3%	-	-	1	33.3%	-	-	-	-	1	33.3%	-	-	-	-
SFPS - Under Declaration of Land	7	-	-	-	-	3	42.8%	-	-	-	-	1	14.2%	-	-	3	42.8%
Sheep Fencing/Mobile Handling Equipment Scheme	3	-	-	-	-	1	33.3%	-	-	1	33.3%	-	-	-	-	1	33.3%
Suckler Cow Welfare Scheme	156	4	2%	3	2%	61	39%	3	2%	4	2%	9	6%	43	28%	29	19%
Other	8	-	-	-	-	-	-	-	-	4	50%	1	12.5%	2	25%	1	12.5%

4(g) Time from Department of Agriculture, Food and the Marine

For 2012 cases, the average time taken by the Department to return files was 48 days. A breakdown follows by scheme:

SCHEME	Average number of days to return file
Agri-Environment Options Scheme	47
AEOS/OFS	53
Bio Energy Scheme	65
Development of the Organic Sector Scheme	60
Disadvantaged Areas Compensatory Allowance Scheme	77
Early Retirement from Farming Scheme	101
Farm Improvement Scheme	30
Farm Waste Management Scheme	37
Grassland Sheep Scheme	50
Non-Valuation Aspects of Reactor Scheme	26
Organic Farming Scheme	39
Rural Environment Protection Scheme (REPS)	56
Single Farm Payment Scheme (SFPS)	52
Sheep Fencing/Mobile Handling Equipment Scheme	20
Suckler Cow Welfare Scheme	12

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

- Requests the relevant file from the Department of Agriculture, Food and the Marine.
- 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 – 265 reminders were issued in 2012, followed by repeat reminders in some cases.

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

For 2012 cases, the average time taken to deal with a case from the time of receipt until the issue of the decision was 96 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 Agriculture Appeals Office, may not be completed within the set time frame.

4(i) End of Position at year end

The position at 31 December 2012 in relation to cases received in 2012 is set out below, together with the position at 31 December 2011 for comparison purposes.

	Position at 31 December 2012 2012 Cases	Position at 31 December 2011 2011 Cases
Cases closed	704	463
Work in progress – Agriculture Appeals Office	221	159
Awaiting Department response	111	114
Sub-total of those on hand	332	273
OVERALL TOTAL	1036	736

5. Disadvantaged Area and Single Payment Scheme Appeals Committees

Disadvantaged Area Scheme (DAS) Appeals Committee

The DAS Appeals Committee was established in October 2012 to deal with appeals from applicants whose stocking density under the 2011 Disadvantage Area Scheme, for reasons outside their control, was less than 0.3 livestock units per hectare. The DAS Appeals Committee is chaired by Mr Pdraig Gibbons and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 601 cases in 2012. Of the 601 cases, it was recommended 191 cases be allowed, 356 be disallowed, 1 case was revised and allowed by the Department, 1 case had been referred to the Committee in error and additional information was requested in 52 cases.

5(a) DAS Committee cases dealt with in 2012

DAS Committee Appeals Status at 31 st December 2012	Number of Cases
Cases considered in 2012	601
Allowed	191
Disallowed	356
Additional information requested	52
Other	2

Single Payment Appeals Committee (S.P.A.C.)

The SPAC was established in February 2004 to deal with appeals made by farmers who are dissatisfied with the decisions of the Department of Agriculture, Food and the Marine in relation to the implementation of the various facets 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 National Reserve. The Appeals Committee is chaired by Mr John Duggan and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 14 cases in 2012 and made recommendations to the Department as set out in the table below.

5(b) S.P.A.C. cases dealt with in 2012

SPAC	2011 National Reserve	2010 National Reserve	Overall Totals
Allowed	-	-	-
Disallowed	13	1	14
Total	13	1	14

6. Selected Appeal Cases

Case 1: Single Payment Scheme (Surrender of unused entitlements to National Reserve)

The appellant submitted an application to the Department of Agriculture, Food and the Marine for the Transfer of Entitlements under the 2007 Single Payment Scheme (SPS). The appellant signed Confirmation of Short Term Renting of land and included a rental agreement valid from February to December 2007. The Department approved the application for transfer of the single payment entitlements. The appellant was advised in writing that Single payment entitlements must be used at least one in every three years otherwise unused entitlements would automatically revert to the National Reserve, they added that a farmer ‘uses’ entitlements by submitting a hectare of eligible land per entitlement on his/her Single payment application. The transferor received payment for the entitlements as part of their 2007 SPS payments. In 2008, 2009 and 2010 the appellant received pre-printed SPS application forms from the Department. The appellant did not apply for the SPS in any of these years. On the pre-printed 2010 form it stated that the entitlements would be lost to the National Reserve if unused in 2010. In 2011 the appellant was informed by the Department that as the entitlements were unused this year and over the previous two year period they must revert to the National Reserve.

The decision was appealed to the Agriculture Appeals Office. In the grounds for appeal the appellant stated that they believed that the person they had transferred the entitlements to in 2007 could use these entitlements for as long as they had the land rented, therefore an annual transfer of entitlements application need not be completed nor did the appellant need to complete a Single Payment Application each year.

The Appeals Officer found that the Transfer of Entitlements Form was clear in that it only referred to the 2007 Single Payment Scheme on the top header. In addition the land rental agreement submitted by the appellant was valid only for a specified period in 2007. The appellant had received SPS pre-printed application forms in 2008, 2009 and 2010. In 2010 the Department sent a pre-printed SPS form, column 5 of this form stated “*Entitlements that will be lost to the National Reserve if unused in 2010*”, this column also has 3 asterix e.g. *** which is further defined as follows “**** Identifies those entitlements, including Standard NR type entitlements, that were not used in 2009. You will lose these entitlements to the National reserve if you do not use them in 2010*”.

As the entitlements in question were not used by the time stipulated they reverted to the National Reserve. The Appeals Officer found that this was in keeping with the requirements of the Single Payment Scheme and that the decision of the Department was correct. Accordingly the appeal was disallowed.

Case 2: Rural Environment Protection Scheme 3 (REPS 3)

The appellant was a REPS 3 participant whose contract expired on 31 May 2011. The Department carried out an inspection on the appellant’s holding on 27 September 2011 and applied a 15% penalty in respect of two non-compliances found as follows: (i) 5% as habitat areas were not fenced off and (ii) 10% in respect of a plot not found to be stockproof. The appellant appealed the Department’s decision on grounds that the inspection took place almost four months after the contract expired.

The Department did not dispute the fact that the inspection took place almost four months after the contract expired but upheld the application of the penalties nevertheless.

In reaching a determination on the appeal the Appeals Officer referred to Section 25 of the terms and conditions which provides as follows:

25.1 *The Minister reserves the right to carry out inspections at reasonable times of any land, premises, plant, equipment, livestock and records of applicants/participants in this Scheme. Inspections may be carried out within 3 months following the participant’s completion of the 5-year term in REPS.*

As the Department did not dispute the fact that the plan expired on 31 May 2011 and the inspection took place on 27 September 2011 the Appeals Officer overturned the decision of the Department to apply penalties as the inspection took place almost four months after the appellant’s REPS contract expired.

The Appeals Officer found the inspection and subsequent application of penalties not to be in accordance with the terms and conditions of the scheme. The appeal was allowed.

Case 3: Rural Environment Protection Scheme 4 (REPS 4)

The appellant's REPS 4 contract commenced on 1 March 2009. The Department wrote to the appellant in November 2011 stating that payment in respect of Supplementary Measure 10 (SM10) had been made in error and a further letter would issue in due course detailing the amount of money that would be clawed back. The Department reviewed the case and upheld the original decision.

An appeal was submitted to the Agriculture Appeals Office on the grounds that the original plan was submitted on 2 February 2009 and a revised plan was submitted on 27 February 2009. The revised plan, submitted three weeks after the original plan, included the SM10 option as an option for payment. The planner stated that he was under the clear impression that as the first plan had not yet been approved, the revised plan would replace the first plan and that the appellant had followed the requirements of their plan. An oral hearing was not requested.

As an oral hearing was not required, the Appeals Officer spoke to the planner on the telephone; he reiterated what was written in the letter of appeal. He stated that he had considered putting the SM 10 option in the original plan, he was giving the appellant time to decide on it and he hadn't got results of soil samples back when he lodged the first plan. He lodged the amended plan with the soil sample results and added the SM10 option to the plan. He stated that the Department had subsequently sent the appellant the relevant form to complete for payment of the SM10 mixed grazing option.

The Appeals Officer noted that the SM10 option was included in the Schedule of Work for Each Year in the original plan. Paragraph 12 of REPS 4 'Terms and Conditions' covers, 'Supplementary Measures' 12.1 gives *Mixed grazing* as one of the available supplementary measures. Paragraph 12.2 states "*It is a requirement that participants elect for supplementary measures from the commencement of the five-year REPS Plan, with the exception of Lake Catchments and Heritage Building supplementary measures, as a condition of eligibility for payment*".

The amended REPS4 plan that included SM10 Mixed Grazing was received by the Department on 27 February 2009 and the REPS4 contract commenced on 1 March 2009.

The Appeals Officer found that the appellant had complied with the requirement of *paragraph 12.2 of the REPS4 Terms & Conditions* by having this supplementary measure in place at the commencement of their REPS4 plan. The appeal was allowed.

Case 4: 2011 Single Payment Scheme (SPS) and Disadvantaged Areas Scheme (DAS)

The farmer applied under the 2011 SPS & DAS and a ground inspection was undertaken in August 2011. The Department issued findings of a reduction of more than 20% in found area versus claimed area mainly on the basis of non-forage area found in a specific parcel.

At appeal the farmer stated payment was received on the parcel in 2008 and any deterioration was a result of compliance with Council Directive 70/409/EEC on the conservation of wild birds. The farmer stated the land is managed in accordance with a National Parks and Wildlife Service's (NPWS) farm plan and passed annual inspections. Evidence was submitted to illustrate topping, grazing and accessibility.

At the oral hearing the Department Inspector stated the parcel was re-inspected in early 2012 and found not to be stock-proof and should have been rejected outright. The Appeals Officer noted there was no reference to stock-proofing at the 2011 inspection and at review the Department reduced the ineligible area from 50% to 20% on part of the parcel.

The farmer's agricultural consultant stated that the entire parcel was accessible to stock and farmed as a single area with cattle and horses, it was stock-proof with commercial forestry on three sides and a stream and bank on the other. The agricultural consultant stated the lands were in a Special Protected Area (SPA) and compliance with the farm plan required topping and grazing of plots within the parcel and was checked annually for the NPWS.

The Terms and Conditions state - *Land that is eligible for SPS payments; ... For land to be eligible, There must be appropriate fencing Appropriate fencing means stock-proof fencing that will control the applicant's animals and also the neighbouring farmer's animals. ... there must be defined external boundaries except in the case of commonage;*

Land not eligible for SPS; ... in the case of each hectare declared, the eligible area excludes any areas under roads, paths, buildings farmyards, woods, scrub, ...

The NPWS farm plan required specified works to prevent domestic livestock escaping from the land, and did not show the farmer was prevented from fencing. The SPS Terms and Conditions required a permanent boundary and stock-proof fencing. The appeals officer noted that the parcel was not rejected for stock-proofing, thus the 2012 report regards stock-proofing was not relied upon in the appeal. The appeals officer upheld the Department's findings regarding the scrub areas and deemed that these comprised non-forage area.

The farmer submitted evidence of the NPWS farm plan. It stated for scrub that *"in general, existing areas of scrub and hedgerow should be retained. In open areas or areas where the extent of scrub / hedgerow is limited, there will be a need to either create habitat or to facilitate some expansion of gorse and native hardwood scrub. Small areas of established gorse or willow scrub, or gorse, willow and other hedge banks, can be trimmed, but must not be removed, burnt or killed. Large continuous block (>1ha) of established briar, scrub or gorse should be opened up (outside the bird breeding season). Retain at least 30% of the area covered by scrub and hedges in scattered lines or patches rather than in a single block"*. The Department of Arts Heritage and the Gaeltacht confirmed to the appeals officer that the NPWS Farm Plan Scheme was in implementation of the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

The 2011 SPS / DAS Terms and Conditions did state that land which was eligible for SPS could include REPS areas such as newly created habitats under option 4A of REPS 3 and REPS 4, and areas under LINNET and riparian zones. Section 15 of the Terms and Conditions stated for the Birds and Habitats Directives that compliance with the requirements to maintain these listed areas is part of cross compliance controls. However Section 15 made no mention regards eligibility for SPS.

The Appeals Officer noted that Article 34.2.(b).(i) of Council Regulation (EC) No. 73/2009 states that eligible hectare shall mean any area which gave a right to payments under the SPS in 2008 and which no longer complies with the definition of eligible as a result of the implementation of Council Directive 79/409/EEC on the conservation of wild birds. In this case the parcel was included in an SPS application in 2008 and gave rise to payments.

In the matter of SPS the Appeals Officer's decision was that the parcel fell within the meaning of Article 34.2.(b).(i) of Council Regulation (EC) No. 73/2009 on the basis of the National Parks and Wildlife Service farm plan that was in place from June 2009. The Appeals Officer upheld the rejection of 1ha under scrub as it existed at the time of the NPWS plan being drawn up but deemed the remaining scrub land, while not forage area, eligible SPS area as the basis of the regulatory provisions. The Appeals Officer found that the specified exclusions did not apply to DAS and fully upheld the Department's decision in respect of DAS. The appeal was partially allowed.

Case 5: Non-Valuation Aspects of the TB / Brucellosis Eradication Schemes

The farmer had two pedigree animals deemed reactors and removed for slaughter in 2011. At valuation the Valuer assigned one of the animals an in-calf value of €2,000 and a not in-calf value of €1,600. The Department appealed the valuation and the animal was reassigned an in-calf value of €2,000 and a not in-calf value of €1,400. Three weeks elapsed between initial valuation and slaughter. Following slaughter a completed ER26 permit was received by the District Veterinary Office certifying the animal was not pregnant. Payment was processed on the basis of the non-pregnant valuation. A review was sought of the animal's pregnancy status but the Department upheld the payment of the non-pregnant value on the basis of the post mortem result.

At appeal the farmer stated the animal was kept an extra 2 weeks on the farm because of the appeal valuation initiated by the Department. The animal was examined by a veterinary surgeon at the time of valuation and certified in-calf, as was the second reactor animal which was found to be pregnant at slaughter. Evidence of coiling and double insemination was provided. The farmer stated the animal suffered lameness in the period between valuation and appeal valuation but could not be treated.

The Department stated that the ER26 permit was relied upon as the determination regards pregnancy status for payment purposes. The Department stated that the appeal valuation was carried out within 6 days of the initial valuation. The Department stated a Veterinary Inspector had examined the animal on the farm as regards its lameness and reported the animal fit for slaughter subject to specific welfare conditions being met, adding that any withdrawal period for treatment would have been an issue.

The Department publication “Compensation Arrangements for TB and Brucellosis – Important Information for Farmers” contains the information on the valuation scheme. Section 8.2; “Where the Valuer inserts two market values for any female animal, the pregnancy status of the particular animal will be checked from the post-mortem result by the factory on the permit (ER26) and the appropriate valuation amount will be used by the DVO when calculating the differential amount due to the herd-owner/keeper. Veterinary staff under Department supervision carry out pregnancy checks on all reactor cows and all reactor heifers described as “in-calf” on the V13. The result determined by the post mortem check for pregnancy is final in this regard”.

The Appeals Officer acknowledged the evidence indicating the animal was pregnant when deemed a reactor but found no provision under the scheme to base the pregnancy status for grant payment on live pregnancy scan or AI evidence. Having contacted the Veterinary Inspector in charge at the abattoir to verify the accuracy of the ER26, the Appeals Officer was satisfied the animal was post mortem examined for pregnancy and the results were reported upon in the required manner to the DVO by way of the completed ER26. Under the scheme there is no provision to take account of the loss of a pregnancy between TB test and post-mortem examination except where the animal actually calves. The Appeals Officer found that the post mortem finding of not pregnant at the time of slaughter is required to be solely relied upon for the purposes of the valuation payment under the scheme. The appeal was disallowed.

Case 6: Single Payment Scheme (Area Over-declaration)

Following an inspection by the Department, the farmer was informed that there was a 2011 SPS (Single Payment Scheme) area over-declaration. It was found that two land parcels were ineligible as they were not farmed by the applicant. The over-declaration was in the category of more than 20% resulting in no payment in 2011. A review of this decision was sought by the farmer and the Department upheld the original decision.

The appeal from the farmer to the Agriculture Appeals Office stated that one land parcel in question was meadowland similar to other such parcels in the area used as rough grazing. The farmer also indicated that the second parcel should have been struck off the SPS application and that the agricultural consultant had been directed to delete it. A submission from the farmer’s consultant was received; he stated that the farmer was under the impression that he had directed the consultant to remove one of the land parcels from the SPS application but his office did not recall being instructed to do so. The consultant stated that it was his opinion that it was not the farmer’s intention to include this parcel on the application.

The oral hearing was attended by the farmer and his representatives, including the consultant, and Department personnel. The Department gave the basis for the original decision; one parcel was found to be low lying, liable to flooding and deemed not to have been farmed in 2011 and found to be ineligible. The officer who carried out the inspection stated that he saw long bog or moor type grasses present, the field was surrounded by open drains, there was no evidence of an agricultural activity, there was no evidence of stock on the ground and it had not been cut or topped. The officer said that there was an open drain intersecting the parcel with bushes on one side. The farmer said, regarding this parcel, that the land to the left of the open drain was firm ground and the land to the right of the drain was boggy ground; photographs were produced. Regarding the second parcel found to be ineligible, the farmer said that its inclusion in the SPS application was a clerical error and it was withdrawn when the error was highlighted.

The Appeals Officer, in the decision letter subsequently issued, noted the detailed observations of the inspecting officer regarding the first ineligible parcel. The Appeals Officer also noted that the photographs which had been produced supported this assessment. The Appeals Officer found that there was no evidence of an agricultural activity in this parcel when the inspection took place or evidence that it was being maintained in GAEC (Good Agricultural and Environmental Condition) and it was found that this parcel was ineligible.

Regarding the second land parcel deemed ineligible by the Department, the Appeals Officer noted that this parcel was included in the application submitted on line by the consultant in May 2011 and a request to delete it was submitted in August 2011, on the same day as the farm inspection. Section 14 of the terms and conditions of the scheme was referenced concerning amendments after 31 May 2011: *'You may withdraw land, reduce the claimed area of a parcel... without penalty, at any time after the 31 May 2011 closing date for Amendments provided the Department has not notified you about any irregularities concerning your Single Payment Scheme application, or provided you have not been notified of an on-the-spot inspection. If you have been notified of an on-the-spot inspection and should that inspection subsequently reveal an irregularity, an amendment cannot be accepted to that part of your application that is affected by the irregularity found.'* Taking account of the fact that the request to delete the parcel was made on the same day as the inspection and there was a responsibility on the farmer to ensure accuracy of information submitted, the Appeals Officer found that the Department's decision regarding this parcel was correct. The appeal was disallowed.

Case 7: Agri-Environment Options Scheme (AEOS) 2011

The applicant was accepted into the Agri-Environment Options Scheme (AEOS) 2011 with a contract start date of 1 September 2011. However, the acceptance letter outlined issues to be resolved before the application could be progressed to payment stage, namely *'Must have valid accumulation of actions on a parcel'* and *'No Maps Submitted'*. In a follow-up letter, the Department clarified that an area based action, namely *'Species Rich Grassland'* was selected on the same parcel as a *'Tree Planting Standard'* action. They stated that under the Terms and Conditions of the scheme, area based actions must be delivered on a full LPIS parcel basis, therefore only the Species Rich Grassland was deemed to be a valid action on the parcel. As the remaining action did not fulfil the minimum action requirements of at least one mandatory and one complementary action, the application was deemed invalid to proceed to the payment stage.

The decision to deem the application invalid was appealed to the Agriculture Appeals Office. In the grounds for appeal the appellant indicated that he was accepted into the AEOS scheme in Autumn 2011 and planted trees in accordance with requirements of that scheme. He enclosed a receipt for 25 Hazel Whips for December 2011. In February 2012 he received a letter stating that his application was being rejected on the basis that all of the actions were applied for on one LPIS plot. He indicated that this was incorrect as he had submitted a Single Payment amendment form in July 2011. In contact with the Appeals office, the farmer indicated that he had left the SPS 2011 amendment form into his local DVO in July 2011 and believed that they had stamped it and sent it on. He then resubmitted this amendment form in March 2012, and obtained a certificate of posting. The appellant also stated that the acceptance letter was very confusing as it said his application was approved to join the scheme.

The Helpsheets/ Terms and Conditions for the 2011 EU Single Payment Scheme states that *'Amendments to 2011 SPS applications, including the addition of parcels/ plots, may be made up to 31 May 2011 on the SPS 2011 AMENDMENT FORM. Late Amendment Forms will be accepted up to and including 10 June 2011'* The Appeals Officer found that there was no evidence of the SPS 2011 amendment form being received by the local DVO or to the main SPS Division, Portlaoise in July 2011. The only amendment form on the Department system was that of March 2012, which was after the date of closing of the receipt of amendment forms.

The Terms and Conditions of the AEOS 2011 scheme, Section 11.2, state that *'Area based actions must be delivered on a full LPIS parcel basis. If you choose either the Traditional Hay Meadow, Species Rich Grassland, Wild Bird Cover, Green Cover Establishment or Minimum Tillage actions the only other action you can select on the same LPIS parcel is either Stonewall Maintenance, Hedgerow Coppicing or Hedge Laying'*. The Appeals Officer found that as the claimed area was not requested for redigitisation on time, the *'Species Rich Grassland'* and *'Tree planting Standard'* were considered to be carried out on the same plot, which was not in line with the Terms and Conditions of the Scheme.

In addition, the Specification for Broadleaved Trees, states *'For this action you must plant trees from the list below'*. The approved list of Native Broadleaved trees did not include Hazel trees. In addition, the farmer purchased whips and not the approved type of standard/ half standard trees for this action. The appeal was disallowed.

Case 8: Single Payments Scheme (Nitrates Regulations 2010)

An inspection was carried out on the appellants 2010 Single Payment Scheme Application, in March 2011. As a result of this inspection a 20% penalty was imposed on the 2010 SPS application. The reasons given for this penalty were inadequate collection of livestock manure, inadequate management of storage facilities and evidence of structural defects in storage facilities.

The decision was appealed to the Appeals Office. The appellant accepted that there was a breach of regulations but felt that a 20% penalty was severe considering that the Department conceded that there was no evidence of pollution taking place on the day of the inspection. Medical grounds were also provided to indicate the appellant suffered ill health and was unable to carry out all the day to day running of the farm. As a result the appellant's farm was slightly overstocked.

At the oral hearing the Departments representative outlined the reasons why the 20% penalty was imposed. They stated that a number of Local Authority inspections were carried out to ensure compliance with the Nitrate Regulations and that there was visual evidence of inadequate collection of waste materials. The Department outlined how the 20% sanction was arrived at and explained the use of the terms negligence and intent indicating that intent was set out in Regulation 796/04, and intent was more serious than negligence. The usual literal meaning of intent was not taken in the legislation, but it could be taken to refer to a management system failure such as inadequate slurry storage that allowed for potential run-off and the possibility of pollution. They accepted that the medical evidence presented was significant and new and it was accepted that there was no evidence of pollution on the day of inspection.

It was indicated that the appellant was a REPS4 participant and had a nutrient management plan in place. The appellant disagreed with the description of structural defects and stated that farm yard manure was taken out of the shed in order to be spread. Evidence of the appellant's medical condition was provided.

The penalty applied was provided for in the EU Commission Regulation 1122/2009 and EU Council Regulation 73/2009. Article 24 (2) of Council Regulation 73/2009 outlines the '*Application of reductions in the case of negligence*,' it states "*In the case of negligence, the percentage of reduction shall not exceed 5 % and, in the case of repeated non-compliance, 15%.*"

Article 24 (3) outlines the application of reductions and exclusions in the cases of intentional non-compliance stating "*In the case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20 % and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.*"

The Appeals Officer, in view of the medical evidence produced at the oral hearing outlining the serious and sudden nature of the appellant's medical condition at the time of inspection, accepted that the non-compliance found on the day of inspection could not be regarded as intentional and should be classified as negligence. The penalty imposed was reduced from 20% to 5%. The appeal was partially allowed.

Case 9: Agri-Environment Options Scheme (AEOS) 2010 and the Organic Farming Scheme (OFS)

The appellant commenced participation in Agri-Environment Options Scheme (AEOS) in 2010 selecting the Traditional Hay Meadow and Riparian Margins options. The appellant was also participating in the Organic Farming Scheme (OFS) from 2010. The Department informed the appellant that he could not participate in the Traditional Hay Meadow and Riparian Margin Options whilst being a participant in the OFS as this was found by the Department to constitute dual payment which is prohibited under EU rules. The Department offered the appellant two options as follows: (a) withdraw from either AEOS or OFS, or (b) continue to participate in AEOS and OFS, but withdraw the area in the AEOS options from OFS. If the appellant selected option (b) he was notified that he would not receive payment under the OFS for the area included in the AEOS options, however, he must continue to farm all of the land organically.

The decision of the Department was appealed to the Agriculture Appeals Office. The appellant argued that he had been advised by his Teagasc advisor when applying to join both schemes and there was nothing in the terms and conditions of either that prevented him from participating in both schemes simultaneously. The appellant contended that he could make best use of his land environmentally by selecting the Traditional Hay Meadow and Riparian Margins options under AEOS. The appellant argued that he had put a considerable amount of work into these options and had to pay additional costs of a

contractor to assist with the hay. He argued that he had entered into the contracts in good faith and had abided by the terms and conditions of both schemes. The appellant stated that he would have selected other options if he had been made aware of the difficulties with the Riparian Margins and Traditional Hay Meadow options when applying to join the scheme.

The Department representatives at the hearing asserted that it had come to the Department's attention that participants in AEOS and OFS who selected area-based options in AEOS were in receipt of double payment. The Department had written to a number of farmers concerning this issue. The Department submitted that payment in respect of area-based options in AEOS and OFS is primarily based on the same principle – income foregone due to the reduction of fertiliser inputs or restricted access for production.

In relation to the Riparian Margins option the Department argued a farmer agrees to take this land out of production and therefore it cannot satisfy the OFS requirements once removed from production. The Department stated that farmers receive payment towards fencing for this area which must be stockproof and it cannot be grazed. In relation to the Traditional Hay Meadow option the Department stated that a farmer is required to have at least three grass species other than Rye grass and participants are prevented from cutting the grass until after 1st July. The Department agreed with the Appeals Officer's assertion that the rules concerning the application of fertilisers under the Traditional Hay Meadow option and the OFS differ.

The Department stated that it could not allow the appellant to convert to another option at that stage as Article 39(3) of Council Regulation 1698/05 requires that Agri-environment commitments be for a minimum of 5 years. The Department referred to Article 27 of Commission Regulation 1974/2006 (Subsection 11) which permits conversion from one option to the other where three conditions are met – (a) any such conversion be of significant benefit to the environment or to animal welfare or to both; (b) the existing commitment is substantially reinforced and (c) the approved rural development programme includes the commitments concerned. The Department submitted that conversion from an area-based option to a linear based action could not be seen to be of significant benefit to the environment nor would it substantially reinforce the existing commitment.

On examination of the terms and conditions of both schemes, the Appeals Officer agreed with the appellant's submissions that the provisions permitted the appellant to participate in both schemes simultaneously and that he was not prevented by the Department from being in OFS and selecting the Riparian Margins and Traditional Hay Meadow options when applying to join AEOS.

In considering the Department's submissions, however, the Appeals Officer agreed with the Department's finding with regard to the Riparian Margin options in that it was found that the appellant agreed under the provisions of AEOS to remove this area from production for the purpose of the Riparian Margin Option. On that basis it was not available for organic production and could not therefore meet the requirements of OFS. The Appeals Officer disallowed the appeal with regard to the Riparian Margin Option.

In relation to the Traditional Hay Meadow option, the Appeals Officer allowed the appeal on the basis that the terms and conditions permitted the appellant to participate in both schemes simultaneously. The Appeals Officer noted that under the Traditional Hay Meadow option the appellant was required to have at least three grass species other than Rye grass and he could not cut the grass until after 1 July. The Appeals Officer also noted that different rules regarding the application of fertilisers apply under the Traditional Hay Meadow option in AEOS to those contained in OFS. The Appeals Officer decided that as there was no evidence to suggest that the appellant did not meet the requirements of both AEOS and OFS concerning the land in the Traditional Hay Meadow Option and as the terms and conditions did not prevent the appellant from participating in this option and OFS simultaneously the appeal in respect of this option should be allowed.

The Appeals Officer agreed with the Department's submission with regard to the appellant joining another option and found that on examination of the relevant EU Regulations, such commitments must be for a minimum of 5 years which was not possible in this case as there were only 3 years remaining on the appellant's contract. The appeal was partially allowed.

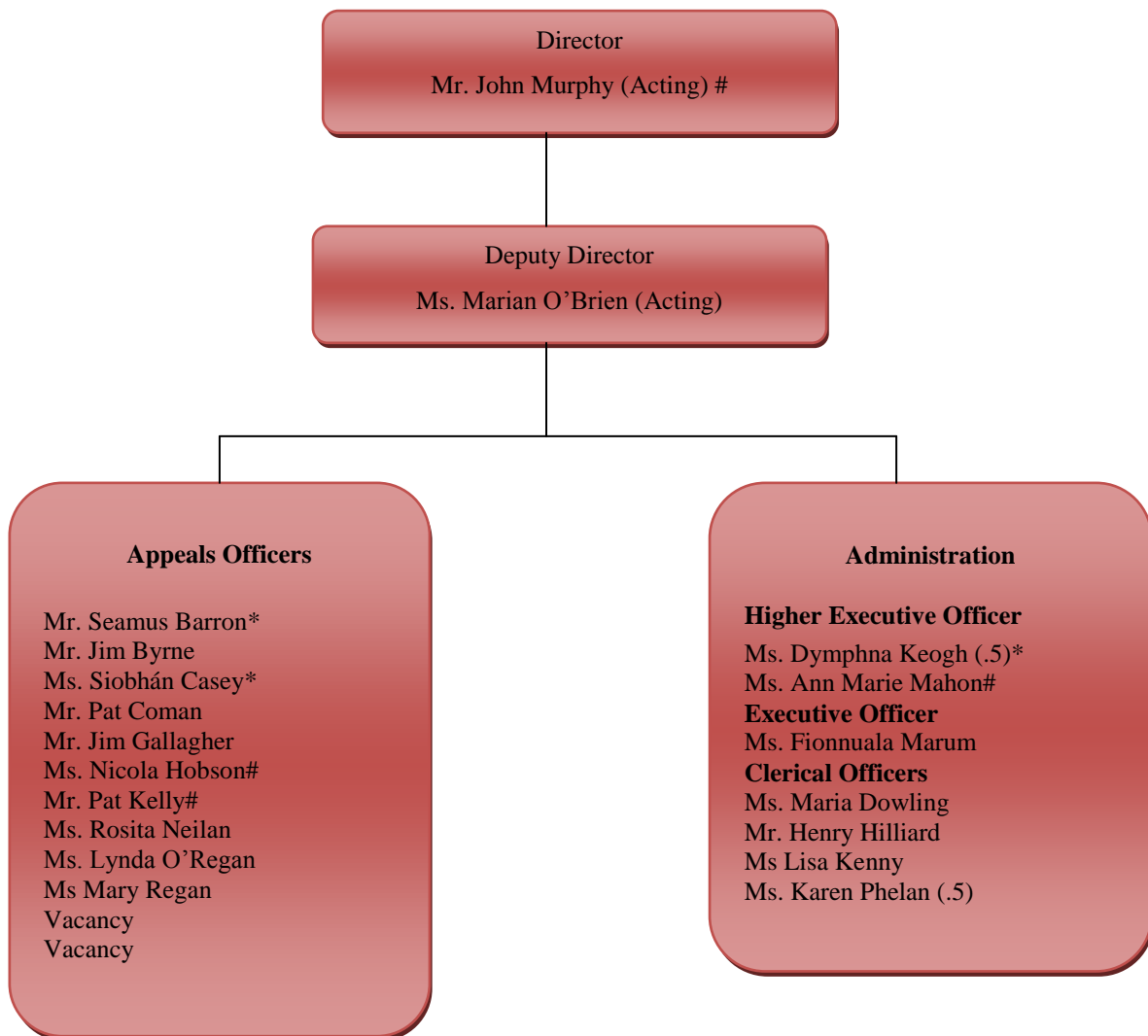
7. Key Findings of the Agriculture Appeals Office relevant to the Department of Agriculture, Food and the Marine

- Scheme applicants, in all schemes, should be given a list of possible penalties including the scale of such penalties and the potential implications. Applicants should also be advised of any changes to potential penalties applicable.
- Changes to Scheme Terms and Conditions should be notified to all participants.
- The expansion of the use of electronic and or text message alerts in respect of all scheme applications and scheme notices could be considered.
- Farmers Charter – the provisions of the Charter are frequently cited at appeal. The Charter and the Department website could usefully clarify, at the outset, the legal basis of the Charter and indicate the need to comply with all Scheme Terms and Conditions and the relevant EU regulations in relation to specific Scheme requirements.

8. Common errors by Scheme Applicants that lead to penalties

- Based on the experience of the Agriculture Appeals Office the use of online application facilities either directly or through an approved agent is encouraged.
- Applicants are advised to obtain and carefully retain a receipt for all documents handed in to Department Offices.
- Applicants are advised to keep a copy of all documentation posted to the Department for their own records.
- Applicants should familiarise themselves with the Terms and Conditions relevant to their application. They should be aware of any revisions to schemes and new versions.
- Applicants should take careful note of all relevant closing dates and adhere to these dates at all times.
- In relation to the Single Farm Payment Scheme, in order to avoid cross compliance penalties, 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 should ensure all lands claimed are the subject of an agricultural activity by them and that “map acre” situations are avoided.
- In relation to AEOS, applicants should take note of the scheme Terms and Conditions in relation to the list of trees approved for planting.

9. Organisation Chart at 31st December 2012



***Joined the Office during 2012.**

#Left the Office during 2012.

.5 indicates the officer attends on a half-time basis.

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

See also:

- S.I. No. 558 of 2002 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002
- S.I. No. 507 of 2004 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004
- S.I. No. 65 of 2006 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006
- S.I. No. 584 of 2006 Agriculture Appeals Act 2001 (Amendment of Schedule) (No. 2) Regulations 2006
- S.I. No. 169 of 2008 AGRICULTURE APPEALS ACT 2001 (AMENDMENT OF SCHEDULE) REGULATIONS 2008
- S.I. No. 106 of 2012 AGRICULTURE APPEALS ACT 2001 (AMENDMENT OF SCHEDULE) REGULATIONS 2012

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



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, Food and the Marine 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. Under Section 14(1) of the Agriculture Appeals Regulations 2002, 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. 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, Food and the Marine 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.
- 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, Food and the Marine (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, Food and the Marine, 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 and the Marine for their comments and observations.**
- 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 5 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, Food and the Marine 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;

- Afforestation Grant and Premium Scheme
- Agri-Environment Options Scheme (AEOS)
- Animal Welfare, Recording and Breeding Scheme for Suckler Herds
- Bio Energy Scheme
- Burren Farming for Conservation Programme
- Dairy Efficiency Programme
- 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
- Forest Environment Protection Scheme (REPS)
- Forest Road Scheme
- Grassland Sheep Scheme
- Installation Aid Scheme (IAS)
- Native Woodland Scheme
- Neighbourwood Scheme
- Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
- Organic Farming Scheme
- Reconstitution of Woodland Scheme
- Rural Environment Protection Scheme (REPS)
- Scheme of Early Retirement from Farming
- Scheme of Grant-Aid for the Development of the Organic Sector
- Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)
- Scheme of Investment Aid for Farm Waste Management (FWM)
- Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
- Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
- Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities
- Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003².
- Sow Housing (Animal Welfare) Scheme
- Targeted Agricultural Modernisation Scheme (TAMS), including -
 - (a) the Dairy Equipment Scheme, (b) the Poultry Welfare Scheme, (c) the Sheep Fencing/Mobile Handling Equipment Scheme, (d) the Sow Housing Scheme and (e) the Water Harvesting/Conservation Scheme
- Upland Sheep Payment Scheme,
- Woodland Improvement Scheme
- Young Farmer's Installation Scheme.



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: _____

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.

