



# Agriculture Appeals Office Annual Report 2005

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

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2005 faoi 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 2005.

**Paul Dillon**

Director of Agriculture Appeals

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

This report is also available in Irish, on request.

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The Agriculture Appeals Office continues to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture and Food regarding their entitlements under certain schemes as set out in the Schedule to the Agriculture Appeals Act 2001. 790 appeals were received in 2005 across the various different schemes.

This report sets out the major developments during the year and a statistical breakdown of the Office's work. A cross-section of the cases handled during the year is included in the report, as well as recommendations to the Department of Agriculture and Food regarding certain schemes. The report also highlights recurring and non-compliance issues by scheme applicants that lead to penalties.

There was a reduction in the number of appeals received in 2005. This was due to the introduction of the Single Payment Scheme which replaced EU Premium Schemes like Special Beef, Suckler Cow, Ewe Premium, Slaughter Premium, Area Aid and Extensification. Secondly, there was a reduction in the number of REPS appeals due to the introduction of a more proportionate schedule of penalties under this scheme

In addition to the customary functions of the Office, the Single Payment Appeals Committee continued to examine appeals in relation to Force Majeure and New Entrant/Inheritance cases 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.

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

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

**Paul Dillon**

Director of Agriculture Appeals

June 2006

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

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

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

## Procedures Manual

A Procedures Manual, outlining information about the Agriculture Appeals Office and details of internal rules, procedures and interpretations used by Appeals Officers, was first drafted in 2002 and further developed during 2005. This is a legal requirement under the Freedom Of Information Act 1997. It contains the following,

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

**Business Plan**

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

**Database**

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

**Website**

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

**Co-operation with the Department of Agriculture and Food**

Ongoing contact with various Divisions of the Department of Agriculture and Food to discuss various issues that arise from appeal cases continued in 2005.

**Meetings of Appeals Officers**

11 meetings of Appeals Officers were held in 2005. 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.

**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 some 12 cases received in 2005 have been referred to the Ombudsman.

2005 Cases examined by Ombudsman	12
Of which, closed by Ombudsman	6
Cases where the Ombudsman has requested this Office to amend his decision	0

### 3. Appeals Procedure and Oral Hearings

Of the 790 appeals received in 2005, some 499 (63%, which is exactly the same as in 2004) involved oral hearings.

On receipt of an appeal, this Office,

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

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

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

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

One of the features of the Office is the right of an appellant to an oral hearing where the Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. 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,

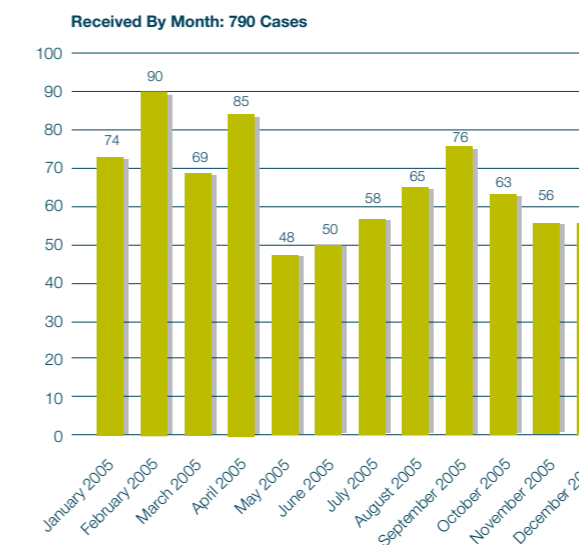
- It is held in private and is informal in format
- The appellant has a right to representation but must attend the hearing in person

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.

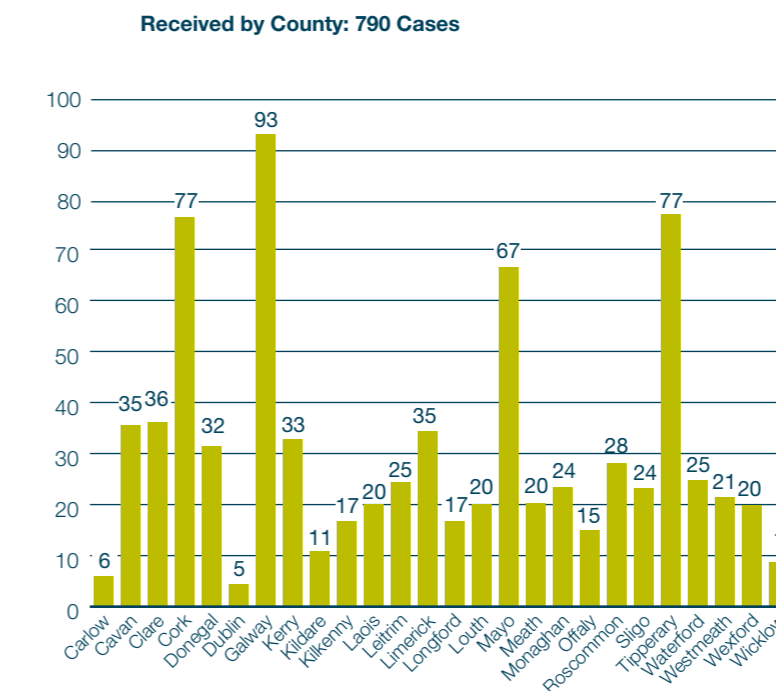
### 4. Statistics – 2005

790 cases were received in 2005 compared with 1,116 in 2004, a 29% decrease.

#### 4(a) Appeals Received by Month

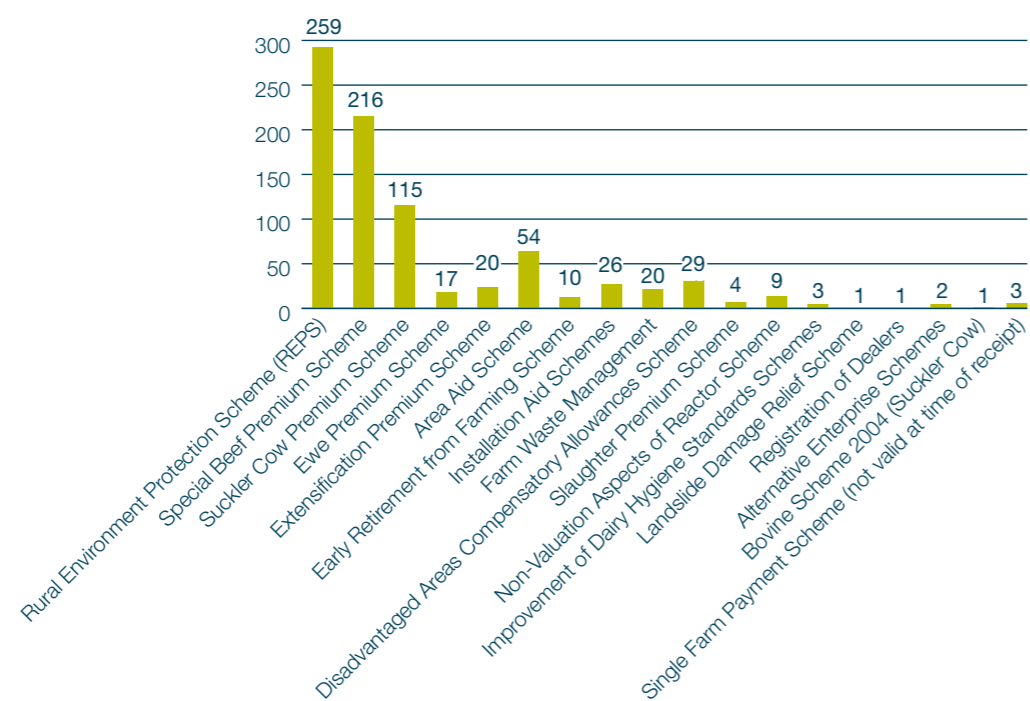


#### 4(b) Appeals Received by County

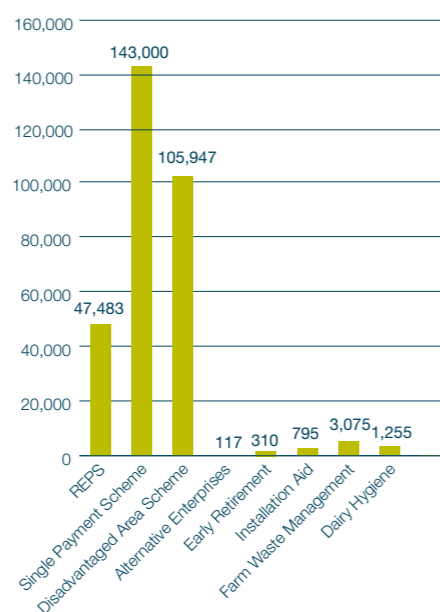


#### 4(c) Appeals Received by Scheme

Received By Scheme: 790 Cases



#### 4(d) Department of Agriculture and Food Applications 2005



Statistics supplied by the Department of Agriculture and Food.

#### 4(e) Outcome of Appeals Received in 2005

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

#### Terminology

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

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

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

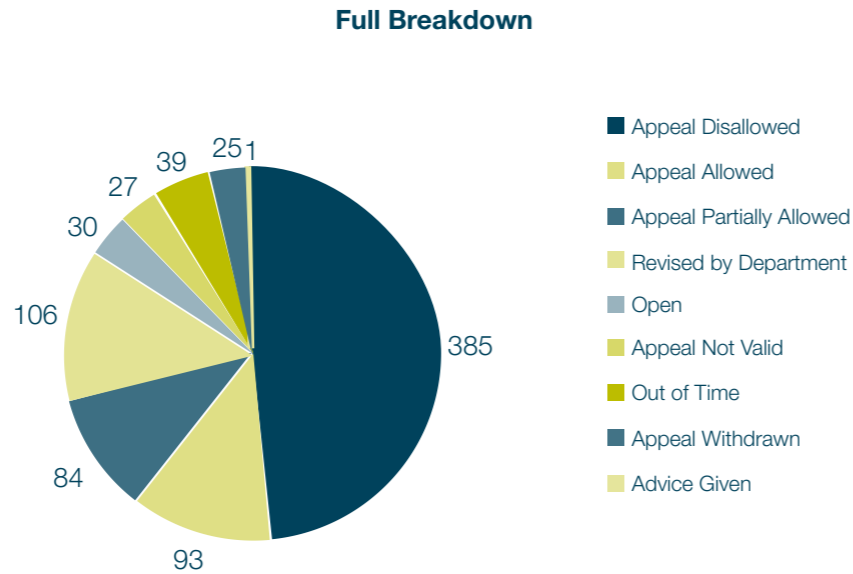
**Not valid:** This category includes appeals on matters not appropriate to the Office, (i.e. Schemes not listed in the Schedule to the Agriculture Appeals Act), pre-13 May 2002 cases, duplicate appeals and cases where no actual decision has been made by the Department of Agriculture and Food.

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

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

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

**Open:** 2005 cases which have still to be finalised to date.



**4(f) Outcome by Scheme Received in 2005**

Scheme ID	Received	Allowed	%	Partially	%	Revised	%	Withdrawn	%	Not Valid	%	Out of Time	%	Advice Given	%	Disallowed	%	Open	%
Rural Environment Protection Scheme (REPS)	259	28	10.8	19	7.3	31	12.0	5	1.9	2	0.8	15	5.8	-	0.0	147	56.8	12	4.6
Special Beef Premium Scheme	218	28	12.8	36	16.5	48	22.0	6	2.8	11	5.0	7	3.2	-	0.0	78	35.8	4	1.8
Suckler Cow Premium Scheme	116	15	12.9	16	13.8	7	6.0	2	1.7	6	5.2	7	6.0	-	0.0	60	51.7	3	2.6
Ewe Premium Scheme	17	3	17.6	2	11.8	-	0.0	-	0.0	1	5.9	1	5.9	-	0.0	10	58.8	-	0.0
Extensification Premium Scheme	20	1	5.0	-	0.0	-	0.0	-	0.0	1	5.0	4	20.0	-	0.0	13	65.0	1	5.0
Area Aid Scheme	54	5	9.3	5	9.3	11	20.4	2	3.7	2	3.7	3	5.6	-	0.0	22	40.7	4	7.4
Early Retirement from Farming Scheme	10	2	20.0	-	0.0	1	10.0	1	10.0	1	10.0	-	0.0	-	0.0	4	40.0	1	10.0
Installation Aid Schemes	26	5	19.2	2	7.7	1	3.8	2	7.7	-	0.0	-	0.0	-	0.0	15	57.7	1	3.8
Farm Waste Management Scheme	20	3	15.0	-	0.0	3	15.0	3	15.0	-	0.0	1	5.0	-	0.0	10	50.0	-	0.0
Disadvantaged Areas Compensatory Allowances Scheme	29	2	6.9	1	3.4	3	10.3	3	10.3	-	0.0	-	0.0	-	0.0	20	69.0	-	0.0
Non-Valuation Aspects of the On-Farm Valuation Scheme for TB & Brucellosis Reactors	9	1	11.1	3	33.3	-	0.0	1	11.1	-	0.0	-	0.0	-	0.0	3	33.3	1	11.1
Slaughter Premium Scheme	4	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	1	25.0	-	0.0	2	50.0	1	25.0
Improvement of Dairy Hygiene Standards Schemes	3	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	3	100	-	0.0
Area Based Compensatory Allowances Scheme	1	-	0.0	-	0.0	1	100.0	-	0.0	-	0.0	-	0.0	-	0.0	0	0.0	-	0.0
Registration of Dealers	1	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	1	100.0	0	0.0	-	0.0
Single Farm Payment Scheme (not valid at time of receipt)	3	-	0.0	-	0.0	-	0.0	-	0.0	3	100.0	-	0.0	-	0.0	0	0.0	-	0.0

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

For 2005 cases the average time taken by the Department to return files was 17 days. The average for 2004 was 23 days. A breakdown follows by Scheme;

Scheme	2005	2004	2003
Area Aid Scheme	28	37	33
Disadvantaged Areas Compensatory Allowances Scheme	17	23	29
Early Retirement from Farming Scheme	15	21	18
Ewe Premium Scheme	12	20	22
Extensification Premium Scheme	33	20	42
Farm Waste Management Scheme	38	33	41
Improvement of Dairy Hygiene Standards Schemes	31	32	30
Installation Aid Schemes	30	23	26
Non-Valuation Aspects of the On-Farm Valuation Scheme for TB & Brucellosis Reactors	26	22	39
Rural Environment Protection Scheme (REPS)	26	29	29
Special Beef Premium Scheme	15	19	16
Suckler Cow Premium Scheme	17	18	23
Other	41	25	47

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

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

The Office asks the Department to return files within two weeks of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued where the Department does not respond promptly. 122 reminders were issued in 2005.

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

For 2005 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 73 days. The average for 2004 was 66 days. *The increase is due to the extra workload caused by the Single Payment Appeals Committee (see Section 8).*

*The Appeals Office has set itself a target of three months from time of receipt of the appeal to the issue of decision letter. For 2005 cases, the average appeal took 89 days.*

4(i) Position as at 31 December 2005

Status	2005	2004	2003
Cases Closed	762	821	841
Work in Progress – Appeals Office	13	200	181
Awaiting Department Response	15	95	121
Total on Hand	28	295	302
Overall Total	790	1,116	1,143

Cases closed in 2005 v Cases closed in 2004			
2005 Cases closed in 2005	621	2004 Cases closed in 2004	841
2004 Cases closed in 2005	292	2003 Cases closed in 2004	300
Total no. of cases closed in 2005*	913	Total no. of cases closed in 2004	1,121

**\*Note:** In addition to the cases closed above The Single Payment Appeals Committee closed a total of 2,546 cases pertaining to the Single Farm Payment Scheme. Please see Section 8, page 36, for further information.

## 5. Selected Appeals Cases

### Case 1 - Rural Environment Protection Scheme

The appellants REPS 2 contract commenced in July 2001. The Agricultural Environmental Plan submitted in support of the application indicated that he was required to repair the roof of a particular shed in year 1. A revised plan was submitted during 2003, which specified the removal of the old roof of the shed during year 1 and its replacement during year 2.

At the first inspection during 2002 the shed roof was found not to have been repaired, therefore, the undertakings in respect of the farmyard were found not to have been carried out as planned and a penalty of 20% was imposed in accordance with the provisions of Annex 1 of the REPS Scheme Document dated 27 November 2000. At a second inspection carried out in February 2004 the shed roof had not yet been repaired and the penalty of 20% was doubled to 40% in accordance with the provisions of the REPS Scheme Document dated 27 November 2000. A third inspection was carried out November 2004; once again the shed roof had not been repaired. As this inspection had taken place after 1 June 2004 the terms and conditions of the REPS Scheme Document dated 5 February 2004 applied. These terms and conditions specify at Annex 1 that the penalty under Measure 8 for undertakings in respect of farm or farmyard not carried out as planned be reduced to 10%. As this was a the third instance of non-compliance the Department then quadrupled the penalty to 40% in accordance with the provisions of the REPS Scheme Document dated 27 November 2000.

The Appeals Officer contacted the Department and pointed out that as the final inspection had taken place after 1 June 2004 the revised penalty schedule under REPS 3 applied in accordance with the provisions of Department Circular No. 11/04. Under the terms and conditions of the REPS Scheme Document dated 5 February 2004 at Annex 1 the penalty under Measure 8 for undertakings in respect of farm or farmyard not carried out as planned is reduced to 10%. Annex 1 further states *"In the case of repeated infringement during the period of the REPS agreement, the appropriate penalty will be doubled. Any further repetition of the same infringement will result in termination and recoupment of all monies paid"*. As there was no provision for the quadrupling of the penalty the Department revised the penalty to 20%, double the 10% penalty, in accordance with the provisions of the REPS Scheme Document dated 5 February 2004. The Appeals Officer upheld this decision.

### Case 2 – Area Aid

The appellant made application under the 2003 Area Aid Scheme for payment of arable aid and increased the arable area applied on using the Area Aid Scheme amendment form prior to the closing date of 31st May 2003.

Following interpretation of the parcels as claimed using Remote Sensing (satellite imagery) the Area Aid Unit issued a request to have the claimed parcels inspected. In December 2003 an inspection of the arable parcels was undertaken and it was found that the claimed parcels only comprised old permanent pasture. No payments were issued to the farmer in respect of the 2003 arable claim at any time.

The penalty imposed on the appellant by the Department was the refusal of arable aid for the year of application and the deduction from future payments of an amount equivalent to that which would have been paid had the non-compliance not been detected.

There was no evidence provided to the Appeals Officer to indicate that the appellant was formally made aware of the consequence of the findings prior to payment deductions being presented against other premium payments.

The appellant's grounds of appeal included his statement that he had sent a letter to the Area Aid Unit in June of 2003 to withdraw the entire arable claim, and that it had been his intention to sow the cereal crop when required but weather prevented him from doing so due in no small part to the soil type that exists on the lands. Evidence was provided from the appellant's contractor corroborating his case in respect of ground conditions.

The Appeals Officer noted that a 2003 Amendment Form was submitted to the Department in May 2003 within 8 days of the final date for sowing scheme crops, only detailed for additional land applied on for payment of arable aid. The evidence provided by the contractor stated the decision not to sow a crop was made on 27th May 2003. At the 27th May 2003 the option remained to revert the Area claim to forage. The Department case that the land was in permanent pasture was not contested.

No verifiable proof of any notification to the Department existed to withdraw the cereal claim in 2003 and the Area Aid Unit had no record of receipt of any letter in this regard following requested checks.

The Appeals Officer found that as a 2003 application it is governed by European Commission Regulation (EC) 2419/2001 and according to that regulation in cases where less than the claimed area is found and a false declaration is determined to have been made by the appellant, no payment is made for the year concerned. Where the difference between the area claimed and the area determined is greater than 20% it is the area determined that is used to calculate the amount of aid refused and that area, if any, is used to calculate the amount of aid going forward to the following year that the appellant is refused payment on. The determined area of cereals in this case was zero, therefore the deduction of an amount equal to what would have issued on the claimed area was in fact improperly applied under the 2003 scheme.

The Appeals Officer's decision, while upholding the Department's position in respect of the non-compliance found, was to apply the penalty as provided for under Regulation. Commission Regulation (EC) 2419/2001 only provided for the payment of an amount equivalent to that which would have issued on the 'determined area' pursuant to Article 31(2) of the regulation and in this case that is nil as no cereals were found. This meant that no administrative penalty could be applied to the farmer in the following three years. In this regard the appeal was partially successful.

The imposition of such penalties for 2004 scheme applications are governed by Commission Regulation (EC) 118/2004 amending Commission Regulation (EC) 2419/2001.

### **Case 3 - Area Aid**

The appellant submitted his 2004 Area Aid application on the 20th April 2004. His application contained 26 parcels of land with a total forage area of 44.96 Ha. The appellant's application was processed on the information received. However on processing his application a problem arose with two of his parcels. It was found that these parcels declared for forage area contained forestry and as he had not notified the Area Aid Unit before they contacted him, an overclaim situation arose. The Area Aid Unit informed the appellant that he had a forage overclaim of 16.17% and in accordance with the Terms and Conditions of the Area Aid Scheme a penalty of double

the difference was applied in determining the area eligible for payment purposes. His eligible forage area was reduced from 38.47 Ha to 26.03 Ha for the 2004 Scheme.

The appellant appealed that decision to the Agriculture Appeals Office on the 24th March 2005. An oral hearing was held on the 15th June 2005. The appellant stated the two parcels in question were in grass at the time of lodging the Area Aid application but were planted shortly afterwards. He also stated that when he queried his forestry advisor in relation to the Area Aid application he was informed that there was no need to inform the Area Aid Unit as the forestry section was under the control of the Department of Agriculture and Food and the forestry section would notify the Area Aid Unit. He also contended that he was required to supply the Land Parcel Identification System (LPIS) numbers of the forestry plots and that both sections of the Department should be communicating with each another.

Following the oral hearing the Department re-examined his appeal and revised its original decision. The Department of Agriculture and Food accepted that the forestry section was under the control of the Department of Agriculture and Food since January 2004 and therefore it was aware of the forestry planting of the two parcels of land originally declared as forage from the appellant's application and processed his application with an eligible forage area of 38.47 Ha without any penalty.

### **Case 4 – Special Beef Premium Scheme**

Following an application under the above scheme the applicant was informed by the Department that 4 of the animals were not eligible, as they were not registered on the CMMS system. The Department further informed him of the rejection of these animals as he had contravened paragraphs 11 and 16(c) of the Schemes Terms and Conditions. Under the two headings of the Terms and Conditions "Completing the Application" Paragraph 11, 5th Indent it states that the producer must ensure that he/she is claiming on eligible animals in that they "Are correctly recorded on the CMMS Database" and under the heading "Other Obligations – The Applicant" Paragraph 16 (c) clearly states that the applicant "Must notify the CMMS database of any animal movements, into or out of the herd and on farm deaths".

The appellant stated that the buyer had neglected to post the movement certificate to the CMMS and that he was unaware that the onus was on

the buyer to make sure that this was carried out. The appellant asked the Department for a review but they upheld their decision.

In his appeal to the Appeals Office the appellant reiterated the same grounds of appeal in that he left it to the seller to notify the CMMS and did not realise that the onus was also on him to notify them.

The appeal was disallowed, as he had not adhered to the Schemes Terms and Conditions as outlined in the Departments decision.

### Case 5 - Rural Environment Protection Scheme

The appellants REPS 2 contract commenced on 1 February 2002. Payment issued in respect of the first three years. The appellants notified the Department that they no longer wished to participate in the Scheme in early February 2005 both by letter and by completing the rear portion of Form 1C.

The appellants submitted an application under the Early Retirement Scheme on 21 March 2005. In order to facilitate the appellants application to join the Early Retirement Scheme a lease was drawn up transferring the land to a third party, this lease had an operative date of 31 December 2004. The third party did not submit an Agri-Environmental Plan and REPS application until August 2005.

Under the terms and conditions of the REPS Scheme Document dated 27 November 2000 at paragraph 23, where a person transfers all of his/her land and the REPS Plan is continued or the land is included in a new REPS Plan by the next anniversary date, the transferor will not be required to reimburse the monies paid. Section 23 further states, *"Where the plan is not continued, the transferor will be required to re-imburse the aid paid. However, exceptions may be made where a participant ceased farming and three years of the plan have been completed and it is not feasible for the successor to continue the plan"*. In this case the land was transferred one month prior to the completion of the third year in REPS. As the appellants had not completed three full years in the REPS Scheme prior to the transfer of the land the Department could have sought full recoupment of all monies paid in accordance with the terms and conditions of the REPS Scheme. However, due to the exceptional circumstances of the case the Department only sought to recoup the REPS payment made in respect of the period after the land had been transferred from the legal ownership of the appellants, the equivalent to one month's payment.

The appellants appealed the decision based on the fact that they had continued farming the land concerned until the Herd Number was made dormant on 1 February 2005.

Having examined the facts the Appeals Officer found that the land had been legally transferred by way of lease with an operative date of 31 December 2004. The transferee had not included the land in a new REPS Plan by the next anniversary date following the transfer (i.e. by 1 February 2005). Paragraph 23 of the terms and conditions is clear that in such cases *the transferor will be required to re-imburse the aid paid*.

The Appeals Officer found that the Department of Agriculture and Food had been generous in their interpretation of the terms and conditions of the Scheme Document in this case and the appeal was disallowed.

### Case 6 - Disadvantaged Area Compensatory

#### Allowances Scheme

A participant in the 2001 and 2002 Disadvantaged Area Scheme programmes was deemed by the Department to have failed to satisfy the Scheme requirement that a participant must reside within a daily commuting distance of 70 miles of the holding on which compensatory allowance is being claimed. In concluding that the commuting distance between the participant's home and her holding was more than 70 miles the Department terminated her participation in the Disadvantaged Areas programme and sought the reimbursement of monies paid to her in 2001 and 2002.

An appeal was submitted to the Agriculture Appeals Office. The appeal maintained that the 'straight line' distance between the participant's home and her holding was less than 70 miles and that this adequately satisfied the Disadvantaged Areas Scheme requirement that a Scheme participant must reside within a daily commuting distance of 70 miles of the participant's holding.

The Appeals Officer disallowed the appeal. He accepted that the straight line distance between the participant's home and her holding was less than 70 miles. He found, however, that the commuting distance – the distance by road in this instance – was greater than 70 miles and disallowed the appeal on this basis.

The participant complained to the Ombudsman and submitted that Section 11(e) of the Interpretation Act, 1937, supported her interpretation that the distance from her home to her holding should be measured in a straight line. Section 11(e) of the Interpretation Act, 1937 states *“Every word or expression relating to the distance between two points and every reference to the distance from or to a point shall, unless the contrary intention appears, be construed as relating or referring to such distance measured in a straight line on a horizontal plane”*.

The complaint to the Ombudsman was referred to the Agriculture Appeals Office. A new Appeals Officer found that he did not have grounds to overturn the decision of the previous Appeals Officer.

The Appeals Officer found that Disadvantaged Areas Scheme provisions do demonstrate “contrary intention” insofar as the reference is to “commuting distance” rather than simply to distance. The Appeals Officer found that, for him to have grounds to overturn the previous decision, the plaintiff would have to demonstrate that she had had the capability to achieve a straight line commute between her residence and her farm holding. The plaintiff had not claimed such a capability. It remained, therefore, that she commuted by road between her home and her holding and thereby exceeded the 70 miles commuting distance limit allowed by Disadvantaged Areas Scheme provisions.

#### **Case 7 – Rural Environmental Protection Scheme.**

The REPS plan in this case included a Supplementary Measure “Local Breeds in Danger of Extinction”. Under the Supplementary Measure the farmer received a top up. The Department of Agriculture & Food accepted the Agri-Environmental Plan and approved the REPS application.

It was a condition under this Supplementary Measure that only female progeny of the breed registered with a breed society on a date subsequent to approval was eligible for a once off payment at the time of first registration under REPS II.

*Under this ‘Rare Breeds’ category the Department made a payment in error for the sum of € 1360. The Scheme participants said they understood a registered Connemara mare would be eligible for payment and overlooked that the Scheme was for its female progeny only. When the supplementary payment came from the Department they understood it to be authentic because no specific application was made by them other than the initial application they made to participate in REPS.*

A Department field inspection subsequently found one registered Connemara mare. No foal was born to this mare during the period of the REPS plan and payment should not therefore have been made. They were not entitled to this payment made in error under the terms and conditions of the Scheme. They did not have any female progeny from this mare during the course of their participation in the Scheme.

They were notified by the Department that this payment of €1360 made in error had to be recovered plus interest of €148.86. The Department acknowledged that it made an error in making payment under the ‘Rare Breeds’ category. It took almost two years however for the Department to discover the discrepancy.

*Under Paragraph 27 of the terms and conditions of REPS 11 (that they signed up to) “where payment is not made within a reasonable period, interest may be applied ---”.*

While it was accepted by the Appeals Officer that payment made should be recovered it was not considered equitable or reasonable in view of the Department delay in identifying the problem that interest should be demanded in the circumstances.

In this case it was decided that no interest should be charged.

#### **Case 8 - Special Beef Premium**

The appellant submitted an application for Special Beef Premium, which was received in the Special Beef Premium Unit on the 12/02/2004 in respect of 17 bulls. On processing the application it was found that two animals applied on for premium as bulls were female animals and were not compliant with the requirements of the Cattle Movement and Monitoring System (CMMS) database on the date of application. The Special Beef Premium Unit wrote to the appellant on the 11/05/2005 informing him that he was in breach of Paragraph 11(b) of the Terms and Conditions of the 2004 EU Special Beef Premium and Bull Premium Scheme. The letter also informed him that the animals were deemed rejected from his application and would incur a percentage reduction penalty, which was to be applied to his 2004 Bovine Scheme applications.

The appellant sought a review of that decision and the Special Beef Premium Unit wrote to him on the 19/09/2005 upholding the original decision stating that the onus was on the Registered Herdowner to ensure at all times

that the animals he was applying for are CMMS compliant at the time of application. The appellant was informed that as he had submitted female animals for Bull Premium and, as no notification of this error was received in the Special Beef Premium Unit, the decision to reject the animals was correct and in accordance with EU Regulations and the Terms and Conditions governing the Scheme.

The appellant appealed that decision to the Agriculture Appeals Office on the 29/09/2005. In the letter of appeal the appellant stated that when his father went to sell some of the cattle on 27/11/2004 it was discovered that two of the animals, which had been applied for on the Bull Premium, were actually female animals but had male cattle identity cards. The appellant stated that he immediately went to the local District Livestock Office of the Department of Agriculture and Food to change the cattle identity cards.

The appeals officer allowed his appeal. He found that Paragraph 11 of the 2004 EU Special Beef Premium Scheme stated that 'When completing each application the producer must ensure he or she is claiming premium on eligible animals only by checking that when lodging the application form each animal submitted for premium: is an uncastrated male animal if submitted for Bull Premium and :is correctly recorded on the CMMS database.' The Appeals Officer found that it was the applicants responsibility to ensure that the animals applied on for Special Beef Premium are eligible and correctly notified to the CMMS database at the time of application. The Appeals Officer found that as the two animals in question were female animals he was obviously not entitled to receive Special Beef Premium on them but he also found that the appellant should not be penalised for this error. The Appeals Officer noted that Paragraph 14 of the Terms and Conditions of the 2004 EU Special Beef Premium Scheme stated that 'The application of penalties shall not apply with regard to those parts of the premium application where the farmer informs the Department in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer has not been informed of the Department's intention to carry out an inspection or that the Special Beef Premium Unit has not already informed the farmer of any irregularity in the application.' The Appeals Officer considered that when the appellant became aware of the fact that he had two female animals with male cattle identity cards he went to the local Department office to correct the error. The appellant completed the form ER94B for the two animals in question correcting the sex of the animals and seeking replacement cattle identity cards. The Appeals Officer found that it was

only at this stage the Special Beef Premium Unit became aware of the error. The Appeals Officer found that as the two animals in question were female animals they were not entitled to receive Special Beef Premium but as the appellant had notified the Department of Agriculture and Food of the error before the Department became aware of it, the animals in question should be deleted from the application without a penalty being applied to his 2004 Bovine Schemes applications.

### **Case 9 - Rural Environment Protection Scheme**

A 15% penalty was applied for non-compliance with Measure 3, Protection of Watercourses, of REPS following the findings of an on-farm inspection.

A compliance inspection took place to check that the undertakings specified for the scheme had been adhered to. The inspector found that a watercourse on the holding was not fenced. The report noted that there was evidence of a fence having been erected. The inspecting officer was shown a rolled up fence in a shed on the day of inspection and informed that a Connemara foal had died after becoming entangled in the fence that had been erected along the watercourse. The farmer stated that the fence was removed to avoid a recurrence of an incident of this nature.

An appeal prepared by the REPS planner stated that the watercourse had been fenced as required under Measure 3 and that the fence had been removed just prior to the inspection due to the death of the foal following entanglement in the fence. She said that there was clear evidence of the fence having been erected and that the actual fence was now rolled up in a shed on the farm. She outlined that sole reason for the removal of the fence was to prevent any danger to animals.

Measure 3 of the plan required that the watercourse in plot 2 was to be fenced 1.5 metres from the top of the bank by the end of the first year of the scheme. The inspector was satisfied that a fence had been erected as required under the specifications of the plan. During the examination of the appeal, the inspecting officer confirmed that a square, sheep wire fence was rolled up in a shed and there was evidence to indicate that this fence had been erected along the watercourse. The farmer provided an explanation that the fence was removed following the death of the foal. The inspecting officer did not state in the report that there were no bovines in plot 2 on the day of inspection. Clarification of the issue during the appeals process revealed that two horses were on the lands during the inspection and the cattle did not have access to the plot or the watercourse at the time of the inspection. This information was not included in the inspection report.

The REP scheme specifications state that access by bovines to within 1.5 metres shall be prohibited before the end of the first year of the plan. The Appeals Officer found that the penalty should not be applied in this instance, as the cattle were not able to gain access to the watercourse on the day of inspection and thereby did not contravene the specifications of Measure 3 of the scheme.

The appeal was allowed.

### **Case 10 – Rural Environment Protection Scheme**

A REPS 1 applicant did not have demonstrable legal title to a section of land submitted for REPS 1 funding. The applicant looked to the REPS 1 concept of 'Beneficial Occupation' to overcome the absence of legal title. He produced the necessary sworn affidavit and entered the land for REPS funding. The Department found, however, that the applicant's circumstances did not entitle him to be treated as a Beneficial Occupier for REPS purposes because there was no familial connection between the applicant and the registered owner. The Department disallowed the land in question and imposed penalties.

The REPS 1 concept of Beneficial Occupation provided for circumstances where a REPS applicant did not have demonstrable legal title to land s/he was farming but did have a familial connection to the actual owner of the land. In such circumstances it was open to an applicant to furnish, in lieu of demonstrable evidence of ownership, a sworn affidavit that s/he had been in undisputed occupation and possession of the land in question and in receipt of any rents and profits, for at least the previous 5 years.

The applicant had discovered, whilst engaged in the preparation of a REPS 1 application, in 1996, that he did not have legal title to a section of the land that he proposed to submit for REPS funding. Prior to this the applicant had assumed that he owned and had full title to the particular section of land. The applicant had purchased all his land from a single vendor in 1979. He had agreed to purchase all the vendor's land and had assumed that the section at issue was included in the folios transferring into his name under the terms of the sale.

In fact the section at issue was not contained in any of the folios that transferred to the applicant. It was contained in an entirely separate folio. This folio failed to transfer to the applicant and remained in the name of the seller.

By the time the applicant initiated the process of joining REPS 1 the seller had passed away and the possibility of executing a deed of transfer, passing the land to the applicant, no longer existed. The applicant initiated a process of acquiring title to the land by 'Section 49' process. For REPS 1 purposes the applicant produced a sworn affidavit claiming Beneficial Occupation of the land. The land was accepted for REPS 1 funding on the basis of the sworn affidavit.

The applicant passed away during the lifetime of his REPS 1 plan. The applicant's spouse continued the plan. The Section 49 process initiated by the applicant concluded and title to land at issue came to the name of the applicant after his death.

A Department inspection found that the applicant had not had an actual familial connection to the original owner of the land and was not entitled to be deemed a Beneficial Occupier for REPS purposes. The Department disallowed the section of land for REPS funding and sought to recoup payments made in respect of the land.

The appeal of the Department's decision stressed that the intention of the original (1979) contract between vendor and applicant had been to transfer all the vendor's land to the applicant. It was by accident rather than intent that title to the section of land at issue failed to transfer to the applicant.

The Appeals Officer found that the applicant did not have the familial connection necessary for him to be deemed a Beneficial Occupier. The Appeals Officer also found, however, that the applicant had been the de facto owner of the land at the time he joined the REPS 1 programme - in accordance with the concept of land ownership provided for by REPS 1 rules - and was entitled to enter the land for REPS 1 funding without the necessity for recourse to the provisions of Beneficial Occupation.

In accordance with REPS 1 rules owners awaiting registration and undisputed unregistered owners/users could be categorised as 'owners' of their lands. The Appeals Officer found that the circumstances of the applicant had satisfied such ownership criteria noting, in this regard, that the applicant had farmed the disputed land since 1979, that he had initiated the Section 49 process of acquiring title to the land in 1996 and that his de facto long-term ownership of the land was effectively confirmed by the State when it granted him full title to the land in 2003. The appeal was allowed.

### Case 11 – Rural Environment Protection Scheme

A penalty of 35% was applied for non-compliance with Measures 3, 5, 6 and 9 of REPS plan following the findings of an inspection.

The inspector reported that the fence in plots 3 and 4 was less than the required 1.5m from the top of the bank of the watercourse. The wire fence forming the farm boundary in the south-western corner of plot 3 had been pulled back allowing the bovines present access to the neighbouring plot. A residual herbicide had been applied in plot 1 within the requisite limit of 1.5m from the hedgerows and an uncultivated margin of at least 1.5m had not been adhered to in this plot. The inspecting officer reported that the uncultivated margin was between 0.6m and 0.8m along the northern and north-eastern boundaries of plot 1.

The REPS planner requested a review of the penalty stating that the drains were scheduled for cleaning and this work was to be completed before the fence was moved out the required distance. This drain had just been cleaned and the fence had not been moved out that week due to work commitments. The planner stated that the farmer intended to purchase the lands adjacent to plot 3 but the vendor died in a traffic accident. The intention was to continue with the purchase of the land but the death of the vendor complicated the issue of the sale. The failure to ensure that adequate field margins were maintained was attributed to an error made by the contractor when tilling plot 1.

In the notice of appeal, the farmer accepted the penalty imposed for failing to have bovines excluded from the watercourse. He described that arrangements were at an advanced stage to purchase the land adjoining plot 3, when the vendor was killed and outlined his intentions to proceed with the purchase. Documentary evidence from the bank sanctioning the finance for the transaction was provided and he stated that it was only a matter of time before the formal purchase was finalised. He was farming the land in the interim period. A statement from the contractor regarding the arrangements for spraying and ploughing the land for a crop of winter wheat was provided. The contractor said that he received clear and concise instructions from the appellant regarding the appropriate field margins that were required to comply with REPS. He explained that he did not make the issue clear to an employee operating the machinery, who failed to ensure that adequate field margins were adhered to.

Documentary evidence was provided to the Appeals Officer that the transfer of the land had been agreed and had been sent to the land registry at the time of vendors death. The appellants cattle had access to this land as the registration process was pending and he claimed that he was unaware of the requirement to submit a REPS 1A.

After examining the evidence of the case, the Appeals Officer found that the land adjoining plot 3 was not listed on the REPS plan nor was there a REPS 1A for this land. The specifications of the scheme places a responsibility on an applicant to declare all lands in the plan that are owned/farmed/controlled and the manner in which these are held. Participants are required to notify the Department within six weeks of any additional land acquired. In the absence of the appropriate documentation, the adjoining land did constitute part of the farmers REPS plan and the south-western corner of plot 3 formed part of the external boundary of the lands entered for the scheme.

The decision of the Department to apply a 10% penalty for failing to have this location stockproof was upheld in this instance.

It was clear that the minimum requirement of 1.5m margins under Measures 6 and 9 were not adhered to in plot 1 and acknowledged that this error was attributed to the agricultural contractor who failed to ensure that the proper margins were left both at the spraying and ploughing stages of cultivation. The Appeals Officer found that the farmer should have contacted the Department upon discovering this problem and conveyed the explanation. As the Department first discovered that the field margins on the day of inspection were less than the scheme specifications, the imposition of the non-compliance penalty was upheld.

This appeal was disallowed.

### Case 12 - Rural Environment Protection Scheme

Following an application under the above scheme the appellant was approved by the Department and started on 1 July 2003. Under Measure 8 the REPS plan required the appellant to carry out the following work in Year 1 regarding Plots 25/25A, Scrap, Old Windows and Loose Rubbish, "Tidy up and dump all rubbish on farm in Local Authority Dump as soon possible Year 1 of plan, anything mentioned above which is to be kept should be stored away in a tidy fashion in yards or sheds, keep farm and farmyard neat and tidy at all times". Following an inspection on 8 September 2004 the Department notified the appellant that they were imposing a 10%

penalty, as the work had not been carried out in year 1 as set out in the approved plan.

The appellant asked for a review stating that he had another source of employment and did not have the time to carry out the work in the time span set out in the approved plan. The Department upheld their decision to impose the 10% penalty.

In his appeal to the Appeals Office the appellant again cited lack of time to carry out the work due to his off farm employment.

While the grounds of appeal were taken into consideration nevertheless the appeal was disallowed, as he had not carried out the work in year 1 of the approved plan. The appellant was notified that the onus was on him to carry out the work as specified in the plan.

### **Case 13 – Rural Environment Protection Scheme**

The herdowner commenced participation in the Repts scheme with effect from the 1st November 2001. At an on-farm inspection in March 2004, he was found to be in breach of Repts under a number of measures and a penalty of 140% was imposed. The penalty related to Measure 2- out wintering of animals 10%, Measure 5- Hedges not trimmed 20%, Hedgerow removed 100%, and Measure 8- Visual Appearance of farmyard 10%.

He sought a review of this decision on the basis of his medical condition together with the fact that family members who assisted while he was ill were not familiar with the farm requirements under the scheme. In addition, he contended that the hedgerow removed was not a hedge but merely some birch trees and the area has since been replanted.

At the oral hearing and in the documentation submitted he outlined the grounds of his appeal, he acknowledged that all was not perfect on the farm on the day of inspection, but put forward that this was due to his medical condition. He stated that he was first diagnosed in mid 2003 and underwent a one-day operation in November 2003. After that, he recuperated at home. He explained how his family were devastated with the news of his illness. He has also put forward that the hedge removed was of poor quality and could not be considered a hedge at all. He explained that there were numerous deep gaps where the cattle accessed the water. He was unsure when the work was done, it was either in November 2003 or the spring of 2004.

He stated that the animals seen had been collected ready for sale, that there had been rain constantly in the previous two days, but that the weather had been dry prior to that.

He explained how he considered the penalty to be very severe and did not provide any incentive for young people such as his son to enter farming. He stated that he had made many improvements in relation to pollution control but felt that these had not been acknowledged.

The Appeals Officer explained that participation in the Repts scheme is governed by the Repts plan drawn up by the planner in conjunction with the applicant. The scheme document clearly set out the position in relation to the maintenance of farm and field boundaries, considered to be habitats,

‘Any interference with habitats, other than as part of an agri-environmental plan shall render the applicant ineligible for the scheme’.

It is not disputed that the hedge was removed. While it is noted that the appellant stated that the hedge was of poor quality and has now been replanted, it is nonetheless the case that the hedge was identified in the plan (marked yellow) as a hedgerow. Indeed he had included this hedge for maintenance (side breasting) in year 1 of his plan. The removal of any hedgerow identified in a Repts plan is contrary to the terms and the spirit of the scheme. It was open to him if he felt that the hedge had been incorrectly identified to inform the Department of Agriculture & Food of that fact, something which he did not do.

The Appeals Officer also considered the appellants medical condition and its effect on his farming activities. He explained that his condition, diagnosed in mid 2003, with an operation in November 2003, caused considerable stress for both himself and his family. However, it did not require him to be away from the farm for any length of time. He explained that he contacted the contractor to clean the waterway. The onus was on the appellant therefore to clearly explain to the contractor the work he wanted done and that care should be taken not to remove any hedge/habitats present. There was evidence of the waterway being worked on on the day of inspection in March 2004, some time after his operation. That is, there were stakes and wire on the ground and some evidence of burning nearby. It was not accepted that his medical condition was a significant factor in his ability to instruct the contractor on what was required.

It was also considered that his medical condition could not be deemed a significant factor in the penalty for out-wintering of animals, as he had cattle selected for sale and out in the fields at the time of inspection. While it is acknowledged that it had rained for two days prior to the date of inspection, the inspector noted 25-30% ground damage and considered that animals should not have been let out in the conditions.

It is noted that he had engaged a contractor to clean the watercourse, it was therefore open to him to also engage a contractor to trim the hedges (side breast) if he was unable to do this work himself.

The appellant put forward that the penalties were very severe. However, the schedule of penalties for non compliance with each measure of the Repts scheme are set out in the schedule of penalties issued at the commencement of the scheme. These penalties are also included at Repts training courses, one of which the appellant attended in February 2003.

Having considered all the issues, the Appeals Officer found therefore that the decision of the Department of Agriculture & Food was appropriate and in accordance with the scheme specification. The appeal was disallowed.

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

1. When sending out a REPS 1C form, the Department should also issue a "Checklist" to the farmer. More and more farmers have off-farm employment and may not have focused on the need to keep their farmyard tidy all the time and may allow work to slip which results in a penalty. These "Reminders" or "Checklists" may help the farmer avoid a penalty by carrying out the work as required.

2.NBAS Division should examine the effectiveness of the notification procedures in relation to farm to farm transactions in order that the seller or purchaser is aware that the animal movements have been notified to the CMMS database. Sometimes the buyer leaves it to the seller to notify CMMS without realising that the onus is also on him to notify them.

3. In penalty letters the Department should clearly distinguish between dual claims on forestry and forage lands. In certain cases a letter was issued stating that a dual claim on lands was resolved. However this only related to the forestry aspect of the claim and a problem remained with the forage claim. The farmer understood all problems were solved.

4. Many of the appeals under the Farm Waste Management scheme and Dairy Hygiene Schemes where farmers applied for grant aid for mobile equipment and milk cooling and storage equipment involved the purchase of the item prior to application for grant or issue of letter of approval. Sometimes the equipment is purchased on an urgent basis where the applicant is aware of the application process but feels he/she cannot manage making a grant application prior to making the purchase. A uniform procedure for such emergency works should be put in place and farmers should be made aware of it.

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

5. Interest should only be charged on recoupment of amounts paid under REPS in accordance with Article 49 of Commission Regulation (EC) 2419/2001. "Interest shall be calculated for the period elapsing between the notification of the repayment obligation to the farmer and either repayment or deduction". The charging of interest for other periods on REPS repayments is not provided for under this regulation.

6. The Department should put in place a comprehensive/timely system to ensure that REPS payments are not issued after a contract has been terminated due to death of participant, and should notify the next of kin immediately on notification of death that the REPS contract has been terminated.

7. There should be a more detailed examination of land eligibility before approving REPS contracts.

8. When a herdnumber is registered/changed, the new herdowner should be issued with a list of schemes operated by the Department, and application forms/terms and conditions where relevant, such as Installation aid to all herdowners under 35.

9. Penalties in relation to CMMS compliance and Land overdeclaration should be proportionate to the offence and relative to the benefit to be gained by the herdowner.

*The Department has commented that in EU funded schemes penalty provisions are set down in Regulations.*

10. The Department should follow up where animal movement permit returns are not made, and/or introduce an option on the permit of 'no movement occurred'. The bottom portion of the permit should contain the words 'Return this form' or similar on the details side of the card.

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

### General

- For all Schemes, applicants should maintain comprehensive records. Proof of postage should be retained for all correspondence sent to the Department and CMMS notifications.
- Farmers should be aware of time deadlines and abide by them. If exceptional circumstances arise, they should consult with the Department

### Identification and Registration

- Failure to check that the Cattle Movement Monitoring System (CMMS) has been notified when animals are bought privately (farm to farm)
- Failure to tag calves in time and to keep other animals properly tagged
- Failure to register births within the specified time limit
- Failure to keep Herd/Flock Register up to date

### Rural Environment Protection Scheme (REPS)

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

Failure to carry out scheduled works such as,

- Keeping boundary fences stock-proof
- Fencing off watercourses where required
- Painting sheds
- Provide livestock housing as set out in the REPS plan
- Maintaining hedgerows.

Also common among REPS applicants is the

- Failure to amend plan to reflect changes in area farmed (i.e. non-notification of lease, rental, purchase or sale of land)
- Failure to notify and discuss with the planner, problems in the implementation of the plan
- Neglect of administrative issues such as the timely return of forms REPS 1A and REPS 1C.
- Failure to check with planner before commencing work that may interfere with the REPS plan e.g. opening a new entrance or moving boundaries.
- REPS participants undertaking removal of hedgerows or part thereof for entrance, site works or access without first applying for and receiving prior derogation from the Department through their REPS planner.

#### **On-Farm Investment Schemes**

- Proceeding with work before the Department of Agriculture and Food has given written approval
- Failure to get planning permission before reaching the age of 35 – failing to qualify for 15% top-up
- Late submission of Installation Aid applications, in particular IAS1 forms.
- Failure to ensure Educational Qualifications are obtained either at time of application or within two years.

#### **Early Retirement Scheme**

- Leases not being finalised and lease obligations not being fulfilled
- Failure by the transferee to farm all the pension and enlarged lands (ERS1).

#### **Single Payment Scheme**

- Failure to declare all land parcels.
- Failure to submit amendments in time.
- Failure to manage setaside
- Failure to remove forestry from forage area when land is planted
- Failure to make application for at least 50% of the eligible area declared during the 3 reference years for SPS where the farmer has consolidated his/her SPS payment.

#### **Disadvantaged Areas Compensatory**

##### **Allowances Scheme**

- Not living within daily commuting distance (70 miles)
- Not maintaining the minimum stocking density required on disadvantaged lands submitted for payment of Disadvantaged Area Compensatory Allowance.

## 8. Single Payment Appeals Committee

In February 2004, the then Minister for Agriculture and Food, Mr Joe Walsh TD, established a Single Payment Appeals Committee to deal with appeals made by farmers who are not satisfied with the decisions of his Department in relation to the implementation of the various facets of the Single Payment Scheme.

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

The Single Payment Appeals Committee examines appeals in relation to the decisions of the Department of Agriculture and Food under both Force Majeure and New Entrant/Inheritance arrangements. A number of Force Majeure appeals were disallowed because there was no benefit to the farmer.

The Single Payments Appeals Committee also deals with appeals from individual farmers in relation to other aspects of the Single Payment Scheme, including the allocation of entitlements from the National Reserve.

There were 21 meetings of the Committee in 2005. The Committee concluded the consideration of 2,546 cases in that time and made recommendations to the Department as set out in the table below. In addition, 22 cases were examined by the Single Payment Appeals Committee where extra information was required before a decision could be made based on the information on hand. These cases were referred back to the Single Payment Unit and will be re-examined by the Committee when the necessary information is provided. The Committee also made decisions on 78 Dairy Premium Cases, of which 12 were allowed and 66 disallowed.

Force Majeure Cases					New Entrant/Inheritance Cases				
	2004	%	2005	%		2004	%	2005	%
<b>Total No. of Cases Examined</b>	2,095		2,102		<b>Total No. of Cases Examined</b>	-	-	444	
Allowed	190	9%	252	12%	Allowed	-	-	41	9%
Disallowed	1,876	90%	1,838	87%	Disallowed	-	-	401	90%
Not Valid	29	1%	12	1%	Not Valid	-	-	2	1%

## 9. Staff of the Agriculture Appeals Office



\* Left the Office during 2005

# Joined the Office during 2005



Number 29 of 2001

**AGRICULTURE APPEALS ACT, 2001**

ARRANGEMENT OF SECTIONS

Section

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

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

SCHEDULE

SCHEMES

ACTS REFERRED TO

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



Number 29 of 2001

### AGRICULTURE APPEALS ACT, 2001

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

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

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

“Director” means Director of Agriculture Appeals;

“functions” includes powers, duties and obligations;

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

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

(2) In this Act—

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

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

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

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

S.1

(d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.

Appointment of appeals officers.

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

Director of Agriculture Appeals.

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

Deputy Director of Agriculture Appeals.

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

Functions of appeals officers.

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

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

Independence of appeals officers.

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

Right of appeal.

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

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

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

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

Oral hearings.

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

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

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

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

[2001.]	<i>Agriculture Appeals Act, 2001.</i>	[No. 29.]	
appeal may examine the appellant, if the appeals officer considers it necessary.	S.8		
(5) An appeals officer, on the hearing of any matter referred to him or her under this Act, shall have the power to take evidence on oath or affirmation and for that purpose may administer oaths or affirmations to persons attending as witnesses at such hearing.			
9.—(1) The decision of an appeals officer and the reasons for making that decision shall be notified in writing to the appellant.	Decisions.		
(2) A document purporting to be a decision made under this Act by an appeals officer and to be signed by him or her shall be <i>prima facie</i> 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 <i>section 7(1)</i> shall, subject to <i>sections 10 and 11</i> , be final and conclusive.			
10.—(1) An appeals officer may, at any time revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which it was given, or if it appears to him or her that there has been any relevant change of circumstances since the decision was given.	Revised Decisions by Director and appeals officers.		
(2) The Director may, at any time, revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.			
(3) A revised decision given under this section shall take effect from such date as the appeals officer concerned determines or considers appropriate having regard to the circumstances of the case.			
11.—Any person dissatisfied with—	Appeals to High Court.		
(a) the decision of an appeals officer, or			
(b) the revised decision of the Director,			
may appeal that decision or revised decision, as the case may be, to the High Court on any question of law.			
12.—(1) Where representations are made to the Minister under section 15(2) or 16(2) of the National Beef Assurance Scheme Act, 2000, the Minister shall upon receipt of such representations refer them, as soon as may be, to the Director for advice.	Representations under National Beef Assurance Scheme Act, 2000.		
(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.			
(3) The Minister shall have regard to any advice given to him or her under this section before refusing an application for the grant of, or revoking, a certificate of approval under the aforesaid Act.			
13.—(1) Where representations are made to the Minister under Article 8(1) of the Diseases of Animals Acts, 1966 to 2001 (Approval and Registration of Dealers and Dealers' Premises) Order, 2001 (S.I. No. 79 of 2001), the Minister shall, upon receipt of such representations refer them, as soon as may be, to the Director for advice.	Representations by certain animal and poultry dealers.		

[No. 29.]	<i>Agriculture Appeals Act, 2001.</i>	[2001.]	
(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.	S.13		
(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.			
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.	Annual reports.		
(2) A report under <i>subsection (1)</i> shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.			
(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.			
15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.	Regulations.		
(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.			
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.	Laying of regulations before Houses of Oireachtas.		
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.	Expenses of Minister.		
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 <i>Agriculture Appeals Act, 2001</i> ”.	Amendment of First Schedule to Ombudsman Act, 1980.		
19.—This Act may be cited as the Agriculture Appeals Act, 2001.	Short title.		

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

SCHEDULE

Section 5.

SCHEMES

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

S.I. No. 193 of 2002

AGRICULTURE APPEALS REGULATIONS 2002

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

**Citation and Commencement**

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

**Definitions**

2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

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

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

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

**Distribution of references to appeals officers**

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

**Decisions which may be appealed and transitional arrangements**

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

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

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

#### **Submission of appeal and information to be supplied by appellant**

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

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

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

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

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

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

#### **Notification of appeal and information to be supplied**

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

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

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

#### **Notice of appeal**

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

#### **Further information to be supplied and amendment of pleadings**

8. The appeals officer to whom an appeal is referred may at any time –  
(a) require the appellant, the deciding officer, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,

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

#### **Summary appeals**

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

#### **Hearings**

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

#### **Failure to attend hearing**

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

#### **Appeal may be decided despite failure to comply with Regulations**

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

#### **Procedure at hearing**

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

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

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

#### **Decision of Appeals Officer**

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

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

GIVEN under my Official Seal,

8 May 2002

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

#### EXPLANATORY NOTE

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

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#### S.I. No. 558 of 2002

#### Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002.

2. The Schedule to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended -

(a) by deleting the following schemes -

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

“Cattle Headage Scheme in More Severely Handicapped Areas”,

“Equine Headage Scheme in all Disadvantaged Areas”,

“Goat Headage Scheme in All Disadvantaged Areas”, and

“Sheep Headage Scheme in All Disadvantaged Areas”,

and

(b) by adding the following schemes -

(i) “Disadvantaged Areas Compensatory Allowances Scheme”  
before mention of “EU Area Aid Scheme (including the Arable Aid Scheme)”, and

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

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

TABLE  
SCHEDULE  
Schemes

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

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

GIVEN under my Official Seal,

6 December 2002

JOE WALSH,  
Minister for Agriculture and Food.

**PN 12452**  
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**Price €2.03**

**S.I. No. 507 of 2004**

**Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004**

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

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

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

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

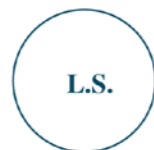
**TABLE**

**SCHEDULE**

**Schemes**

Disadvantaged Areas Compensatory Allowances Scheme  
EU Area Aid Scheme (including the Arable Aid Scheme)  
EU De-seasonalisation Slaughter Premium Scheme  
EU Ewe Premium Scheme  
EU Extensification Premium Scheme  
EU Slaughter Premium Scheme  
EU Special Beef Premium Scheme  
EU Suckler Cow Premium Scheme  
Farm Improvement Programme (FIP)  
Farm Improvement Programme (FIP) Horticulture  
Installation Aid Scheme (IAS)  
Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo  
National Scheme of Installation Aid (SIA) (introduced December 1998)  
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)  
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Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)

Scheme of Investment Aid for upgrading of On-Farm Dairying  
facilities  
Scheme of Investment Aid in Alternative Enterprises (Housing and  
Handling Facilities) (AES)



GIVEN under my Official Seal, this 3<sup>rd</sup> day of August, 2004.

Joe Walsh TD,  
Minister for Agriculture and Food

(Pn. 3375)  
Price: €0.76

