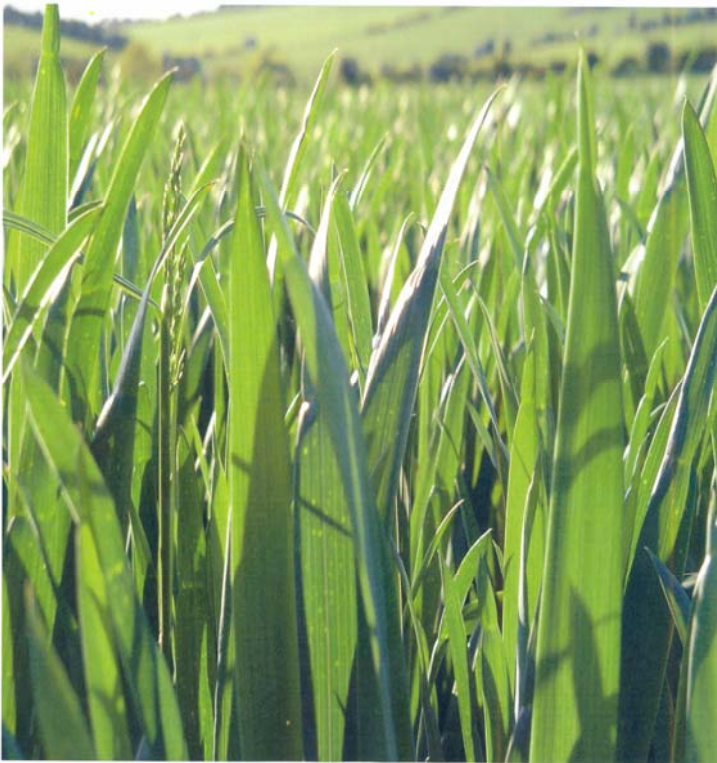




# Agriculture Appeals Office Annual Report 2008



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

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2008 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 2008.

John Murphy  
(Acting) Director of Agriculture Appeals Office

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

#### **Contact Details**

Agriculture Appeals Office  
Kilminchy Court  
Portlaoise  
Co. Laois

Telephone: 057-8667167 or LoCall 1890-671671  
Fax: 057-8667177  
E-mail: [appeals.office@agriculture.gov.ie](mailto:appeals.office@agriculture.gov.ie)  
Website: [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie)

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## **1. Introduction by the Director of Agriculture Appeals Office**

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

The function of the Agriculture Appeals Office is to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Fisheries and Food regarding their entitlements under certain schemes as set out in the Schedule to the Agriculture Appeals Act 2001. Four hundred and eighty one appeal cases were received in 2008 across the various different schemes. This represents an increase of 22% on 2007 figures.

This report sets out the major developments during the year and a statistical breakdown of the Office's work. In line with recent reports, it contains a cross-section of cases determined by Appeals Officers so as to illustrate the type of issues that gave rise to an appeal and the consideration given to them by Appeals Officers.

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

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

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

This report is available on the Agriculture Appeals Office website, [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie)

John Murphy  
(Acting) Director of Agriculture Appeals Office  
June 2009

## **2. Agriculture Appeals Office 2008**

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

### **Procedures Manual**

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

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

### **Business Plan**

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

### **Database**

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

### **Website** ([www.agriappeals.gov.ie](http://www.agriappeals.gov.ie))

Conscious of the commitment to e-Government, the office launched its website, [www.agriappeals.gov.ie](http://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](mailto:appeals.office@agriculture.gov.ie).

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

Ongoing contact with various Divisions of the Department of Agriculture, Fisheries and Food to discuss various issues that arise from appeal cases continued in 2008.

### **Meetings of Appeals Officers**

11 meetings of Appeals Officers were held in 2008. The principal purpose of these meetings is to establish consistency of approach by the Appeals Officers and to discuss matters relevant to the work of the office. These meetings are usually held monthly.

### **Freedom of Information**

A number of formal requests were received under the provisions of the Freedom of Information Acts. All of these requests were in respect of personal information contained on file.

### **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, fifteen cases received in 2008 have been referred to the Ombudsman. There have been no occurrences where the Ombudsman has requested this office to amend its decision.



### **3. Appeals Procedure and Oral Hearings**

Of the 481 appeals received in 2008, some 331 (69%) involved oral hearings. (61% in 2007).

On receipt of an appeal, this office,

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

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;

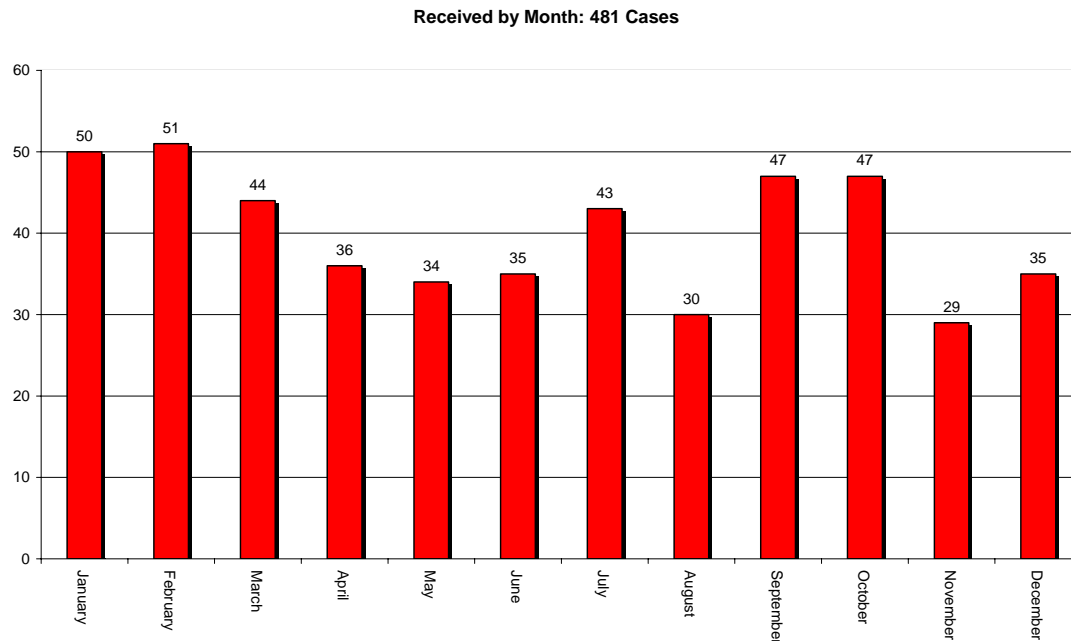
- It is held in private and is informal in format
- The Appellant has a right to representation but must attend the hearing in person

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.

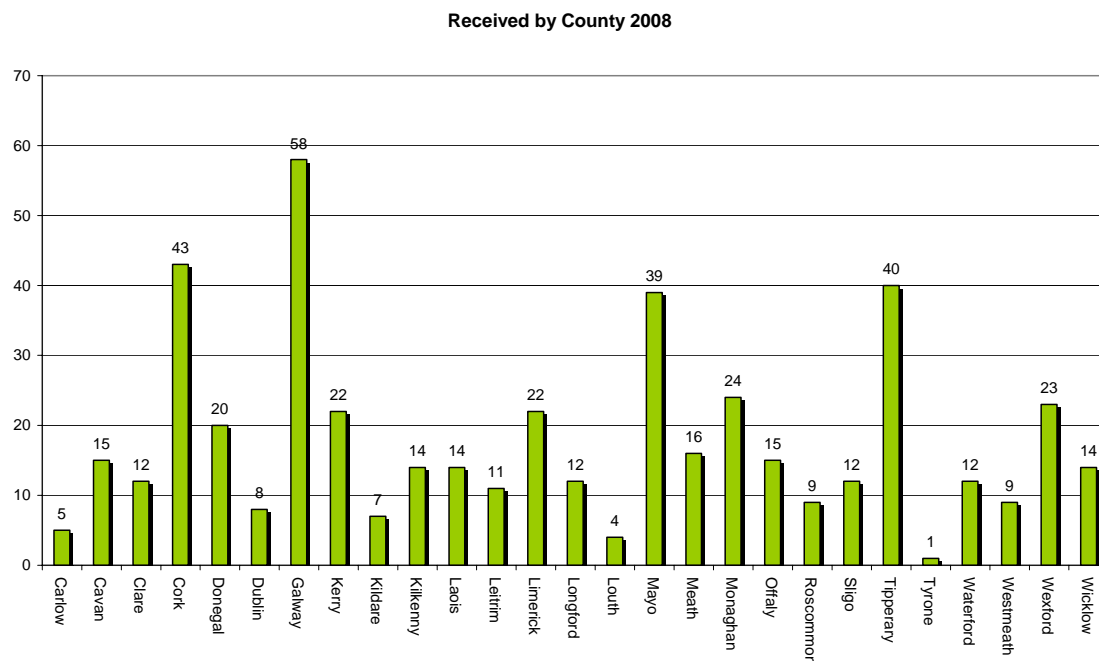
## 4. Statistics – 2008

481 cases were received in 2008 compared with 394 in 2007, a 22% increase.

### 4(a) Appeals Received by Month

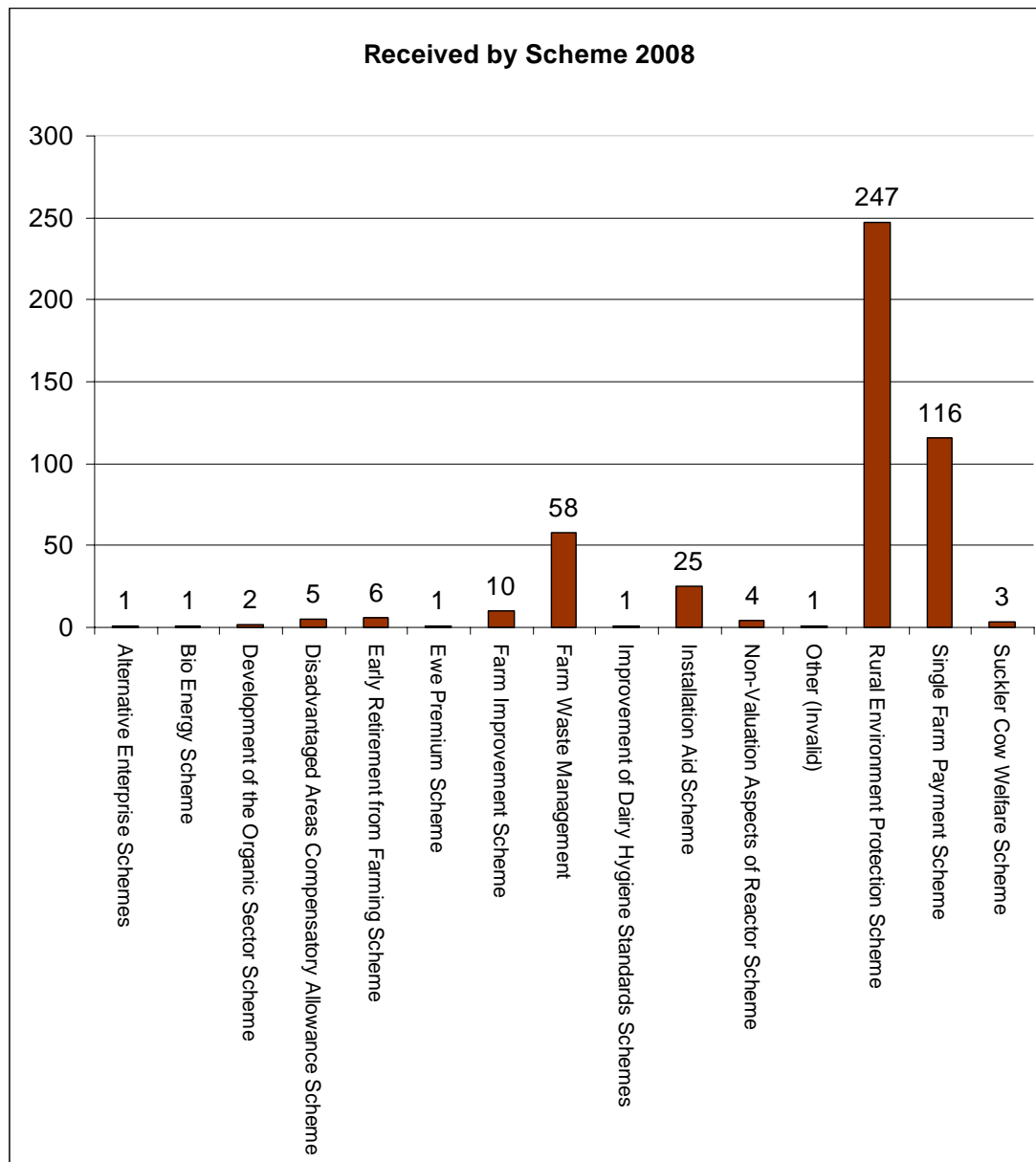


### 4(b) Appeals Received by County

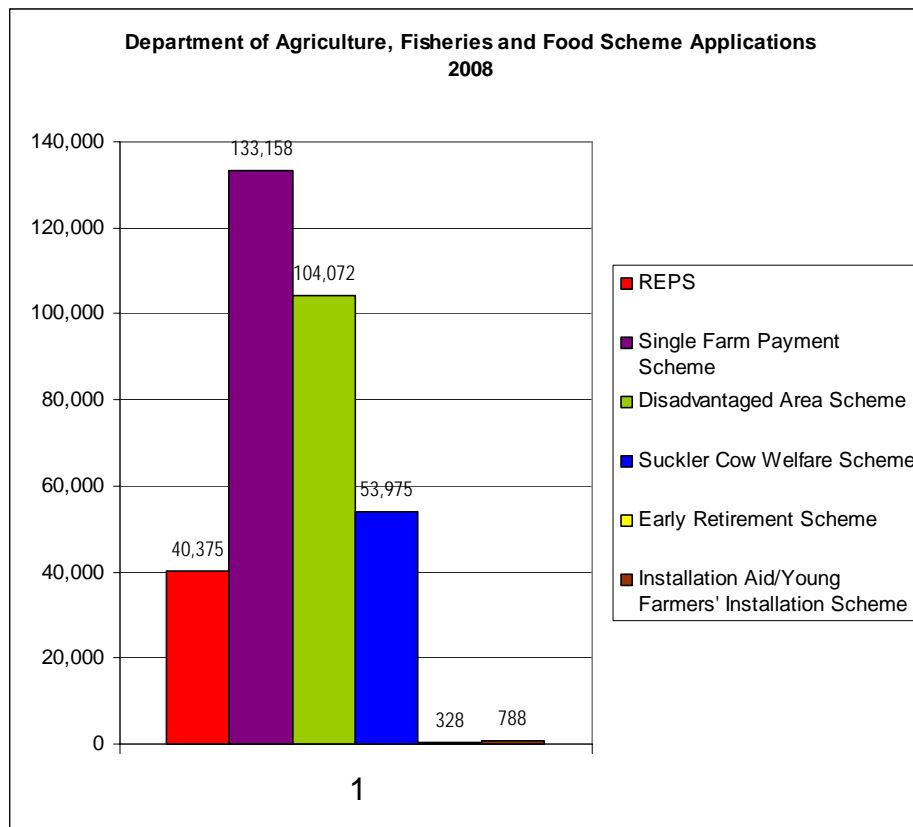




#### 4(c) Appeals Received by Scheme



4(d) Department of Agriculture, Fisheries and Food Scheme Applications 2008



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

**4(e) Outcome of Appeals Received in 2008**

Comparison with previous years	2008	2007	2006	2005	2004
Appeals Allowed, Partially Allowed or Revised	34%	38%	36%	36%	33%
Appeals Withdrawn, Not Valid, Out of Time or Advice Given	12%	13%	14%	11%	11%
Disallowed	46%	42%	40%	49%	51%
Open	8%	7%	10%	4%	5%

*Above figures are based on statistics available at time of publication.*

**Terminology**

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

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

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

**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, Fisheries and Food.

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

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

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

**Open:** 2008 cases which have still to be finalised to date.

**4(f) Outcome by Scheme Received in 2008**

SCHEME	Received	Allowed	%	Partially	%	Revised	%	Withdrawn	%	Not Valid	%	Out of Time	%	Advice Given	%	Disallowed	%	Open	%
Alternative Enterprise Schemes	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%	-	0.0%
Bio Energy Scheme	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%	-	0.0%
Development of the Organic Sector Scheme	2	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	2	100.0%	-	0.0%
Disadvantaged Areas Compensatory Allowance Scheme	5	-	0.0%	-	0.0%	-	0.0%	1	20.0%	2	40.0%	-	0.0%	-	0.0%	-	0.0%	2	40.0%
Early Retirement from Farming Scheme	6	1	16.7%	-	0.0%	1	16.7%	1	16.7%	-	0.0%	-	0.0%	-	0.0%	2	33.3%	1	16.7%
Ewe Premium Scheme	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%
Farm Improvement Scheme	10	2	20.0%	1	10.0%	-	0.0%	2	20.0%	1	10.0%	-	0.0%	-	0.0%	4	40.0%	-	0.0%
Farm Waste Management Scheme	58	7	12.1%	4	6.9%	6	10.3%	-	0.0%	2	3.5%	6	10.3%	-	0.0%	30	51.7%	3	5.2%
Improvement of Dairy Hygiene Standards Scheme	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%	-	0.0%	-	0.0%	-	0.0%
Installation Aid Scheme	25	1	4.0%	-	0.0%	1	4.0%	1	4.0%	2	8.0%	1	4.0%	-	0.0%	17	68.0%	2	8.0%
Non-Valuation Aspects of Reactor Scheme	4	-	0.0%	1	25.0%	-	0.0%	1	25.0%	-	0.0%	-	0.0%	-	0.0%	2	50.0%	-	0.0%
Other	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Rural Environment Protection Scheme	247	28	11.3%	18	7.3%	43	17.4%	9	3.6%	6	2.4%	8	3.2%	-	0.0%	118	47.8%	17	6.9%
SFPS - Cross Compliance	17	3	17.7%	4	23.5%	-	0.0%	-	0.0%	-	0.0%	1	5.9%	-	0.0%	9	52.9%	-	0.0%
SFPS - Late Submission of Applications	22	-	0.0%	-	0.0%	9	40.9%	1	4.5%	-	0.0%	-	0.0%	-	0.0%	12	54.5%	-	0.0%
SFPS – Other	14	2	14.3%	-	0.0%	2	14.3%	-	0.0%	4	28.6%	-	0.0%	-	0.0%	4	28.6%	2	14.3%
SFPS - Over Declaration of Land/Setaside	56	5	8.9%	6	10.7%	13	23.2%	3	5.4%	2	3.6%	-	0.0%	-	0.0%	15	26.8%	12	21.4%
SFPS - Surrender of unused entitlements to National Reserve	5	1	20.0%	1	20.0%	2	40.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	20.0%	-	0.0%
SFPS – Under Declaration of Land	1	-	0.0%	-	0.0%	1	100.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
SFPS - Surrender of Entitlements (failure to apply)	1	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	1	100.0%
Suckler Cow Welfare Scheme	3	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	3	100.0%	-	0.0%

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

For 2008 cases the average time taken by the Department to return files was 26 days. The average for 2007 was 33 days. A breakdown follows by scheme;

SCHEME	2008
Alternative Enterprise Scheme	51
Bio Energy Scheme	16
Development of the Organic Sector Scheme	42
Disadvantaged Areas Compensatory Allowance Scheme	10
Early Retirement from Farming Scheme	17
Ewe Premium Scheme	14
Farm Improvement Scheme	31
Farm Waste Management Scheme	31
Installation Aid Scheme	27
Non-Valuation Aspects of Reactor Scheme	18
Rural Environment Protection Scheme	36
Single Farm Payment Scheme	26
Suckler Cow Welfare Scheme	15

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

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

The office asks the Department to return files within two weeks of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued where the Department does not respond promptly – 149 reminders were issued in 2008.

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

For 2008 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 101 days. The Appeals Office has set itself a target of three months from time of receipt of the appeal to the issue of decision letter. For 2007 cases, the average appeal took 121 days. Some cases, due to circumstances outside the control of the Appeals Office may not be completed within the set time frame.

**4(i) Position as at year end**

Status (as at 31/12/08)	2008	2007	2006	2005	2004
Cases Closed	339	254	288	762	821
Work in Progress – Appeals Office	96	134	130	13	200
Awaiting Department Response	46	6	9	15	95
Total On hand	142	140	139	28	295
Overall Total	481	394	427	790	1116

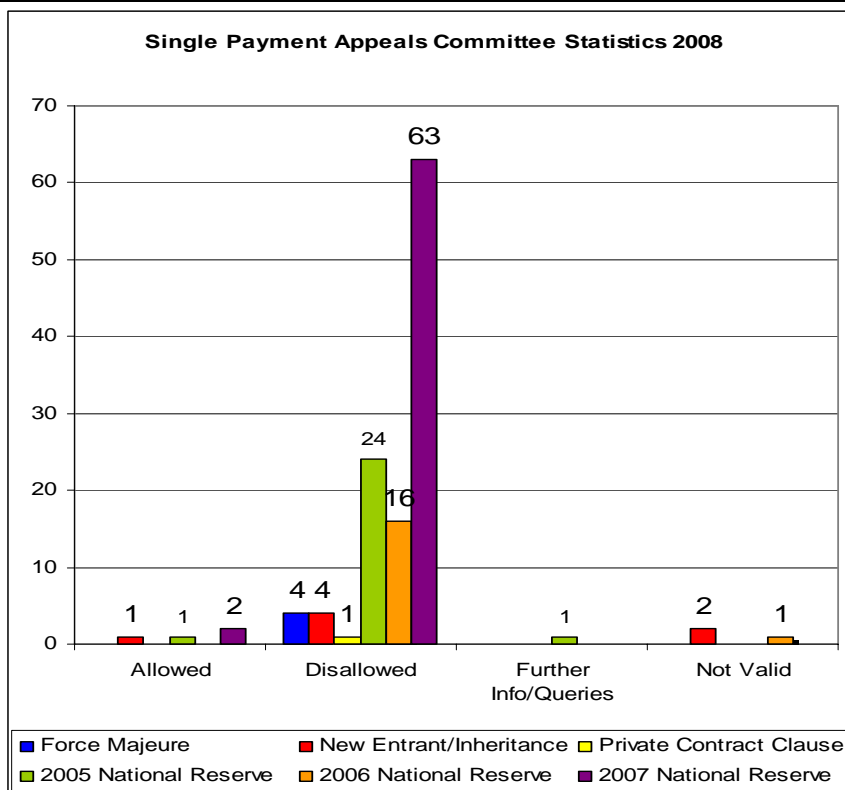
Cases Closed in 2008	Number
2008 cases closed in 2008	339
2007 & 2006 cases closed in 2008	140
<b>Total no. of cases closed in 2008*</b>	<b>479</b>

\*Note: In addition to the cases closed above The Single Payment Appeals Committee closed a total of 120 cases pertaining to the Single Payment Scheme. Please see following section for further information.

## 5. Single Payment Appeals Committee

The Single Payment Appeals Committee was established in February 2004 to deal with appeals made by farmers who are 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, Fisheries and Food under various aspects of the Single Payment Scheme. These include Force Majeure, New Entrant/Inheritance arrangements, Private Contract Clause with the majority of the work making decisions on cases relating to the allocation of entitlements from the 2005, 2006 and 2007 National Reserve. There were 3 meetings of the Committee in 2008 and it concluded the consideration of 120 cases in that time and made recommendations to the Department as set out in the table below.

Single Payment Appeals Committee Statistics 2008							
	Force Majeure	New Entrant/Inheritance	2005 National Reserve	2006 National Reserve	2007 National Reserve	Private Contract Clause	Overall Totals
Allowed	-	1	1		2	-	4
Disallowed	4	4	24	16	63	1	112
Further Info/Queries	-	-	1	-	-	-	1
Not Valid	-	2	-	1	-	-	3
<b>Total</b>	<b>4</b>	<b>7</b>	<b>26</b>	<b>17</b>	<b>65</b>	<b>1</b>	<b>120</b>





## 6. Selected Appeal Cases

### Case 1 Bioenergy Scheme for Willow and Miscanthus

The Bio Energy Scheme provides establishment grants to encourage the growing of willow and miscanthus for the production of biomass suitable for use as a renewable source of energy. The closing date for applications was initially 29<sup>th</sup> February 2008 but was extended to 31<sup>st</sup> March 2008. In August 2008, contact was made with the Bio Fuels Policy Unit by the Appellant regarding the application. On the 3<sup>rd</sup> September 2008, the Department informed the Appellant they had no record of receiving an application from him to participate in the scheme and at this stage could not accept a late application. The decision was subsequently appealed to the Agriculture Appeals Office.

At the oral hearing, the Department confirmed no application was received and that there was no correspondence by the Appellant with the Bio Fuels Policy Unit until late August 2008. They stated they cannot grant aid retrospectively and therefore had to refuse the request to accept a late application. It was emphasised that the grant is not an automatic entitlement to growers, as they must apply for the grant. Following assessment of an application, which may involve a desk assessment and/or an on-site inspection, a letter of approval would be issued where successful. An applicant must get this formal letter of 'Pre-Planting Approval' prior to any work or planting taking place.

In response, the Appellant emphasised the work and cost involved in establishing a crop of miscanthus. The process in completing the application form with assistance from a contracting agency was explained. No checks were carried out by the contracting agency before planting to identify if the letter of approval was received. The Appellant confirmed that he had a copy of the application form that he stated was sent by standard post. It was suggested there might have been some confusion as the application timeframe for the Bio Energy Scheme coincided with the application period for the Hemp Scheme.

In the Terms and Conditions of the scheme under Section 9 'Application for Pre-planting approval' it is highlighted in bold that *'all proposed planting must receive prior written approval from the Department of Agriculture, Fisheries and Food. Any planting which proceeds without such approval will not be eligible for grant assistance'*. There is also reference to pre-planting approval in Section 8 'Conditions of Grant Aid under the Bio Energy Scheme'. In Section 3, 'Definitions', it defines that an 'applicant' means *'a person who has applied for pre-planting approval'* and *'approval' means "a pre-planting approval granted by the Minister in relation to an application made under this scheme"*. It was noted that when the Appellant completed the application form he signed a declaration that he had read, and agreed to observe and be bound by Terms and Conditions of the Bio Energy Scheme. Unfortunately, the Department never received an application prior to the closing date of the scheme and no evidence was provided that an application was posted. Also planting of the crop took place before any approval could have been issued by the Department. The appeal was disallowed.

## Case 2 Early Retirement Scheme (ERS) 3

The Appellant had sought exemption from certain Early Retirement Scheme (ERS) 3 requirements under the provision of force majeure/exceptional circumstances as a result of having been forced out of farming due to medical illness in 1996. The Department of Agriculture, Fisheries and Food rejected the request on the basis that *'an applicant must have farmed solely or with a family member/partner for the 10 years prior to the signing of the transfer/conveyance or operative date of the lease and that only lands transferred to an eligible transferee on or after 1 January 2005 are eligible for the scheme'*. In the appeal, it was stated that the Appellant became seriously ill in 1996 but continued farming in a limited way with the assistance of friends, relations and good neighbours until the ERS 3 qualification age of 55 years old was reached.

In the Terms and Conditions of ERS3, under section 5 'Persons Eligible to Apply for a Pension', it states in paragraph 5.7 that the applicant must *"have farmed either solely or with a family member/partner for the 10 years prior to the signing of the transfer/operative date of lease"*. Section 4 deals with 'Lands Eligible for Payment' and in paragraph 4.2, it describes *'lands transferred ... on or after 1 January 2005 are eligible for inclusion under the Scheme'*. Paragraph 4.1 also states that the *'lands must be "...subject of an SPS/Area Aid application... at the date of signing of the transfer/lease documents or during the year prior to signing are eligible for payment'*. Department records indicated that the Appellant's last Area Aid form was submitted in 1993 and the last herd test took place in November 1993. No evidence on Department records demonstrated any farming activity had been conducted after 1993.

In relation to 'Exceptional Circumstances', section 21, of the Terms and Conditions of ERS3 states *"Where an intending applicant is unable to meet certain scheme conditions for reasons beyond his/her control...The circumstances under which exceptional circumstances may be considered include...serious illness/incapacity (supported by medical evidence)'*. The medical evidence submitted did confirm the Appellant was incapable of work (as verified by the Department of Social Welfare Medical Officer) after a road traffic accident in 1996 and also provides a further history of ill health. However, the request to waive the scheme requirements based on the medical evidence cannot be accepted as (a) given the length of time i.e. a period in excess of 12 years was required to be waived and (b) no Area Aid application has been submitted since 1993 which would indicate no farming activity prior to the road accident in 1996. The appeal was disallowed.

### Case 3 Farm Improvement Scheme (FIS)

An application for the Farm Improvement Scheme (FIS) was received on the 22<sup>nd</sup> October 2007. It related to grant aid to (i) install mats on slats and (ii) erect a meal bin. The scheme was suspended on 31<sup>st</sup> October 2007 as the level of funding allocated had been reached and applications received between the 21<sup>st</sup> October and 31<sup>st</sup> October 2007 were only to be processed up to the level of funding available. On the 5<sup>th</sup> June 2008, the Department of Agriculture, Fisheries and Food's (DAFF) local office was informed that the application had been lodged on the 19<sup>th</sup> October 2007. It was explained that the agricultural consultancy kept a register of applications it prepared and the application in question was recorded as being submitted on the 19<sup>th</sup> October 2007. The DAFF reviewed the case internally and decided that the application could not be accepted. Their view was that the Terms and Conditions clearly set out that *'the scheme will come into operation as and from 12th July 2007 and will be closed for new applications when the allocation of €85 million identified in the 2007-2013 Rural Development Programme for the Modernisation of Agricultural Holdings has been exhausted'*. The DAFF concluded that the inclusion of applications received after the closing date (21<sup>st</sup> October 2007) would lead to expenditure under the scheme greater than the allocation that was provided for.

An appeal was lodged. The DAFF considered the information provided and confirmed their decision that the application could not be processed. It was date stamped received 22<sup>nd</sup> October 2007 and as this was outside the time period allowed they could not process it. The appeal grounds stated that the application was submitted on the 19<sup>th</sup> October 2007. Following discussion, corroboration of time of lodging was sought. It was contended that other applications received on 19<sup>th</sup> had been processed and this scenario amounted to discrimination. The Appellant maintained the application was lodged on the 19<sup>th</sup> not the 22<sup>nd</sup>. The argument centred on the application being lodged on the 19<sup>th</sup> but only date stamped on the following Monday (22<sup>nd</sup>) and if it was not stamped until then it was unfair that it be dealt with this way.

The facts of the scheme are clear. The 21<sup>st</sup> October 2007 was the end date for submissions for this particular scheme. Applications after that date could not be entertained as the indicative funding provided had been reached. Applications received after that date were left on hands pending additional funds. It was noted that the application was acknowledged on the 22<sup>nd</sup> October 2007. The form FIS9 that issued to the Appellant stated that it was to *'...acknowledge receipt of ... application on 22<sup>nd</sup> October 2007 for grant aid under the above [Farm Improvement] Scheme...'*. Notwithstanding the assertion that the application was lodged on the 19<sup>th</sup>, it is logical to accept that an application submitted on the Friday would have been stamped accordingly. As this was not the case it was found that there was insufficient probative evidence to ground the view that it was received on the 19<sup>th</sup> and to lead to a successful conclusion. The appeal was disallowed.

#### Case 4 Farm Waste Management Scheme (FWM)

A summary application was submitted under the Farm Waste Management (FWM) Scheme by the Appellant's father under his own herd number. Subsequently, the Appellant submitted a joint application in both his and his father's names under the Appellant's herd number. In his application, the Appellant applied for the additional 10% aid for young farmers. Approval to commence works at a grant rate of 70% issued to the Appellant and his father. When the Appellant notified the Department of commencement of works the Department informed him that he was not eligible for the additional 10% aid as both applicants would have to be under 35 years of age at the time of application to qualify. In the circumstances, the Appellant was informed that he would qualify for 60% aid.

The Appellant appealed the decision on the basis that his father farmed under his own herd number. He stated that he had arranged finance on the basis that he would receive 70% funding from the Department. The herd number under which the Appellant applied for aid was originally in his own name only, however, he and his father intended to enter into a partnership agreement and it was intended that his father's herd number would become dormant. As the arrangement for a joint partnership did not transpire the Appellant's father continued to farm under his own herd number and the Appellant under his. When the Appellant realised that his herd number was in joint names after the additional 10% aid was refused he changed the herd number to his name only.

In considering the appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions which issue to scheme participants. With particular regard to this case, the Terms and Conditions provides as follows; *'In the case of an application made by joint herdowners, persons registered with joint interests in a herd number, or joint holders of another Department identifier, or partnerships, additional investment aid will be payable where the agricultural training and experience above is met by one of the herdowners/joint holders/partners. In such cases, all parties must be under 35 years and be registered with a Department identifier for the first time within five years of the date of receipt of a valid application under the scheme'.*

Although he had been notified that he qualified for 70% grant-aid, the Appellant had not commenced work when the Department notified him of the error. The Appellant had applied for the additional 10% aid and by signing the application form he was stating he satisfied the Terms and Conditions. However, as his father was jointly named on the application and was not under the age of 35 years, the application was not eligible for the 10% additional aid. The appeal was disallowed.

### Case 5 Farm Waste Management (FWM)

The Department received an application under the Farm Waste Management Scheme (FWM) for grant aid on a slatted tank and concrete area, stanchions, feed barrier and barrier-walls. The Department had determined the construction of an unroofed freestanding slatted tank is not permitted and the options were to erect a fence around an uncovered tank, or cover it with solid slabs. The Appellant was close to the grant aid limit under the FWM scheme and had intended to construct a shed over the tank under the Farm Investment Scheme (FIS).

The Appellant had full planning permission for a slatted shed, and stated any protective fencing would be removed when building the shed and putting slats on the tank. The Appellant stated that regardless of the FIS application the shed is needed and will be built. The Department stated that had the Appellant applied for the whole slatted shed under the FWM scheme and then deferred the shed section to the later grant scheme (FIS) the slats would have been grant aided.

The Department stated the Appellant had applied under the FWM scheme for grant on an unroofed slatted slurry tank and under that scheme an un-roofed tank can only be grant-aided if fenced in or has a solid concrete cover, and excluded slats. Paragraph 11 of the FWM terms and conditions detailed the investments eligible for grant aid;

- *Slurry/effluent tank underground/over ground with protective fencing and/or rainwater cover, where appropriate.*
- *Slurry tank under slatted/cubicle house.*
- *Related Cattle Structures*
- *Slatted house*
- *Unroofed slatted feed areas as an extension of an animal house*

Specification S123 at point 1.5 states a stock proof and child proof fence, 1.8m high, shall be provided around all external tanks not already protected by safety covers as specified in the specification. Paragraph 11 of the FWM Terms and Conditions required all structures under the Scheme to be constructed in full compliance with the relevant Minimum Specification(s) issued at the date of approval by the Department.

The Appeals Officer noted the original application & planning permission and considered the items applied on were integral to a housing unit. A notice issued in September 2008 'Notice to Farmers Completing Work Under The Farm Waste Management Scheme' to all FWM applicants and it stated; *Tanks underneath Animal Housing – Where an applicant is unable to complete an animal house (as outlined in the notice) by the end of the year, grant aid may still be available for tanks underneath the proposed house provided that they are fully completed (i.e. floor and walls completed to the relevant specifications, slatted and backfilled)....*

The Appeals Officer found the manner of the application caused the tank to be assessed without regard to the entire structure intended to be built. The Appeals Officer found the scheme conditions required solid slabs or protective fencing for an external tank, but accepted this tank was integral to a slatted house. The Appeals Officer considered the erection of a protective fence would solely be to comply with the requirements for an external tank, and this tank was never intended to be external. The fence would be removed for provision of slatted cattle accommodation at a loss of cost and grant aid. The Appeals Officer noted the original application included drawings and planning permission details for a full slatted shed. The Appeals Officer also noted the exceptional provision under the FWM scheme to grant-aid slatted tanks once in place, backfilled and invoiced, certified and claimed for in full by 31<sup>st</sup> Dec 2008 per notice dated Sept 2008.

The Appeals Officer partially allowed the appeal, allowing grant aid on the tank inclusive of the slats and without the protective fence. Disallowing the ancillary works listed on the application such as feed barriers, barrier walls, stanchions, and concrete area, as these items were not integral to the tank applied for.

## Case 6 Installation Aid Scheme (IAS)

The Appellant's Installation Aid Scheme (IAS) application form IAS1 was lodged with the Department of Agriculture, Fisheries and Food (DAFF) in December 2007. His 'date of set up' was in October 2006 as determined by DAFF in accordance with the scheme's Terms and Conditions. The DAFF wrote to the Appellant informing him that a penalty would be imposed because his IAS1 application form had not been submitted within 6 months of his 'date of set up'.

The Appellant submitted a letter from his consultant in support of his appeal. This letter stated that his consultant was aware that the IAS was going to close in 2006. He was also aware that a new scheme would be launched in 2007. This new Installation Scheme would have a higher rate of aid available for qualifying applicants. He contacted the Department by phone and his impression after the call was that he could apply under the proposed 2007 Installation Scheme as the scheme was for people who 'set up' in farming in late 2006. The advisor had no record of the name of the DAFF official that he had spoken to on the phone about the matter. The new scheme, Young Farmers Installation Scheme (YFIS) was launched on 13th June 2007. The consultant realised subsequently that neither the Appellant nor any other people who 'set up' in farming in late 2006 were eligible for aid under the YFIS.

There was never any provision to allow those farmers who were 'set up' in farming in 2006 to apply for aid under YFIS. During the appeals process the DAFF outlined that it had been announced at the launch of the YFIS that a 'top up' payment would be made available to IAS applicants who set up in late 2006.

The Appeals Officer's opinion was that the Terms and Conditions of the IAS were clear in specifying the penalties for non-compliance. Where the application for scheme (IAS1) was not lodged within 6 months of set up, a penalty of 5% would be imposed for each month or part of month that the IAS1 was late. In the Appellant's case the penalty was correctly calculated as 40%.

The Appeals Officer reviewed the DAFF press release announcing the YFIS that was issued on 13<sup>th</sup> June 2007. The following is an extract from the press release *'The Minister also announced that she was making available this higher level of grant to farmers set-up in farming between 1st May 2006 and 31st December 2006 under the previous Installation Aid Scheme, provided the applicant complies with the requirements of that Scheme and;*

*(a) confirms in writing that he/she is applying for the higher rate of grant (€15,000);*

*(b) submits a fully completed Business Plan in the format provided for under the Young Farmers' Installation Scheme; and*

*(c) provides evidence of compliance with two of the development options chosen by the applicant within two years of the date of set-up.'*

The Appeals Officer's interpretation of this press release, which was reported in the farming press, was that those farmers who 'set up' in 2006 had to apply under the old IAS. The appeal was disallowed.

**Case 7 Non-Valuation Aspects of the On-farm Valuation Scheme for TB and Brucellosis Reactors.**

An animal was deemed inconclusive for TB at test, and a Restriction Notice was served on the Appellant. The animal was slaughtered under permit in early October 2007 and a suspect TB lesion was forwarded for laboratory analysis. On 18<sup>th</sup> October 2007, the District Veterinary Office (DVO) was notified the lesion was positive for TB and the DVO issued immediate notice of this to the Appellant by post.

On 20<sup>th</sup> October 2007, the Appellant moved in a single animal that was neither a stock bull nor a suckler calf for fostering. The Appellant did not contact the DVO prior to moving in the animal, the animal was not bought in under permit (ER37G), and no CMMS movement certificate was in the Appellant's nor the seller's possession at the time – one was applied for but was retained at the DVO pending checks. On 23<sup>rd</sup> October 2007, the Appellant confirmed to the DVO that an animal was moved in. The DVO informed the Appellant that the movement was in breach of regulations and refused the Appellant Hardship Grant or Income Supplement during that restriction. This decision was appealed.

The Restriction Notice served in September 2007 stated the holding would remain restricted until withdrawn by a further notice in writing by a Veterinary Inspector. The serving officer recorded that the *'herdowner will require permit to purchase in weanling and bull for breeding'*. The Restriction Notice required that the person who is for the time being in occupation of a restricted holding shall ensure that *'(1) no animal is moved into or out of the holding except under the authority of a movement permit'*.

The Appellant did not approach the DVO for permission to move in an animal as required by the Restriction Notice, had that been done an ER37G movement permit would have been issued and a Department official would have explained the consequences of buying in. The ER37G permit states at paragraph C – *'Payment of, or eligibility for Income Supplement and Hardship Grants will cease for the remainder of the restriction from the date animals are moved into the herd and Depopulation Grants will not be paid in respect of animals moved in during the restriction period (with the exception of permission relating to stock bull, replacement suckler calf or newly established herds)'*. The Appellant's stated understanding was that an animal could be bought in on the basis that the Restriction Notice was issued due to a TB doubtful animal. There had been two previous restrictions on the herd where the same requirements applied and the Appellant had qualified for and received Hardship Grant on one of those occasions.

The Appeals Officer noted that the period of restriction was becoming lengthy and the number of reactors significant. However, the Appellant acted contrary to the terms of the Restriction Notice by introducing an animal without a permit. This was a matter fully under the Appellant's own control and the Appellant's action had hindered any explanation of the consequence of buying in. The appeal was disallowed.



### Case 8 Rural Environment Protection Scheme (REPS) 3

The appeal under the Rural Environment Protection Scheme (REPS) 3 concerned a finding by the Department that a much reduced commonage area was eligible for payment under the scheme. Initially, in 2005, a contract area of 49.6 hectares was approved for REPS payment, including 24.4 hectares of Measure A land. The Measure A land included 21.04 hectares of claimed commonage. Following an audit inspection in 2007, the Department Inspector deemed that the eligible commonage area was only 2.16 hectares. The Appellant was informed that a clawback would apply on 18.88 hectares at the rate of €242 per hectare per annum.

The Appellant had farmed the rejected commonage on a continuous basis since 1979 and held an affidavit to support that statement. The Appellant had sought clarification as to the commonage eligibility for REPS during a previous case that was subject to an appeal. The Appellant stated that a Department official had said over 40 hectares of the land was eligible, and the understanding was based on having used the land for the previous 35 years.

The Appeals Officer noted Annex 3 at page 19 of the REPS 3 Terms and Conditions, dated 5<sup>th</sup> Feb 2004, where the issues pertaining to Land Eligibility and Declaration of Land are set out; *'It is the responsibility of the applicant(s) to declare all lands farmed/owned/controlled and the manner in which these are held. This responsibility is discharged by advising the planner/planning agency regarding the details of all lands owned/farmed ..... the planner must examine the applicant's legal title to establish the eligibility of the lands'*.

A 1/3<sup>rd</sup> share of owned commonage amounting to 21.04 hectares was claimed. The registered land folio showed the Appellant as registered owner of private land and a share of commonage equivalent to 2.156 hectares. The commonage area originally submitted represented the entire commonage area of 21.40 hectares and it also contained a significant amount of forestry area.

In a previous appeal under an earlier REPS contract it was found that the Appellant did not have the right to claim more than 2.156 hectares of this commonage and this was not reflected by any party, including the Appellant, the REPS planner and the Department officials on the approval for payment under REPS 3, even though the grounds for only allowing the area 2.156 hectares of commonage were similar.

The Appeals Officer noted folios owned by other parties that included shares of this commonage, and one such party had claimed a registered share of the same commonage in a scheme application to the Department.

Annex 3 of the Terms and Conditions stated that documented commonage shares/grazing rights are only eligible for payment provided documentary evidence of entitlement to such rights is provided, viz; Registered on Land Registry folio, Land Commission Vesting Order, Certified copy of relevant estate papers from Land Commission records, Grant by the freehold legal owner, Grazing Trust Deed, Grant or Deed by original Estate Landlord – \*together with details as submitted with Area Aid application.\* in the case of grazing rights \*\* a sworn affidavit setting out the hectare area/acreage of grazing rights entitlement together with a signed map (to include a list of names of the other rights holders) outlining the boundaries of same.

*"Commonage and grazing rights are defined under the scheme; 'Commonage which may be eligible for payment shall mean lands held in common ownership for which a commonage framework plan has been/is in the process of being prepared'. 'Grazing Rights' shall mean lands on which persons have grazing entitlements.*

The Appeals Officer disallowed the appeal on the basis that eligibility must be assessed under the requirements pertaining to 'Documented Commonage Shares' as set out in Annex 3 of the REPS Terms and Conditions dated 5<sup>th</sup> Feb 2004, and that part of commonage not contained on the registered folio did not meet the requirements for REPS 3 payment.

### Case 9 Rural Environment Protection Scheme (REPS)

The Appellant's late husband had commenced participation in the REPS 2 with effect from 1<sup>st</sup> March 2004. Payment issued in respect of 4 years under this scheme with the fourth year payment issuing on the 28<sup>th</sup> May 2007. It later came to the attention of the Department that the REPS participant died on the 10<sup>th</sup> May 2007 and the Department sought recoupment of that portion of the payment from the date of death to the end of the fourth year in REPS. The Department submitted that the contract ends on the death of the named person in the contract, and thus any aid paid in respect of the period after death must be reimbursed to the Department.

At the oral hearing the Appellant outlined the grounds of appeal. She explained how her husband had died suddenly, and that she had been the joint owner of the land since 1996 and she submitted a letter from her Solicitor to confirm this. She did not know that she should also have been the joint applicant under the REPS. She explained that she had notified the Department local office and the Single Payment Unit in September 2007 of her husband's death but was advised to wait until 2008 to change details so as to ensure 2007 payments issued without problem. She also said that there was a herd test in July 2007 at which it would have been known that her husband had died.

In considering the case, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions of the scheme as issued to every herdowner at the commencement of the scheme. In particular to this case is the requirement that *'Where an applicant dies within the period of the plan, 'Force Majeure' shall be applied terminating the contract and no reimbursement of aid already paid shall be sought'*.

The REPS 2 plan submitted in February 2004 was in the sole name of the Appellant's husband. It did not indicate at any time that the land was held in joint ownership, as was the correct position. It is the responsibility of the applicant to declare all land owned and the manner in which it was held. This responsibility is discharged by supplying the planner with the details of the lands owned either individually or in partnership with others. In this case, as only a single applicant was named, the REPS contract is with that person. The Department confirmed that in January 2008 the Appellant sought to have the herd number and Single Payment entitlements transferred to her name. She should have been informed by the Department of Agriculture, Fisheries and Food that the REPS contract was terminated at that time. In addition, her planner who prepared the transfer documents should also have informed her that the REPS contract was terminated and that a new plan should have been drafted.

The Terms and Conditions state that where an applicant dies, then the contract is terminated. Therefore this contract terminated on the 10<sup>th</sup> May 2007. Any payments made after that date are not valid. While it is regretted that the Appellant was not informed earlier by either the Department or the planner that the REPS contract was terminated, none of these factors altered the fact that the contract terminated on the death of the REPS participant and therefore no further monies are due based on that contract. The appeal was disallowed.

### Case 10 Rural Environment Protection Scheme (REPS) 3

The appeal was against a refund of monies already paid under REPS, on leased land sold before the end of the REPS contract. The Appellant's Rural Environment Protection Scheme (REPS) 3 plan commenced on 1<sup>st</sup> February 2006 with a contract area of 44.79 Ha. The REPS planner notified the Department in April 2008 that 6.57 Ha of contract area was removed from the plan as it had been sold. The Department sought a clawback of monies already paid on this land amounting to €2,362.25 under the provisions of the scheme's Terms and Conditions.

An appeal was submitted against the clawback on the grounds that there had been a misunderstanding between the Appellant and the landowner over the signing of the lease. The Appellant had signed the lease but unknown to him the landowner had not, even though the 5 year lease was verbally agreed to and rent paid. The Appellant stated that the landowner was elderly and the solicitor never informed him that the landowner had not signed the lease. The Appellant stated he had spent money bringing the land to REPS standard and would not have done so if he thought it was to be sold. The owner of the land had indicated to him that he could lease this land for as long as he wanted it. The Appellant stated he paid €1500 in rent for each of three years, and the last time he paid was informed that the land was sold and would not be rented to him any more.

The Appeals Officer had regard to the Terms and Conditions of the scheme, the relevant EU legislation and the circumstances particular to the case. The Appeals Officer accepted the Appellant acted in good faith when lodging the REPS 3 plan and had wrongly assumed a five-year lease was in place. The Appellant had a lease drawn up, signed the lease, paid rent, and provided evidence of having spent €1700 on cutting hedges, spreading lime and repairing fences.

In the REPS 3 plan lodged on 31<sup>st</sup> January 2006, this land parcel was recorded as leased from the landowner for at least 5 years from the date of approval of plan. The plan was signed by the Appellant, and certified by his planner. Section 1, of the declaration the Appellant signed states, (The information furnished to the planner and recorded in the accompanying plan is correct). While the Appeals Officer accepted that the Appellant thought the information furnished to the planner was correct, it did not alter the fact that the owner did not sign a lease, so the information given was incorrect. The planner signed a declaration, which states *'I certify that the Agri-environmental Plan set out herein conforms in all respects to the requirements laid down for the REPS'*, again as no lease was signed by the owner, this is incorrect. The land was removed from the contract during the contract period and the Appeals Officer also established that this land parcel did not continue in any REPS plan after it was no longer rented to the Appellant.

The REPS 3 Terms and Conditions 16.2 which covers Reduction in Area, states in section 16.2.1 *'Where the eligible area farmed is decreased, the annual payment will be adjusted if and as appropriate at the commencement of the next full year. Aid must be reimbursed at rates provided for in paragraph 16.5'*. The Appeals Officer found no grounds to overturn the Department's decision and disallowed the appeal.

### Case 11 Rural Environment Protection Scheme (REPS) 3

The appeal under the Rural Environment Protection Scheme (REPS) 3 concerned the termination of a REPS contract and clawback of monies paid, as the Department deemed there was an artificial creation of the holding for the purpose of drawing down or maximising benefits under the scheme.

The land was leased mountain land and acquired through public auction, with the Appellant's brother acquiring the other lot. It previously had been one unit, leased as a single unit as part of an Early Retirement Scheme (ERS) and declared by the ERS transferee in REPS. In summary, the Department considered the case under the following factors:

- Planned benefit to the environment: two biodiversity options have been selected but only one has been completed.
- Farming activity: ewes were found on other land, which pointed to the fact it was not a viable unit.
- Economic viability: No farm accounts were provided as evidence of economic viability.
- The Department also noted there were inconsistencies between the Appellant's REPS record and sheep register.

The Appellant explained that his previous lease had expired; he was a sheep farmer and had established entitlements. He had also been a past participant in REPS and had established entitlements. He accepted that he should have informed the Department of the movement of sheep to other short term rented land. The location of the boundary fence, which differed on the lease map compared to the REPS map, was explained as an error on the map received by the Department. A corrected version was received from the Appellant's solicitor after the oral hearing.

From the Department's database, it was confirmed that the Appellant had a registered herd number, had established entitlements through consolidation and purchase and was a participant in a previous REPS Scheme, 2004 to 2009.

The Appeals Officer accepted the original holding was split in two however, considered that the Appellant, or his planner, did not require being familiar with the history of the holding or its previous involvement in DAFF Schemes. A copy of the advertisement from the paper and a statement from the auctioneers was received which verified the lands were let in two different lots on the instructions of the landlord.

Accounts were received to demonstrate the Appellant's farming activity. The Appeals Officer noted that the Appellant's farm enterprise may not have been economically viable without the support of DAFF grants but considered it would not be dissimilar to many sheep and beef farmers farming hill/mountain areas.

The REPS plan did provide for two biodiversity options, which suggested benefits to the environment. The Appeals Officer considered that the fact that only one of them was completed was not reason for terminating the contract as the Terms and Conditions provide for this in the penalty schedule. (See annex 1 of the Terms and Conditions). In addition, it was considered if the Appellant complied with the plan lodged and did not overgraze/undergraze the land, other benefits would also accrue to the environment.

In relation to viability and the necessity to acquire other land to facilitate the lambing period, the Appeals Officer noted the REPS programme did facilitate farmers to rent land for short periods provided DAFF are informed within 6 weeks of obtaining this land.

The appeal was allowed as it was the Appeal's Officer's view there was not sufficient evidence to indicate that the Appellant was involved in the splitting of a holding to maximise payments under REPS.

### Case 12 Rural Environment Protection Scheme (REPS) 3

The Appellant commenced participation in REPS 3 with effect from 1<sup>st</sup> April 2004 in respect of 50.96 hectares of land. In an amended plan submitted to the Department in June 2008, he advised them that he had disposed of an out farm and had purchased other land to replace sold land. On the basis of this information, the Department of Agriculture, Fisheries and Food informed him that a clawback of monies was due based on the reduction of contract area. The Appellant sought an oral hearing of his appeal.

The Appellant stated that a unique opportunity had arisen to purchase land closer to his home farm and it was necessary to sell an out farm to finance this purchase. The Appellant had discussed the issues concerned with his REPS planner, and had hoped that the purchaser of his land would enter REPS. However, this was not possible as the purchaser was obtaining additional land and would not be in a position to enter REPS until 2009. The Appellant stated he had qualified for Stamp Duty Farm Consolidation Relief from the Revenue Commissioners and put forward that this should be considered under REPS also.

In considering the appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions as issued to every herdowner at the commencement of the scheme. In particular to this case is the requirement in relation to the disposal of contract land. This is set out in Para 16.2.1 of the Terms and Conditions; *'Where the eligible area farmed is decreased, the annual payment will be adjusted at the commencement of the next full year. Aid must be reimbursed at the rates provided for in Para 16.5'. Para 16.5 states 'If reimbursement is required, it shall be at the rate of €175 per hectare of non-target land ...'*

Under the terms of REPS 3, farmers undertake, as part of their agreement with the Department of Agriculture, Fisheries and Food, to farm the lands (whether owned, leased, rented or used) according to the Terms and Conditions of the scheme, his/her approved agri-environmental plan and the requirements of the REPS 3 Farmers Handbook. The Appellant included on his REPS plan, 50.96 hectares of land which he undertook to farm for 5 years from 1/4/2004. He had submitted that a unique situation arose whereby there was an opportunity to purchase land near his home farm, and this necessitated the sale of other owned land. While the Appeals Officer did accept this to be true, the Appellant did consult with his REPS planner and was aware of the Terms and Conditions of the scheme he entered into. He was aware that it was necessary to sell the land to an 'existing REPS applicant' in order that recoupment of monies previously paid under REPS would not apply. As the owner of the land, any decision to sell is considered to be a personal, voluntary decision, made in full knowledge as a REPS participant the REPS planner submitted that the Appellant qualified for Stamp Duty Farm Consolidation Relief administered by the Revenue Commissioners and that this should apply in REPS also. As there is no provision under REPS for such relief, the Appeals Officer was precluded from applying a similar exemption. The Appellant put forward that the land disposed of received payment at a reduced rate as it was over the 40 hectares on which maximum payment is made. However, the Terms and Conditions of the scheme clearly state the rules by which monies will be recouped, that is, as specified at Para 16.5 as outlined above. The appeal was disallowed.

### Case 13 Rural Environment Protection Scheme (REPS)

The appeal concerned the Department of Agriculture Fisheries and Food's decision to impose two 10% penalties under REPS as a result of findings of an on-farm inspection for (a) failure to spread the required amount of lime by the end of year 2 of the REPS contract and (b) not maintaining stonewalls as outlined in the plan.

The Appellant's REPS 3 contract had a commencement date of 1<sup>st</sup> February 2006. The Department carried out an on-farm audit inspection on 18th March 2008 and following a detailed examination the penalties were imposed.

In the grounds of appeal, the REPS planner outlined the difficulties in ordering lime and obtaining a contractor to spread the lime, combined with unsuitable weather conditions and then an inappropriate time to spread during the grazing season. This resulted in the Appellant being unable to spread the lime as required. The planner also advised of an error in the REPS plan for a length of stonewall to be maintained, which resulted in an insufficient length of stonewalls to be rebuilt.

The Appeals Officer took into account the EU Regulations governing the scheme as set out in the scheme specification. Paragraph 27 of the Terms and Conditions of the REPS Document, dated 5th February 2004, states that *'It shall be the responsibility of the applicant to familiarise him/herself with his/her agri-environmental plan, the REPS Farmer's Handbook and those scheme Terms and Conditions and with the consequences for breaches of the scheme'*. In making his application to be admitted into the REPS Scheme, the Appellant signed a declaration which stated at paragraph (ii) *'I have read and agree to be bound by the terms and conditions of the Rural Environment Protection Scheme'* and at paragraph (iv) *'I hereby undertake to carry out my farming activities in accordance with my agri-environmental plan and the Department's Agri-environmental Specifications'*. He therefore agreed to familiarise himself with the REPS Plan and to farm in accordance with the specifications set out in that plan.

The REPS plan clearly stated that 73.97 tonnes of lime were required to be spread before the end of year 2. The Appeals Officer found issues with suppliers and contractors or weather conditions to be unacceptable reasons for not complying with the REPS plan requirements. The Appeals Officer noted that the Appellant had 2 years to fulfil the requirements and where there are difficulties in meeting these requirements the Department should be consulted to determine the options.

In relation to maintenance of the stonewalls, the REPS plan clearly stated that 372m of stonewall in plot 3 and 150m in plot 6 were to be repaired/rebuilt as per specification in year 2. The Department Inspector reported that this was not carried out. If there was an error in the Appellant's REPS plan, this should have been identified within the 2 years and amended accordingly, prior to any Department inspection. The Appeals Officer found that the works should have been carried out. The appeal was disallowed.



#### Case 14 Rural Environment Protection Scheme (REPS)

The Appellant applied for REPS 3 in June 2006. The farm was inspected in early November 2007. As part of the audit the record sheets for year ending 30<sup>th</sup> September 2007 were examined and non-compliance was noted. The chemical phosphorus spread exceeded the planned limits by greater than 10%. A penalty of 50% was indicated. The REPS planner outlined that soil analysis was reported on the 28<sup>th</sup> June 2006; fertiliser recommendations were given to the Appellant on the 29<sup>th</sup> March 2007 and that fertiliser was purchased on the 11<sup>th</sup> April 2007. The planner's conclusion was that the record sheets for year ending 30<sup>th</sup> September 2007 were completed based on the fertiliser recommendations given during the year and that these were established based on the soil analysis report. An amended plan was then submitted with REPS3 1C form at the anniversary date.

An oral hearing was held. It was explained that year 1 of the plan was audited; the relevant plan being that lodged in June 2006. Upon examination the record sheets showed that the chemical phosphorus used amounted to 295kgs which differed from the amount planned (0kgs). A penalty was applied. An amended plan was received at the anniversary date which referred to a chemical P limit of 527kgs. As far as the inspecting officer was concerned this was not relevant to the inspection.

Planner commentary cited that the original plan lodged assumed an index of 3. Subsequent soil analysis results required new recommendations with fertiliser purchased in accordance with that proposal. An amended plan was then submitted with the second year form 1C at the next anniversary date highlighting the new Phosphorus limits. The Department view was that the plan in hand was the relevant one to inspect. The planner view was that the best technical and agronomic practice would be to have the information within a short period of time and to submit the details with the second year 1C along with an amended plan. It was a question of interpretation. It was shown that the Appellant at his request was informed on the 29<sup>th</sup> March 2007 of the requirements for the year with fertiliser being bought in April. What was for determination was whether the amended plan submitted with the form 1C had the effect of retrospectively amending the parameters of the nutrient management component of the REPS plan. While it was undisputed that the P limits contained in the original plan were less than the amount of chemical P subsequently spread the question remained as to the relevance of the amended plan.

The provisions of various circulars issued by the Department during the course of REPS2/3 dealt with modification to plans arising from soil analysis results. Circular 17/04 stated the requirements for preparing and submitting plans with an index 3 assumed provided that soil samples would be taken as soon as possible and that original soil analysis results together with an amended REPS plan (if required) would be submitted with the second year REPS 1C. Circular 13/02 referred to the conditions when amendments to plans are required, for example, a change in the nutrient management plan (new soil test reports). It also refers to the fact that where a plan is amended, it is essential to give the reason for amendment and include any relevant documentation e.g. soil test reports. Reference was also made to the requirement that the Department should be notified within 6 weeks of any change to the plan and the amended plan submitted at the same time as the REPS 1C provided the 1C is submitted on time and without penalty.

There was an expectation raised that the soil results could be submitted with form 1C and an amended plan at the anniversary date. Fertiliser was purchased after the soil analysis results became available. There is a requirement to submit amended plans within a time frame; notwithstanding that requirement it is open to some interpretation when read in conjunction with the provisions of circular 17/04. The planner acted in keeping with the standard administrative procedure set down. The Appellant acted reasonably in following the guidance of the planner. The amended plan clearly allowed for 527kgs of chemical nitrogen. Only 295kgs was spread. Therefore, the limit was not exceeded and so no penalty was applicable.

The Appeals Officer's finding was that the circular gave rise to an expectation that it was in order to submit an amended plan (+ soil result update) with the form 1C. The appeal was allowed.



### Case 15 Single Payment Scheme (SPS)

A Single Payment Scheme (SPS) cross-compliance inspection was carried out on the Appellant's farm in December 2007. A 5% penalty was imposed on his SPS payment for non-compliance with Statutory Management Requirement 4 (SMR 4) Nitrates: more than 20% of the Appellant's total area declared under cereals in 2007 had no green cover present following the application of a non selective herbicide. A 'green cover' helps to minimise nitrate losses from soils through leaching.

The Appellant's grounds of appeal were that he had been advised to apply glyphosate (a non selective herbicide) post harvest to a number of fields that were infested with scutch grass. He had cultivated the fields 10 days later in order to establish a green cover for cross compliance purposes. He had followed this advice but due to the dry weather during October 2007, no weed or cereal seeds germinated after the cultivation.

During the appeals process the Department outlined that the Nitrates Regulations came into effect on 1<sup>st</sup> February 2006. All farmers were expected to comply with the regulations from that date. The Appellant's pesticide records indicated glyphosate had been sprayed on the fields in October. The Inspecting Officer confirmed that the Appellant had carried out light cultivations afterwards but there was no evidence of green cover having emerged. The Department referred to the specific section of the Nitrates Regulations that dealt with the requirement for a green cover: *'When a non selective herbicide is applied to arable land or to grassland in the period between the 1<sup>st</sup> July and 15<sup>th</sup> January the necessary measures shall be taken to provide for the emergence of green cover within 6 weeks of the application from a sown crop or from natural regeneration'*. There was no green cover evident in the fields on the day of inspection, which was more than 6 weeks after the application of the non-selective herbicide.

The Appeals Officer's understanding was that there were numerous factors affecting the germination of weed/volunteer cereal seeds in tillage fields that had been treated with a non selective herbicide after harvest and then lightly cultivated. They included soil moisture, temperature and seed dormancy. While natural regeneration could usually be relied upon, it was not a guaranteed method of establishing green cover.

The Appeals Officer accepted that weather during October and November 2007 may not have been conducive for the growth of a green cover through natural regeneration of weeds and "volunteer" cereals. However under the Nitrates Regulations there was a responsibility on all farmers to take the necessary measures to ensure that a green cover was established within 6 weeks of the application of a non-selective herbicide. It was the Appeals Officer's opinion that the regulations implied that farmers should check that the natural regeneration process i.e. germination of weeds and volunteer cereals, had taken place shortly after cultivating the stubbles. If this natural regeneration process had failed, the farmer should have made the necessary decision to establish a green cover crop, to comply with the regulations. The appeal was disallowed.

## Case 16 Single Payment Scheme (SPS)

In 2007, the applicant declared an area of 89.17ha in his Single Payment Scheme application. On carrying out a compliance inspection the Department found an eligible area of 65.07ha. The difference in area declared and the area found to be eligible by the Department was due to the rejection of three land parcels on the basis they were not maintained in good agricultural and environmental condition (GAEC), they were inaccessible, they were not adequately fenced and they were not managed by the Appellant. Consequently an over-declaration penalty was applied in accordance with the Terms and Conditions. As the over-declaration was over 20% the penalty incurred was loss of SPS payment for 2007.

The Appellant stated he rented the land in good-faith to maximise his entitlements. He stated he managed the parcels by visiting them occasionally during the reference year. He accepted he did not have any animals of his own on the parcels, however, he stated they were maintained in GAEC as they were grazed by animals belonging to other farmers. He accepted that the plots were not adequately fenced.

In considering the appeal, the Appeals Officer is required to have regard to the EU Regulations governing the scheme as set out in the Terms and Conditions which issue to scheme participants. With particular regard to this case, the SPS Terms and Conditions provides as follows:

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

It further provides that *'all forage areas must be adequately fenced'*

Chapter 23 defines a holding as *'all the production units within the territory of the State managed by a farmer'*.

Agricultural activity is defined as *'the production, rearing or growing of agricultural produce including harvesting, milking, breeding animals and keeping animals for farming purposes or maintaining the land in good agricultural and environmental condition'*.

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

A report of the inspection carried out by the Department showed the parcels in question were inaccessible as they did not have direct access. Most of the area inspected was found to be unfit for grazing as it was covered with boulders and scrub and was very dangerous in some parts. In some of the parcels, it was not possible to identify the area rented by the Appellant as there were no defined boundaries as the plots were not fenced but opened out into commonage areas. The Appellant accepted the land was not grazed by his own animals but he stated that it was grazed by other animals and this should be sufficient to satisfy the GAEC requirement. However, the Appeals Officer found that another farmer's animals having access to the plots supported the finding that the plots were not adequately fenced. In addition, there was no direct access to the plots and the land was not maintained in GAEC. The appeal was disallowed.

## **7. Recommendations to the Department of Agriculture, Fisheries and Food arising from Appeal Cases.**

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

### **General**

- Due to recurring issues with non-notification of animal movements, the Agriculture Appeals Office recommends that the Department consider the issuing of a movement permit cancellation notice once the valid period of the movement permit plus the statutory 7 days to notify the database elapses. Where the movement has taken place and the notification is not made within the required 7 days the DVO should have a role in resolving these movements. This would serve to copperfasten the statutory requirements of the movement notification system and serve as a reminder to those who omitted to post the movement slip. Also, as the cancellation notice would only issue where there are non-returns, the numbers required would be low.
- It should state on all CMMS movement permits what the timeframe is for return of the completed permit following movement of the animal(s).
- Where calves are being registered during a herd restriction, the new passports are sent directly to the local Department office. In such cases the herdowner should be informed that the passports have issued in order to be satisfied that the registration process is completed.
- That ERAD information booklet “Compensation Arrangements for TB and Brucellosis – Important Information for Farmers” should issue with the restriction notice.

### **REPS**

- The Department should, in light of the sometimes severe and untimely consequences that arise where a REPS participant is deceased within contract, examine the possibility of permitting the reassignment of the REPS contract, subject to legal permissions.
- In line with Government policy generally, the Department should give consideration to reviewing the rate of recoupment in REPS where land is both purchased and sold for the purposes of consolidating the holding, in particular where Revenue Stamp Duty relief is given.
- For REPS purposes, the Department should provide farmers with a breakdown of animals by age category by month end either through the online system or in paper format.

### **Single Payment Scheme**

- That the Department would investigate the extension of the late application period for the Single Payment Scheme to 50 working days subject to penalties.
- That the Department would investigate the possibility of putting in place a database acknowledgement system in respect of the receipt of Single Payment Scheme applications. A reminder notice would be issued within the late application period where the pre-printed form was not returned by the closing date. The Agriculture Appeals Office acknowledges that such receipts are issued to all on-line applicants.

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

### General

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

### REPS

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

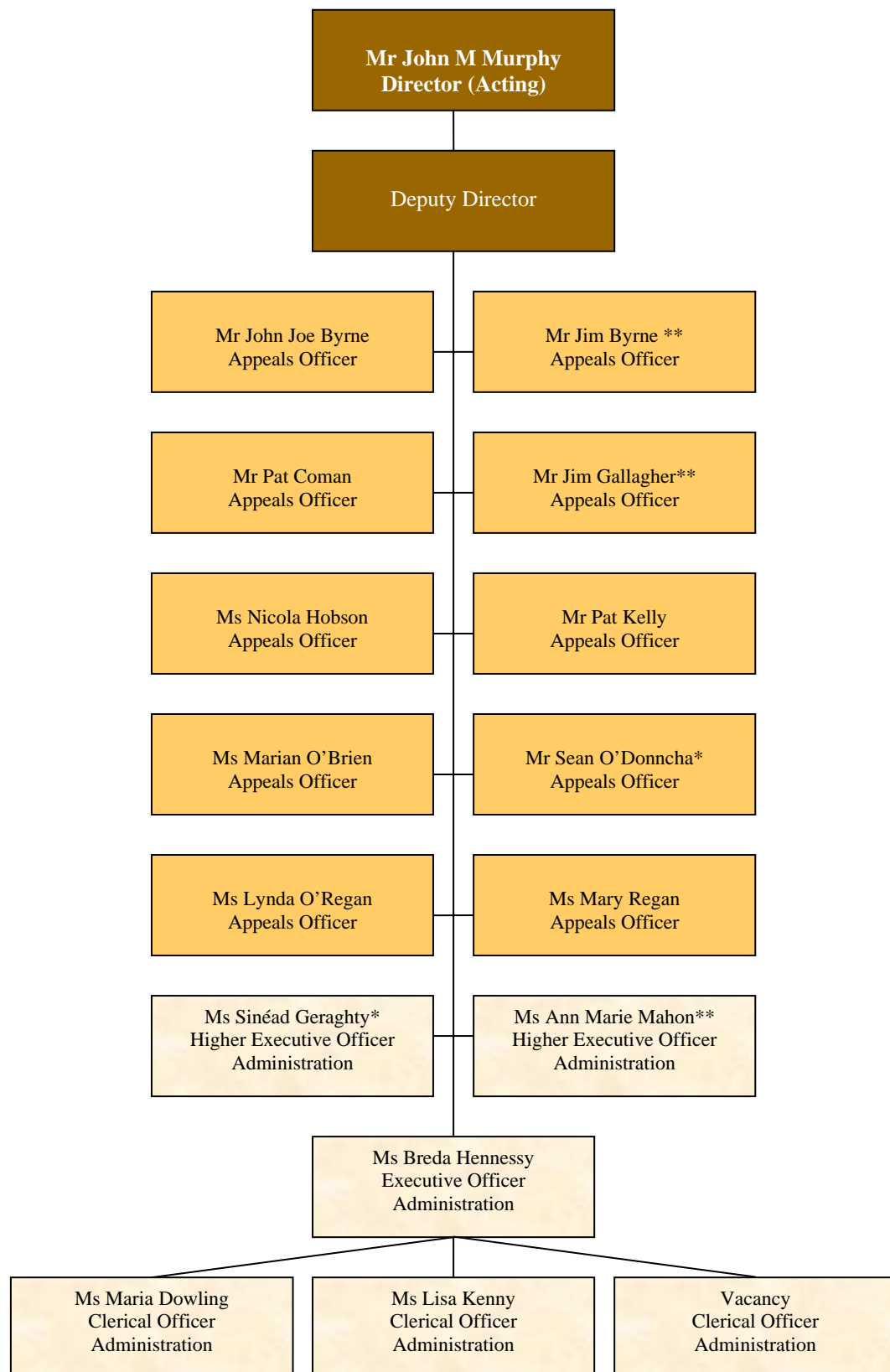
### Single Payment Scheme

- Single Payment Scheme applicants with more entitlements than hectares of eligible land should investigate their options for the surplus entitlements such as leasing, selling or consolidation where that is an option, prior to the scheme or activity closing dates that are available from the Department.
- In order to avoid cross compliance penalties SPS applicants with cattle must:
  - (a) ensure all cattle are properly tagged
  - (b) regularly crosscheck the animals in their herd with the animals listed on the CMMS herd profile for their herd issued by the Department
  - (c) immediately rectify any inconsistencies between their CMMS herd profile and the cattle on farm; have animals removed from or added to their herd profile
  - (d) ensure all farm to farm cattle movements are properly notified
  - (e) 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.
- Farmers should ensure that rented/leased land satisfies the Terms & Conditions of the scheme.

### Disadvantaged Area Scheme

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

**9. Staff of the Agriculture Appeals Office 2008**



\*Left the Office during 2008

\*\* Joined the Office during 2008

*Administration staff are responsible for the following activities; Appeal receipt/file management, general administration and accommodation, Appeals Officer Support, I.T. maintenance/development, statistics and general correspondence.*

# APPENDICES



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

**Section**

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

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

**SCHEDULE**

**Schemes**

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

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

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

**Procedure at hearing.**

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

**Decision of Appeals Officer.**

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

GIVEN under my Official Seal,  
8 May 2002

JOE WALSH TD

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Minister for Agriculture, Food and Rural Development



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

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

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

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

“Cattle Headage Scheme in More Severely Handicapped Areas”,

“Equine Headage Scheme in all Disadvantaged Areas”,

“Goat Headage Scheme in All Disadvantaged Areas”, and

“Sheep Headage Scheme in All Disadvantaged Areas”,

and
    - (b) by adding the following schemes -
      - (i) “Disadvantaged Areas Compensatory Allowances Scheme” before mention of “EU Area Aid Scheme (including the Arable Aid Scheme)”, and
      - (ii) “Scheme of Grant Aid for the Development of the Organic Sector” after mention of “Scheme of Early Retirement from farming”,
- and the said Schedule, as so amended, is set out in the Table to this Regulation.



**TABLE  
SCHEDULE  
Schemes**

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

GIVEN under my Official Seal,  
6<sup>th</sup> December 2002

JOE WALSH TD

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Minister for Agriculture and Food



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

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

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

**TABLE  
SCHEDULE  
Schemes**

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

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

JOE WALSH TD

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Minister for Agriculture and Food



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

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006.
  2. The Schedule (as amended by the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004 (S.I. No. 507 of 2004)) to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended by adding -
    - (a) after the mention of “Scheme of Grant Aid for the Development of the Organic Sector” the following scheme:  
“Scheme of Grant Aid for Improvements in Animal Welfare Standards (Sow Housing)”;
    - (b) after the mention of “Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities)(AES)” the following part of a scheme:  
“Single Payment Scheme, insofar as it relates to the following -
      - (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005<sup>1</sup>) of Commission Regulation (EC) No 796/2004<sup>2</sup>,
      - (b) Article 21 of Commission Regulation (EC) No 796/2004,
      - (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,
      - (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,
      - (e) Article 34.3 of Council Regulation (EC) No 1782/2003<sup>3</sup>, and
      - (f) Article 8 of Commission Regulation (EC) No 795/2004<sup>4</sup>.”;
- and the said Schedule, as so amended, is set out in the Table to this Regulation.

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<sup>1</sup> O.J. No. L42/3, 12.02.2005

<sup>2</sup> O.J. No. L141/18, 30.4.2004

<sup>3</sup> O.J. No. L270/1, 21.10.2003

<sup>4</sup> O.J. No. L 141/1, 30.4.2004

**TABLE  
SCHEDULE  
Schemes**

Disadvantaged Areas Compensatory Allowances Scheme  
EU Area Aid Scheme (including the Arable Aid Scheme)  
EU De-seasonalisation Slaughter Premium Scheme  
EU Ewe Premium Scheme  
EU Extensification Premium Scheme  
EU Slaughter Premium Scheme  
EU Special Beef Premium Scheme  
EU Suckler Cow Premium Scheme  
Farm Improvement Programme (FIP)  
Farm Improvement Programme (FIP) Horticulture  
Installation Aid Scheme (IAS)  
Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo  
National Scheme of Installation Aid (SIA) (introduced December 1998)  
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)  
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May '99)  
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors  
Rural Environment Protection Scheme (REPS)  
Scheme of Early Retirement from Farming  
Scheme of Grant-Aid for the Development of the Organic Sector  
Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)  
Scheme of Grant-Aid for Investment in Alternative Enterprises  
Scheme of Grant-Aid for Investments in Agri-Tourism  
Scheme of Installation Aid (SIA)  
Scheme of Investment Aid for Farm Waste Management (FWM)  
Scheme of Investment Aid for the Control of Farm Pollution (CFP)  
Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)  
Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities  
Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)  
Single Payment Scheme, insofar as it relates to the following ;  
    (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005<sup>1</sup>) of Commission Regulation (EC) No 796/2004<sup>2</sup>,  
    (b) Article 21 of Commission Regulation (EC) No 796/2004,  
    (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,  
    (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,  
    (e) Article 34.3 of Council Regulation (EC) No 1782/2003<sup>3</sup>, and  
    (f) Article 8 of Commission Regulation (EC) No 795/2004<sup>4</sup>.

GIVEN under my Official Seal,  
3<sup>rd</sup> February 2006

MARY COUGHLAN TD

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Minister for Agriculture and Food

<sup>1</sup> O.J. No. L42/3, 12.02.2005

<sup>2</sup> O.J. No. L141/18, 30.4.2004

<sup>3</sup> O.J. No. L270/1, 21.10.2003

<sup>4</sup> O.J. No. L 141/1, 30.4.2004



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

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

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

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

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

**TABLE  
SCHEDULE**

Disadvantaged Areas Compensatory Allowances Scheme  
EU Area Aid Scheme (including the Arable Aid Scheme)  
EU De-seasonalisation Slaughter Premium Scheme  
EU Ewe Premium Scheme  
EU Extensification Premium Scheme  
EU Slaughter Premium Scheme  
EU Special Beef Premium Scheme  
EU Suckler Cow Premium Scheme  
Farm Improvement Programme (FIP)  
Farm Improvement Programme (FIP) Horticulture  
Installation Aid Scheme (IAS)  
Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo  
National Scheme of Installation Aid (SIA) (introduced December 1998)  
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)  
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)  
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors  
Rural Environment Protection Scheme (REPS)  
Scheme of Early Retirement from Farming  
Scheme of Grant-Aid for the Development of the Organic Sector  
Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)  
Scheme of Grant-Aid for Investment in Alternative Enterprises  
Scheme of Grant-Aid for Investments in Agri-Tourism  
Scheme of Installation Aid (SIA)  
Scheme of Investment Aid for Farm Waste Management (FWM)  
Scheme of Investment Aid for the Control of Farm Pollution (CFP)  
Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)  
Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities  
Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)  
Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities  
Single Payment Scheme, insofar as it relates to the following -  
    (a) Article 14(1a) (inserted by paragraph 6(b) of Article 1 of Commission Regulation (EC) No. 239/2005<sup>1</sup>) of Commission Regulation (EC) No 796/2004,  
    (b) Article 21 of Commission Regulation (EC) No 796/2004,  
    (c) Chapter I of Title IV of Commission Regulation (EC) No 796/2004,  
    (d) Chapter II of Title IV of Commission Regulation (EC) No 796/2004,  
    (e) Article 34.3 of Council Regulation (EC) No 1782/2003, and  
    (f) Article 8 of Commission Regulation (EC) No 795/2004.

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

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Minister for Agriculture and Food

<sup>3</sup> O.J. No. L270/1, 21.10.2003

<sup>4</sup> O.J. No. L 141/1, 30.4.2004





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

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2008.

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

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

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

“Bio Energy Scheme (excluding Willow)”,

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

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

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

and

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

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

**TABLE  
SCHEDULE  
Schemes**

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

GIVEN under my Official Seal,  
29 May 2008

BRENDAN SMITH TD

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Minister for Agriculture, Fisheries and Food.



## Appeal Procedure & Notice of Appeal Form

### The Agriculture Appeals Office

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

### How To Make an Appeal

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

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

### Appeals Process

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

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

### Oral Hearings

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

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

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

### Right of Review

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

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

### Contact Details

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

### Checklist before submission

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

## **Schedule of Schemes Covered**

**The Office deals with appeals under the following schemes;**

- Animal Welfare, Recording and Breeding Scheme for Suckler Herds
- Bio Energy Scheme (excluding Willow)
- Disadvantaged Areas Compensatory Allowances Scheme
- EU Area Aid Scheme (including the Arable Aid Scheme)
- EU De-seasonalisation Slaughter Premium Scheme
- EU Ewe Premium Scheme
- EU Extensification Premium Scheme
- EU Slaughter Premium Scheme
- EU Special Beef Premium Scheme
- EU Suckler Cow Premium Scheme
- Farm Improvement Scheme
- Farm Improvement Programme (FIP) Horticulture
- Installation Aid Scheme (IAS)
- Landslide Damage Relief Scheme for the Pullathomas Area of County Mayo
- National Scheme of Installation Aid (SIA) (introduced December 1998)
- National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)
- National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)
- Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
- Organic Farming Scheme
- Rural Environment Protection Scheme (REPS)
- Scheme of Early Retirement from Farming
- Scheme of Grant-Aid for the Development of the Organic Sector
- Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)
- Scheme of Grant-Aid for Investment in Alternative Enterprises
- Scheme of Grant-Aid for Investments in Agri-Tourism
- Scheme of Installation Aid (SIA)
- Scheme of Investment Aid for Farm Waste Management (FWM)
- Scheme of Investment Aid for the Control of Farm Pollution (CFP)
- Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)
- Scheme of Investment Aid for upgrading of On-Farm Dairying Facilities
- Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)
- Scheme of Investment Aid for Demonstration On-Farm Waste Processing Facilities
- Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003<sup>2</sup>.



## Notice of Appeal Form

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

### Official use only

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

Appeal No: \_\_\_\_\_

Checked by: \_\_\_\_\_

**Please complete parts 1 and 2 (overleaf) in full**

### Part 1 – Application Details (Please use block capitals)

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

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

Herd / REPS / Application No: 

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

This image shows a full page of blank, lined paper. It features approximately 20 horizontal blue or grey lines spaced evenly apart, typical of notebook paper. The lines extend across the entire width of the page, leaving small margins at the top and bottom. There are no vertical lines, text, or other markings on the page.

Date: \_\_\_\_\_

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