

An Oifig Achomharc  
Talmaíochta

Agriculture  
Appeals Office



# AGRICULTURE APPEALS OFFICE



## ANNUAL REPORT 2016

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

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2016 faoi do bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talmhaíochta, 2001.

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act 2001, the report of the Agriculture Appeals Office for 2016 is hereby submitted.

Angela Robinson  
Director of Agriculture Appeals

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  
Dublin Road  
Portlaoise  
Co Laois  
R32 DTW5

Telephone: 057 8631900 or LoCall 076 106 4418

Fax: 057 8667177

E-mail: [appeals@agriappeals.gov.ie](mailto:appeals@agriappeals.gov.ie)

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

## Agriculture Appeals Office Annual Report 2016

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## 1. Introduction

I am pleased to introduce the Agriculture Appeals Office Annual Report for 2016.

The function of the Agriculture Appeals Office is to provide an independent appeals service to applicants who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine, in relation to the Schemes set out in the Schedule to the Agriculture Appeals Act 2001, as amended. The Office provides a free, impartial appeals service to such applicants.

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

The legislation requires Appeals Officers to be independent in the performance of their functions. The legislation also requires the decision of an Appeals Officer to comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question and to have regard to the principles of natural justice.

This annual report provides a statistical breakdown of the Office’s work for the year up to 31 December 2016. In 2016, a total of 598 appeals were received across the various Schemes. 615 appeals, including appeals received in previous years, were closed in 2016. In addition to those appeals, the Office participated in closing appeal cases arising from the 2013 Land Parcel Identification System (LPIS) Eligibility Review through the LPIS Appeals Committee which examined appeals from applicants whose land parcels had been reduced as part of that Review. The LPIS Committee comprised of Appeals Officers and an independent Chairperson, Mr. Pdraig Gibbons. On behalf of the Agriculture Appeals Office, I would like to take this opportunity to thank Mr. Gibbons for his work as Chairman of the Committee.

The statistical breakdown for the outcome of appeals closed in 2016 does not differ significantly from the outcome of appeals closed in 2015 with 41% of appeals allowed, partially allowed, or, revised by the Department following input from the Agriculture Appeals Office, 45% of appeals were disallowed, the balance of 14% being withdrawn, invalid or

received late. The scheme that was the subject of the highest number of appeals closed in 2016 was the Agri-Environment Options scheme (AEOS), followed by appeals against decisions arising from the Basic Payment /Areas Of Natural Constraints inspections.

To illustrate the type of issues that gave rise to appeals and the consideration given to these issues by Appeals Officers, the report contains a summary of a selection of cases determined by Appeals Officers during the year. This report also includes suggestions that are included for the consideration of the Department of Agriculture, Food and the Marine and for scheme participants.

I would like to acknowledge the current team's continued commitment to the work of the Office, including their contribution to working groups set up in the Office in 2016 to prepare for new work being assigned to the Agriculture Appeals Office. I also thank any former team members who left the Office in 2016. I look forward to working further with the team, to build on their commitment to deliver a quality service and to continue to identify any possibilities for the Office to improve the service for clients while ensuring the integrity of the independent appeals service provided by this Office.

As well as fulfilling its primary function as a report to the Minister for Agriculture, Food and the Marine, it is hoped that this report will be of use to Scheme Applicants, the Department of Agriculture, Food and the Marine and other interested parties.

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

Angela Robinson

Director of Agriculture Appeals

27 June 2017

## **2. Overview of Agriculture Appeals Office**

### **2.1 Appeals service**

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

In line with its mission statement, the Office aims to be client friendly and to deliver the service in a courteous and efficient manner. One of the main features of the appeals service is the right of an Appellant to an oral hearing where an Appeals Officer brings the Appellant and the Department official(s) together 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 by the Appeals Officer to both the Appellant and the Department.

On request, from either party, the Director of Agriculture Appeals may review a decision by an Appeals Officer where there has been a mistake made in relation to the law or the facts of the case.

### **2.2 Procedures Manual**

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

- Structure, organisation, names and designations of members of staff
- Functions, powers and duties

- Rules and guidelines
- Office procedures
- Classes of records held and the arrangements for access
- Rights of review and appeal including rights of review under the Freedom of Information Act.

### **2.3 Business Plan**

The 2016 Business Plan forms the basis for the work of the Office and is subject to regular review.

### **2.4 Website and e-mail**

Useful information is available at the Agriculture Appeals Office website: [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie) where Appellants can download the Appeals Procedure Information Note and the “Notice of Appeal” form.

Appeals may be lodged online to the e-mail address: [appeals@agriappeals.gov.ie](mailto:appeals@agriappeals.gov.ie)

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

The Department of Agriculture, Food and the Marine is required to provide certain information to the Agriculture Appeals Office. Ongoing contact with various Divisions of the Department of Agriculture, Food and the Marine occurred in 2016 to ensure all relevant information was made available to the Agriculture Appeals Office for appeal cases received.

### **2.6 Meetings of Appeals Officers**

The Office held eighteen meetings of Appeals Officers in 2016. The main purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the Office.

## **2.7 Freedom of Information**

The Agriculture Appeals Office received six formal requests under the provisions of the Freedom of Information Act in 2016.

## **2.8 The Office of the Ombudsman**

Under the Agriculture Appeals Act 2001, Appellants to the Agriculture Appeals Office may request a review of their case by the Office of the Ombudsman. Twenty five appeal cases were referred to the Ombudsman in 2016. This compares with fifty two appeal cases which were referred to the Ombudsman in 2015. There were two linked cases in 2016 where the Ombudsman upheld the complaints.

## **2.9 Litigation**

The Appeals legislation provides that a person dissatisfied with a decision of an Appeals Officer and the revised decision of the Director may appeal to the High Court on any question of law. In 2016, the High Court found against an Appeals Officer in regard to an appeal against a decision of the Department concerning the Single Farm Payment scheme. The decision of the High Court is currently under appeal to the Court of Appeal.

## **2.10 Reviews by Director**

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. A request for a review of a decision may be submitted by an Appellant and/or by the Department of Agriculture, Food and the Marine. There was a 100% increase in requests for Director reviews in 2016.



### 3. Appeals Procedure

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

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

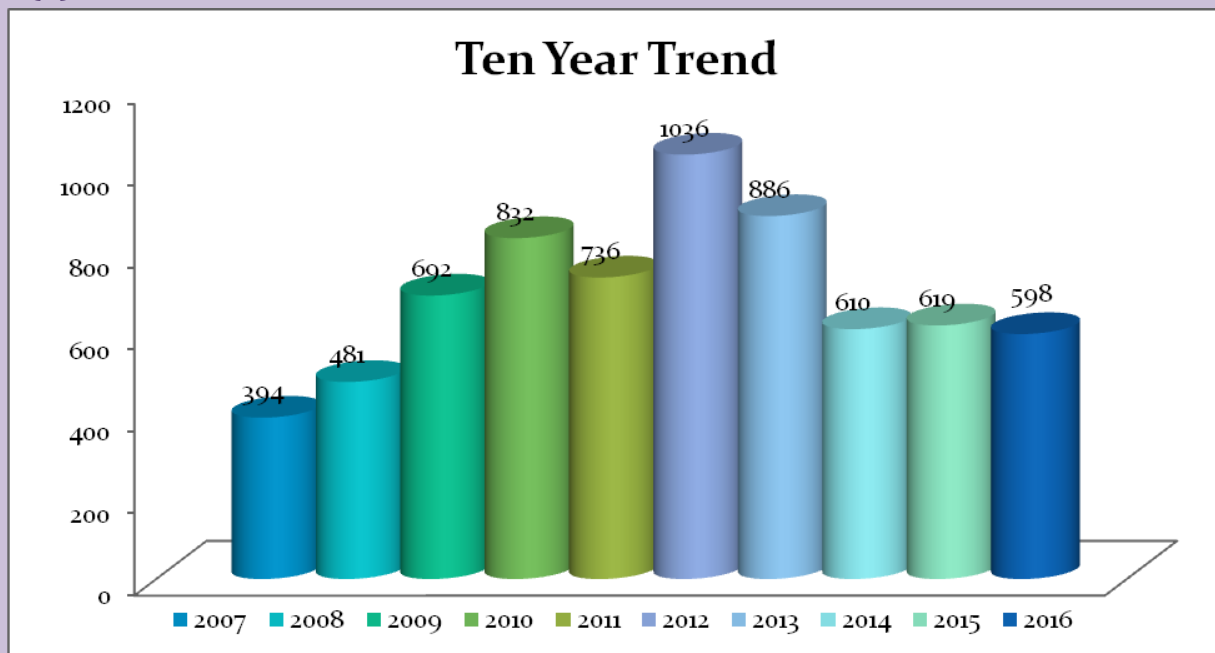
- The Appeals Officer considers all the evidence in full (including any evidence presented at an oral hearing if there was one). The Appeals Officer makes a determination on the appeal and notifies the appellant of the decision in writing, setting out the reasons for that decision. The Department will also be notified of the decision.
- An Appeals Officer may revise a decision of an Appeals Officer, if it appears that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which the decision was given.
- An appeal to this Office does not preclude an Appellant from raising an issue with either the Office of the Ombudsman or with the High Court on a point of law.

#### 4. Statistics – 2016

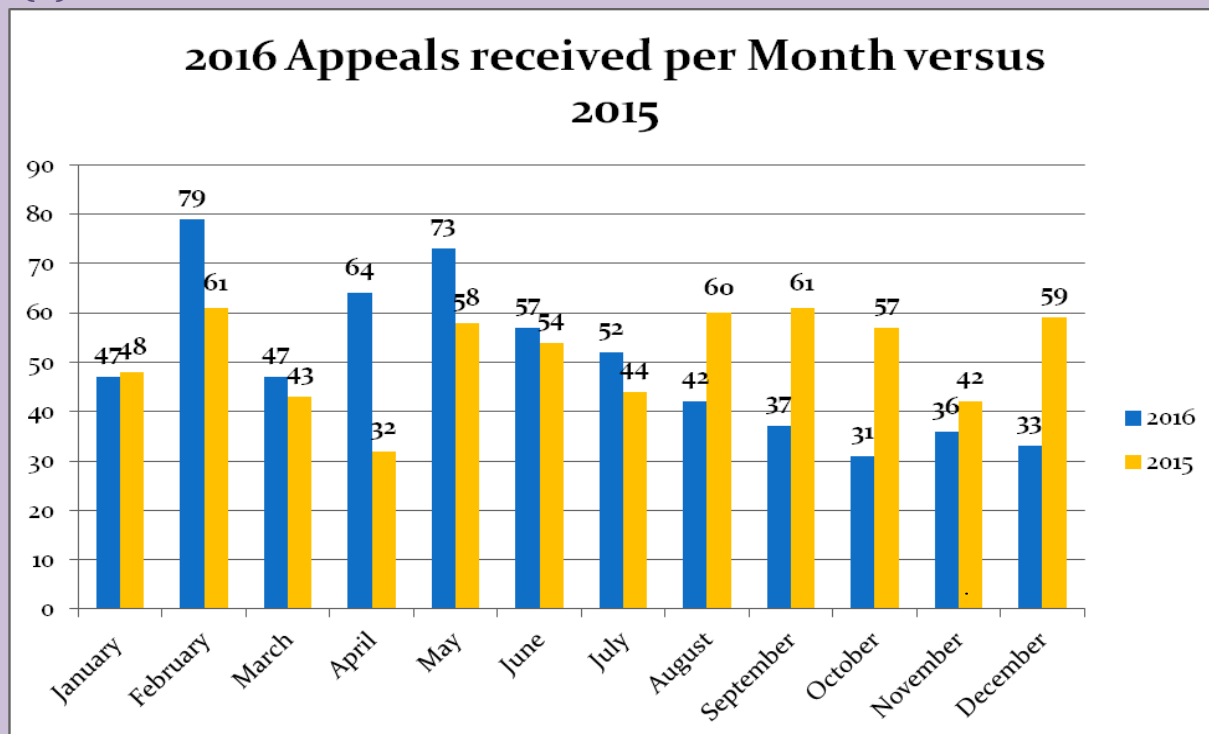
The tables and graphs set out below provide a number of statistical breakdowns.

A total of 598 appeals were received in 2016 compared with 619 in 2015, a decrease of 3.5%. This is also lower than the 10 year average of 688 appeals per annum, as illustrated below:

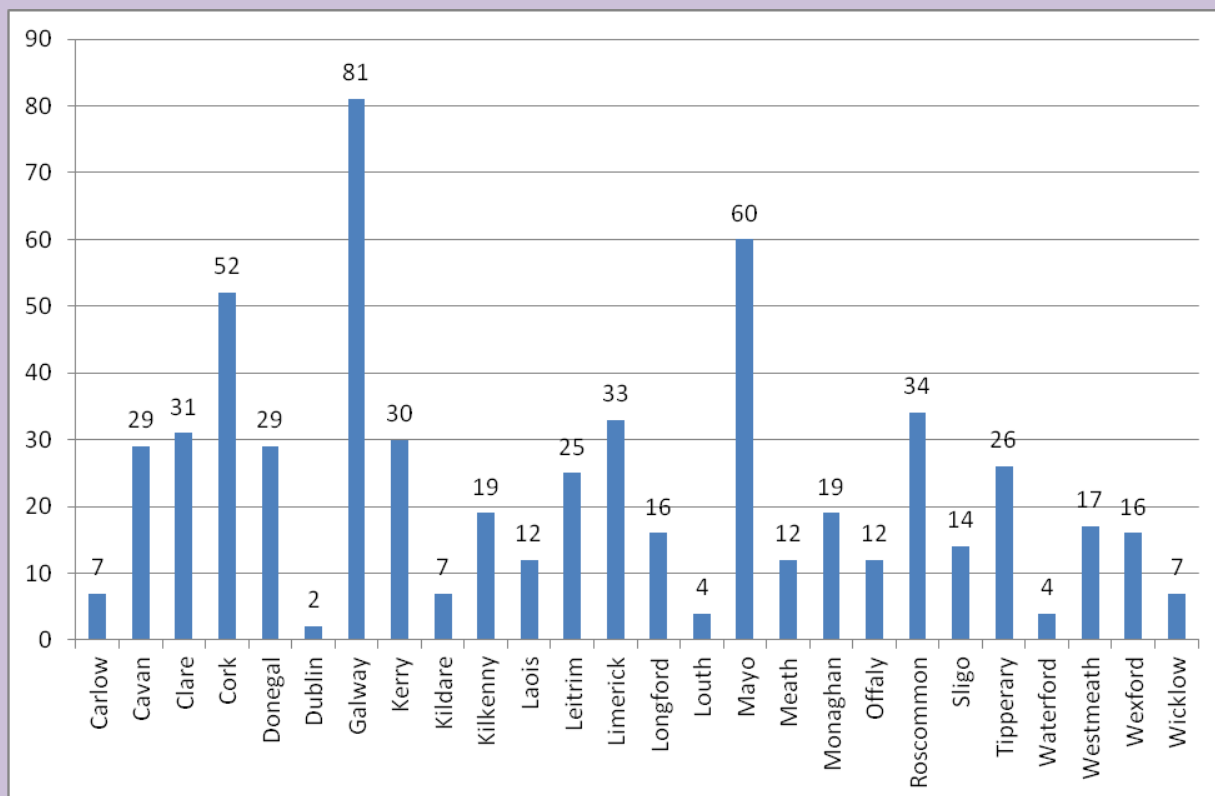
##### 4(a) APPEALS RECEIVED PER ANNUM 2006 - 2016.



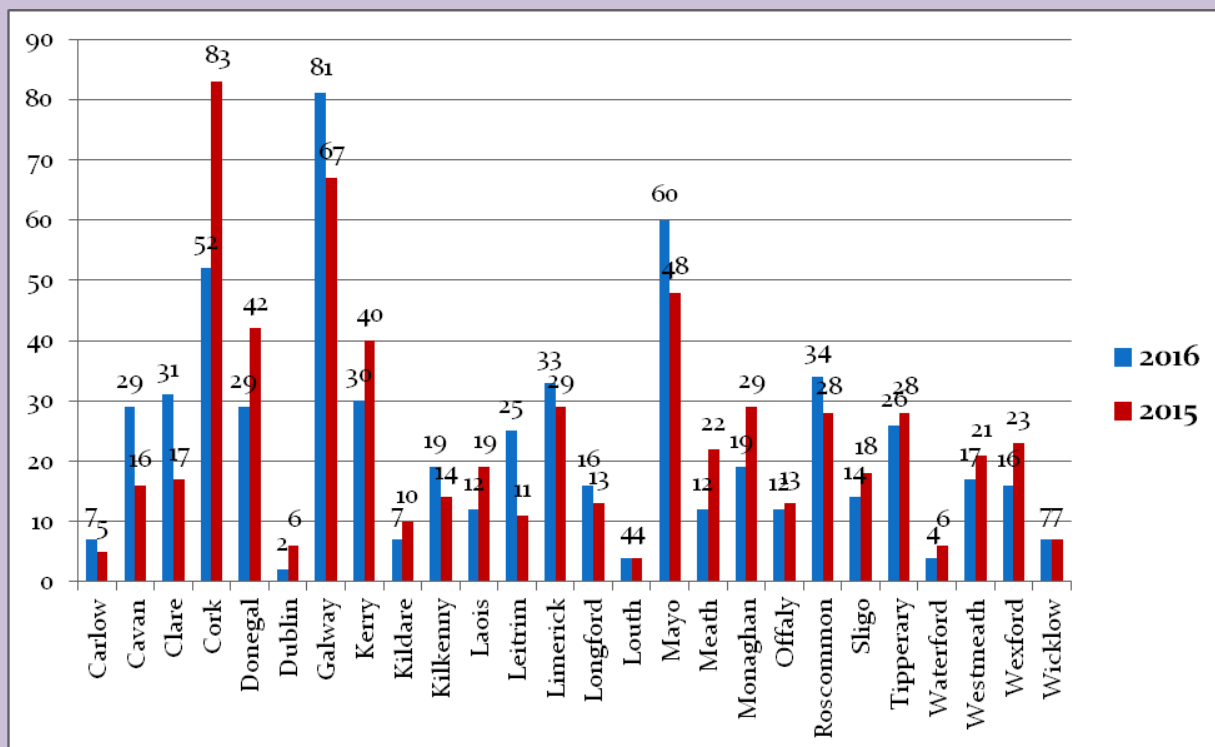
##### 4(b) APPEALS RECEIVED PER MONTH DURING 2016.



#### 4(c) APPEALS RECEIVED BY COUNTY IN 2016.

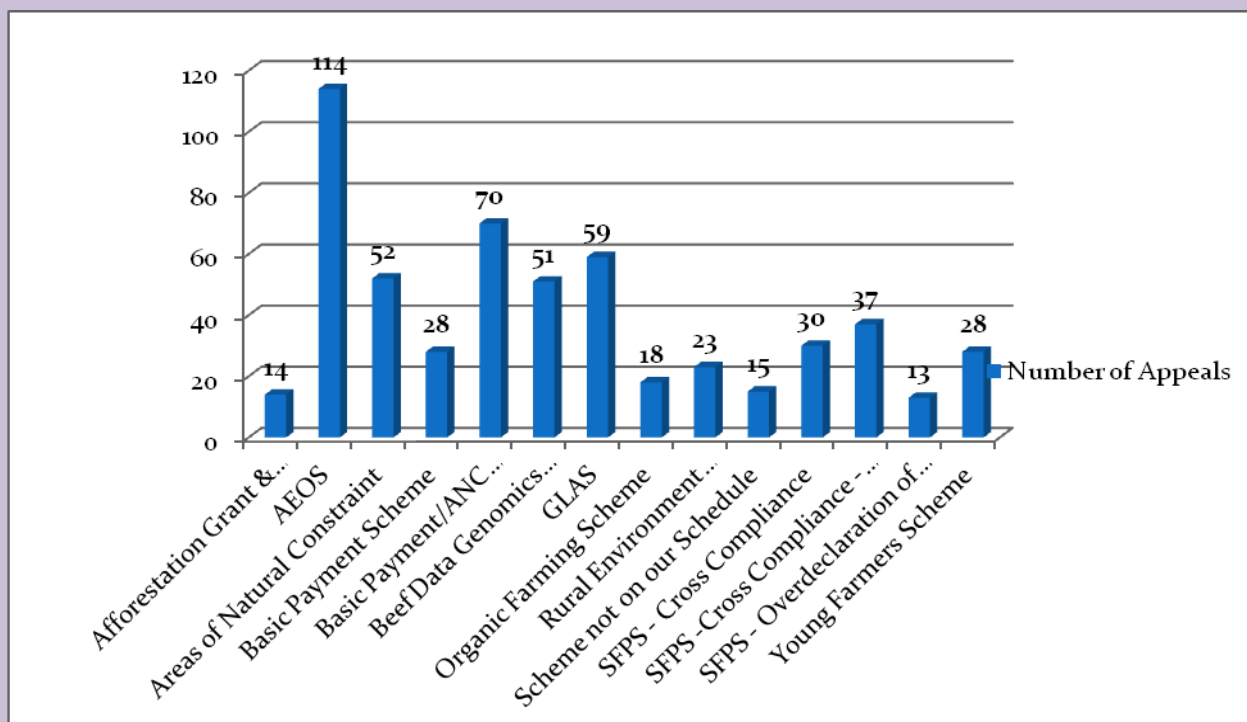


#### 4(d) COMPARISON OF NO. OF APPEALS RECEIVED PER COUNTY FOR 2015 AND 2016



#### 4(e) APPEALS RECEIVED BY SCHEME IN 2016

This table refers to Schemes where more than 10 appeals were received.



#### 2015 Top 10 Schemes

Scheme	No. of Appeals
SFPS Nitrates	158
REPS	80
SFPS-CC Insp	69
SFPS-Over declare	64
AEOS	62
DAS	42
BDGP	37
BDP	14
OFS	10
SFPS-Transfer of Entitlements	10

#### 2016 Top 10 Schemes

Scheme	No. of Appeals
AEOS	114
BPS/ANC Inspection	70
GLAS	59
ANC	52
BDGP	51
SFPS-Nitrates	37
SFPS-CC Insp	30
BPS	28
YFS	28
OFS	18

#### 4(f) OUTCOME OF APPEALS CLOSED IN 2016 (not including LPIS committee)

##### *Terminology*

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

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

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

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

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

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

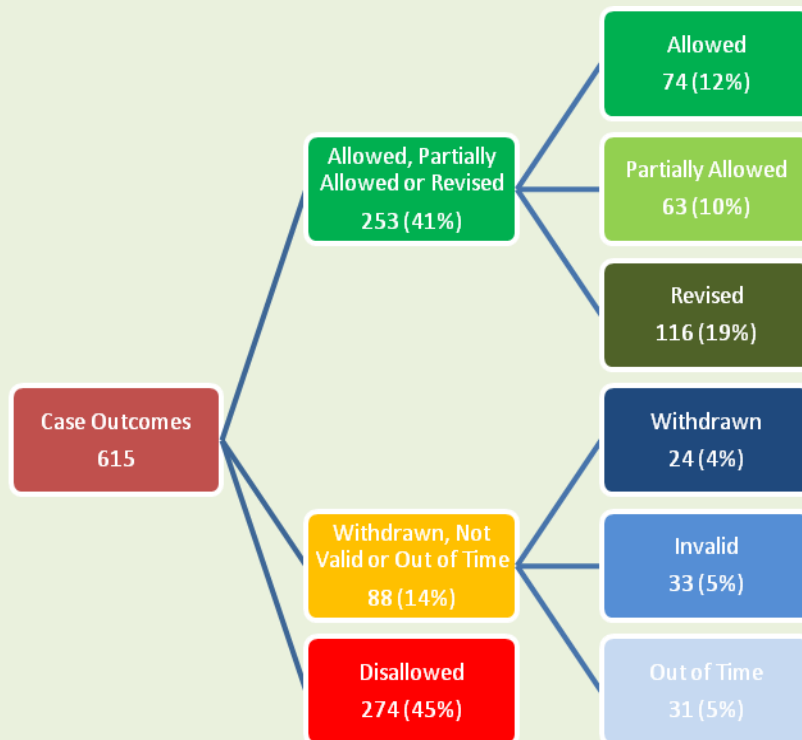
**Appeal Disallowed** Where the Appeals Officer, following consideration of the case, decides that the grounds of appeal do not warrant overturning the decision and that the penalty imposed/decision made by the Department of Agriculture, Food and the Marine was the correct one.

- There were 615 appeal cases closed in total. This compares with 672 cases that were closed in 2015. Of the 615 cases closed, 367 cases were received in 2016, 226 were received in 2015, 19 were received in 2014, 2 cases were received in 2013 and 1 case was received in 2011.

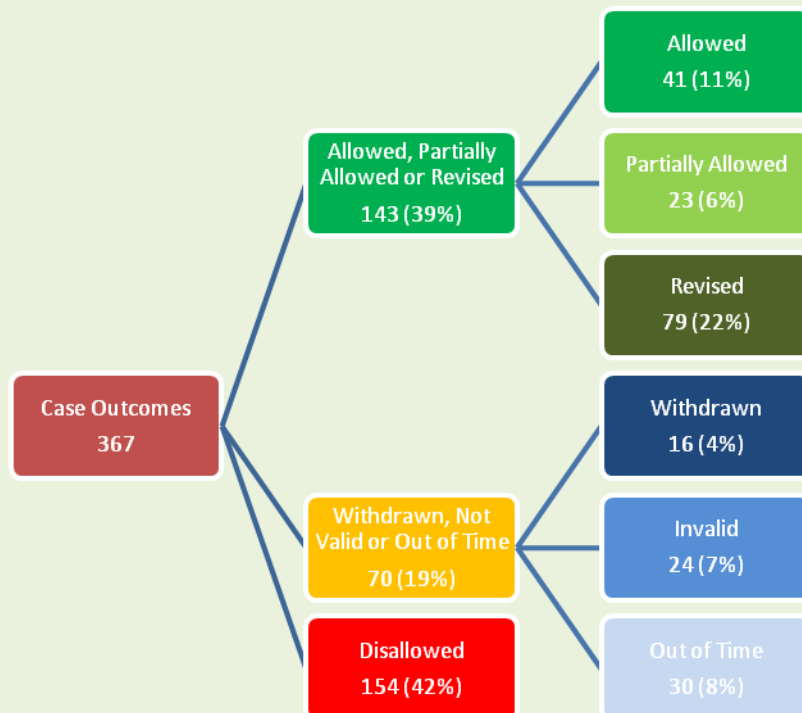
The statistics for the outcome of appeals received and closed in 2016 do not differ significantly from those for all appeals closed in 2015, as illustrated below using the terminology referred to above.

<b><i>Outcome of Appeals Closed including appeals received in previous years (not including LPIS committee appeals)</i></b>				
<b><i>Decision Results</i></b>	<b><i>2016 outcome</i></b>		<b><i>2015 outcome</i></b>	
	<b><i>Number of all appeals closed in 2016 (615)</i></b>	<b><i>Percentage</i></b>	<b><i>Number of appeals closed in 2015 (672)</i></b>	<b><i>Percentage</i></b>
<b><i>Allowed, Partially Allowed or Revised by the Department</i></b>	253	41%	278	41%
<b><i>Appeals Withdrawn, Invalid and Out of Time</i></b>	88	14%	96	14.5%
<b><i>Disallowed</i></b>	274	45%	298	44.5%
<b><i>Total</i></b>	615		672	

## Outcome of all cases closed in 2016 (incl. received in previous years) (615)



## Outcome of all cases received in 2016 and closed in 2016 (367)



**4(g) Statistics on Receipt and Outcome by Scheme at 31 December 2016 for appeals received in 2016 which were closed in 2016**

\*Please note "Other" in the table below includes Schemes where less than 5 appeals were received e.g. Forest Road Scheme (1); Grant Aid for the Dev. of the organic sector (3); SFPS – Surrender of unused Entitlements (1); SFPS – Value of Entitlements (1); SFPS – Transfer of unused Entitlements (3); TAMS Animal Welfare Safety & Nutrient Storage Scheme (1); TAMS Pig & Poultry Investment Scheme (2). Please note also that the percentage calculated is based on outcome of 2016 cases closed at 31 December 2016 (367 cases).

SCHEME	Received	Closed	Allowed	%	Partially Allowed	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
Afforestation Grant & Premium Scheme	14	4			1	25.00	1	25.00							2	50.00	10	71.43
AEOS	114	79	8	10.13	6	7.59	4	5.06	8	10.13	2	2.53	8	10.13	43	54.43	35	54.43
Areas of Natural Constraints	52	22	5	22.73			6	27.27			1	4.55	1	4.55	9	40.91	30	57.69
Basic Payment Scheme	28	17	3	17.65			8	47.06	1	5.88	2	11.76	1	5.88	2	11.76	11	39.29
Basic Payment Scheme/ ANC inspection	70	34	5	14.71	6	17.65	1	2.94	2	5.88	1	2.94	3	8.82	16	47.06	36	51.43
Beef Data Genomics Programme	51	41	1	2.44			19	46.34	1	2.44			1	2.44	19	46.34	10	19.61
Disadvantaged Areas Scheme	7	3									2	66.67	1	33.33			4	57.14
GLAS	60	42	4	9.52			15	35.71					1	2.38	22	52.38	18	30.00
*Other	12	6	1								1		1	16.67	3		6	50.00
Organic Farming Scheme	18	7	1	14.29	3	42.86	2	28.57							1	14.29	11	61.11
Rural Environment Protection Scheme	23	15	3	20.00	2	13.33	3	20.00	1	6.67					6	40.00	8	34.78
Scheme not on Schedule	15	13									13	100.00					2	13.33
SFPS - Cross Compliance	30	18	2	11.11	4	22.22	1	5.56					7	38.89	4	22.22	12	40.00
SFPS -Cross Compliance – Nitrates	37	30	1	3.33	1	3.33	12	40.00		3.33			1	3.33	14	46.67	7	18.92
SFPS - Over declaration of Land/Set-aside	13	7							1	14.29	2	28.57	2	28.57	2	28.57	6	46.15
TAMS – Dairy Equipment Scheme	5	4	1	25.00					1						3	75.00	1	20.00
TAMS – Farm Safety Scheme	5	5	1	20.00											4	80.00		
TAMS - Sheep Fencing/Mobile Handling Equipment	9	6	2	33.33									2	33.33	2	33.33	3	33.33
TAMS – YF Capital Investment Scheme	7	5	2	40.00			2	40.00							1	20.00	2	28.57
Young Farmers Scheme	28	9	1	11.11			5	55.56	1	11.11			1	11.11	1	11.11	19	67.86



#### 4(h) Receipt of documents from Department of Agriculture, Food and the Marine

When an appeal is lodged with the Agriculture Appeals Office, this Office requests the Department of Agriculture, Food and the Marine to provide the relevant documentation/file and any relevant information to the Office within two weeks of the request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued when the Department does not respond promptly. A number of reminders and repeat reminders were issued by this Office to the Department in 2016. The average number of days for the return of file documents from the Department was 35 days for all 2016 appeals. A breakdown of the average number of days taken for a selection of schemes for receipt of the Department file documents from the date of request by this Office is set out below (*Statistics in the examples below refer only to a selection of schemes where more than 10 appeals were received*).

SCHEME	Average number of days to return file
Areas of Natural Constraints	77
Basic Payment Scheme/ Areas of Natural Constraints	37
Agri-Environment Options Scheme	26
Beef Data Genomics Programme	18
Green, Low-Carbon, Agri-environment Scheme (GLAS)	18
Average	35

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

The Agriculture Appeals Office has set itself a target of three months from the time of receipt of the Department of Agriculture, Food and the Marine file documents to the issue of a decision letter. Some cases, due to circumstances outside the control of the Agriculture Appeals Office, may not be completed within the set time frame. Such circumstances can include delays in getting agreement on dates for arranging oral hearings. For 2016 cases, the average time taken to deal with a case was 88 days. This includes cases that were revised by the Department following intervention by the Appeals Office, prior to assignment of the case to an Appeals Officer.

**4 (j) Number of oral hearings held**

A total of 319 oral hearings were held In 2016 of which 201 concerned appeals submitted in 2016, 110 concerned appeals submitted in 2015 and 8 were in relation to appeals submitted in 2014. The total number of oral hearings held in 2015 was 307.

**4(k) Position at year end**

A total of 615 appeal cases were closed in 2016 including 367 cases received in 2016, 226 cases received in 2015, 19 cases received in 2014, 2 cases received in 2013 and 1 case received in 2011.

The status at 31 December 2016 of appeals received in 2016 is set out below, together with, for comparison purposes, the position at 31 December 2015 in respect of appeals received in 2015. The cases listed in the table do not include cases dealt with by the LPIS committee (see Section 5).

	<b>Position at 31 December 2016</b> <i>Appeals received in 2016</i>	<b>Position at 31 December 2015</b> <i>Appeals received in 2015</i>
Cases closed	367	383
Work in progress – Agriculture Appeals Office	127	149
Awaiting Department response	104	87
Total Appeals received	598	619
Remaining appeals received to be processed	231	236

## 5. Land Parcel Identification System (LPIS) Eligibility Review Appeals Committee

The LPIS Eligibility Review Appeals Committee was established in October 2013 to consider appeals from farmers regarding the 2013 LPIS Eligibility Review. The LPIS Appeals Committee is chaired by Mr. Padraig Gibbons and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 55 cases in 2016. This compares with 232 cases dealt with in 2015. The table shows the outcome of the 55 cases dealt with in the year.

### 5(a) LPIS Committee cases dealt with in 2016

LPIS Committee Appeals Status at 31 <sup>st</sup> December 2016	Number of Cases
Cases considered in 2016	55
Allowed	12
Partially Allowed	7
Disallowed	14
Land Verification Check recommended	3
Other (Invalid / incomplete)	19

## 6. Table of Example Cases dealt with by Appeals Officers in 2016

*Note1:* The legislation requires Appeals Officers to be independent in the performance of their functions. The legislation also requires that the decision of an Appeals Officer shall have regard to the principles of natural justice and complies with any relevant legislation, terms and conditions and guidelines of the Minister governing or relating to the scheme in question.

*Note 2:* Some appeals decisions for cases listed below may be the subject of a request for review by the Director or the Ombudsman which may result in a change to the Appeals Officer's decision referred to below.

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
Organic Farming Scheme (OFS)	<p><b>Background:</b> The Department sought recovery of all Organic Farming Scheme payments from the applicant due to non-renewal of an organic licence.</p> <p><b>Appeal Assessment:</b> The appellant had housed cattle solely on straw bedded slats and this was permitted for the appellant's organic licence. However, after year 1 of his OFS contract, the licensing body informed the appellant that 50% of animal housing had to be solid floor and straw bedding could no longer be used on slats. The farmer could not meet this new requirement and did not renew his organic licence. The Organic Farming Scheme required that scheme participants had to have an organic licence throughout their contract.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that there was a change of requirements within contract and decided the appellant was entitled to retain all monies paid for year 1 of the OFS contract for which he had held an organic licence but must repay Organic Farming Scheme monies for the period no organic licence was held.</p>	The appeal was partially allowed

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
Statutory Management requirement (SMR) No. 4 Cross Compliance	<p><b>Background:</b> The Department received a cross-report from the County Council concerning Statutory Management Requirement 4 (<i>protection of waters against pollutants</i>) and, on review, imposed a 15% intent sanction on the appellant's scheme payments.</p> <p><b>Appeal Assessment:</b> The findings included that slurry was stored in an unlined earthen lagoon, and cattle were feeding in an open yard with no storage facility or collection of runoff. The appellant had been given a grace period by the County Council to remedy storage but no change had been made. Issues had developed over a period of time between the Appellant and the County Council concerning run-off from the public road.</p> <p><b>Appeal Outcome:</b> In the absence of proper collection and storage, or, evidence that the facility in use was compliant with the requirements of the Nitrates Regulations, in addition to the fact that the facility was found not to be designed, sited, constructed, maintained and managed to prevent run-off or seepage directly or indirectly into groundwater or surface water, the Appeals Officer found the Department had imposed the correct sanction.</p>	The appeal was disallowed
Basic Payment Scheme (BPS)	<p><b>Background:</b> The applicant, after the closing date of the scheme, sought to add a parcel which he had deleted in error.</p> <p><b>Appeal Assessment:</b> The parcel in question was deleted from the application submitted. There is no provision under the scheme to include, after the closing date of the scheme, parcels which have been deleted. The onus is on the applicant and his/her advisor to ensure the accuracy of the application lodged.</p> <p><b>Appeal Outcome:</b> As the applicant is not entitled to increase the area declared for payment, the</p>	The appeal was disallowed

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	Appeals Office found that the Department decision was correct.	
Area of Natural Constraints (ANC)	<p><b>Background:</b> The appellant did not receive payments under the Areas of Natural Constraint Scheme (ANC) for 2015 because he did not maintain livestock in his herd for the required period.</p> <p><b>Appeal Assessment:</b> The appellant's herd was restricted with TB and he could not buy or sell cattle during this time. Other matters arising included delays occurring between purchase of cattle and their delivery to the farm, the need to dispose of a number of cattle for safety reasons and timing of restriction notice.</p> <p><b>Appeal Outcome:</b> The appeal was allowed due to specific circumstances arising including that it was accepted by the Appeals Officer that the appellant had to sell cattle for health and safety reasons, and the restriction in place did not allow him to buy replacements at that time.</p>	The appeal was allowed.
Areas of Natural Constraints (ANC)	<p><b>Background:</b> The 2016 Areas of Natural Constraint Scheme (ANC) payment was refused as the 2015 Sheep Census form had not been submitted by the deadline of 29 January 2016.</p> <p><b>Appeal Assessment:</b> It was submitted that the 2015 Sheep Census form had been returned to the Department in January 2016 and a Certificate of Postage obtained. Scheme terms and conditions make it clear that only registered or Express post receipts are acceptable. A Certificate of Postage is not acceptable as proof of postage. It is a condition of the scheme that the Sheep Census form be lodged by the 29 January 2016.</p> <p><b>Appeal Outcome:</b> As there was no acceptable evidence of postage, the Appeals Officer found that the</p>	The appeal was disallowed

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	decision of the Department was correct.	
REPS4	<p><b>Background:</b> The appellant successfully joined REPS 4. The Department sought recovery of amounts already paid because the appellant withdrew from his REPS Contract.</p> <p><b>Appeal Assessment:</b> The Department changed the requirements for farmers with contract grazing systems with the issuing of a REPS 4 Circular 10/11 in July 2011. This circular stipulated that contract grazing was no longer acceptable under REPS 4 Terms and Conditions as farmers now had to own enough livestock in their own right to meet the minimum stocking density. The changing of the rules made the appellant's continued participation in REPS 4 untenable. He would not have joined REPS 4 if those rules had applied at the beginning of the contract.</p> <p><b>Appeal Outcome:</b> Taking account of the specific circumstances of the case including long term illness being a significant impediment to the Appellant changing his current farming system of contract grazing, the appeal was allowed.</p>	The appeal was allowed.
Beef Data Genomics Programme (BDGP)	<p><b>Background:</b> Entry into this scheme was refused as the application was not received by the extended closing date of 5 June 2015.</p> <p><b>Appeal Assessment:</b> It was submitted that the application form was submitted by regular post and the applicant has no proof of postage. The scheme conditions provide that the only acceptable proof of postage is Express or Registered post receipt.</p> <p><b>Outcome:</b> As there is no acceptable proof of postage, the Appeals Officer found that the decision of</p>	The appeal was disallowed

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	the Department was correct.	
Beef Data Genomics Programme (BDGP)	<p><b>Background:</b> The farmer participated in the Beef Data and Genomics Programme. A requirement of the scheme is to have calves born in the herd registered within 27 days of their birth. The Department imposed a penalty as seven of the calves born in the farmers herd were not registered within the timeline.</p> <p><b>Appeal Assessment:</b> The findings included evidence that the form to register the calves was signed on time but was not received in the Department's Registration Agency until after the deadline. The farmer stated that he had posted the forms on time but had no evidence of the postage.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that the terms and conditions for the BDGP state that it is the responsibility of the applicant to ensure that the registration is received in the Department within the specified timeline. As there was not any evidence of proof of postage the Appeals Officer could not overturn the decision made by the Department.</p>	The appeal was disallowed
Afforestation Grant and Premium Scheme and Forest Environmental Protection Scheme	<p><b>Background:</b> The boundary of two adjoining forestry contracts had a town land boundary demarcated by a watercourse. The appellant's folio indicated that his farm forest boundary extended to the middle of this watercourse.</p> <p><b>Appeal assessment:</b> The Department accepted the watercourse as the boundary of both contracts. When the area was digitised the area was reduced with a penalty arising for the reduction. The forestry applications were made on GIS generated white O.S. maps which showed that the boundary was the centre of the watercourse.</p> <p><b>Appeal Outcome:</b> The Appellant's evidence indicated that the boundaries should be extended and</p>	The appeal was allowed.



<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	the Appeals Officer accepted the evidence presented by the Appellant.	
Nitrates	<p><b>Background:</b> The Department imposed a 5% penalty because the farmer had exceeded the 170 kg of nitrates limit per hectare per calendar year.</p> <p><b>Appeal Assessment:</b> The findings included evidence that the farmer had arranged to import pig slurry onto his farm but did not spread it because he realized that, if he did, he would be breaching the nitrates limit. He then arranged to divert the slurry to another farm. The farmer had signed the Record 3 form from the exporter some months later stating that he accepted the slurry. The Record 3 form was submitted to the Department.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that the farmer signed the form stating that he had imported pig slurry but he maintained that it was diverted to another farmer. Because the Record 3 form submitted to the Department stated that the farmer imported the slurry, this was used to calculate his compliance with the Nitrates Regulations. The Appeals Officer did not overturn the decision.</p>	The appeal was disallowed
Alternative Enterprise Options Scheme (AEOS)	<p><b>Background:</b> Because the contract land was not retained for the full period of the AEOS plan, the contract was terminated and recoupment of all monies paid was sought by the Department.</p> <p><b>Appeal Assessment:</b> The lease in this case did not extend to the full period of the contract. Although a verbal agreement did exist initially, for legal reasons it was not possible to extend the lease and the land could not be claimed by the applicant and was removed from the Basic Payment scheme application. Therefore it could not be deemed eligible under the AEOS scheme.</p> <p><b>Outcome:</b> As the land was not declared under the Basic Payment scheme for the full period of the</p>	The appeal was disallowed

Name of Scheme	Short description of case	Outcome of appeal by Agriculture Appeals Officer
	AEOS contract, the Appeals Officer found that the decision of the Department was correct.	
Forest Roads Scheme	<p><b>Background:</b> Following an inspection, a Forest Road Grant application was refused for payment by the Forest Service. The reason for the refusal was detailed as follows – ‘<i>All materials used in the construction of a forest road must comply with Waste Management Act 1996 and the European Communities (Waste Directive) Regulations 2011 (SI No. 126 of 2011). Applications for grant aid for roads constructed with materials not in compliance with the ACT/Regulations will not be grant aided and remedial works may be required.</i>’</p> <p><b>Appeal Assessment:</b> Before the hearing date was fixed, the Appellant undertook discussions with the County Council in relation to the waste management issue. A Grant of Registration for the road making was granted by the County Council. This certificate of registration authorised the importation of tonnes of waste material under class 6 as per part 11 of the third schedule of the Waste Management (Facility Permit and Registration) Regulations, 2007, as amended. It was also provided that, as this was a retrospective application, no further material could be accepted on site.</p> <p><b>Appeal Outcome:</b> The Department (Forest Service) accepted the additional information and revised the decision accordingly.</p>	The Department revised its decision and allowed payment.
Areas of Natural Constraint (ANC)	<p><b>Background:</b> No ANC payment issued due to stocking density requirements not been met. The applicant had not submitted his sheep census form.</p> <p><b>Appeal Assessment:</b> All examinations failed to reveal any proof that sheep census forms were forwarded. As per the terms and conditions, in cases of dispute, the only acceptable proof of the</p>	The appeal was disallowed.

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	<p>items being forwarded is a swift post receipt. This was not available in this particular case.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that, in the absence of swift post receipt, the original decision could not be overturned.</p>	
Alternative Enterprise Options Scheme (AEOS)	<p><b>Background:</b> The Department imposed a penalty in this case for the non provision of watertroughs in the correct parcels as outlined in AEOS application.</p> <p><b>Appeal Assessment:</b> The examination included evidence that the water troughs were deployed in LPIS parcels other than those specified in initial application.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that the terms and conditions were not adhered to in this case and could not overturn the original decision.</p>	The appeal was disallowed.
Nitrates	<p><b>Background:</b> 1% nitrates penalty was imposed by the Department because of a breach on Nitrates limits. Slurry was exported but a record of movement was not received by the Department.</p> <p><b>Appeal Assessment:</b> The terms and conditions specify that, where documents are not received, the only acceptable proof of postage is a swift post receipt: this was not available in this case.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that, as the terms and conditions specified a swift post receipt as required, the original decision should be upheld.</p>	The appeal was disallowed.
Basic Payment Scheme Cross Compliance and Areas of Natural	<p><b>Background:</b> A 1% cross compliance penalty for tagging irregularities was levied at inspection. In addition, the Maximum Eligible Area (MEA) was found to be less than the area claimed as submitted by the applicant in his annual application. This was due to parcels being overgrown and not used.</p>	The appeal was disallowed.

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
Constraints Scheme 2016	<p><b>Appeal Assessment:</b> The tagging breach was referred to by the applicant in his appeal submission. Satellite imagery and inspection reports were both examined regarding the assessment of the Maximum Eligible Area.</p> <p><b>Appeal Outcome:</b> There was insufficient evidence available, or provided, to overturn the decision made by the Department in respect of both issues in this case</p>	
Targeted Agricultural Modernisation Schemes 2 (TAMS 2)	<p><b>Background:</b> No payments were made for a capital investment on the grounds that the original application was made by an individual and the payments to the supplier were made by a company.</p> <p><b>Appeal Assessment:</b> Evidence provided in this case indicated that the original application was made by an individual while all payments made in respect of the project were made by a registered company. Further enquiries revealed that the share holding in the company was 50/50 with another individual.</p> <p><b>Appeal Outcome:</b> Due to the share holding position, the Appeals Officer found that the individual and the company could not be taken as one and the same entity and upheld the original decision.</p>	The appeal was disallowed
Areas of Natural Constraints (ANC)	<p><b>Background:</b> The Department failed to consider the appellant's ANC application on the basis that the stocking density requirements had not been met.</p> <p><b>Appeal Assessment:</b> The ANC requires that an applicant maintain a minimum stocking density of 0.15 livestock units per hectare for seven consecutive months. When the Appellant did not meet this requirement, his application was not accepted. The Appellant submitted medical evidence in support</p>	The appeal was allowed

<i>Name of Scheme</i>	<i>Short description of case</i>	<i>Outcome of appeal by Agriculture Appeals Officer</i>
	<p>of his case.</p> <p><b>Appeal Outcome:</b> The Appeals Officer found that the appellant had met the requisite stocking density requirements in all other years and found that the medical evidence supplied supported his case and that <i>Force Majeure</i> was applicable in this instance.</p>	

## **7. Suggestions by the Agriculture Appeals Office for consideration by the Department of Agriculture, Food and the Marine**

- *All Schemes:* In the case of joint herd owners and partnerships, it is suggested that the scheme terms and conditions, Department procedures and declarations by applicants should provide for nominated representation on behalf of the parties making the application, including providing for representation of the partnership, joint herdowners etc. at on the spot inspections.
- *All Schemes:* When providing information on reasons for penalties/non-payment of amounts claimed, where possible, the appropriate terms and conditions and, where relevant, specific EU rules, should be stated in writing.
- *AEOS:* Given the importance of the land availability rule for certain scheme conditions, the Department terms and conditions should emphasise the risk of penalties arising for applicants leasing land where the land lease might expire in the period before the end of their AEOS contract.
- *Schemes that involve multiannual commitments by appellants:* Where approval and a contract for scheme participation have been completed and, subsequently, rules are amended, Department policy and procedures should provide the option to exit the contract without penalty in circumstances where applicants cannot comply with the new additional requirements that were unforeseen at the time of commencement of the contract.
- *BPS Land eligibility:* Where on the spot field checks are carried out by Department personnel, any photographs taken by the Department to support findings should be dated.
- *General:*
  - Where the Appellant's grounds dispute the Department's version of events at inspection, the Department inspector who carried out the inspection should be present at the oral hearing requested by the appellant.
  - Without prejudice to the responsibility of scheme applicants to submit all required information and documents with their application(s), the Department should continue to improve the facility to allow cross checking of certain information available within the Department relating to checking an appellant's compliance with requirements and, in making such checks, should ensure all relevant sources are examined.
  - Scheme terms and conditions should ensure applicants are fully aware of the type of penalties that can be applied across schemes and for subsequent years.

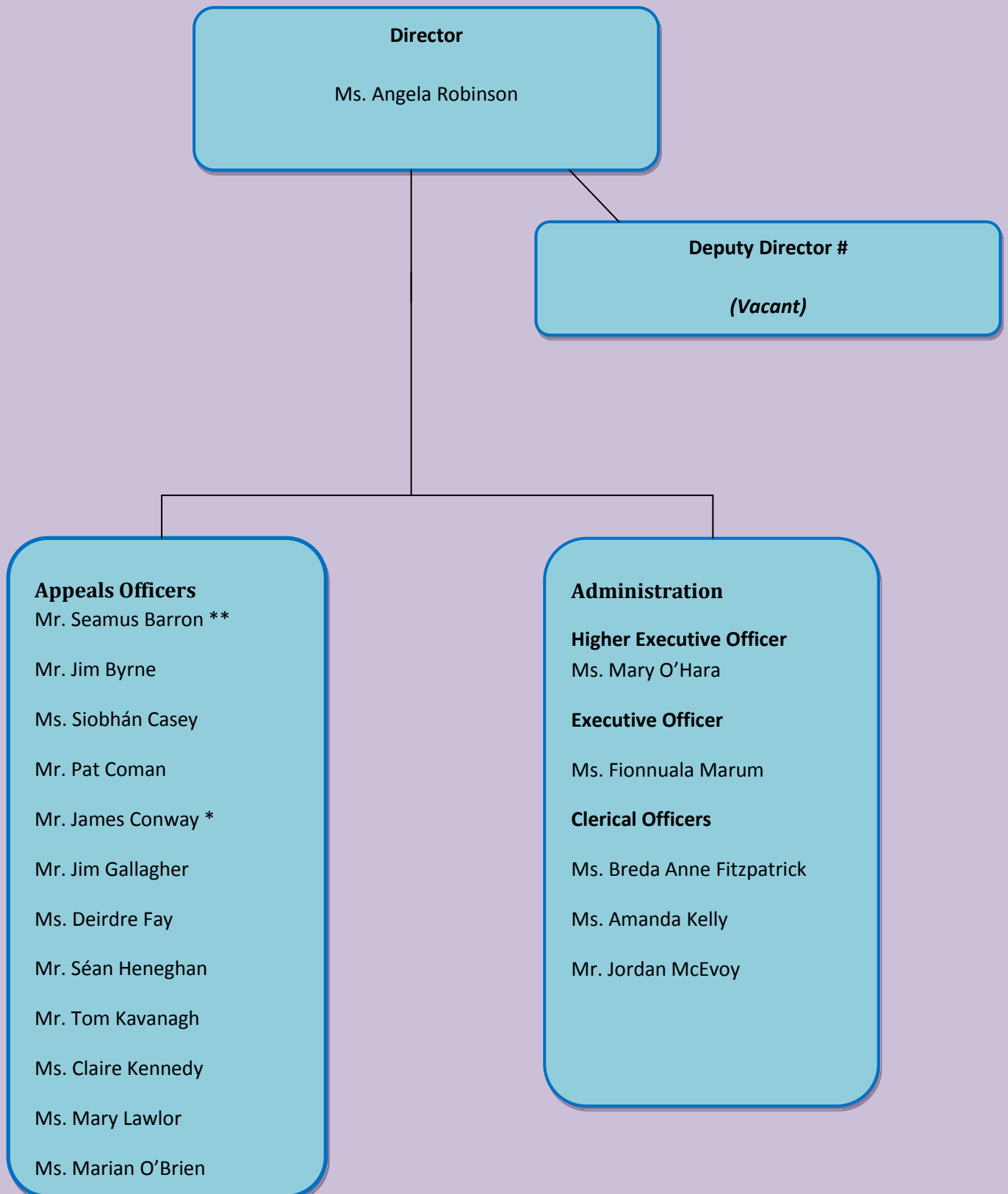
## 8. Suggestions for scheme applicants arising from common errors by Scheme participants

- *AEOS*: Applicants should ensure any land leases are for a period equal to or later than their AEOS contract term.
- *AEOS and Schemes involving multi annual contracts*: Before taking any decisions including but not limited to sale of land, non renewal of leases or decisions not to commence or complete actions included in their multi-annual contract, applicants should check the details of the contract including expiry dates, the terms and conditions of the scheme and/or obtain the Department's view in writing prior to proceeding with such decisions.
- *Areas of Natural Constraints*: Applicants should ensure that all animals are registered as required and, in particular, when purchasing animals, including equines.
- *Areas of Natural Constraints*: Applicants should familiarise themselves with the penalties that may arise arising for failure to submit the Sheep Census form by the appropriate deadline.
- *All Schemes*: Issues continue to arise regarding proof of postage: applicants should as far as possible use the recommended postal facility when posting important documents.
- *All Schemes*: Applicants should familiarise themselves with the Scheme Terms and Conditions and should note the penalties applicable, including those that may arise across several applications/schemes. Where applicants are unclear on any aspect of the terms and conditions, they should obtain the Department's clarification in the first instance. Applicants should be aware of the penalties arising where there is a reoccurrence of a non-compliance which has previously resulted in a penalty.
- *Appeal submission*: When submitting appeals outside the three month deadline for receipt of appeals, appellants should state and provide supporting documents to explain why the appeal was submitted late – these reasons are not necessarily the same grounds of appeals submitted against the Department's decision.
- *Appeal submission*: When submitting an appeal, Appellants should always include a copy of the Department decision which is the subject of their appeal. This will assist in expediting the appeal and determine if the appeal is valid.

## APPENDICES



Organisation Chart at 31 December 2016



\*Indicates officer joined the Office during 2016.

\*\* Indicates officer departed the Office during 2016

# Acts for Director when Director is absent



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 (as amended by SI 638 of 2016)

### *Schemes*

Afforestation Grant and Premium Scheme

Agri-Environment Options Scheme (AEOS)

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

Areas of Natural Constraint

Basic Payment Scheme (BPS)

Beef Data Programme (BDP)

Beef Genomics Scheme (BGS)

Beef Data Genomics Programme (BDGP)

Bio Energy Scheme

Burren Farming for Conservation Programme

Dairy Efficiency Programme

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

Farm Improvement Scheme

Forest Environment Protections Scheme (FEPS)

Forest Road Scheme

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

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

Greening Payment

Grassland Sheep Scheme (GSS)

Installation Aid Scheme (IAS)

Native Woodland Scheme

Neighbourwood Scheme

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

Organic Farming Scheme

Protein Aid Scheme

Reconstitution of Woodland Scheme

Rural Environment Protection Scheme (REPS)

Scheme of Early Retirement from Farming

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

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

Scheme of Investment Aid for Farm Waste Management (FMW)

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

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

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

Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003<sup>1</sup> and Land Parcel Identification System Review 2013 (LPIS Review 2013)

Sow Housing (Animal Welfare) Scheme

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

(a) The Dairy Equipment Scheme

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<sup>1</sup> OJ L270, 21.10.2003, p.1

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

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

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

Upland Sheep Payment Scheme

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme.



S.I. No. 193 of 2002

## AGRICULTURE APPEALS REGULATIONS 2002

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

### Citation and Commencement

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

### Definitions

#### 2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

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

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

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

### Distribution of references to appeals officers.

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

Decisions which may be appealed and transitional arrangements.

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

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

Submission of appeal and information to be supplied by Appellant

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

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

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

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

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

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

Notification of appeal and information to be supplied.

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

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

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

Notice of appeal.

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

Further information to be supplied and amendment of pleadings.

8. The appeals officer to whom an appeal is referred may at any time –  
require the Appellant, the deciding officer, or any other person appearing to  
the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,  
allow the amendment of any notice of appeal, statement, or particulars at any  
stage of the proceedings, and

fix the period for the furnishing of any such statement or particulars upon such terms as he or she may think fit.

#### Summary appeals.

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

#### Hearings.

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

#### Failure to attend hearing.

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

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

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

#### Procedure at hearing.

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

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

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

Decision of Appeals Officer.

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

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

GIVEN under my Official Seal,

8 May 2002

JOE WALSH TD

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Minister for Agriculture, Food and Rural Development



See also other relevant references:

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

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

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

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

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

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

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

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

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

Copies of all legislation are available on the website [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie).