



Agriculture
Appeals Office



agriculture appeals office



annual report 2002



To the Minister for Agriculture and Food, Mr. Joe Walsh T.D.

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2002 faoi bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talamhaíochta, 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 2002.

The Agriculture Appeals Office was established on 13th May 2002 and this is the first report covering the period from 13th May to 31st December 2002.

Paul Dillon

*Director of Agriculture Appeals
June 2003*

Contents

Introduction by Director of Agriculture Appeals	2
The Establishment of the Agriculture Appeals Office	3
2002 - The First Year	4
Appeals Procedure and Oral Hearings	6
Statistics	7
Some Appeals Cases	12
Recommendations to the Department of Agriculture and Food	16
Recurring mistakes by scheme applicants that lead to penalties	17
Agriculture Appeals Office Staff	18

Appendices

Agriculture Appeals Act 2001	19
Agriculture S.I. No. 193 of 2002, Agriculture Appeals Regulations 2002	26
S.I. No. 558 of 2002, Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002	30
Contact Details	32

1. Introduction by the Director of Agriculture Appeals

In 2000, the Programme for Prosperity and Fairness and the Protocol on Direct Payments to Farmers provided for the establishment of an independent Agriculture Appeals Office on a statutory basis. The legislation implementing this undertaking, the Agriculture Appeals Act, was enacted on 9th July 2001.

The Agriculture Appeals Office was established on 13 May 2002 on the introduction of the Agriculture Appeals Regulations 2002. The Office is an independent agency providing an appeals service to farmers who may be unhappy with decisions of the Department of Agriculture and Food concerning their entitlements under designated schemes operated by the Department. I was appointed as Director on 13 May 2002 and a total of 10 Appeals Officers were appointed in 2002.

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

Paul Dillon

Director of Agriculture Appeals

2. The Establishment of the Agriculture Appeals Office

The Office was established on 13 May 2002 and the Director and one Appeals Officer were appointed from that date. Additional Appeals Officer were appointed on a phased basis as follows:

- One Appeals Officer appointed in June
- One Appeals Officer appointed in July
- One Appeals Officer appointed in August
- Two Appeals Officers appointed in September
- Two Appeals Officers appointed in October
- One Appeals Officer appointed in November
- One Appeals Officer appointed in December

Of the support staff:

- Two Clerical Officers were appointed in June
- One Higher Executive Officer was appointed in November
- One Clerical Officer was appointed in December

The Office is located in Portlaoise, Co. Laois.

3. 2002 – The First Year

The Agriculture Appeals Act, 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.

Prior to the establishment of the Office, livestock scheme applicants dissatisfied with decisions of the Department had the right of appeal to the Headage and Premia Appeals Unit. Rural Environment Protection Scheme (REPS) applicants had the right of appeal to the REPS Appeals Committee. Both were non-statutory bodies. Other scheme applicants had less formalised appeal structures. The establishment of the Agriculture Appeals Office put the appeals process 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

One of the first tasks undertaken was the development of a Procedures Manual outlining information about the Agriculture Appeals Office and details of internal rules, procedures and interpretations used by Appeals Officers. This is a legal requirement of the Freedom Of Information Act 1997. It contains the following,

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

Business Plan

In accordance with the Strategic Management Initiative, the development of a Business Plan to coordinate with the Department of Agriculture and Food Statement of Strategy 2003 – 05 commenced in 2002. The Business plan will form the basis for the Office's work.

Database

A database was developed to process and record cases received by the Office. An electronic library of decisions was also put in place. The development of the database ensures up to date information regarding the status of cases and the overall performance of the Office.

Website

Conscious of the commitment to e-Government, the Office also began development of a website. It is intended that, as well as being a source of information, appellants will be able to lodge appeals online.

Accommodation

In conjunction with the Office of Public Works (OPW), suitable accommodation was located for the Agriculture Appeals Office. These Offices are in Kilminchy, Portlaoise. While waiting for the new Offices to be completed, the Office spent its first year in temporary accommodation.

Co-operation with the Department of Agriculture and Food

A number of initial meetings regarding the operation of the Office took place in 2002 with various Divisions of the Department of Agriculture and Food. Ongoing contact to discuss various issues that arise from appeal cases will continue.

Meetings of Appeals

Officers

Regular meetings of Appeals Officers are held. The principal purpose of these meetings is to establish consistency of approach by the Appeals Officers. Two such meetings were held in 2002, in November and December.

4. Appeals Procedure and Oral Hearings

On receipt of an appeal, this Office,

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

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

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

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

One of the features of the Office is the right of an appellant to an oral hearing where the Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. **Of the 518 appeals received in 2002, some 244 (47%) involved oral hearings.** 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 some 93 locations throughout the country.

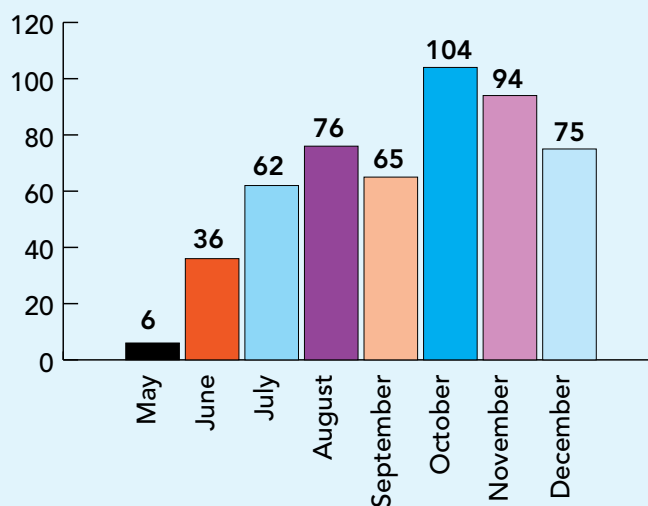
Conscious of the need to be efficient, the Agriculture Appeals Office aims to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country and these regions are rotated on a regular basis.

5. Statistics – 2002

5(a) Appeals Received by Month

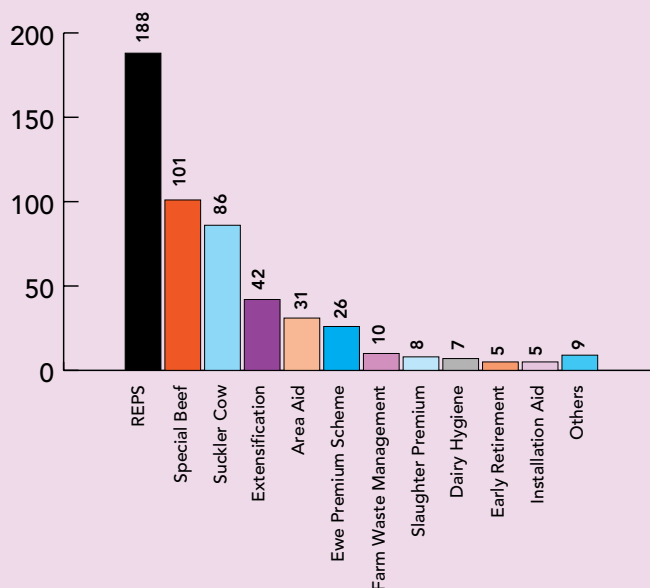
The Office could consider only decisions of the Department taken after 13th May 2002, the date of the introduction of the Agriculture Appeals Regulations. This, coupled with the need to increase awareness of the Office, led to a relatively small volume in the first year.

Received 2002: 518 Cases

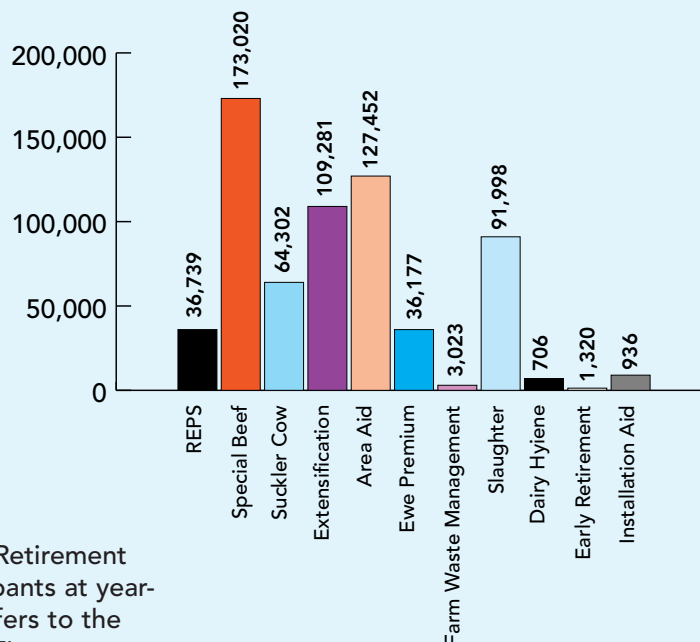


5(b) Appeals Received by Scheme

Agriculture Appeals Office Appeals Received 2002



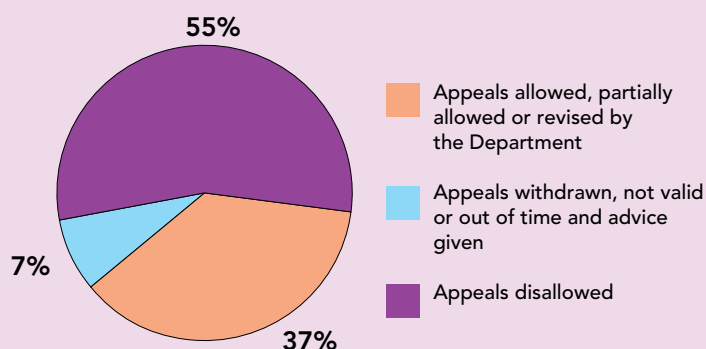
Department of Agriculture and Food Scheme Applications 2002



Note: REPS and Early Retirement figures refer to participants at year-end. Extensification refers to the number of payments. Figures supplied by the Department of Agriculture and Food.

5(c) Outcome of Appeals

Outcome of Appeals 2002 (Summary)



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 recommends a reduced or lesser penalty.

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

Not valid: This category includes appeals on matters not appropriate to the Office, (i.e. Schemes not listed in the Schedule to the Agriculture

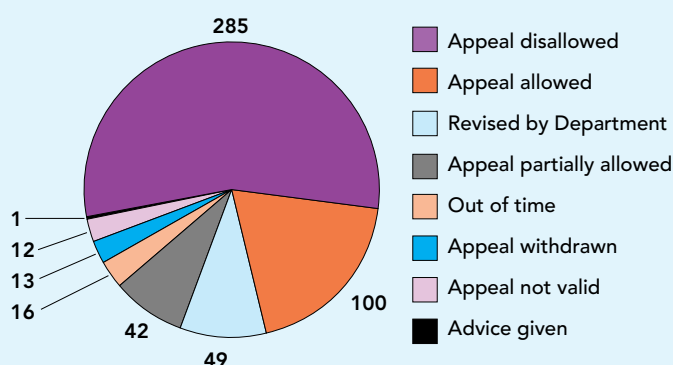
Appeals Act), pre-13 May 2002 cases, duplicate appeals and cases where no actual decision has been made by the Department of Agriculture and Food.

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

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

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

Outcome of Appeals 2002 (Full Breakdown)



5(d) Outcome by Scheme

Received	Received	Allowed	%	Partially Allowed	%	Revised by Department	%	Withdrawn	%	Not Valid	%	Out of Time	%	Advice Given	%	Disallowed	%
Rural Environment Protection Scheme (REPS)	188	32	17.0	21	11.2	23	12.2	4	2.1	1	0.5	8	4.3	-	-	99	52.7
Special Beef Premium Scheme	101	22	21.8	6	5.9	7	6.9	2	2.0	3	3.0	5	5.0	-	-	56	55.4
Suckler Cow Premium Scheme	86	14	16.3	7	8.1	6	7.0	-	-	3	3.5	1	1.2	-	-	55	64.0
Extensification Premium Scheme	42	11	26.2	-	-	4	9.5	2	4.8	2	4.8	-	-	-	-	23	54.8
Area Aid Scheme	31	7	22.6	3	9.7	5	16.1	2	6.5	-	-	1	3.2	-	-	13	41.9
Ewe Premium Scheme	26	5	19.2	3	11.5	1	3.8	1	3.8	2	7.7	-	-	-	-	14	53.8
Farm Waste Management	10	2	20.0	-	-	-	-	1	10.0	1	10.0	-	-	-	-	6	60.0
Slaughter Premium Scheme	8	1	12.5	1	12.5	1	12.5	-	-	-	-	-	-	-	-	5	62.5
Improvement of Dairy Hygiene Standards	7	1	14.3	-	-	-	-	-	-	-	-	-	-	-	-	6	85.7
Early Retirement from farming	5	3	60.0	-	-	-	-	-	-	1	20.0	-	-	-	-	1	20.0
Installation Aid Scheme	5	-	-	-	-	2	40.0	-	-	-	-	-	-	-	-	3	60.0
Control of Farm Pollution	3	-	-	-	-	-	-	-	-	-	-	1	33.3	-	-	2	66.7
On-Farm Valuation Scheme	2	-	-	1	50.0	-	-	-	-	-	-	-	-	-	-	1	50.0
Cattle Headage Scheme	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100.0
Disadvantaged Areas Compensatory Allowances Scheme	1	1	100.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Registration of Dealers	1	-	-	-	-	-	-	-	-	-	-	-	-	1	100.0	-	-
Sheep Headage Scheme	1	1	100.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Totals	518	100		42		49		13		12		16		1		285	

5(e) Time from Department of Agriculture and Food to Appeals Office

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

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

The Office asks the Department to return files within two weeks of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer promptly and considered as soon as possible.

For 2002 cases the average time taken by the Department to return files was 28 days. A breakdown follows by Scheme;

Scheme	Average
Rural Environment Protection Scheme (REPS)	36
Special Beef Premium Scheme	17
Suckler Cow Premium Scheme	20
Extensification Premium Scheme	24
Area Aid Scheme	53
Ewe Premium Scheme	32
Farm Waste Management	26
Slaughter Premium Scheme	15
Improvement of Dairy Hygiene Standards	13
Early Retirement from Farming	10
Others	19

5(f) Time taken to determine cases

For 2002 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 43 days. A breakdown follows by Scheme;

Scheme	Average
Rural Environment Protection Scheme (REPS)	45
Special Beef Premium Scheme	34
Suckler Cow Premium Scheme	47
Extensification Premium Scheme	44
Area Aid Scheme	50
Ewe Premium Scheme	44
Farm Waste Management	34
Slaughter Premium Scheme	28
Improvement of Dairy Hygiene Standards	42
Early Retirement from Farming	67
Others	44

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 2002 cases, the average appeal took 71 days.

5(g) Position as at 31 December 2002

Status	Number of cases
Cases Closed	313
Cases On Hand	
Work In Progress–Appeals Office	108
Awaiting Department Response	97
Total on Hand	205
Total	518

4. Some Appeal Cases

Case 1 - Rural Environment Protection Scheme (REPS)

The appellant commenced his participation in the Rural Environment Protection Scheme on the 1st July 2001. He had already completed 5 years in the previous REPS Scheme. Following a REPS compliance inspection in July 2002 it was found that he was in breach of Measure 8 (Maintain and Improve Visual Appearance of Farm and Farmyard). A 20% penalty was applied. The appellant appealed the decision stating that due to a back injury he was incapacitated for the last 2 weeks in June 2002 and was not able to tidy the farmyard.

The Appeals Officer disallowed his appeal because the appellant had 12 months to complete the work for that year. Furthermore, an untidy farmyard had been mentioned in the previous plan, as well as the current plan, as being an issue that needed attention. It was the opinion of the Appeals Officer that the medical evidence presented, while relevant, did not provide adequate grounds to allow his appeal.

Case 2 - Rural Environment Protection Scheme (REPS)

An Audit inspection was carried out and the applicant was informed that the total level of non-compliance resulted in a penalty of 30%. This consisted of a 20% penalty under Measure 5 (Maintaining Farm and Field Boundaries) and a further 10% under Measure 8 (Appearance of Farm and Farmyard).

The appellant disputed the findings in the notification of appeal and described fences on the farm as being maintained to a standard

beyond the requirements of REPS. A problem with waste plastic was also outlined by the appellant, where the remnants of material from a previous farming system would re-emerge.

An oral hearing was held in relation to the case. At this hearing it emerged that there was a second stock-proof fence outside the original wire fence observed by the inspector in one of the plots. The position in relation to the fence of the second plot could not be established at the oral hearing. In order to form a definite opinion in relation to this plot, the location in question was visited. After examining the site in contention, it was found that this area listed on the inspection report was stock-proof at the original inspection. An incorrect plot had been cited in the inspection report form as not being stock-proof. On this basis, the penalty was removed as the original decision conveyed to the farmer was incorrect.

The penalty in relation to Measure 8 was also examined. A significant amount of waste plastic was found on the holding. The problem was attributed to farming practices prior to joining REPS. However, a considerable period of time had elapsed from joining REPS and the problem still exists. The penalty was found to be appropriate in this instance. The Appeals Officer allowed the appeal against the 20% penalty under Measure 5 but disallowed the appeal against the 10% penalty under Measure 8. Therefore, the overall penalties were reduced from 30% to 10%.

Case 3 - Rural Environment Protection Scheme (REPS)

An appellant's second year REPS application was due to be received in the Department no later than 31

January 2002 in order to avoid a late application penalty.

The second year application (1C Form) was not received in the Department until 4th June 2002. As the 1C form was received in the Department 82 working days late a 100% penalty was applied on his second year payment (i.e. no payment). The appellant stated that he never received the 1C application in the post from the Department.

This appeal was disallowed. The Scheme conditions state that responsibility for ensuring that applications for second and subsequent years payment are submitted rest with the beneficiary.

Case 4 - Extensification

A farmer appealed the refusal of his EU Extensification Premium payment. The Department of Agriculture and Food determined, on the basis of the census returns submitted by him, that he exceeded the stocking density limit for his holding. The appellant stated that age and ill health prevented him from completing farm records himself, he had to rely on another person, who was inexperienced in this work, who innocently overstated the stock numbers in the records.

The purpose of the Extensification premium payment is to encourage and reward extensive farming and is available to farmers subject to certain conditions being met.

In the year 2001 a maximum stocking density for Extensification premium eligibility was set at 2 livestock units per hectare of forage area as per Area Aid declaration.

The farmer concerned notified the Department he was opting for the Census System to calculate his entitlement to Extensification premium for the year 2001. During the year, he also returned the

Department forms CEN1 and CEN2 showing the number of reckonable livestock units on his holding on each of the five census date during the year. These figures were compiled on the basis of his recorded entries in his animal Bovine Herd Register (BHR). The Department used these figures to calculate his eligibility for Extensification Premium in year 2001 and found he had exceeded the 2 livestock units per hectare stocking density limit. On this basis the Department decided the farmer was not eligible for Extensification Premium payment in 2001.

The farmer's Agricultural Consultant submitted revised stocking density figures for 2001 based on the information recorded on the BHR but the revised figures were rejected by the Department on the grounds that the census returns already submitted on forms CEN1 and CEN2 could not be amended at that late stage.

The Appeals Officer carried out a thorough check on the reckonable livestock units on the holding for each of the five census dates in 2001 based on the entries on the BHR, which was agreed to be factual and correct. The Appeals Officer calculated the stocking density to be marginally in excess of the 2 livestock units per hectare limit for Extensification premium, notwithstanding the farmers appeal on the grounds of age and ill health the scheme terms and conditions must be observed. The facts as determined independently by the Appeals Officer in this case determined the outcome of the appeal, which was disallowed.

Case 5 - Special Beef Premium

An applicant under the 2001 Special Beef Premium Scheme appealed a decision not to issue payment on almost 29 animals which were deemed in excess of the 2.0 Livestock

unit per Hectare Premium limit for his holding.

The appellant had declared 40.88 Ha of Forage lands allowing the payment of 81.76 livestock units of premium in 2001, i.e. $(40.88 \times 2.0 \text{ LU per Ha})$. The farm's milk quota at 40,703 gallons utilized 51.03 livestock units with the remaining 30.73 livestock units available for payment of Special Beef Premium. However the 70 Beef animals submitted over 2 applications for that year exceeded the limits and the appellant was not paid premium in respect of almost 29 animals.

The appellant sought to appeal this decision on the grounds that he had forgotten about the limits on premium payments. He normally applied only once during the year and this was done in January. Having checked his identity cards in November 2001, he realized that he had a lot of animals that were eligible on age grounds and submitted these animals on a second application for premium lodged in November of 2001. While he was aware of the Terms of the scheme, he sought that the November application be brought forward and processed under the 2002 scheme year. If this were allowed he would not be at the loss of the premium on the animals.

The Appeals Officer found that the appeal to have the November application brought forward to 2002 could not be upheld. The Terms of the Scheme were quite specific on the issue and the grounds put forward did not allow the setting aside of this. However it was also noted that in calculating the amount of Beef Premium that could be paid, the Department had counted his first Beef Premium application in total leaving only 2.21 units from the second application eligible for payment. Included in this first application were 15 animals of over 2 years and these were counted at 1.0 livestock units each. Special Beef animals of less than 2 years are

counted at 0.6 livestock units each and the Appeals Officer noted that had these younger animals (from the second application) been counted in place of the older animals, the appellant would be in a better position. It was clarified that there was no requirement that the animal submitted first be used in calculating the limit, provided that the overall limit of 2.0 livestock units was not being breached.

While the appeal was not granted to the appellant, the re-calculation of the stocking density limits using the younger animals allowed for the payment of a further 10 premiums. The appellant was entitled to a further €1,360 under the Special Beef Premium Scheme for 2001.

Case 6 – Ewe Premium

An applicant applied for ewe premium on 50 ewes. A compliance inspection carried out by the Department on 20/3/02 found that 29 of the 50 sheep the subject of his application were located on land that was not notified to the Department in accordance with the provisions of paragraph 3 (vii) of the Scheme conditions. In view of the fact that the number of non-compliant sheep exceeded 20% the Department declined to pay any ewe premium on this application.

The applicant stated that it was a genuine oversight by him in not notifying the Department of the movement of 29 sheep to land owned by a neighbour for short term grazing and he intended no fraud or irregularity.

This appeal was partially allowed. The Appeals Officer found that the movement of 29 sheep to undeclared lands was in breach of paragraph 3(vii) of the Scheme conditions, which requires an applicant to provide advance notification in writing to the local office of the Department of any changes regarding the location(s) of

the sheep flock from that, declared in Section 3 of the application form. In view of this requirement payment of the premium on the 29 sheep found on undeclared lands was declined. Payment of the premium on the other 21 sheep found on inspection to be compliant with the Scheme conditions was approved on the basis that the Department Inspectors accepted that the sheep on the undeclared lands belonged to the applicant. In reaching the decision to pay the premium on the 21 sheep found to be compliant with the Scheme conditions the Appeals Officer accepted that the applicant made a genuine mistake in not notifying the Department of the movement of the 29 sheep to his neighbour's land and no fraud or irregularity was intended by this action.

During the examination of the circumstances surrounding this case it was noted by the Appeals Officer that a net forage area of 51.99 hectares was confirmed following inspection. As the Terms and Conditions of the Area Based Compensatory Allowance Scheme indicated that there was a cap of 45 hectares on which payment could issue and the applicant had a found area in excess of 45 hectares, clarification was sought from the Department as to the grounds for the imposition of a penalty. The Department confirmed that as the over-declaration in respect of the forage area could not have yielded a higher payment to the application that no penalty should apply.

Case 7 - Area Based Compensatory Allowance

The appellant in this case declared a forage area of 73.68 hectares. During a ground inspection of the Area Aid declaration the actual forage area found was 51.99 hectares indicating a shortfall of 21.69 hectares. As the area over-claimed exceeded 20% of the area found it was deemed that no area-linked payments could be made for the year in question.

7. Recommendations to the Department of Agriculture and Food arising from Appeals Cases

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

1. When an appeal is lodged, the relevant file and a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed are requested from the Department. The case should be examined thoroughly by the relevant Department Official and a comprehensive report prepared for the Agriculture Appeals Office so that the Appeals Officer has all the information from the Department at the start of the case.
2. When the Department notifies a farmer of proposed penalties, a full list of the penalties, the specific reasons for them and the relevant terms and conditions for each penalty should always be given.
3. When a farmer is penalised under one of the schemes and is informed of the right of appeal to the Agriculture Appeals Office, the Department should at the same time go ahead and arrange for payment of the grant, less the amount of the penalty. In some cases, the practice has been for the Department to withhold all payment from the farmer following the lodgement of an appeal until such time as the appeal is finalised.
4. In some Department Schemes, the Official who carries out the review of a case after a penalty has been imposed is the same person who decided to impose the penalty in the first place. This is not satisfactory. A person other than the person who imposed the penalty initially should always carry out the review.
5. If the Department issues a notice of intention to impose a penalty and requests the farmer to reply within the two weeks if they wish to have the case reviewed, then the Department should wait at least two weeks before confirming the penalty.
6. Where the Agriculture Appeals Office allows an appeal and the Department is not seeking a review of the decision, the appropriate action should be taken by the Department within 4 weeks. If the Department is seeking a review, this should also be done within 4 weeks.
7. The processing of reconciliation forms completed by farmers under the Extensification scheme should be expedited.
8. The movement Permit system for farm-to-farm movement of animals (FMD 9) should have two perforated sections to be torn off and returned to the CMMS (one for the buyer and one for the seller) so that one party is not relying on the other for compliance.

The Department have indicated that they are in the process of doing this.
9. The Department should issue reminder notices to participants who have still not returned their REPS 1C Forms approximately 2 weeks before the date on which penalties for late applications apply. (See case 3 above).

The Department has indicated that many farmers wait until the last few days before lodging their form. The current warning system comes into operation on the fourth working day after the end of the month that the form was due.

8. Recurring mistakes by scheme applicants that lead to penalties

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

Livestock Schemes

- Failure to check animals through a crush before applying
- Failure to keep animals properly tagged
- Failure to keep Herd/Flock Register up to date
- Failure to check the Herd/Flock Register before applying for grants
- Failure to check that the Cattle Movement Monitoring System (CMMS) has been notified when animals are bought privately (farm to farm)
- Selling animals within the retention period
- Failure to submit applications on time

These failures and omissions lead to cases where the applicant may,

- Apply for grants on dead animals or animals that were sold
- Apply for Special Beef Premium on female animals

Rural Environment

Protection Scheme (REPS)

Failure to carry out scheduled works such as,

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

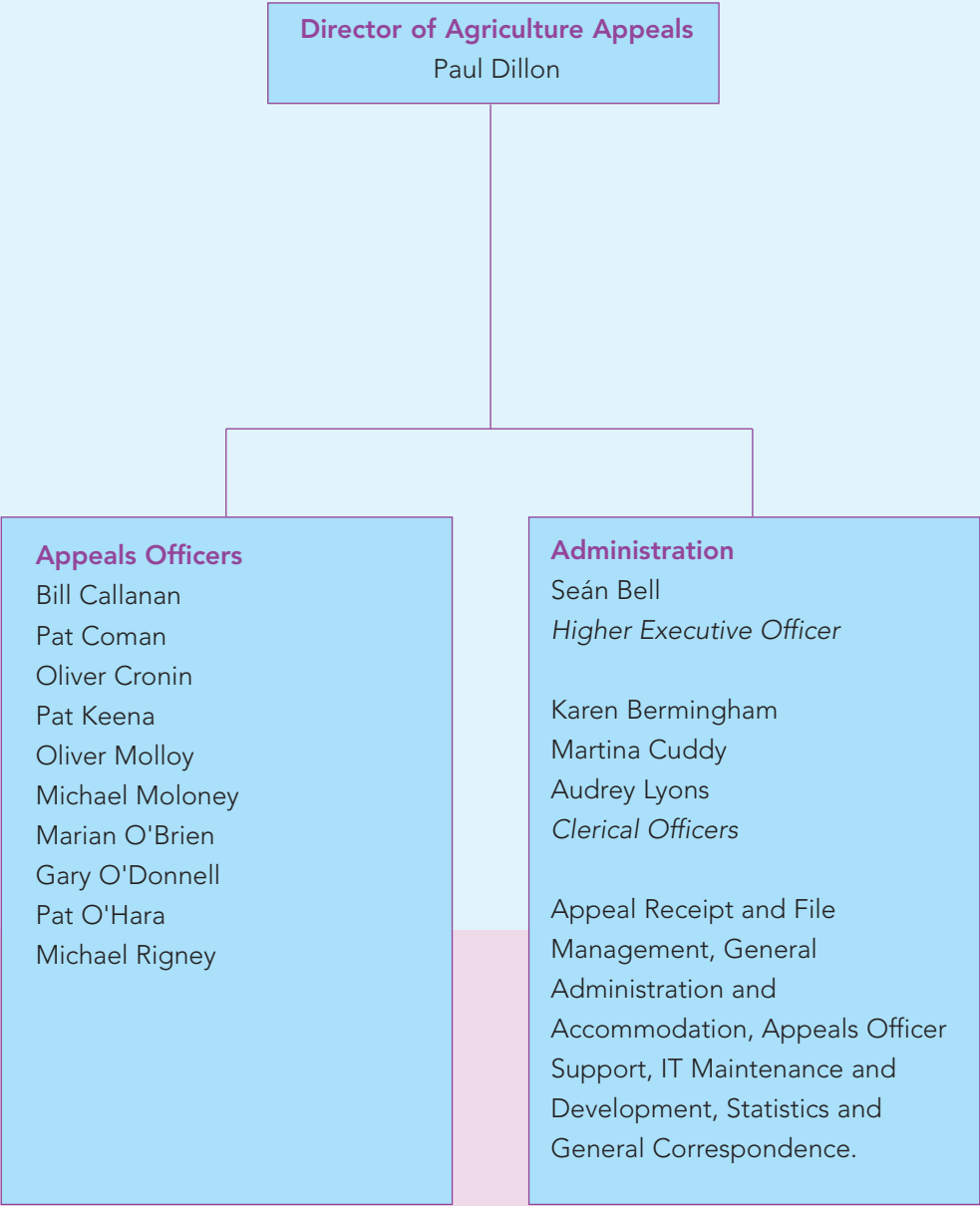
Also common among REPS applicants,

- Failure to amend plan to reflect changes in farming system
- Neglect of administrative issues such as the timely return of forms REPS 1A and REPS 1C

On-Farm Investment Schemes

- Proceeding with work before the Department of Agriculture and Food has given written approval
- Failure to get planning permission before reaching the age of 35 – failing to qualify for 15% top-up

9. Agriculture Appeals Office Staff



Appendices

Appendix A

Agriculture Appeals Act 2001



Number 29 of 2001

AGRICULTURE APPEALS ACT, 2001

ARRANGEMENT OF SECTIONS

Section

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

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

SCHEDULE

SCHEMES

ACTS REFERRED TO

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



Number 29 of 2001

AGRICULTURE APPEALS ACT, 2001

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

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

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

“Director” means Director of Agriculture Appeals;

“functions” includes powers, duties and obligations;

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

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

(2) In this Act—

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

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

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

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

S.1	(d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.
Appointment of appeals officers.	2.—The Minister may appoint such and so many of his or her officers or, following selection at competitions held by the Civil Service and Local Appointments Commissioners, other persons holding positions within the Civil Service, as he or she considers appropriate, to be appeals officers for the purposes of this Act.
Director of Agriculture Appeals.	3.—The Minister shall, following selection at a competition held by the Committee on Top Level Appointments in the Civil Service or the Civil Service and Local Appointments Commissioners, appoint a person holding a position within the Civil Service as the chief appeals officer who shall be known as the Director of Agriculture Appeals, and is in this Act referred to as the “Director”.
Deputy Director of Agriculture Appeals.	4.—One of the appeals officers shall be designated by the Minister to act as the deputy for the Director when he or she is not available.
Functions of appeals officers.	5.—(1) The functions of appeals officers shall be to consider and make determinations on appeals made by affected persons against decisions taken by officers of the Minister in respect of applications for entitlement under the schemes set out in the <i>Schedule</i> . (2) The Minister may, from time to time, amend by regulations the <i>Schedule</i> so as to add to or delete from the <i>Schedule</i> 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 <i>Schedule</i> , the decision shall, on notice of appeal being given to the Director, within the prescribed time and in the prescribed form, be referred to an appeals officer. (2) Regulations may provide for the procedure to be followed on appeals under this Act. (3) An appeals officer, when deciding a question referred under subsection (1), shall not be confined to the grounds on which the decision of the deciding officer was based, but may decide the question as if it were being decided for the first time. (4) An appeals officer shall determine an appeal, as soon as is practicable, having regard to any guidelines issued or regulations made in this regard by the Minister.
Oral hearings.	8.—(1) An appeals officer shall, if so requested by the appellant, hold an oral hearing for the purpose of an appeal referred to him or her under this Act. (2) An oral hearing under this section shall be held in private. (3) An appellant may represent himself or herself or be represented by another person at the oral hearing of his or her appeal. (4) Where an appellant is represented by another person at the oral hearing of his or her appeal, the appeals officer hearing the

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

appeal may examine the appellant, if the appeals officer considers it S.8 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.

9.—(1) The decision of an appeals officer and the reasons for Decisions. 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.

10.—(1) An appeals officer may, at any time revise any decision Revised Decisions of an appeals officer, if it appears to him or her that the decision was by Director and erroneous in the light of new evidence or of new facts brought to his appeals officers. 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.

11.—Any person dissatisfied with—

Appeals to High Court.

- (a) the decision of an appeals officer, or
- (b) the revised decision of the Director,

may appeal that decision or revised decision, as the case may be, to the High Court on any question of law.

12.—(1) Where representations are made to the Minister under section 15(2) or 16(2) of the National Beef Assurance Scheme Act, 2000, the Minister shall upon receipt of such representations refer them, as soon as may be, to the Director for advice. Representations under National Beef Assurance Scheme Act, 2000.

(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.

(3) The Minister shall have regard to any advice given to him or her under this section before refusing an application for the grant of, or revoking, a certificate of approval under the aforesaid Act.

13.—(1) Where representations are made to the Minister under Article 8(1) of the Diseases of Animals Acts, 1966 to 2001 (Approval and Registration of Dealers and Dealers' Premises) Order, 2001 (S.I. No. 79 of 2001), the Minister shall, upon receipt of such representations refer them, as soon as may be, to the Director for advice. Representations by certain animal and poultry dealers.

	[No. 29.] <i>Agriculture Appeals Act, 2001.</i> [2001.]
S.13	<p>(2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.</p> <p>(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.</p>
Annual reports.	<p>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.</p> <p>(2) A report under <i>subsection (1)</i> shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.</p> <p>(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.</p>
Regulations.	<p>15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.</p> <p>(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.</p>
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.	<p>18.—Part I of the First Schedule to the Ombudsman Act, 1980, is amended by the substitution for “Department of Agriculture” of the following:</p> <p>“Department of Agriculture, Food and Rural Development Appeals Officers under the <i>Agriculture Appeals Act, 2001</i>”.</p>
Short title.	19.— This Act may be cited as the Agriculture Appeals Act, 2001.

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

SCHEDULE

Section 5.

SCHEMES

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

Appendix B

Agriculture S.I. No. 193 of 2002

Agriculture Appeals Regulations 2002

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,
Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE

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

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Appendix C

Agriculture S.I. No. 558 of 2002

Agriculture Appeals Act 2001 (Amendment of Schedule)
Regulations 2002

S.I. No. 558 of 2002

Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002

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

1. These Regulations may be cited as the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002.
2. The Schedule to the Agriculture Appeals Act 2001 (No. 29 of 2001) is amended -
 - (a) by deleting the following schemes -
 - “Beef Cow Scheme in Less Severely Handicapped Areas and Coastal Areas with Specific Handicaps”,
 - “Cattle Headage Scheme in More Severely Handicapped Areas”,
 - “Equine Headage Scheme in all Disadvantaged Areas”,
 - “Goat Headage Scheme in All Disadvantaged Areas”, and

- “Sheep Headage Scheme in All Disadvantaged Areas”,
- and
- (b) by adding the following schemes -
 - (i) “Disadvantaged Areas Compensatory Allowances Scheme” before mention of “EU Area Aid Scheme (including the Arable Aid Scheme)”, and
 - (ii) “Scheme of Grant Aid for the Development of the Organic Sector” after mention of “Scheme of Early Retirement from farming”,

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

TABLE SCHEDULE

Schemes

- Disadvantaged Areas Compensatory Allowances Scheme
- EU Area Aid Scheme (including the Arable Aid Scheme)
- EU De-seasonalisation Slaughter Premium Scheme
- EU Ewe Premium Scheme
- EU Extensification Premium Scheme
- EU Slaughter Premium Scheme
- EU Special Beef Premium Scheme
- EU Suckler Cow Premium Scheme
- Farm Improvement Programme (FIP)

Farm Improvement Programme (FIP)
Horticulture

Installation Aid Scheme (IAS)

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

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

National Scheme of Investment Aid
for the Improvement of Dairy

Hygiene Standards (introduced May
1999)

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

Rural Environment Protection Scheme
(REPS)

Scheme of Early Retirement from
farming

Scheme of Grant Aid for the
Development of the Organic Sector

Scheme of Grant-Aid for Investment
in Alternative Enterprises

Scheme of Grant-Aid for Investments
in Agri-Tourism

Scheme of Installation Aid (SIA)

Scheme of Investment Aid for Farm
Waste Management (FWM)

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

Scheme of Investment Aid for the
Improvement of Dairy Hygiene

Standards (DHS)

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

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

GIVEN under my Official Seal,

6 December 2002

JOE WALSH,
Minister for Agriculture and Food.

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Agriculture
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