

Sample Cases

2011

6. Selected Appeal Cases

Case 1 Rural Environmental Protection Scheme (REPS) 3

The REPS 3 contract commenced 1st November 2006 with a contracted area of 28.96ha and payment to year 5 was claimed with no changes to this contracted area. During November 2010, the Department notified the appellant the eligible area determined for REPS payment purposes was found to be 28.52ha and that as a consequence a recoupment of the annual REPS payments on an over-claimed area of 0.44ha was required.

In the letter of appeal, the REPS Planner stated the Department's audit determined 28.52ha as opposed to 28.96ha, but that a review of the plan had shown that 3.4ha of set-a-side should have been included from year 3 onwards and thereby giving more than enough area to cover the area difference determined by the Department.

REPS Circular No. 10/07 "Notification of Amendment to REPS 2, REPS 3 and REPS 4 Terms and Conditions – Reduction of Compulsory Set-aside to zero in 2008" of 22nd November 2007, as issued to all REPS Planners and Planning Agencies, stated *"Arising from the European Commission reduction in compulsory set-aside to 0% in 2008 participants of all REPS schemes may declare set-aside land as forage or arable area on their 2008 single payment scheme application and qualify for REPS payment subject to the following: Arable (SFP) Set-aside - The change in REPS contract area must be notified to the local office of the department on the farmers annual REPS 1C form. REPS area for payment can be increased in line with reductions in set-aside area on eligible REPS land (i.e. owned or leased areas). No amended plan is necessary. Payment is conditional on the area claimed as arable or forage on the 2008 SFP application being farmed to REPS specifications"*.

The Appeals Officer examined the REPS 1C forms for all years and the REPS file content and found no evidence that the appellant had notified any change in contract area as per the requirements of Circular 10/07. On the 2nd year REPS 1C, submitted after Circular 10/07, the appellant had entered 3.40ha of set-a-side, whereas the contract area should instead have been increased in order to receive payment on the old set-a-side area and the set-a-side area left at zero. The REPS 1C forms for year 3 to year 5 stated 0.00ha for set-a-side but again there was no increase in contract area. The Appeals Officer's decision was that regards the set-a-side land the provisions required for payment set out in Circular 10/07 were not met.

The Appeals Officer noted that during year 5 the appellant deleted 0.47ha of short term rented land from the pre-printed 2010 Single Payment Scheme application and noted that the Department had deducted this 0.47 ha from the remaining area in calculating the payable area, this was aside from deductions for the old set-a-side plots, house and curtilage. The Appeals Officer found that the Department had incorrectly deducted for the short term rented land in the 2010 area check as it was not part of the contract paid area. The eligible area calculated from the total 2010 SPS area, less the required REPS deductions and less the unclaimed old set-a-side parcels, was found to be marginally in excess of the REPS 3 contract area of 28.96 ha and no over-claim existed. The appeal was allowed.

Case 2 Single Payment Scheme (SPS)

An application under the 2010 SPS was received and was examined by the Department of Agriculture, Food and the Marine. The appellant was notified that a dual claim had been made by another farmer in respect of certain land parcels. Both parties claimed entitlement to the land and the appellant informed the Department he had rented the land 'without maps' and understood this was allowed, while still allowing him to claim his full SPS entitlements. However, the Department found as he did not have the land on a date, which included the 31st May 2010, as required by the scheme's Terms and Conditions, he did not comply and an overdeclaration penalty was applied. As the overdeclaration exceeded 50% of the land area deemed eligible, the penalty of a nil payment in 2010 was applied together with an administrative fine to be recouped over the following three years.

At an oral hearing, the appellant explained that although he had been the scheme applicant for some time he had only recently taken over completing forms under this scheme. He said he understood that he could rent land short term and still claim his SPS entitlements using that same land. He said the land was rented without maps and this is clearly stated on the invoice for the transaction. He was unsure how the person who rented the land obtained the maps. The appellant confirmed that the other farmer had cattle on the land on the 31st May 2010 and that the other farmer looked after the cattle.

In considering this case, the Appeals Officer had regard to the EU Regulations, the Terms and Conditions and the principles of natural justice. In particular, the requirement relating to the 31st May rule for land availability, as specified in the Terms and Conditions, which states *"All of the hectares of land declared by you to support your claim must be subject to an agricultural activity by you for a period that includes 31 May 2010."*

The appellant confirmed that he was not the person carrying out the agricultural activity on the land on the 31st May 2010 and the land was not available to him on that date. Therefore, it was found he was not in compliance with the Terms and Conditions of the scheme. Any advice to the contrary is incorrect. If in keeping with standard farming practice, a farmer enters into a rental or grazing agreement for any of the lands declared on the SPS application after 31st May he/she is obliged to enter into a signed written rental or grazing agreement which includes information on the start and end date, lands taken, herdnumbers of both parties etc.

Where it is found that the application of a penalty is correct, the penalties are set out in the Terms and Conditions of the scheme. The Agriculture Appeals Office cannot set aside or change the penalties in such circumstances. The appeal was disallowed.

Case 3 Single Payment Scheme Cross Compliance

The appellant applied for SPS in 2010. The Department carried out an SPS Ground Inspection and concluded that there was an area over-declaration. In particular, a portion of one parcel of land was rejected on the basis that it was overgrown with scrub, no agricultural activity was taking place on the land and it was not being maintained in Good Agricultural and Environmental Conditions (GAEC).

The appellant appealed the Department's decision and questioned the Department's interpretation of "agricultural activity". He stated that the lands in question were maintained in GAEC. The appellant stated that as this portion of land was wet, it was fenced off and was for grazing only in dry summers, unfortunately it had not been grazed in 2010 due to poor weather conditions. The appellant referred to Annex III of Regulation (EC) No 73/2009 which states a minimum level of maintenance is required and in his view he did apply a minimum level of maintenance. The Department presented photographs which the inspecting officer had taken during his inspection. The photos showed an area overgrown in scrub, heathers, small bushes, rushes and marshy ground.

In considering the case, the Appeals Officer had to have regard to the Terms and Conditions of the scheme and to the relevant EU legislation. In particular Section 4 of the 2010 SPS Terms and Conditions details 'Land that is eligible for SPS Payments', it states "*an 'eligible hectare' is land that is used for an agricultural activity...*", Section 5 defines 'Agricultural activity' as "*the production, rearing or growing of agricultural products including..., or maintaining the land in good agricultural and environmental condition as established under Article 6 of Regulation (EC) No 73/2009*". The Single Farm Payments Scheme "Guide to Cross Compliance" was issued to all herd owners in March 2005 and GAEC is detailed in Section A of this booklet. It states that "*GAEC is applicable to all farmers in respect of all lands farmed*". Of particular significance is Section 4 (page 6 and 7) which details "*minimum level of maintenance*", it requires for "*appropriate grazing and/or cutting managements practices*".

As the appellant did not carry out any agriculture activity or a minimum level of maintenance to keep the land in GAEC, the Appeals Officer found that the Department were correct in their decision that land could not be regarded as eligible area as defined under the scheme. The appeal was disallowed.

Case 4 Single Payment Scheme (SPS) and Disadvantaged Areas Compensatory Allowance Scheme (DAS) Cross Compliance

The appellant had declared 54ha. The Department undertook an eligibility inspection and rejected 11ha on the basis that the claimed parcel was not fenced/stock-proof and there was no evidence of farming activity. The appellant stated the land was leased rough grazing and farmed since 1997 which he used to move stock to as the home farm is subject to flooding. Lowland ewes and cattle were farmed and the rough grazing was used for wintering ewe lambs, for dry ewes after weaning, to graze a mare over the winter or whenever grass was scarce. The appellant stated the lands were fenced by means of an electric fence. The appellant advised that he was badly injured in a fall in July 2010 and was unable to farm until late September 2010 and therefore, he had not put sheep on the rough grazing during summer 2010.

The appellant's advisor stated the land was approximately 2 miles from the farm base, and that the land's Special Area of Conservation (SAC) status placed additional rules and restrictions on the land and the National Parks and Wildlife Service (NPWS) do not wish to see additional or new fencing on the land. The land was included in the appellant's Rural Environmental Protection Scheme (REPS) agri-environmental plan since 1997 which stated "*light graze with cattle or sheep / maintain in its present undamaged condition/ continue present management..*" The advisor noted a change had appeared in the SPS rules in 2008, when it was stated external boundaries must be stock-proof and appropriate to the farming enterprise whereas prior to 2008 forage had to be accessible and available for grazing with no stated compulsion on fencing. The advisor stated 25% to 30% of the land was covered in scrub but with some grazing beneath canopy and the remainder consisting of bracken and heather. The advisor stated hill or mountain land that was traditionally unfenced did not require sheep fencing and therefore no issue as regards fencing was foreseen with this land. The appellant's representative stated the land is normally farmed from the first week in July and a fence is erected when in use but the injury prevented the land from being farmed. He requested the case be considered as one of force majeure.

The 2010 SPS Terms and Conditions state "*for land to be eligible ...*

3. There must be appropriate fencing for the farming enterprise. Appropriate fencing means stock-proof fencing that will control the applicant's animals and also the neighbouring farmer's animals. In mountain/hill areas this generally means sheep fencing;

4. There must be defined external boundaries except in the case of commonage..."

Land maintenance

The land must be maintained in Good Agricultural and Environmental Condition (GAEC). As regards maintenance of mountain and hill land, generally the only way of keeping it in GAEC is by grazing it with livestock. The applicant must be in control of all land parcels declared, and the applicant must maintain stock-proof fencing."

The Appeals Officer noted that the SPS Terms and Conditions only specified commonage as exempt from the requirement for stock-proof fencing on eligible land. In this case, the lands were private rented lands and there is no stated exclusion in the Terms and Conditions from the fencing requirement even where those lands may have been traditionally unfenced.

On the August inspection date, there was no evidence of agricultural activity found and the land parcel was not stock-proof. The Inspecting Officer found one boundary fenced but the other boundaries were open, evidence of heavy scrub in areas and bushes dispersed around the parcel and no evidence of any farming activity on the land.

The medical evidence confirmed the accident took place in July 2010, a date after the 2010 SPS application. The Appeals Officer accepted that the injury had curtailed the appellant's ability to farm. Unfortunately, at that stage the parcel had been applied on as being eligible and meeting the SPS requirements and the 31st May 2010 for availability had elapsed. The land had also been on previous SPS applications and there was sufficient time available to have met the stock-proofing requirement. The current REPS plan made no mention of boundaries being exempted from fencing.

The Appeals Officer did not accept that the occurrence of the injury mitigated the requirements to have the land stock-proofed as set out in the 2010 SPS Terms and Conditions. The appeal was disallowed.

Case 5 Single Payments Scheme (SPS) Nitrates

The Department undertook an inspection of the appellant's farm in March 2010 on behalf of the local authority in relation to the Good Agricultural Practice for the Protection of Waters Regulations (Nitrates Regulations). The findings of the inspection were:

- clean water was not being diverted to a clean water outfall to minimise soiled water generation;
- evidence of inadequate collection of livestock manure, organic fertiliser and soiled water;
- earth lined lagoons on the holding for the storage of milking parlour washings, organic fertiliser and soiled water did not comply with the Department's storage specifications.

The overall cross-compliance result was a 20% sanction.

The appellant sought a review by the Department and provided evidence by way of water samples taken from test holes on the farm adjacent to one of the lagoons which indicated no pollution. The Department in its reply stated that the intent sanction had been applied as effluents from yards and associated building were stored in earth lined structures which were deemed as unsuitable. The breach was considered to have occurred knowingly to the appellant and this justified the intent sanction. The Department considered the submitted documentation and the other pollution control facilities on the farm and reduced the penalty from 20% to 15%.

At the oral hearing, the appellant did not dispute that clean water was not diverted to a clean water outfall to minimise soiled water generation, and this had subsequently been corrected. He stated the lagoon had been renovated and enlarged and water samples taken indicated no instance of pollution. Issue was taken by the appellant with the intent sanction applied.

In considering the case, the Appeals Officer had regard for the EU Regulations governing the SPS as set out in the Terms and Conditions. The Appeals Officer noted that in the course of the Department's inspection it was found there was a risk of run off from the yard that could directly/ indirectly enter the watercourse. The fact that such a risk existed warranted the imposition of a sanction. It was found that the Department was correct in imposing a sanction as the structures found were a potential risk. It was noted that subsequent to carrying out improvement works the structures were deemed acceptable by the local authority.

The Appeals Officer found there was a risk of pollution but this could be construed more as negligence rather than as intent. It was noted from the provided documentation that water samples were not adversely affected. It was accepted that works had been carried out on the structures which served to minimise any future risks. Accordingly, it was the Appeals Officer's decision that the application of a penalty in this instance was justified but that it should be reduced to 5%. The appeal was partially allowed.

Case 6 Rural Environmental Protection Scheme (REPS) 3

The appellant commenced in REPS 3 on 1st November 2006. The Department carried out an inspection on the appellant's holding in May 2010 and found that hedgerows had been removed between plots in two locations. A penalty of 100% was applied.

The appellant appealed the decision on grounds that the area marked as hedgerow on his plan in one of the plots was not a hedgerow but was bramble and briars which had grown on dumped soil. He argued that his planner had marked this in his plan as a hedgerow in error. In relation to the other plot, the appellant appealed on grounds that the hedgerow had been removed by a contractor in error and without his knowledge. The appellant had been requested to tidy up the hedgerow between two plots as it had encroached onto a right of way. The appellant submitted that he was not present on the farm at the time the work was being carried out and upon his return to the farm the contractor had removed the full hedgerow on one side of the plot and was about to remove the hedgerow on the other side. The hedgerow consisted of a bank with mature trees growing on top and the appellant argued that it was of poor quality and of little value to animals and birds. The appellant stated there was no benefit to be derived from removing the hedgerow and he was prepared to replace the hedgerow that was removed. The appellant also cited medical circumstances as grounds of appealing the penalty.

The Appeals Officer examined the Terms and Conditions of REPS 3 and the Farmers Handbook which issued to all farmers on joining the scheme. In particular, the Appeals Officer noted the following in respect of the payment of grant aid:

"Payment shall be made in respect ... and are farming in accordance with an agri-environmental plan... in compliance with

- *All relevant EU requirements and national legislation*
- *The Department's Specification for Repls planners and*
- *The terms and conditions of the scheme."*

The Appeals Officer considered the Farmers Handbook for REPS and in particular the following:

"Under Measure 5

- *You must retain all field boundary features on all of the land farmed.*
- *You must retain hedgerows/stonewalls on all of the land farmed."*

There was no dispute concerning the Department's finding that the hedgerows had been removed. The Appeals Officer noted that the hedgerows that had been removed were marked yellow on the appellant's REPS plan and were therefore subject to the Measure 5 requirements.

In considering the grounds of appeal that the hedgerow was included in the plan in error, the Appeals Officer held that the onus is on the farmer in conjunction with the planner to ensure the accuracy of plans. The Appeals Officer noted that the Department had not been notified the map was incorrect since the appellant's commencement date in 2006. The Appeals Officer stated that any errors in the plan are a matter between the appellant and the planner.

In relation to the removal of the second hedgerow which the appellant claimed was removed in error by a contractor, the Appeals Officer considered the grounds of appeal and the medical evidence submitted with the appeal. The Appeals Officer noted that the hedgerow had been removed in 2010 by a contractor and it consisted of mature trees which was obvious from photographic evidence submitted. The Appeals Officer did not accept that the contractor could confuse tidying up of the hedgerow with complete removal. While it was accepted the appellant was not present when the work was carried out, nevertheless, the Appeals Officer held that the participant is responsible for ensuring the requirements of the scheme are met. The Appeals Officer also considered the medical evidence submitted by the appellant. On noting that the appellant had continued to work off-farm and engage contractors to carry out work on the farm, the Appeals Officer did not consider that the medical circumstances were a contributing factor to the non-compliances identified. The appeal was disallowed.

Case 7 Single Payment Scheme (SPS) Nitrates

In June 2011, the appellant was informed by the Department that a 20% sanction was being imposed on their Single Payment Scheme (SPS) and Disadvantaged Areas Compensatory Allowance Scheme (DAS) 2008 applications, as the organic nitrogen produced on their lands was 363kg per hectare. This decision was appealed on the grounds that the appellant had intended to export 400 tonnes of farmyard manure (FYM) but was unable to do so due to the inclement weather in the autumn of 2008, and also due to a herd restriction under the Tuberculosis (TB) Eradication Scheme in December 2008. It was pointed out that the appellant was under the 250kg/ha (derogation) limit in 2006, 2007, 2009 and 2010.

At the oral hearing, the Department stated that an interim statement issued on 31st August 2008 advising that the appellant had reached 244 kg per ha. It was also stated that Organic N produced over the period of TB restriction was removed from the calculation, however, the Organic N level per ha for the calendar year 2008 amounted to 363 kg.

The appellant's adviser acknowledged the limit was exceeded but there was no intention or intent in exceeding the limit in 2008. It was stated there were external factors as it was planned to export around 400 tonnes but because of wet weather and consequential mucky road conditions this was not possible as the lands were on a main road. The appellant was also a licensed dealer and it proved difficult to sell cattle that year due to low cattle prices.

The Appeals Officer referred to Statutory Instrument No. 378 of 2006 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006 and to Statutory Instrument 101 of 2009. The Appeals Officer accepted that the Department had allowed for the period the herd was restricted under the TB Scheme, and also noted the appellant was issued with an interim Nitrates Statement on 31st August 2008. The Appeals Officer noted the appellant had increased stock numbers between September and December 2008 and this was after being made aware of the Nitrates level for the farm up to 31st of August 2008.

The Appeals Officer pointed out there was an extension given in 2008 to spread FYM until the 30th of November, and that another part of the farm where the FYM was also intended to be spread was accessible by a local road. The Appeals Officer found there were insufficient mitigating grounds to overturn the 20% penalty and the Department's decision was upheld. The appeal was disallowed.

Case 8 Organic Farming Scheme (OFS) 2010

The appellant commenced in the OFS on the 1st November 2009. The contract stated that *“Payment amounts will be calculated on the total eligible area for payment declared annually. This annual declaration must be made by you on Form OFS2 at the end of each calendar year and returned to us (The Department) as soon as possible the following year”*. Under the scheme, where livestock farming is undertaken, the area paid upon is calculated with regards to the number of livestock units (LU) held, with each 0.5 LU qualifying a hectare for payment.

The Department received an OFS2 Form from the appellant in February 2011 which was signed as being correct. The form was found to be incorrect as the appellant had over declared the livestock units on the farm for the year 2010, therefore qualifying a higher area. The Department wrote to the appellant and informed him that based on Stocking Density found an eligible area over claim would be dealt with in accordance with IACS rules, therefore an overclaim penalty was applied which amounted to no aid being payable for the year 2010.

The appellant stated that he felt that he was entitled to a pro rata payment for 2010. He admitted that the OFS2 Form was incorrect.

In considering the case, the Appeals Officer had regard to the Terms and Conditions of the scheme, the relevant EU legislation and the rules of natural justice. The relevant Terms and Conditions applicable to the appellant's Contract were dated 11th August 2007. The penalty imposed in this instance was detailed in Article 16 of Commission Regulation No 1975/2006 and required that where *“the area declared for payment... exceeds the area determined... - if the difference is more than 20% of the area determined, no aid shall be granted for the area – related measure concerned”*. However the penalty schedule of the relevant Terms and Conditions did not include reference to Article 16 of Commission Regulation 1975/2006. The penalty schedule in the 2007 Terms and Conditions allows for a recoupment of the overpayment due to an incorrect declaration however as the appellant had not been paid the 2010 OFS payment overpayment was not an issue.

The Appeals Officer found that it was more proportionate that the appellant was paid on a pro-rata basis for the correct area as determined by the Department based on the Animal Identification & Movement System (AIM) for 2010. The appeal was partially allowed.

Case 9 Single Payment Scheme (SPS)

An application under the 2010 SPS was received in respect of 18.09 ha of land. Additional land of 14.17ha was added by way of amendment form at a later date giving a total of 32.26ha of land. The appellant was informed that as he had not activated all his entitlements and had not used 6.18 Standard (NR) entitlements over the period 2009 and 2010, they would revert to the National Reserve.

At the oral hearing, the appellant explained that he holds entitlements with different values. He has been renting additional land over the past years and does not always have enough land to claim all his entitlements. He stated that he was unaware that he could change the order of payment of entitlements to ensure that all were activated over the two year period.

In considering the case, the Appeals Officer had regard to the EU Regulations, the Terms and Conditions and the principles of natural justice. In particular to this case are the requirements set out under the 2010 Terms and Conditions which state under Paragraph 22 'Payment on National Reserve entitlements in 2010 (Standard (NR) entitlements)' that *"A two year usage rule now applies to Standard (NR) entitlements. The usage of Standard (NR) entitlements will be rotated in the same way as Standard entitlements (see 24 below)"*.

Paragraph 24 'Maximise your entitlements payment in 2010' states *"Entitlements of all types not used in 2009 must be used in 2010 otherwise they will be lost to the National Reserve"*.

Prior to 2009, National Reserve entitlements were given a higher priority than standard entitlements and thus were paid prior to standard entitlements. This changed in 2009 and priority was given to the higher value entitlements unless the farmer requested a change in the order of payment. This meant that standard entitlements would be paid prior to National Reserve entitlements. In addition, entitlements had to be used over a two year period otherwise they would be returned to the National Reserve.

On the pre-printed 2010 SPS form, the appellant was informed that the 6.18 standard (NR) entitlements would be lost if not used in 2010 and was given the option of changing the order of payment of entitlements in column 7 of the application form. The appellant did not change the order of payment when submitting the Single Payment application form at the closing date of 17th May 2010 nor did he change the order of payment at any time thereafter. It was clear that by not changing the order of payment, the appellant did receive a higher payment in 2010 based on higher value entitlements being given first priority, it also resulted in the return of unused standard (NR) entitlements of lower value to the National Reserve as he did not have sufficient land declared to activate all the entitlements.

The Appeals Officer found that the appellant did not alter the order of payment in order to protect his standard (NR) entitlements. The appeal was disallowed.

Case 10 Rural Environmental Protection Scheme (REPS) 4

Following an on-farm inspection, a penalty of 50% was imposed under Measure 3, as a watercourse was not stockproof on the day of inspection.

At the oral hearing, the Inspecting Officer stated the penalty was applied according to the REPS 4 penalty schedule and was proportionate to the length of watercourse unfenced. He stated first-time participants had one year to prevent bovines access to the watercourses and the appellant had completed over 1 year of the REPS contract by inspection date (contract commencement date was 1st June 2009). He noted a letter was issued to all REPS participants on 13th July 2010, one month prior to the inspection, instructing that fences must be permanently in place for the duration of the REPS contract regardless of the presence of livestock. On the day of inspection, he noted there was no stock present in the field, the ground was suitable for machinery to travel on and there was no evidence of further fencing taking place i.e. stakes, wire present.

The REPS planner stated the task was completed by the end of year 1, i.e. 31st December 2010, as the anniversary date is 1st January and the letter received 13th July 2010, which superseded the REPS 4 specification, was only received shortly before the inspection. The letter required the fences to be permanently in place for the duration of the REPS contract whereas the specification only required a new participant to the scheme to prohibit access by bovines before the end of the first year. The REPS planner noted previous REPS programmes permitted temporary fences but this letter emphasised permanent fences. The REPS planner stated the penalty was harsh as the part unfenced (274m) of the total length to be fenced (2732m) was small and proposed it would be fairer if the weightings applied were proportionate to the percentage unfenced rather than the length unfenced.

The appellant stated that prior to receipt of the letter the contractor had commenced fencing a difficult piece around the house. She stated that the contractor was also a silage contractor and was not there consistently, however, it was understood they had to the end of the calendar year to complete the work. She stated that the drains also required to be cleaned prior to fencing and this involved another contractor which had added to the delay.

The letter, dated 13th July 2010, issued by the Agricultural Structures Division to all REPS 4 participants, states *"as a participant in REPS 4, please be aware that fences such as those required for habitats, boundaries and watercourses must be permanently in place for the duration of your REPS, regardless of the presence of livestock. Any exception to the above must be clearly detailed in your REPS plan."*

Prior to the issue of this notice, the Department acknowledged that they accepted what was stated in the Specification for REPS Planner which refers to *"For first time REPS participants, access by bovines to within 1.5 metres of watercourses must be prohibited before the end of the first year of the plan and thereafter..."*.

In this case, the inspection took place about 4 weeks after the July 2010 letter was issued and at this stage 90% of the work was completed. The REPS specification provided a timeframe to the end of the first year and there appeared confusion when this date actually occurred i.e. the day prior to your anniversary date (31st December 2010) or 12 months after contract commenced (31st May 2010). As this is not clarified anywhere, either date could be considered and in this case, the appellant understood it to be 31st December 2010. It was the Appeals Officer's decision where there was a significant change to the requirements there should be a period of grace given to allow applicants to comply with this requirement. The appeal was allowed.

Case 11 Rural Environmental Protection Scheme (REPS) 3

Following an on-farm inspection, two penalties of 10% each were imposed under Measure 1 for the recommended quantity of lime not applied and the planned organic nitrogen (N) exceeded. The relevant plan stated the total lime required was 47.02 tonnes, whereas the receipts and record sheets submitted only reflected that 40 tonnes was applied. For organic N, it exceeded the tolerance by more than 10%, as Year 2 figures showed 13,385.51kgs applied of which 4,000kgs was imported whereas the appellant's plan stated a maximum of 9,039kgs was permitted.

The appellant accepted that only 40 tonnes of lime was received and spread but emphasised he had not done anything environmentally damaging. An amended plan was submitted to reflect changes in the farming system with the introduction of maize silage. The appellant's planner noted the severity of the penalty rate compared to the rate imposed on an applicant who did not spread any of the required lime. Regarding the organic N, the appellant stated he imported slurry from a neighbour who was intensively stocked. It was noted that the nitrates limit were not exceeded and no pollution was caused, as the actual potential of the land for organic N was 13,741.35kgs.

Paragraph 27 of the Terms and Conditions of the REPS Document, dated 5th February 2004, states that *"It shall be the responsibility of the applicant to familiarise him/herself with his/her agri-environmental plan, the REPS Farmer's Handbook and those Scheme Terms and Conditions and with the consequences for breaches of the Scheme"*. In making an application to be admitted into the REPS Scheme an appellant signs an declaration which states at paragraph (ii) *"I have read and agree to be bound by the terms and conditions of the Rural Environment Protection Scheme"* and at paragraph (iv) *"I hereby undertake to carry out my farming activities in accordance with my Agri-Environmental Plan and the Department's Agri-environmental Specifications"*. Therefore, an appellant agrees to familiarise themselves with their REPS Plan and to farm in accordance with the specifications set out in that plan.

In relation to the lime requirements, the appellant accepted that he did not spread the required amount and therefore, did not comply with the REPS plan requirements. There is no provision in REPS 3 (unlike REPS 4) to apply a graduating scale for penalties. Regarding the organic N, although the applicant was within the limits for the potential of their grassland to take animal and other wastes, the onus is on the REPS participant and his planner to submit an amended plan in a timely manner to reflect changes. An amended plan submitted to the Department almost 14 months after the event was considered unacceptable. The appeal was disallowed.

Case 12 Animal Welfare, Recording and Breeding Scheme (Suckler Welfare Scheme)

The appellant was a participant in the Suckler Welfare Scheme in 2009 where 13 animals were registered. In June 2010, the Department informed the applicant that 13 calves were ineligible for payment, as the calves had all been weaned on the same date in contravention of the scheme's Terms and Conditions. A review of the decision was sought, but the Department upheld its decision. The matter was then appealed to the Agriculture Appeals Office. In the letter of appeal, the appellant accepted that the calves were all weaned on the same date.

Paragraph 8.5.2 of the Terms and Conditions of the Suckler Welfare Scheme is titled Graduated Weaning and states,

- *"Abrupt weaning of all animals at the one time is not permitted.*
- *For herds with more than 10 suckler cows, a gradual weaning procedure must be followed when weaning, with the following being the procedures permitted;*
- *At pasture: The herd of cows and calves are retained in a properly fenced field with a good grass supply (or with supplementary forage provided) and with a concentrate creep for the calves. Calves must be weaned in at least two separate groups with each group being removed at a minimum interval of five days. The first group of cows must be removed allowing their calves to stay with the remaining herd. Another method is to separate cows and calves by means of a well-powered electric fence (up to three strands may be needed). After a few days the cows can be taken away to another area. Again the cows must be weaned in at least two separate groups.*
- *Indoors: Calves are housed in a pen adjacent to the cows with access to these cows. Calves must be weaned in at least two separate groups with each group being removed at a minimum interval of five days. The first group of cows must be removed allowing their calves to stay with the remaining herd. Cows for culling and those in poor body condition (e.g. young cows or very old cows) should be weaned first and late calving cows in good body condition weaned towards the end.*
- *Date of weaning must be recorded in the Animal Events System."*

The Appeals Officer noted the appellant had attended a training course on the Suckler Welfare Scheme in 2009 which took place shortly before meal feeding the calves had commenced. The Appeals Officer concluded that by weaning all 13 calves on the same date the appellant had breached paragraph 8.5.2 of the scheme's Terms and Conditions. The appeal was disallowed.

Case 13 Early Retirement Scheme (ERS 2) 2000

The applicant was accepted into the Early Retirement Scheme (ERS) 2000 with a commencement date of 21st December 2006. In 2011, the Department informed the applicant that as a result of insufficient documentary evidence of his farming experience for the 10 year period 1996 to 2006, the Department deemed him ineligible for payments under the scheme and that all payments made to date were to be recouped. This decision was subsequently appealed to the Agriculture Appeals Office.

At the oral hearing, the Department stated that arising from an EU Commission audit, the Department had been obligated to satisfy the auditors that all participants had the requisite length of farming experience in accordance with paragraph 5.7 of the scheme's Terms and Conditions. In the appellant's case, the Department were not satisfied that there was documentary evidence that the appellant had farmed for 2 of the 10 years.

In response, the appellant stated that the production of documentary evidence was not a requirement under the scheme's Terms and Conditions. The appellant also referred to the large amount of documentation supplied by him in support of his appeal, which showed that he was farming in the 2 years in question.

In considering the case, the Appeals Officer had regard to the EU Regulations governing the scheme as set out in the Terms and Conditions and to the principles of natural justice. Section 5 of the Terms and Conditions is titled 'Person Eligible to Apply for a Pension' and states, "*To become eligible for a pension, the applicant shall on the date the completed application is received in the Department: (Paragraph 5.7); have farmed either solely or with a family member for the 10 years prior to the signing of the transfer/conveyance or operative date of lease...*"

Appendix IV of Terms and Conditions is titled 'Supporting Documents to be furnished with Application for Early Retirement (ERS 2) 2000'. Document 5 required by the Applicant/Transferor is 'Confirmation of Farming for previous 10 years by Agricultural Advisor/Agricultural Consultant (Form ER2)'.

The Appeals Officer concluded that at the time of his application to the ERS2, the appellant had fulfilled all the application criteria as outlined in the scheme's Terms and Conditions. The Appeals Officer on consideration of the documentation supplied concluded there was sufficient evidence to indicate the appellant was farming for the 2 years in question. The appeal was allowed.

Case 14 Rural Environmental Protection Scheme (REPS) 4

The appellant's REPS 4 contract commenced in June 2008. In July 2010, an on-farm inspection was carried out and a penalty of 15% was imposed for non-compliance with the Terms and Conditions of REPS 4 as the appellant exceeded their planned organic nitrogen (N) limit by 20%.

The decision was appealed on the grounds that the appellant did not exceed or increase their organic N limits as they had remained fairly constant annually at about 6572kg. There was a REPS application submitted with an incorrect organic figure of 5470kg which was about 20% less than the appellant's actual organic N figure. The appellant was not overstocked and had not indicated a reduction in stock numbers in their plan.

At the oral hearing the Department Inspector outlined an audit-inspection had been undertaken and it was found that the organic N figure exceeded the planned figure by more than 20% and a 15% penalty under the Terms and Conditions of REPS 4 was imposed.

The appellant reiterated the points made in their letter of appeal, and stated that he had extra land rented for which he was not being given any credit. The appellant stated that the penalty went against common sense and now regretted joining REPS 4. The REPS planner stated the appellant was new to REPS and was not a participant in any of the previous schemes. The planner also stated that REPS 4 was a new scheme and planners were under pressure and mistakes were made. The planner accepted that the planned figure for organic N was breached but the figure for the farm was not breached as the appellant had rented extra land.

The Appeals Officer pointed out that the planned limits were set by the appellant and their REPS planner. The Appeals Officer quoted from Section 11.2 of the REPS 4 Terms and Conditions, and also quoted from page 1 of the appellant's amended REPS 4 plan which gave a total figure of projected production of Nitrogen of 5470kgs. As the planned Organic Nitrogen limit was exceeded by more than 20%, the decision to impose a 15% penalty under REPS 4 Terms and Conditions was upheld, and the appeal was disallowed.

