

# **Sample Cases**

## **2012**

## 6. Selected Appeal Cases

### Case 1: Single Payment Scheme (Surrender of unused entitlements to National Reserve)

The appellant submitted an application to the Department of Agriculture, Food and the Marine for the Transfer of Entitlements under the 2007 Single Payment Scheme (SPS). The appellant signed Confirmation of Short Term Renting of land and included a rental agreement valid from February to December 2007. The Department approved the application for transfer of the single payment entitlements. The appellant was advised in writing that Single payment entitlements must be used at least one in every three years otherwise unused entitlements would automatically revert to the National Reserve, they added that a farmer 'uses' entitlements by submitting a hectare of eligible land per entitlement on his/her Single payment application. The transferor received payment for the entitlements as part of their 2007 SPS payments. In 2008, 2009 and 2010 the appellant received pre-printed SPS application forms from the Department. The appellant did not apply for the SPS in any of these years. On the pre-printed 2010 form it stated that the entitlements would be lost to the National Reserve if unused in 2010. In 2011 the appellant was informed by the Department that as the entitlements were unused this year and over the previous two year period they must revert to the National Reserve.

The decision was appealed to the Agriculture Appeals Office. In the grounds for appeal the appellant stated that they believed that the person they had transferred the entitlements to in 2007 could use these entitlements for as long as they had the land rented, therefore an annual transfer of entitlements application need not be completed nor did the appellant need to complete a Single Payment Application each year.

The Appeals Officer found that the Transfer of Entitlements Form was clear in that it only referred to the 2007 Single Payment Scheme on the top header. In addition the land rental agreement submitted by the appellant was valid only for a specified period in 2007. The appellant had received SPS pre-printed application forms in 2008, 2009 and 2010. In 2010 the Department sent a pre-printed SPS form, column 5 of this form stated "*Entitlements that will be lost to the National Reserve if unused in 2010*", this column also has 3 asterix e.g. \*\*\* which is further defined as follows "*\*\*\* Identifies those entitlements, including Standard NR type entitlements, that were not used in 2009. You will lose these entitlements to the National reserve if you do not use them in 2010*".

As the entitlements in question were not used by the time stipulated they reverted to the National Reserve. The Appeals Officer found that this was in keeping with the requirements of the Single Payment Scheme and that the decision of the Department was correct. Accordingly the appeal was disallowed.

### Case 2: Rural Environment Protection Scheme 3 (REPS 3)

The appellant was a REPS 3 participant whose contract expired on 31 May 2011. The Department carried out an inspection on the appellant's holding on 27 September 2011 and applied a 15% penalty in respect of two non-compliances found as follows: (i) 5% as habitat areas were not fenced off and (ii) 10% in respect of a plot not found to be stockproof. The appellant appealed the Department's decision on grounds that the inspection took place almost four months after the contract expired.

The Department did not dispute the fact that the inspection took place almost four months after the contract expired but upheld the application of the penalties nevertheless.

In reaching a determination on the appeal the Appeals Officer referred to Section 25 of the terms and conditions which provides as follows:

- 25.1 *The Minister reserves the right to carry out inspections at reasonable times of any land, premises, plant, equipment, livestock and records of applicants/participants in this Scheme. Inspections may be carried out within 3 months following the participant's completion of the 5-year term in REPS.*

As the Department did not dispute the fact that the plan expired on 31 May 2011 and the inspection took place on 27 September 2011 the Appeals Officer overturned the decision of the Department to apply penalties as the inspection took place almost four months after the appellant's REPS contract expired.



The Appeals Officer found the inspection and subsequent application of penalties not to be in accordance with the terms and conditions of the scheme. The appeal was allowed.

### Case 3: Rural Environment Protection Scheme 4 (REPS 4)

The appellant's REPS 4 contract commenced on 1 March 2009. The Department wrote to the appellant in November 2011 stating that payment in respect of Supplementary Measure 10 (SM10) had been made in error and a further letter would issue in due course detailing the amount of money that would be clawed back. The Department reviewed the case and upheld the original decision.

An appeal was submitted to the Agriculture Appeals Office on the grounds that the original plan was submitted on 2 February 2009 and a revised plan was submitted on 27 February 2009. The revised plan, submitted three weeks after the original plan, included the SM10 option as an option for payment. The planner stated that he was under the clear impression that as the first plan had not yet been approved, the revised plan would replace the first plan and that the appellant had followed the requirements of their plan. An oral hearing was not requested.

As an oral hearing was not required, the Appeals Officer spoke to the planner on the telephone; he reiterated what was written in the letter of appeal. He stated that he had considered putting the SM 10 option in the original plan, he was giving the appellant time to decide on it and he hadn't got results of soil samples back when he lodged the first plan. He lodged the amended plan with the soil sample results and added the SM10 option to the plan. He stated that the Department had subsequently sent the appellant the relevant form to complete for payment of the SM10 mixed grazing option.

The Appeals Officer noted that the SM10 option was included in the Schedule of Work for Each Year in the original plan. Paragraph 12 of REPS 4 'Terms and Conditions' covers, 'Supplementary Measures' 12.1 gives *Mixed grazing* as one of the available supplementary measures. Paragraph 12.2 states "*It is a requirement that participants elect for supplementary measures from the commencement of the five-year REPS Plan, with the exception of Lake Catchments and Heritage Building supplementary measures, as a condition of eligibility for payment*".

The amended REPS4 plan that included SM10 Mixed Grazing was received by the Department on 27 February 2009 and the REPS4 contract commenced on 1 March 2009.

The Appeals Officer found that the appellant had complied with the requirement of *paragraph 12.2 of the REPS4 Terms & Conditions* by having this supplementary measure in place at the commencement of their REPS4 plan. The appeal was allowed.

### Case 4: 2011 Single Payment Scheme (SPS) and Disadvantaged Areas Scheme (DAS)

The farmer applied under the 2011 SPS & DAS and a ground inspection was undertaken in August 2011. The Department issued findings of a reduction of more than 20% in found area versus claimed area mainly on the basis of non-forage area found in a specific parcel.

At appeal the farmer stated payment was received on the parcel in 2008 and any deterioration was a result of compliance with Council Directive 70/409/EEC on the conservation of wild birds. The farmer stated the land is managed in accordance with a National Parks and Wildlife Service's (NPWS) farm plan and passed annual inspections. Evidence was submitted to illustrate topping, grazing and accessibility.

At the oral hearing the Department Inspector stated the parcel was re-inspected in early 2012 and found not to be stock-proof and should have been rejected outright. The Appeals Officer noted there was no reference to stock-proofing at the 2011 inspection and at review the Department reduced the ineligible area from 50% to 20% on part of the parcel.

The farmer's agricultural consultant stated that the entire parcel was accessible to stock and farmed as a single area with cattle and horses, it was stock-proof with commercial forestry on three sides and a stream and bank on the other. The agricultural consultant stated the lands were in a Special Protected Area (SPA) and compliance with the farm plan required topping and grazing of plots within the parcel and was checked annually for the NPWS.



The Terms and Conditions state - *Land that is eligible for SPS payments; ... For land to be eligible, ..... There must be appropriate fencing .... Appropriate fencing means stock-proof fencing that will control the applicant's animals and also the neighbouring farmer's animals. ... there must be defined external boundaries except in the case of commonage; Land not eligible for SPS; ... in the case of each hectare declared, the eligible area excludes any areas under roads, paths, buildings farmyards, woods, scrub, ...*

The NPWS farm plan required specified works to prevent domestic livestock escaping from the land, and did not show the farmer was prevented from fencing. The SPS Terms and Conditions required a permanent boundary and stock-proof fencing. The appeals officer noted that the parcel was not rejected for stock-proofing, thus the 2012 report regards stock-proofing was not relied upon in the appeal. The appeals officer upheld the Department's findings regarding the scrub areas and deemed that these comprised non-forage area.

The farmer submitted evidence of the NPWS farm plan. It stated for scrub that "*in general, existing areas of scrub and hedgerow should be retained. In open areas or areas where the extent of scrub / hedgerow is limited, there will be a need to either create habitat or to facilitate some expansion of gorse and native hardwood scrub. Small areas of established gorse or willow scrub, or gorse, willow and other hedge banks, can be trimmed, but must not be removed, burnt or killed. Large continuous block (>1ha) of established briar, scrub or gorse should be opened up (outside the bird breeding season). Retain at least 30% of the area covered by scrub and hedges in scattered lines or patches rather than in a single block*". The Department of Arts Heritage and the Gaeltacht confirmed to the appeals officer that the NPWS Farm Plan Scheme was in implementation of the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

The 2011 SPS / DAS Terms and Conditions did state that land which was eligible for SPS could include REPS areas such as newly created habitats under option 4A of REPS 3 and REPS 4, and areas under LINNET and riparian zones. Section 15 of the Terms and Conditions stated for the Birds and Habitats Directives that compliance with the requirements to maintain these listed areas is part of cross compliance controls. However Section 15 made no mention regards eligibility for SPS.

The Appeals Officer noted that Article 34.2.(b).(i) of Council Regulation (EC) No. 73/2009 states that eligible hectare shall mean any area which gave a right to payments under the SPS in 2008 and which no longer complies with the definition of eligible as a result of the implementation of Council Directive 79/409/EEC on the conservation of wild birds. In this case the parcel was included in an SPS application in 2008 and gave rise to payments.

In the matter of SPS the Appeals Officer's decision was that the parcel fell within the meaning of Article 34.2.(b).(i) of Council Regulation (EC) No. 73/2009 on the basis of the National Parks and Wildlife Service farm plan that was in place from June 2009. The Appeals Officer upheld the rejection of 1ha under scrub as it existed at the time of the NPWS plan being drawn up but deemed the remaining scrub land, while not forage area, eligible SPS area as the basis of the regulatory provisions. The Appeals Officer found that the specified exclusions did not apply to DAS and fully upheld the Department's decision in respect of DAS. The appeal was partially allowed.

#### **Case 5: Non-Valuation Aspects of the TB / Brucellosis Eradication Schemes**

The farmer had two pedigree animals deemed reactors and removed for slaughter in 2011. At valuation the Valuer assigned one of the animals an in-calf value of €2,000 and a not in-calf value of €1,600. The Department appealed the valuation and the animal was reassigned an in-calf value of €2,000 and a not in-calf value of €1,400. Three weeks elapsed between initial valuation and slaughter. Following slaughter a completed ER26 permit was received by the District Veterinary Office certifying the animal was not pregnant. Payment was processed on the basis of the non-pregnant valuation. A review was sought of the animal's pregnancy status but the Department upheld the payment of the non-pregnant value on the basis of the post mortem result.

At appeal the farmer stated the animal was kept an extra 2 weeks on the farm because of the appeal valuation initiated by the Department. The animal was examined by a veterinary surgeon at the time of valuation and certified in-calf, as was the second reactor animal which was found to be pregnant at slaughter. Evidence of coiling and double insemination was provided. The farmer stated the animal suffered lameness in the period between valuation and appeal valuation but could not be treated.



The Department stated that the ER26 permit was relied upon as the determination regards pregnancy status for payment purposes. The Department stated that the appeal valuation was carried out within 6 days of the initial valuation. The Department stated a Veterinary Inspector had examined the animal on the farm as regards its lameness and reported the animal fit for slaughter subject to specific welfare conditions being met, adding that any withdrawal period for treatment would have been an issue.

The Department publication "Compensation Arrangements for TB and Brucellosis – Important Information for Farmers" contains the information on the valuation scheme. Section 8.2; "Where the Valuer inserts two market values for any female animal, the pregnancy status of the particular animal will be checked from the post-mortem result by the factory on the permit (ER26) and the appropriate valuation amount will be used by the DVO when calculating the differential amount due to the herd-owner/keeper. Veterinary staff under Department supervision carry out pregnancy checks on all reactor cows and all reactor heifers described as "in-calf" on the V13. The result determined by the post mortem check for pregnancy is final in this regard".

The Appeals Officer acknowledged the evidence indicating the animal was pregnant when deemed a reactor but found no provision under the scheme to base the pregnancy status for grant payment on live pregnancy scan or AI evidence. Having contacted the Veterinary Inspector in charge at the abattoir to verify the accuracy of the ER26, the Appeals Officer was satisfied the animal was post mortem examined for pregnancy and the results were reported upon in the required manner to the DVO by way of the completed ER26. Under the scheme there is no provision to take account of the loss of a pregnancy between TB test and post-mortem examination except where the animal actually calves. The Appeals Officer found that the post mortem finding of not pregnant at the time of slaughter is required to be solely relied upon for the purposes of the valuation payment under the scheme. The appeal was disallowed.

#### **Case 6: Single Payment Scheme (Area Over-declaration)**

Following an inspection by the Department, the farmer was informed that there was a 2011 SPS (Single Payment Scheme) area over-declaration. It was found that two land parcels were ineligible as they were not farmed by the applicant. The over-declaration was in the category of more than 20% resulting in no payment in 2011. A review of this decision was sought by the farmer and the Department upheld the original decision.

The appeal from the farmer to the Agriculture Appeals Office stated that one land parcel in question was meadowland similar to other such parcels in the area used as rough grazing. The farmer also indicated that the second parcel should have been struck off the SPS application and that the agricultural consultant had been directed to delete it. A submission from the farmer's consultant was received; he stated that the farmer was under the impression that he had directed the consultant to remove one of the land parcels from the SPS application but his office did not recall being instructed to do so. The consultant stated that it was his opinion that it was not the farmer's intention to include this parcel on the application.

The oral hearing was attended by the farmer and his representatives, including the consultant, and Department personnel. The Department gave the basis for the original decision; one parcel was found to be low lying, liable to flooding and deemed not to have been farmed in 2011 and found to be ineligible. The officer who carried out the inspection stated that he saw long bog or moor type grasses present, the field was surrounded by open drains, there was no evidence of an agricultural activity, there was no evidence of stock on the ground and it had not been cut or topped. The officer said that there was an open drain intersecting the parcel with bushes on one side. The farmer said, regarding this parcel, that the land to the left of the open drain was firm ground and the land to the right of the drain was boggy ground; photographs were produced. Regarding the second parcel found to be ineligible, the farmer said that its inclusion in the SPS application was a clerical error and it was withdrawn when the error was highlighted.

The Appeals Officer, in the decision letter subsequently issued, noted the detailed observations of the inspecting officer regarding the first ineligible parcel. The Appeals Officer also noted that the photographs which had been produced supported this assessment. The Appeals Officer found that there was no evidence of an agricultural activity in this parcel when the inspection took place or evidence that it was being maintained in GAEC (Good Agricultural and Environmental Condition) and it was found that this parcel was ineligible.



Regarding the second land parcel deemed ineligible by the Department, the Appeals Officer noted that this parcel was included in the application submitted on line by the consultant in May 2011 and a request to delete it was submitted in August 2011, on the same day as the farm inspection. Section 14 of the terms and conditions of the scheme was referenced concerning amendments after 31 May 2011: *'You may withdraw land, reduce the claimed area of a parcel... without penalty, at any time after the 31 May 2011 closing date for Amendments provided the Department has not notified you about any irregularities concerning your Single Payment Scheme application, or provided you have not been notified of an on-the-spot inspection. If you have been notified of an on-the-spot inspection and should that inspection subsequently reveal an irregularity, an amendment cannot be accepted to that part of your application that is affected by the irregularity found.'* Taking account of the fact that the request to delete the parcel was made on the same day as the inspection and there was a responsibility on the farmer to ensure accuracy of information submitted, the Appeals Officer found that the Department's decision regarding this parcel was correct. The appeal was disallowed.

#### Case 7: Agri-Environment Options Scheme (AEOS) 2011

The applicant was accepted into the Agri-Environment Options Scheme (AEOS) 2011 with a contract start date of 1 September 2011. However, the acceptance letter outlined issues to be resolved before the application could be progressed to payment stage, namely *'Must have valid accumulation of actions on a parcel'* and *'No Maps Submitted'*. In a follow-up letter, the Department clarified that an area based action, namely *'Species Rich Grassland'* was selected on the same parcel as a *'Tree Planting Standard'* action. They stated that under the Terms and Conditions of the scheme, area based actions must be delivered on a full LPIS parcel basis, therefore only the Species Rich Grassland was deemed to be a valid action on the parcel. As the remaining action did not fulfil the minimum action requirements of at least one mandatory and one complementary action, the application was deemed invalid to proceed to the payment stage.

The decision to deem the application invalid was appealed to the Agriculture Appeals Office. In the grounds for appeal the appellant indicated that he was accepted into the AEOS scheme in Autumn 2011 and planted trees in accordance with requirements of that scheme. He enclosed a receipt for 25 Hazel Whips for December 2011. In February 2012 he received a letter stating that his application was being rejected on the basis that all of the actions were applied for on one LPIS plot. He indicated that this was incorrect as he had submitted a Single Payment amendment form in July 2011. In contact with the Appeals office, the farmer indicated that he had left the SPS 2011 amendment form into his local DVO in July 2011 and believed that they had stamped it and sent it on. He then resubmitted this amendment form in March 2012, and obtained a certificate of posting. The appellant also stated that the acceptance letter was very confusing as it said his application was approved to join the scheme.

The Helpsheet/ Terms and Conditions for the 2011 EU Single Payment Scheme states that *'Amendments to 2011 SPS applications, including the addition of parcels/ plots, may be made up to 31 May 2011 on the SPS 2011 AMENDMENT FORM. Late Amendment Forms will be accepted up to and including 10 June 2011'* The Appeals Officer found that there was no evidence of the SPS 2011 amendment form being received by the local DVO or to the main SPS Division, Portlaoise in July 2011. The only amendment form on the Department system was that of March 2012, which was after the date of closing of the receipt of amendment forms.

The Terms and Conditions of the AEOS 2011 scheme, Section 11.2, state that *'Area based actions must be delivered on a full LPIS parcel basis. If you choose either the Traditional Hay Meadow, Species Rich Grassland, Wild Bird Cover, Green Cover Establishment or Minimum Tillage actions the only other action you can select on the same LPIS parcel is either Stonewall Maintenance, Hedgerow Coppicing or Hedge Laying'*. The Appeals Officer found that as the claimed area was not requested for redigitisation on time, the *'Species Rich Grassland and Tree planting Standard'* were considered to be carried out on the same plot, which was not in line with the Terms and Conditions of the Scheme.

In addition, the Specification for Broadleaved Trees, states *'For this action you must plant trees from the list below'*. The approved list of Native Broadleaved trees did not include Hazel trees. In addition, the farmer purchased whips and not the approved type of standard/ half standard trees for this action. The appeal was disallowed.



### Case 8: Single Payments Scheme (Nitrates Regulations 2010)

An inspection was carried out on the appellants 2010 Single Payment Scheme Application, in March 2011. As a result of this inspection a 20% penalty was imposed on the 2010 SPS application. The reasons given for this penalty were inadequate collection of livestock manure, inadequate management of storage facilities and evidence of structural defects in storage facilities.

The decision was appealed to the Appeals Office. The appellant accepted that there was a breach of regulations but felt that a 20% penalty was severe considering that the Department conceded that there was no evidence of pollution taking place on the day of the inspection. Medical grounds were also provided to indicate the appellant suffered ill health and was unable to carry out all the day to day running of the farm. As a result the appellant's farm was slightly overstocked.

At the oral hearing the Departments representative outlined the reasons why the 20% penalty was imposed. They stated that a number of Local Authority inspections were carried out to ensure compliance with the Nitrate Regulations and that there was visual evidence of inadequate collection of waste materials. The Department outlined how the 20% sanction was arrived at and explained the use of the terms negligence and intent indicating that intent was set out in Regulation 796/04, and intent was more serious than negligence. The usual literal meaning of intent was not taken in the legislation, but it could be taken to refer to a management system failure such as inadequate slurry storage that allowed for potential run-off and the possibility of pollution. They accepted that the medical evidence presented was significant and new and it was accepted that there was no evidence of pollution on the day of inspection.

It was indicated that the appellant was a REPS4 participant and had a nutrient management plan in place. The appellant disagreed with the description of structural defects and stated that farm yard manure was taken out of the shed in order to be spread. Evidence of the appellant's medical condition was provided.

The penalty applied was provided for in the EU Commission Regulation 1122/2009 and EU Council Regulation 73/2009. Article 24 (2) of Council Regulation 73/2009 outlines the '*Application of reductions in the case of negligence*,' it states "*In the case of negligence, the percentage of reduction shall not exceed 5 % and, in the case of repeated non-compliance, 15%.*"

Article 24 (3) outlines the application of reductions and exclusions in the cases of intentional non-compliance stating "*In the case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20 % and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.*"

The Appeals Officer, in view of the medical evidence produced at the oral hearing outlining the serious and sudden nature of the appellant's medical condition at the time of inspection, accepted that the non-compliance found on the day of inspection could not be regarded as intentional and should be classified as negligence. The penalty imposed was reduced from 20% to 5%. The appeal was partially allowed.

### Case 9: Agri-Environment Options Scheme (AEOS) 2010 and the Organic Farming Scheme (OFS)

The appellant commenced participation in Agri-Environment Options Scheme (AEOS) in 2010 selecting the Traditional Hay Meadow and Riparian Margins options. The appellant was also participating in the Organic Farming Scheme (OFS) from 2010. The Department informed the appellant that he could not participate in the Traditional Hay Meadow and Riparian Margin Options whilst being a participant in the OFS as this was found by the Department to constitute dual payment which is prohibited under EU rules. The Department offered the appellant two options as follows: (a) withdraw from either AEOS or OFS, or (b) continue to participate in AEOS and OFS, but withdraw the area in the AEOS options from OFS. If the appellant selected option (b) he was notified that he would not receive payment under the OFS for the area included in the AEOS options, however, he must continue to farm all of the land organically.

The decision of the Department was appealed to the Agriculture Appeals Office. The appellant argued that he had been advised by his Teagasc advisor when applying to join both schemes and there was nothing in the terms and conditions of either that prevented him from participating in both schemes simultaneously. The appellant contended that he could make best use of his land environmentally by selecting the Traditional Hay Meadow and Riparian Margins options under AEOS. The appellant argued that he had put a considerable amount of work into these options and had to pay additional costs of a



contractor to assist with the hay. He argued that he had entered into the contracts in good faith and had abided by the terms and conditions of both schemes. The appellant stated that he would have selected other options if he had been made aware of the difficulties with the Riparian Margins and Traditional Hay Meadow options when applying to join the scheme.

The Department representatives at the hearing asserted that it had come to the Department's attention that participants in AEOS and OFS who selected area-based options in AEOS were in receipt of double payment. The Department had written to a number of farmers concerning this issue. The Department submitted that payment in respect of area-based options in AEOS and OFS is primarily based on the same principle – income foregone due to the reduction of fertiliser inputs or restricted access for production.

In relation to the Riparian Margins option the Department argued a farmer agrees to take this land out of production and therefore it cannot satisfy the OFS requirements once removed from production. The Department stated that farmers receive payment towards fencing for this area which must be stockproof and it cannot be grazed. In relation to the Traditional Hay Meadow option the Department stated that a farmer is required to have at least three grass species other than Rye grass and participants are prevented from cutting the grass until after 1<sup>st</sup> July. The Department agreed with the Appeals Officer's assertion that the rules concerning the application of fertilisers under the Traditional Hay Meadow option and the OFS differ.

The Department stated that it could not allow the appellant to convert to another option at that stage as Article 39(3) of Council Regulation 1698/05 requires that Agri-environment commitments be for a minimum of 5 years. The Department referred to Article 27 of Commission Regulation 1974/2006 (Subsection 11) which permits conversion from one option to the other where three conditions are met – (a) any such conversion be of significant benefit to the environment or to animal welfare or to both; (b) the existing commitment is substantially reinforced and (c) the approved rural development programme includes the commitments concerned. The Department submitted that conversion from an area-based option to a linear based action could not be seen to be of significant benefit to the environment nor would it substantially reinforce the existing commitment.

On examination of the terms and conditions of both schemes, the Appeals Officer agreed with the appellant's submissions that the provisions permitted the appellant to participate in both schemes simultaneously and that he was not prevented by the Department from being in OFS and selecting the Riparian Margins and Traditional Hay Meadow options when applying to join AEOS.

In considering the Department's submissions, however, the Appeals Officer agreed with the Department's finding with regard to the Riparian Margin options in that it was found that the appellant agreed under the provisions of AEOS to remove this area from production for the purpose of the Riparian Margin Option. On that basis it was not available for organic production and could not therefore meet the requirements of OFS. The Appeals Officer disallowed the appeal with regard to the Riparian Margin Option.

In relation to the Traditional Hay Meadow option, the Appeals Officer allowed the appeal on the basis that the terms and conditions permitted the appellant to participate in both schemes simultaneously. The Appeals Officer noted that under the Traditional Hay Meadow option the appellant was required to have at least three grass species other than Rye grass and he could not cut the grass until after 1 July. The Appeals Officer also noted that different rules regarding the application of fertilisers apply under the Traditional Hay Meadow option in AEOS to those contained in OFS. The Appeals Officer decided that as there was no evidence to suggest that the appellant did not meet the requirements of both AEOS and OFS concerning the land in the Traditional Hay Meadow Option and as the terms and conditions did not prevent the appellant from participating in this option and OFS simultaneously the appeal in respect of this option should be allowed.

The Appeals Officer agreed with the Department's submission with regard to the appellant joining another option and found that on examination of the relevant EU Regulations, such commitments must be for a minimum of 5 years which was not possible in this case as there were only 3 years remaining on the appellant's contract. The appeal was partially allowed.