

Sample Cases

2014

6. Selected Appeal Cases

Case 1: Rural Environment Protection Scheme (REPS 4).

The Appellant successfully applied to join REPS 4 and was given a start date of 1 July 2009. In a letter issued by the Department of Agriculture, Food and the Marine (the Department) in 2013 the Appellant was informed that following an inspection of his holding a penalty of 50% for permanent field boundaries on map not retained, and a 1% penalty for non compliance with specific requirements under Biodiversity Undertaking, Measure 2 had been applied, a total penalty of 51%.

The Appellant subsequently appealed to the Agriculture Appeals Office. The appeal was on the basis that the removed hedgerow consisted of trees which were of danger to people and as a consequence that they had been removed for safety reasons.

At the oral hearing it was argued by the Appellant that in a portion of the plot in question hedgerow had not been removed, rather it was a case of earth having been levelled.

Section 18 of the REPS 4 Terms and Conditions is titled Penalties. Paragraph 18.1 states; *Failure to comply with the Scheme Terms and Conditions, the agri-environmental plan and/or REPS Farmer's Handbook will result in an appropriate penalty/sanction.* Annex 1 of the Scheme terms and conditions lists REPS penalties. Under Measure 5 the penalty for *Permanent field boundaries on map not retained* is listed as 5% - 50%.

The Appeals Officer found that the REPS 4 terms and conditions had been breached and that a penalty was warranted. However it was concluded that the extenuating circumstances warranted a reduction of the 50% penalty for the removal of hedgerow to 20%. The 1% penalty remained unaltered. The appeal was partially allowed in that the total penalty was reduced to 21%.

Case 2: Agri- Environment Options Scheme.

The Appellant applied to join the Agri-Environment Options Scheme (AEOS) listing Species Rich Grassland, and Traditional Hay Meadow as Mandatory Actions, and Conservation of Animal Genetic Resources, and Tree Planting – Standard as Complementary Actions. The application was successful and the Appellant was given a contract start date of 1 September 2010. In a letter issued in 2014, the Department informed the Appellant that administrative checks had revealed that the Appellant was not a member of the Connemara Pony Breeders Society from the commencement date of their AEOS contract, and that as the action was therefore ineligible for payment, all monies paid in respect of the action were to be recouped. The Appellant subsequently appealed to the Agriculture Appeals Office.

In the Specifications for the Agri-Environment Options Scheme and Natura 2000 Scheme under the heading Conservation of Animal Genetic Resources (Rare Breeds) at page 12 states; *You must be a member of an approved breed society and you must remain a member of the breed society for the period of the contract.*

The Appeals officer found that the Appellant had not been a member of the approved breed society from the commencement of their AEOS contract and, therefore, the Scheme conditions had not been met. The appeal was disallowed.

Case 3: Agri- Environment Options Scheme

The Appellant's Agri-Environment Options Scheme (AEOS) contract commenced on 1 September 2010. The Department wrote to the Appellant in 2014 noting that some land parcels with associated AEOS actions had not been claimed on the 2013 Single Payment Scheme (SPS) as required, and requested a reason. The Appellant replied stating that the land had been leased out due to his health deteriorating. The Department subsequently issued a letter stating there was insufficient evidence to terminate Scheme participation under force majeure; the plan was terminated and reimbursement of payments was required.

In the appeal the Appellant stated that s/he had gone abroad for an extended period, on medical advice, in the hope that the change of climate would improve their health. S/he submitted a letter from his GP which confirmed that they had been advised a year previously to avoid any contact with farming.

At the oral hearing further medical evidence was submitted including doctors' and consultants' letters and details of hospitalisations. The Appellant stated that an SPS application had not been completed in 2014 as they had ceased farming in the autumn 2013; the land was leased out in two separate leases in the spring and autumn of 2013. They said that they were not aware that there was a problem when the land was leased out; their health had deteriorated unexpectedly. Subsequent to the oral hearing the Appellant submitted to the Appeals Officer copies of the 2013 land leases; both leases had terms of five years.

In the decision letter, the Appeals Officer noted the AEOS (2010) terms and conditions.

Section 6.1 - *To be eligible to participate a farmer shall: ...have all lands farmed declared on the Integrated Administration and Control System (IACS).*

Section 10.1 - *Where all or part of an undertaking is not continued for a minimum period of five years, all or part of the aid paid in respect of the undertaking shall be repaid.*

Section 18 - *Where a beneficiary is unable to continue complying with the commitments given for reasons beyond his/her control, a case may be made under force majeure to terminate the plan...the following categories of force majeure may be recognised...long term professional incapacity of the participant...*

The Appeals Officer accepted that it was necessary for the Appellant to cease farming in 2013 due to ill health, and found that the leases submitted were proof he had ceased farming. The Appeals Officer found that sufficient evidence had been provided to accept that force majeure applied under long term professional incapacity; that the Appellant was unable to continue to comply with the AEOS commitments for reasons beyond their control. The appeal was allowed, the AEOS contract was terminated with no clawback of AEOS payments made.

Case 4: Organic Farming Scheme.

A 2009 applicant for the Organic Farming Scheme (OFS) declared 2 horses on their annual declaration of farming activity in 2013. The Department established that the horses were not certified as organic animals and could not be included in the calculation for payment. The Department wrote to the Appellant and outlined that the level of entitlement for the OFS in 2013 was based on an area of 20ha (rather than the 30ha claimed area). At oral hearing the Appellant outlined the difficulties in organic farming, stating that the farm was farmed in an organic manner and that the horses were fed organic meal when on the farm.

Participation in the OFS imposes a responsibility on applicants to be aware of the requirements of the Scheme. At the outset applicants sign a declaration wherein they state that they *...agree to observe and be bound by all conditions of the Scheme...1 understand and accept that it is the applicants responsibility to acquaint him/herself with the conditions of the Scheme.* It states *The objective of this Scheme is to deliver enhanced environmental and animal welfare benefits and to encourage producers to respond to the market demand for organically produced food.*

Section 4.2 states *Livestock and crop products must be produced in accordance with Council Regulation (EC) No 834/07 as amended. Statutory Instrument No. 30 of 2009 imposes additional conditions that must also be met*" Annex 2 deals with the Calculation of payments and it states *Under the Scheme, organic livestock producers will receive payment computed on the basis of a minimum stocking level of 0.5 livestock units per hectare of eligible forage area declared. This arrangement allows for farmers to receive payment on a pro rata basis to their level of production. The eligible area for payment must be computed from the participant's Annual Declaration of Farming Activity (Form OFS2).* There is a footnote to the text on the calculation of livestock unit which states *Female or male horses of 2 years or older, with passport, in the organic operator's name indicating eligibility for human consumption and certified as organic by OCB. All other horses are ineligible and therefore cannot be included in calculating a participant's number of livestock units.* The Appeals Officer concluded that only horses which were certified as organic were deemed eligible for stocking density calculations. The certifying body in this case had stated that the horses were not certified as organic. The appeal was disallowed.

Case 5: Disadvantaged Areas Scheme

An application under the 2013 Single Payment Scheme was received in the Department of Agriculture Food and the Marine, this also serves as an application under the Disadvantaged Areas Scheme (DAS). The Appellant was advised that s/he did not qualify for the DAS Scheme as s/he had not complied with the terms and conditions of that Scheme in that s/he did not maintain the seven month retention period during which a farmer must retain a stocking density of 0.15 livestock units per hectare. The Appellant was a newly registered herdowner and had rented land, and it took some time to source animals for the herd. Animals were moved into the herd at the end of July 2013, many of which were sourced from a family member. It was also submitted that the Appellant was unaware of the change in the Scheme whereby the period in which animals had to be maintained was increased from 3 months prior to 2012 to 7 months since 2012. Animals would have been moved in sooner had the Appellant been aware of this requirement.

In particular to this Scheme are the requirements set out in paragraph 22 of the terms and conditions:-

'To be eligible for payment under the 2013 DAS, you must in your own right

(2) Hold a valid Herd Number issued by the Department of Agriculture, Food and the Marine,

(5) Undertake to farm and manage the land applied on in 2013, for the full calendar year,

(8) Have a holding that meets the minimum stocking levels,

2. Minimum Stocking Density of 0.15 livestock units per forage hectare in 2013 - The retention period is increased to seven consecutive months where the stocking density on the holding has to be equal or greater than 0.15 livestock units per forage hectare. In addition to maintaining 0.15 livestock units for a minimum retention period of seven consecutive months, applicants must also maintain an annual average of 0.15 livestock units calculated over the 12 months of the Scheme year.

It was acknowledged that the Appellant was a newly registered herdowner and that the herdnumber was issued in June 2013 and that s/he was unable to purchase animals until the issue of this number. Notwithstanding this, the Appellant had confirmed by signing the 2013 SPS application form that s/he was aware of the terms and conditions of the Scheme. This document clearly stated that s/he was required to maintain a minimum stocking density of 0.15 livestock units per hectare for a consecutive 7 month period. Therefore it was incumbent on the Appellant to stock the land as soon as the herdnumber was issued in order to comply with this requirement. The appeal was disallowed.

Case 6: Single Payment Scheme (SPS) Cross Compliance under Good Agricultural and Environmental Conditions (GAEC) & Statutory Management Requirement (SMR) 4.

An on farm inspection on behalf of the Local Authority detected non-compliance with SMR4 Nitrates requirements and of GAEC requirements.

The inspection found evidence of;

- Clean water allowed mix with slurry, eave gutters missing from a number of farm buildings causing rainwater to fall to dirty yards increasing the soiled water produced
- No collection of silage effluent - no channels on two silage bases.
- Inadequate containment of organic manure, cattle fed on an open yard with no collection facilities for runoff.
- Structural defects in dung-stead, a number of openings with effluent discharging directly to ground water.
- Farmyard manure stored in a parcel throughout the prohibited period.

A 20% 'Intent' sanction was applied under SMR4 for poor management of the collection of organic materials leading to the direct discharge to ground water. The inspection also found a parcel fence broken in 2 places and found poaching within a forage parcel and a 5% sanction was applied under GAEC.

The Appellant stated unfavourable wet weather affected ground stability and with increased run off had resulted in a delay in undertaking a farmyard development plan for which finance was also an issue. The Appellant stated rainwater was diverted to a slatted shed to assist slurry agitation and was harvested to water troughs in the farmyard and did not meet with any soiled yard. The Appellant stated the dung-stead was constructed to grant specification in the 1970s and the openings were there to allow seepage go to an underground tank. The Appellant stated one silage base had an effluent channel piped to a slatted tank and the other base sloped to the dung-stead and not to land. The Appellant stated ground water was tested within 40m of the farm yard and there was no issue found, the farm has its own well and quality of water is very important.

The Appellant stated the poaching resulted from a number of weanlings left out on higher land in very wet weather but were stocked within REPS limits. The Appellant stated the land stored manure was so since late 2012 and wet weather had prevented spreading. The Appellant stated regards stock-proofing that the parcel had previously been fenced with posts and wire, an electric fence is used there and the boundaries were never breached.

The Appeals Officer found no mention of a stock-proofing finding on the inspection reports or on the initial notice that issued to the Appellant, and in the absence of such reference on the official reports overturned this element of the GAEC sanction. The inspection reports showed an area in excess of 2 hectares heavily poached from out-wintering. Farm stocking density levels were not accepted as mitigating grounds for this breach and this element of the GAEC sanction was upheld.

At inspection gutters were missing from farm buildings with rainwater falling onto soiled yards and mixing with slurry, the report included a farmyard sketch showing flow directions. The Appeals Officer noted plans were in place to develop the farmyard but found the diversion of clean water from soiled yards has been a

statutory requirement since 2006. The Appeals Officer found the open gaps on the dung-stead walls indicated the original facility was not being maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water, and such prevention was also a statutory requirement since 2006. The Appeals Officer found explanations that run off was to an underground tank were not supported by the inspection findings of large scale direct discharge to groundwater. The inspection finding of cattle wintered in an open yard with no collection facility for run-off slurry was found to be a breach of the requirement to collect and store run off. The inspection found no effluent collection in place at two silage pits. The Appellant's agricultural consultant stated channels are now in place and effluent is piped to the slatted tank. The Nitrates Regulation requires silage effluent be collected and held in a manner that prevents the run-off or seepage, and the inspection evidence shows this requirement was not being complied with.

The field storage of organic manure was found at inspection, which was during the period when land storage is permitted. However, the evidence showed this material was field stored from the previous year and therefore throughout the 18 week prohibited period. The deferral of spreading in the event of heavy rain is within what is required by the Nitrates Regulation but the land storage of the material during the prohibited period is contrary to the Regulation.

The 2013 SPS Terms and Conditions specified applicants must comply with a number of SMRs and maintain land in GAEC. The January 2008 Explanatory Handbook for Good Agricultural Practice Regulations is referenced to in the 2013 SPS Terms and Conditions and states that in order to keep soiled water to a minimum a farmer must divert all clean water to a clean water outfall, prevent clean water from becoming soiled, keep the amount of soiled water that is produced on a holding to a minimum. The publication also states all organic fertilisers, effluents and soiled waters must be collected in a way that will prevent runoff or seepage, directly or indirectly, into ground waters or surface water. A farmer must also make sure there is enough spare storage to allow for bad weather and storage facilities must be kept leak-proof and structurally sound. The Appeals Officer found the farmer had not complied with fundamental elements of the Nitrates Regulations in place since 2006 and upheld the 'intent' level sanction.

The Appeals Officer's decision was to reduce the GAEC sanction to 3% and to uphold the 20% sanction applied under SMR 4. The appeal was partially allowed.

Case 7: Single Payment Scheme (SPS) and other area related Schemes.

The appeal concerned area eligibility of two claimed parcels under the 2013 Single Payment Scheme (SPS), Disadvantaged Areas Scheme (DAS) and other area based Schemes. A ground eligibility inspection found two claimed parcels were not farmed by the Appellant. Following the inspection the Appellant wrote to the Department seeking to withdraw the parcels. The Appellant was subsequently advised the parcels were also the subject of a claim by another farmer. The Appellant was refused permission to amend the 2013 application and the parcels were deemed rejected.

The Department inspector recorded at the inspection of being informed by the Appellant prior to visiting the parcels of the new situation. The inspector stated two days prior notice was given for the inspection.

The Appellant stated the parcels were rented for over 12 years through a verbal arrangement and paid for retrospectively at the end of each year. The Appellant stated this arrangement was altered by the landowner in 2013, without notice, even though the Appellant had fertilised the land in May 2013. In support of the appeal the Appellant provided fertiliser invoices, the appeals officer found some contained dates at variance with the statements in the appeal. The Appellant stated the first indication of another farmer on the land was when silage was cut there at the end of July 2013, on the same day the Department notified that an inspection was to take place, and had no opportunity to give prior notice to the Department of the new situation.

The Terms and Conditions required a written rental agreement in place for any rented land declared:- no rental agreement was provided or shown to exist. The Appeals Officer found the other 2013 claimant had provided a valid written rental agreement.

The Appellant's notification to the Single Payment Unit to remove the parcels for 2013 was on a date after the inspection date and the Appeals Officer found the Terms and Conditions only allow the withdrawal of land after 31 May 2013 where a farmer has not been notified of an on-the-spot inspection. The Terms and Conditions further state that if a farmer has 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 the application that is affected by the irregularity found. The force majeure provisions were found not to be applicable in these circumstances.

On the basis of the Appellant not meeting the requirements of the 2013 SPS Terms and Conditions for a written rental agreement to be in place and prohibiting the withdrawal of land parcels once an inspection or an irregularity is notified, the appeal was disallowed.

Case 8: Agri- Environment Options Scheme

The Appellant's AEOS2 contract included two mandatory actions, one of which was an area of Wild Bird Cover. In September 2013 an inspection found the Wild Bird Cover area was found to be over-claimed, a penalty was applied in accordance with the IACS rules leading to no Wild Bird Cover payment for the year of the finding and the found area was deemed the eligible area for the action.

In the appeal the Appellant stated the kale planted was a 2 year crop and was not required to be cultivated in 2013 per the AEOS contract. The Appellant stated the sown area was marginal in nature and had to be left undisturbed for the kale's second year and some rushes had developed. A receipt was provided as evidence kale was sown in 2012. The Appellant stated linseed and kale were sown in the parcel but were not mixed

and it was part of the kale area that was at issue but all of the area was hand sown. The Appellant provided photographs taken in 2014 showing evidence of kale stalks toward the area of the parcel appealed.

The Department inspection found a defined strip of ground along one side of the Wild Bird Cover parcel with no crop. Failed patches could indicate a fertility issue but in this case it was a defined strip of ground. It was a requirement that the crop must only be sown on suitable ground.

The Appellant was contracted to sow the Wild Bird Cover crop before the 31 May 2012. The crop was into its second year when inspected. The photographic evidence was considered not definitive in that a collection of kale stalks were visible in a reasonably narrow area but showed very little evidence of kale stalks elsewhere in the area shown. At inspection the Department inspector found no issue with any of the parcel other than the area under appeal.

The AEOS2 specifications are set out for crop management but are silent on crop failure. The specification sowing rate for a kale seed is approx 2 kg per hectare when broadcast and adequate kale seed was purchased for the area. However, on the basis of the evidence provided an inadequate quantity of linseed seed was purchased and would have implied an overall shortfall of seed. It was found that neither kale nor linseed were growing on a defined area of land while the remainder of the parcel was in order. The appeal was disallowed.

Case 9: Single Payment Scheme-Nitrates.

The total amount of Nitrogen from livestock manure applied on the Appellants holding was 500kgs per hectare, it had exceeded the permitted level of 170kg per hectare and a penalty of 20% was applied to the Appellants payments under the Single Payment Scheme (SPS) and/or Disadvantaged Areas Scheme (DAS) and REPS/AEOS where applicable.

An appeal was submitted to the appeals office on the grounds that additional land had been rented in 2013. Taking into account the rented land the nitrate limit was not breached.

At the oral hearing the Regulations which set the limit of 170kg/ha for organic nitrates and the calculation of the figures on a graduated scale from the Department stock database were outlined. As was the requirement to have records of rented land notified to the Department by 31 December 2013.

It was acknowledged that the Rental Agreement was not received for the rented land until early December of the following year, when the requirement was that it should have been submitted to the Department by 31 December of the previous year. The appeal was disallowed.

Case 10: Targeted Agricultural Modernisation Scheme (TAMS) – Dairy Equipment Scheme closing date.

An application under the Dairy Equipment Scheme was received in the Department of Agriculture Food and the Marine on 2 January 2014. The Appellant was notified that the application was deemed to be ineligible as it was received after the closing date for the Scheme of 31 December 2013. A review of this decision was sought on the basis that the application was posted on the evening of 30 December 2013, and was sent by Express post as specified in the Department terms and conditions of the Scheme. An Post initially confirmed that the post would be delivered the next day but subsequently advised that due to the time of year (New Year) and the large amount of post being processed, that the letter was not delivered until 2 January 2014. It was also submitted that the Appellant was not aware that applications could have been submitted by hand to the local Department office and only became aware of this later. The Appellant also indicated that they had learned that applications were accepted via scanning and email with the originals being submitted in the first week of January 2014. In a similar transaction, an item posted by Express Post on 6 February 2014 was delivered to the Department's Offices in Wexford on 7 February 2014. The Appellant stated that next day delivery is the normal course of events.

Section 1(v) of the Targeted Agricultural Modernisation Scheme (TAMS) terms and conditions dated 1 October 2012 states - *The Scheme will come into operation as and from 20 December 2011 and will be closed for valid applications on 31 December 2013....*

Section (x) - *Applications for grant-aid should be sent to the Department of Agriculture, Food and the Marine, Dairy Equipment Scheme Section, On-Farm Investment Schemes Division, Johnstown Castle Estate, Co. Wexford... The Department strongly recommends that applications for grant-aid be sent to the Department by registered post or other form of tracked mailing system....*

Paragraph 32- Procedure for Application for Aid, *The closing date for receipt of valid applications shall be 31 December 2013.*

The date of receipt of the application is not disputed. The Department have stated that they did not accept applications for this Scheme by scanning or email. Only original documentation was accepted. In relation to the issue of applications being accepted by the Local Office of the Department, they referred to Paragraph 1 (x) of the terms and conditions '*Where application forms are delivered by hand to the Department, a Departmental receipt must be obtained for the application concerned at the time of delivery*'. It was open to the Appellant and/or his consultant to check with the Department if there were concerns relating to the timely delivery of the application. It is acknowledged that the application form was posted on the 30 December 2013, however, the onus was on the Appellant to ensure that sufficient time was allowed to ensure that the application was received before the closing date. Any incorrect information given by An Post at the time of postage is a matter between the Appellant and that organisation. The appeal was disallowed.