

An Oifig Achomhairc  
Talmhaíochta

Agriculture  
Appeals Office



**2018**  
**ANNUAL REPORT**  
**of the**  
**AGRICULTURE APPEALS**  
**OFFICE**



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

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act, 2001, the report of the Agriculture Appeals Office for 2018 is hereby submitted.

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16 May 2019

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*Tá an Tuarascáil seo ar fáil freisin i nGaeilge, ach é a iarraidh.*

*This report is also available in Irish, on request.*

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## 1. Introduction

I am pleased to introduce the Agriculture Appeals Office Annual Report for 2018.

The primary function of this report is to fulfill the requirements of Section 14 of the Agriculture Appeals Act 2001, as amended, by reporting the activities of the Office in 2018 to the Minister for Agriculture, Food and the Marine.

The report also endeavors to provide useful information to scheme applicants, the Department of Agriculture, Food and the Marine and other interested parties.

The mission of the Office is as follows:

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

This annual report includes the following:

- a statistical breakdown of the appeals dealt with by the Office in 2018
- an overview of appeal related activities undertaken by the Office during 2018
- a description provided by Appeals Officers of some example cases determined by in 2018
- suggestions for the Department of Agriculture, Food and the Marine that might assist in improving processes, and,
- suggestions for scheme participants that might assist in improving the awareness of scheme issues arising.

A total of 556 appeals were received in 2018, a decrease of 13% on 2017.

The highest number of appeals received in 2018 was for the Green Low-Carbon Agri-Environment Scheme (GLAS).

The outcome of all appeals closed in 2018 was as follows:

- 39% of appeals were allowed, partially allowed, or, the Department decision was revised after the appeal was submitted to this Office,
- 45% of appeals were disallowed, and
- 16% of appeals were withdrawn, invalid or were received after the 3 month deadline.

Of the 45% appeals disallowed, the majority concerned appeals against GLAS decisions.

The function of an Appeals Officer is to determine an appeal against a decision of the Department of Agriculture, Food and the Marine concerning schemes included in the Schedule to the Agriculture Appeals Act, 2001, as amended. Appeals Officers have a legal obligation to be independent in the performance of their functions when determining agriculture appeals, to adhere to the scheme rules and to have regard to the principles of natural justice. The Administration section of the Office deals with all administrative aspects of the appeals service.

In 2018, the Minister established a Forestry Appeals Committee (FAC) to consider appeals against decisions by the Department of Agriculture, Food and the Marine concerning applications for forestry licences. The FAC has a separate statutory status to the Agriculture Appeal function. However the full administration functions and secretariat support for the FAC appeals process were assigned to the Agriculture Appeals Office. In addition, Appeals Officers were, in 2018, appointed by the Minister to be members of the FAC and this requires them, in that regard, to perform a separate statutory function to that of their function to determine Agriculture Scheme appeals. A total of 231 forestry licence appeals were received by the Office in 2017 and 2018. While this report provides some details on FAC appeals, the FAC has a separate statutory function to report to the Minister on its activities.

The total number of Agriculture appeals closed in 2018 was 520 which was 26% lower than the number of appeals closed in 2017. The reduction in the number of Agriculture appeal cases closed in 2018 when compared with 2017 can be attributed mainly to the additional forestry appeal work assigned to the Office in 2018 and to vacancies arising. These factors also contributed to the time taken to complete requests for reviews of Appeals Officer decisions. The effect of the additional work on the capacity of the Office to continue to deal efficiently with appeals is under on-going review. I have been actively engaging with Human Resources Division and I anticipate that resource needs identified will be responded to positively.

I would like to express my gratitude to the Chairman of the FAC, Mr. Bart Brady, for his positive interaction and consultation with this Office with regard to the shared allocation of resources required for the implementation of the new forestry licence appeals service.

I would like to acknowledge the work of my colleagues in the Appeals Office including those who left the Office during 2018. Throughout the year the Appeals Office team continued to demonstrate a strong commitment to their work and to providing a quality customer service. In particular I thank the team for their readiness to take on the additional duties arising from the new forestry licence appeals service.

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

Angela Robinson  
Director of Agriculture Appeals

## **2. OVERVIEW OF AGRICULTURE APPEALS OFFICE**

### **2.1. Overview of the Agriculture Appeals Service**

The Agriculture Appeals Office was established in 2002. The appeals process provided by the Agriculture Appeals Office has a statutory basis: the Agriculture Appeals Act 2001, as amended, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers and the scheme decisions that may be appealed. Appeals Officers are independent under the Act.

In line with its mission statement, the Office aims to be client friendly and to deliver the service in a courteous and efficient manner. One of the main features of the appeals service is the right of an Appellant to an oral hearing whereby an Appeals Officer brings the Appellant and the Department official(s) together to hear both sides of a case and to ask questions. Following consideration of all of the facts of a case, comprehensive decision letters are issued by the Appeals Officer to both the Appellant and the Department.

### **2.2. Procedures Manual**

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

- Structure, organisation, names and designations of members of staff
- Functions, powers and duties
- Rules and guidelines
- Office procedures
- Classes of records held and the arrangements for access
- Rights of review and appeal including rights of review under the Freedom of Information Act.

### 2.3. Overview of the Appeals Procedure

- Scheme applicants who are dissatisfied with a scheme decision by the Department of Agriculture, Food and the Marine (“ the Department”) must complete a ‘Notice of Appeal’ form and submit it to the Agriculture Appeals Office.
- Applicants have three months from the date of the Department’s decision to lodge an appeal to the Office. An appeal received after three months will only be accepted by the Director if there are exceptional circumstances for a failure to meet the deadline.
- Appeals are generally dealt with in the order that they are received.
- On receipt of an appeal, the Appeals Office forwards the appellant’s grounds of appeal to the Department along with a request for the relevant file and a statement responding to the Appellant’s grounds. The Department’s statement on the Appellant’s grounds of appeal is subsequently forwarded to the Appellant.
- On receipt of the Department file and statement, the Director assigns the case to an Appeals Officer.
- Appellants are entitled to an oral hearing as part of their appeal. The Agriculture Appeals Office aims to hold oral hearings in a convenient location for the Appellant, where possible, and to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region.

The key features of an oral hearing are that:

- it is held in private,
  - it is informal,
  - the Appellant is present,
  - the Department is represented,
  - the Appellant may bring representatives.
- The Appeals Officer considers all the evidence from both the Department and the Appellant in full including any evidence presented at an oral hearing. The Appeals Officer makes a determination on the appeal and notifies the Appellant of the decision in writing, setting out the reasons for that decision. The Department will also be notified of the decision.



- An Appeals Officer may revise a decision of an Appeals Officer if it appears that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which the decision was given.
- On request from either the Department or the Appellant, the Director of Agriculture Appeals may revise a decision by an Appeals Officer where it has been established by him or her that there has been a mistake made in relation to the law or the facts of the case.
- An appeal to the Agriculture Appeals Office does not preclude an Appellant from raising their case with either the Office of the Ombudsman or with the High Court on a point of law.

#### **2.4. Business Plan**

The 2018 Business Plan forms the basis for the work of the Office and is subject to regular review. Targets included in the business plan are monitored regularly.

#### **2.5. Website and e-mail**

Appellants can download the Appeals Procedure Information Note and the “Notice of Appeal’ form from the Appeals Office website [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie). Appeals may be lodged online to the e-mail address: [appeals@agriappeals.gov.ie](mailto:appeals@agriappeals.gov.ie)

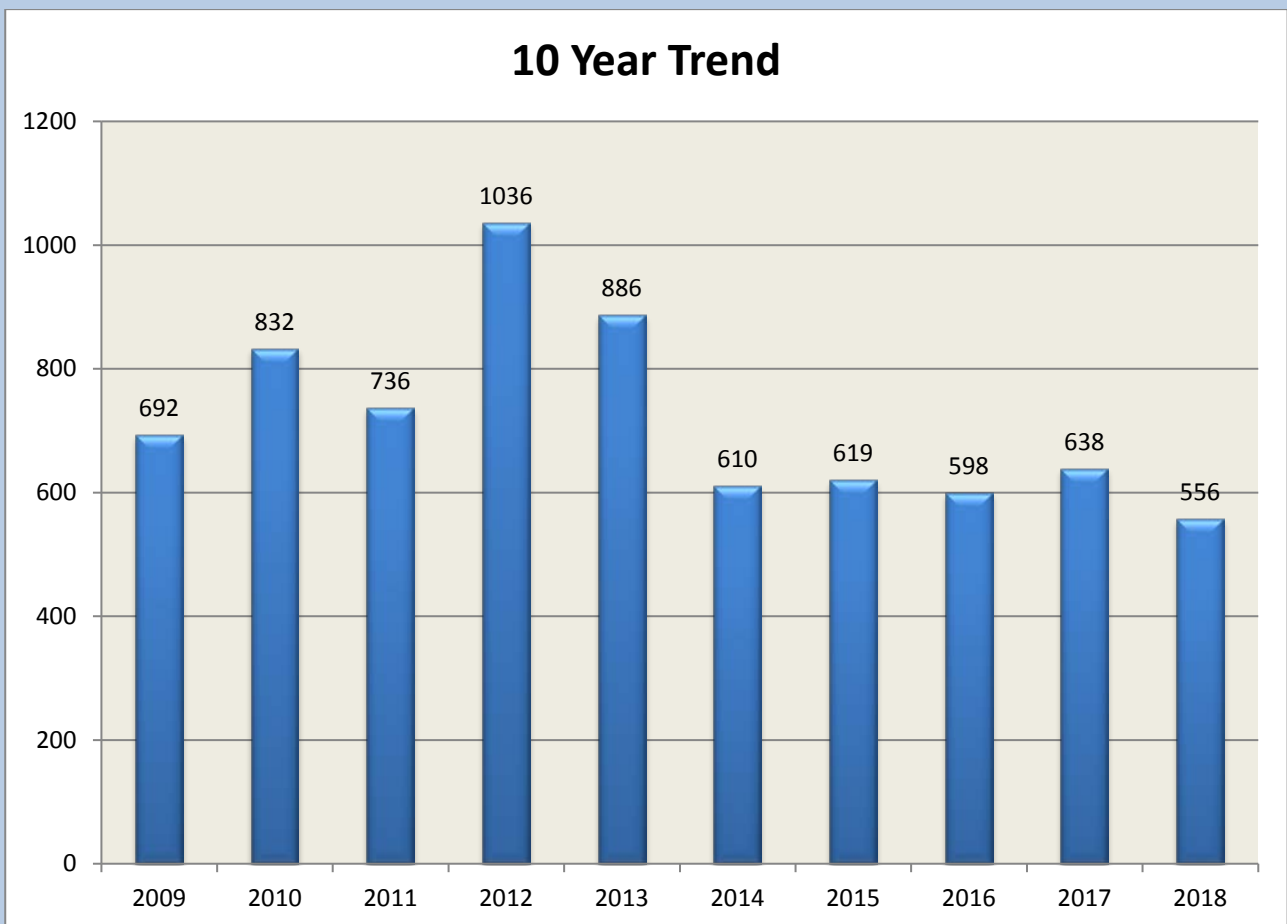
### 3. STATISTICS ON AGRICULTURE APPEALS DEALT WITH IN 2018

The tables and graphs set out below provide a number of appeal statistics.

#### 3.1. Agriculture Appeals Received Per Annum

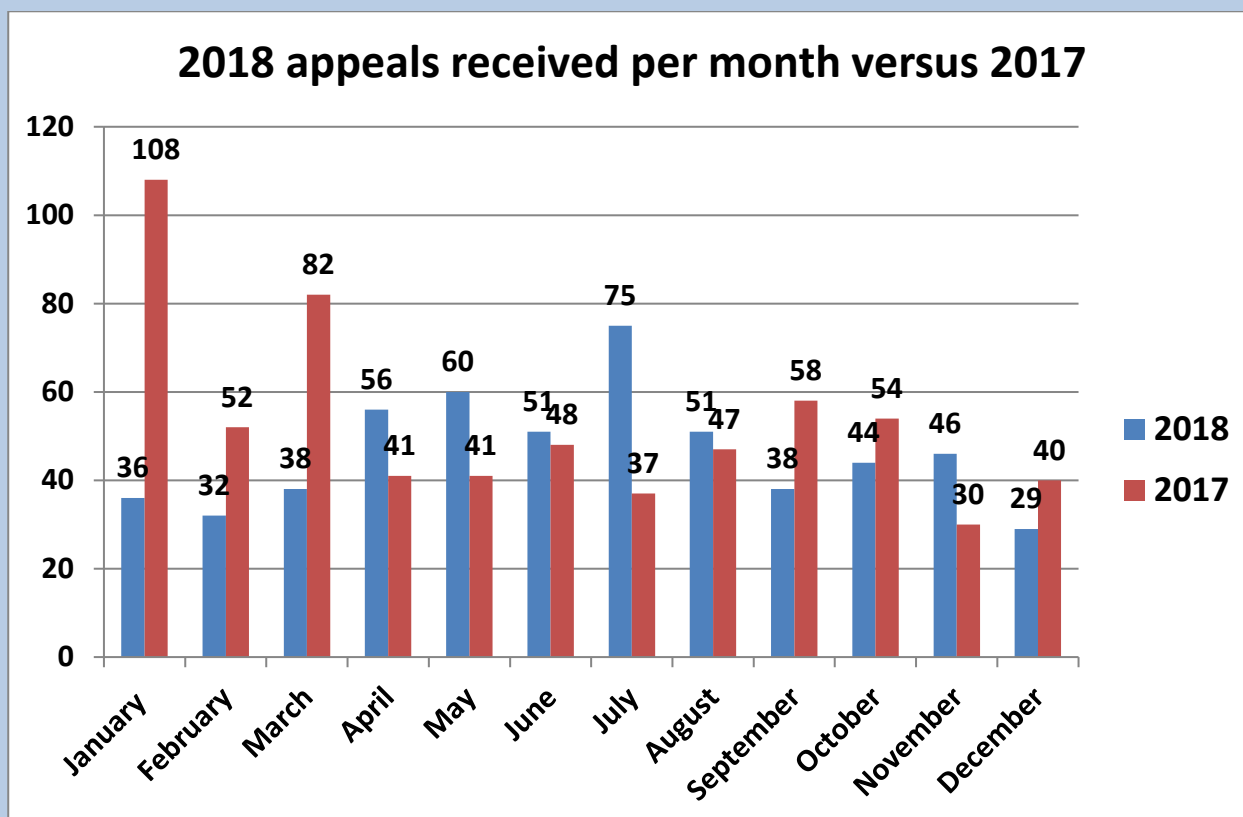
A total of 556 appeals were received in 2018 a decrease of 13% when compared with 638 appeals received in 2017.

The number of appeals received in 2018 is lower than the 10 year annual average of 720 appeals, as shown in the following table:



### 3.2. Appeals Received Per Month

With regard to the timing of receipt of appeals throughout the year, this is generally linked to a number of variables including the date of receipt of scheme applications, the date of the Department inspection/findings and the date of the Department's final decision. The table below shows the number of appeals received per month in 2018 compared with 2017.

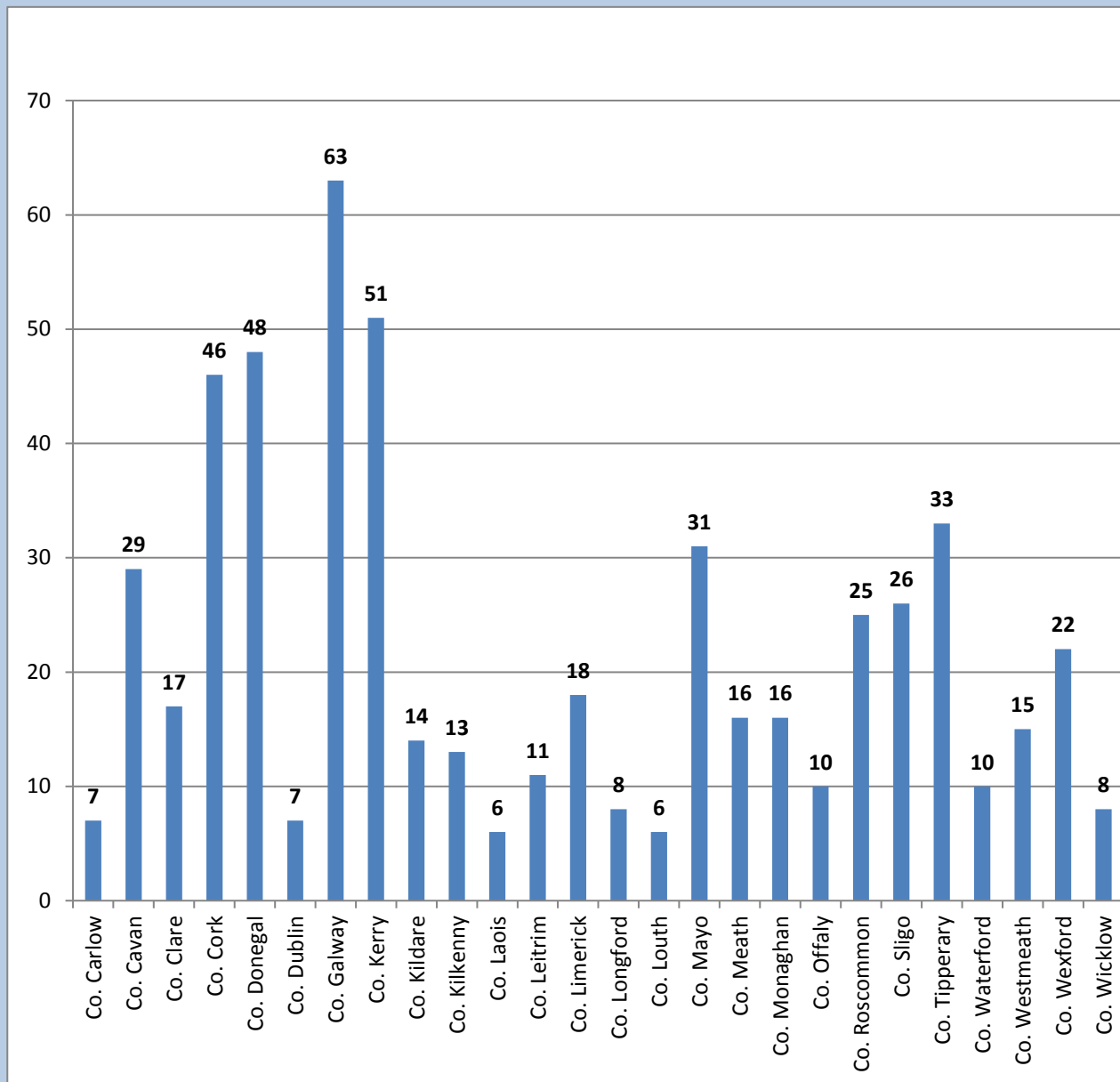


As indicated in the Table, the highest number of appeals received in the year was in July 2018. The majority of those appeals concerned the GLAS.

With regard to the higher number of appeals received in January 2017 compared with January 2018, the Agriculture Appeals Act, 2001, was amended in January 2017 to allow the Office to accept appeals against Department decisions concerning the allocation of entitlements under the Basic Payment Scheme. Prior to the amendment, appeals could not be sent to this Office. Consequently the majority of the appeals received in January 2017 related to a backlog of appeals on BPS entitlements.

### 3.3. Appeals Received Per County

The number of appeals received per county may vary for a number of reasons including the size of the population of applications and timing and number of inspections.

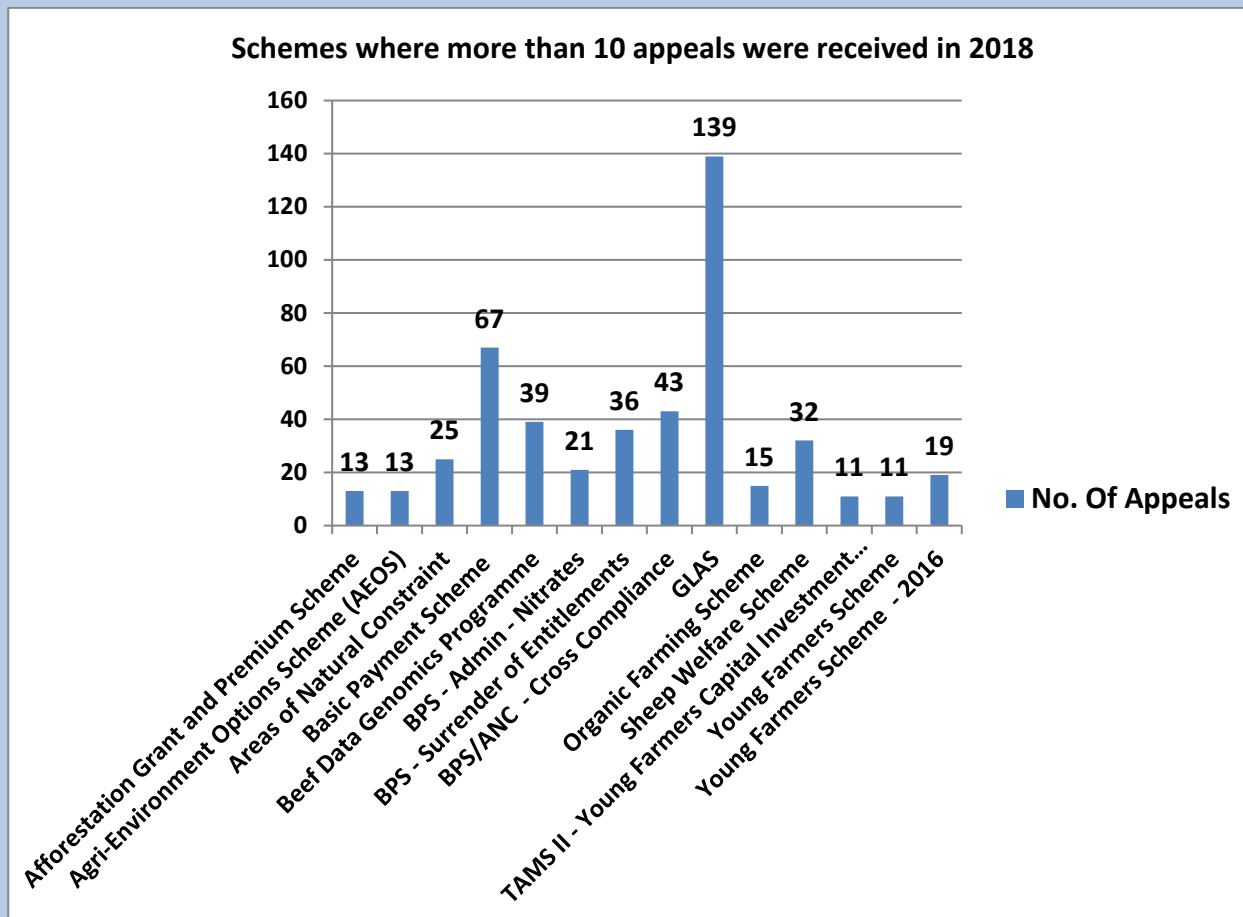


As shown in the graph above, the highest numbers of appeals received in 2018 were from appellants in County Galway (63 appeals) and County Kerry (51 appeals).

In 2017, the highest numbers of appeals received were also from County Galway followed by County Cork.

### 3.4. Appeals Received Per Scheme

The table below shows the breakdown of appeals received per Scheme and includes only Schemes where more than 10 appeals were received, giving a total of 484 appeals of the 556 received in 2018.



The highest number of appeals received in 2018 concerned the following schemes:

- *GLAS* (25% of all appeals received)
- *Basic Payment Scheme (BPS)* (12% of all appeals received )
- *Cross Compliance<sup>1</sup> for BPS and Other Area Based Schemes* (8% of all appeals received)

<sup>1</sup> Cross Compliance involves two key elements: a requirement for farmers to comply with 13 Statutory Management Requirements (SMRs) set down in EU legislation on public health, animal and plant health, animal welfare and the Environment. and a requirement to maintain the land in good agricultural and environmental condition (GAEC). DAFM checks are carried out across the BPS/Area of Natural Constraints and other Area Based Schemes

The main issues arising for the three schemes with the highest number of appeals included the following:

**GLAS:**

- Low Input Permanent Pasture action: no owned bovines; land parcels not claimed as permanent pasture in the previous years;
- Protection of Watercourses from Bovines action;
- No bovines on the farm for the duration of the contract; inadequate fencing of watercourses;
- Farm Nutrient Plan not submitted as required.

**Basic Payment Scheme:**

- Ineligible land due to non permanent stock proof fencing;
- Inadequate reductions for scrub, trees;
- No agricultural activity on land parcels.

**Basic Payment Scheme/Areas of Natural Constraints Cross Compliance:**

- Tagging and Registration issues – animals not tagged and registered by the required date;
- Failure to forward nitrates records as required;
- Removal of landscape features.

**3.5. Appeals Received Per Scheme comparison between 2018 and 2017**

The reasons for differences in appeal numbers per scheme each year may be dependent on a number of factors including the introduction of new schemes, the closure of older schemes, the timing and volume of applications, the timing and volume of inspections, the type of penalty imposed, and the date of the final Department decision. The table below shows the comparison on numbers of appeals received in 2018 and 2017 for some schemes.

2018 Top 10 Schemes appealed		2017 Top 10 Schemes appealed	
Scheme ID	No. of appeals	Scheme ID	No. of appeals
GLAS	139	Beef Data Genomics Programme	110
Basic Payment Scheme	67	Basic Payment Scheme - National Reserve	79
Cross Compliance - Basic Payment Scheme/Areas of Natural Constraint and Other Area Based Schemes	43	GLAS	79
Beef Data Genomics Programme	39	Cross Compliance - Basic Payment Scheme/Areas of Natural Constraint and Other Area Based Schemes	58
Basic Payment Scheme - Surrender of Entitlements	36	Basic Payment Scheme - Scottish Derogation Scheme	47
Sheep Welfare Scheme	32	Areas of Natural Constraint	41
Areas of Natural Constraint	25	Agri-Environment Options Scheme	39
Basic Payments Scheme – Admin - Nitrates	21	Basic Payment Scheme	30
Organic Farming Scheme	15	Basic Payments Scheme – Admin - Nitrates	30
Agri- Environment Options Scheme (AEOS)	17	Young Farmers Scheme	17

### 3.6. Number of Appeals Closed

There were 520 appeal cases closed in 2018. This compares with 707 cases that were closed in 2017. The cases closed included appeals that were received in 2018 and in previous years as set out in the following Table:

Year in which appeal was received	Number of Appeals Closed in 2018
2018	337
2017	167
2016	13
2015	2
2014	1
Total	520

The reasons for carry-over of appeals from previous years can include the timing of receipt of the appeal (i.e. received towards the previous year end), delay on the part of appellants and/or the DAFM reverting with additional information requested, availability to attend oral hearings, the complexity of the appeal, the need to obtain legal advice on matters linked to the appeal and legal proceedings relating to an appeal.

In regard to the reduction in numbers of appeals closed in 2018 when compared with 2017, it is relevant to mention that this Office and Appeals Officers were assigned significant additional functions in 2018 when the implementation of the new forestry licence appeals service was assigned to the Office. Further details on the numbers of forestry licence appeals received and closed are included in section 4 of this report. It is also relevant to mention that a number of Appeals Officer vacancies arose. The capacity of the Office to deal with the increased volume of work is kept under on-going review and requests for resources are the subject of regular consultation with Human Resources Division.

### **3.7. Outcome Of Appeals Closed In 2018**

The Agriculture Appeals legislation requires Appeals Officers to be independent in the performance of their functions and to comply with any relevant legislation, terms, conditions and guidelines relating to the schemes and to have regard to the principles of natural justice when making a decision. There are a number of possible outcomes to appeals which are described below.

#### **3.7.1. Terminology For Outcome Of Appeals**

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

**Appeal Allowed** This category includes cases here the Appeals Officer, having considered the case put forward, decides that the Department's decision to impose a sanction should be overturned.



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

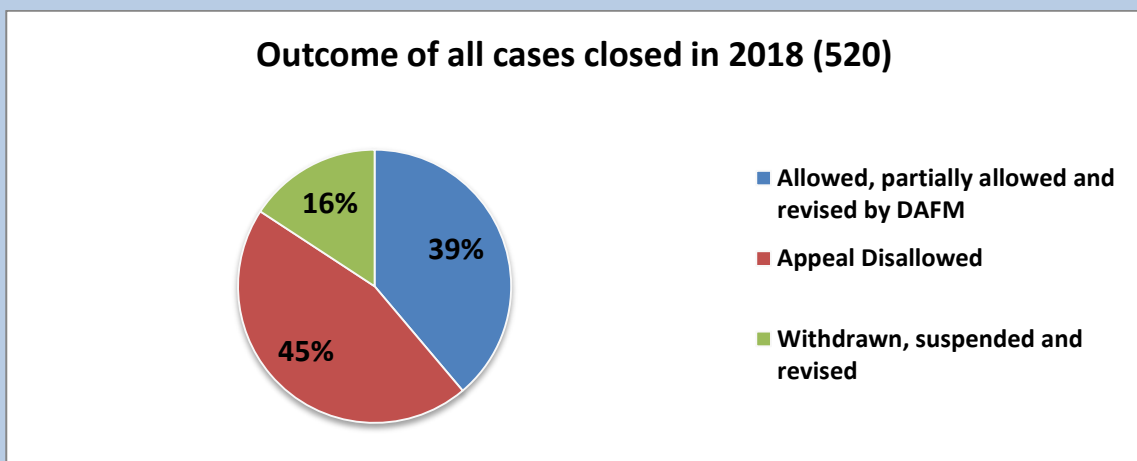
**Revised by the Department** This category includes cases where the Department has revised its original decision for reasons that can include additional information submitted by the Appellant to the Agriculture Appeals Office, information provided at oral hearings and/or as a result of specific queries raised by the Appeals Office.

**Invalid** This category includes appeals on matters not appropriate to the Agriculture Appeals Office, e.g. Schemes not listed in the Schedule to the Agriculture Appeals Act and cases where there is no Department decision relevant to the appeal.

**Out of time** This category includes Appeals that are received after the three month deadline since the date of the Department decision.

**Appeal Disallowed** This category includes cases where the Appeals Officer, following consideration of the case and all relevant information, decides that the grounds of appeal do not warrant overturning the sanction imposed by the Department of Agriculture, Food and the Marine.

### 3.7.2. Outcome Of All 520 Appeals Closed In 2018



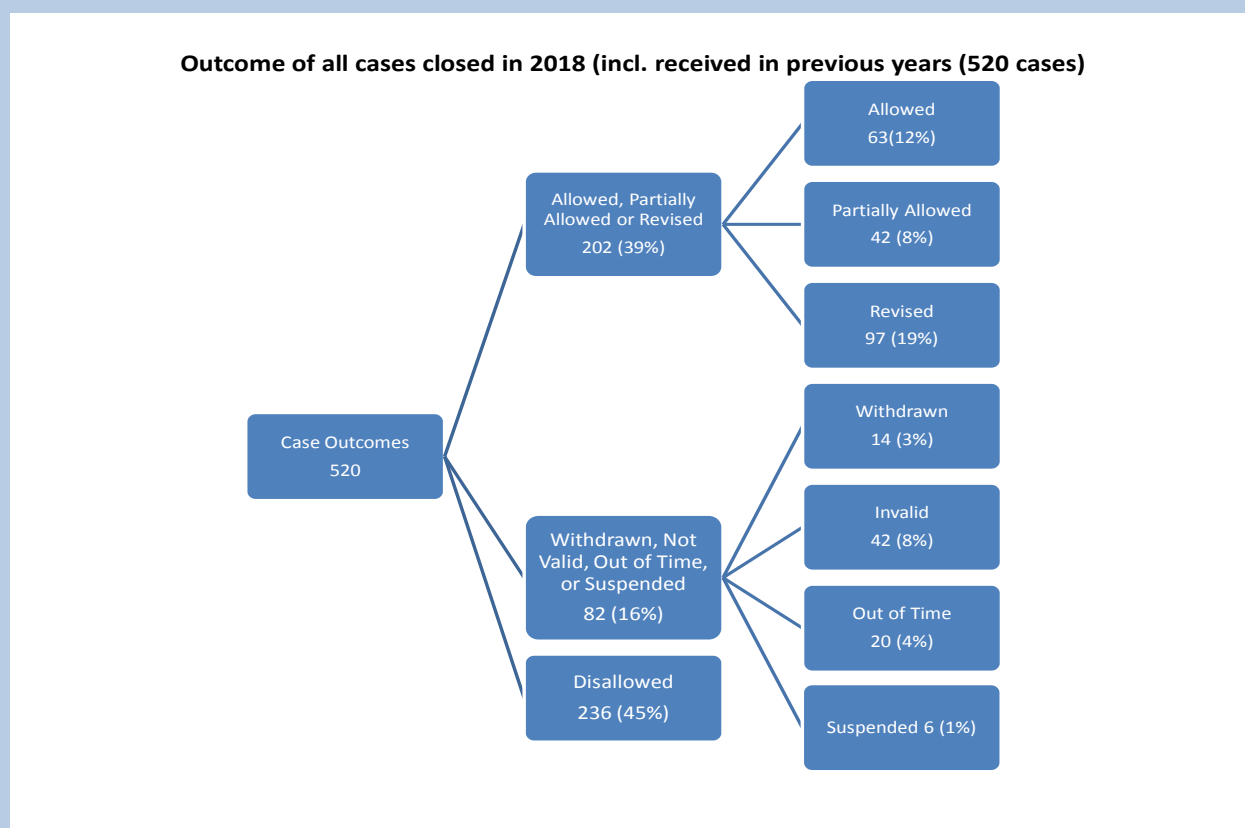
In comparison with 2017, the outcome result for all cases closed in that year was 52% disallowed, 37% allowed and 11% withdrawn/invalid/out of time.

The table below includes the number of appeals for each category of outcome for all appeals closed in 2018.

<i>Appeal Decision Results</i>	<i>Number of all appeals closed in 2018 (520)</i>	<i>Percentage</i>
Allowed, Partially Allowed or Revised by the Department (all Appeals closed in 2018)	202	39%
Appeals Withdrawn, Invalid and Out of Time (all Appeals closed in 2018)	82	16%
Disallowed (all Appeals closed in 2018)	236	45%

### 3.7.3. Breakdown of outcomes of all appeals closed in 2018

The chart below gives a further breakdown of the individual categories for outcomes referred to in the preceding Table and Graphs.



#### **3.7.4. Decisions Revised By The Department - 97 Cases**

The highest percentage in the “*appeal allowed, partially allowed or revised by the Department*” category concerned those in the ‘*revised by the Department*’ category. The reasons for such revisions in 2018 concerned mainly the submission of additional information not previously made known to the Department. The Department also revised a number of decisions for cases involving issues raised by the Appeals Office with the Department concerning certain aspects of a scheme’s terms and conditions.

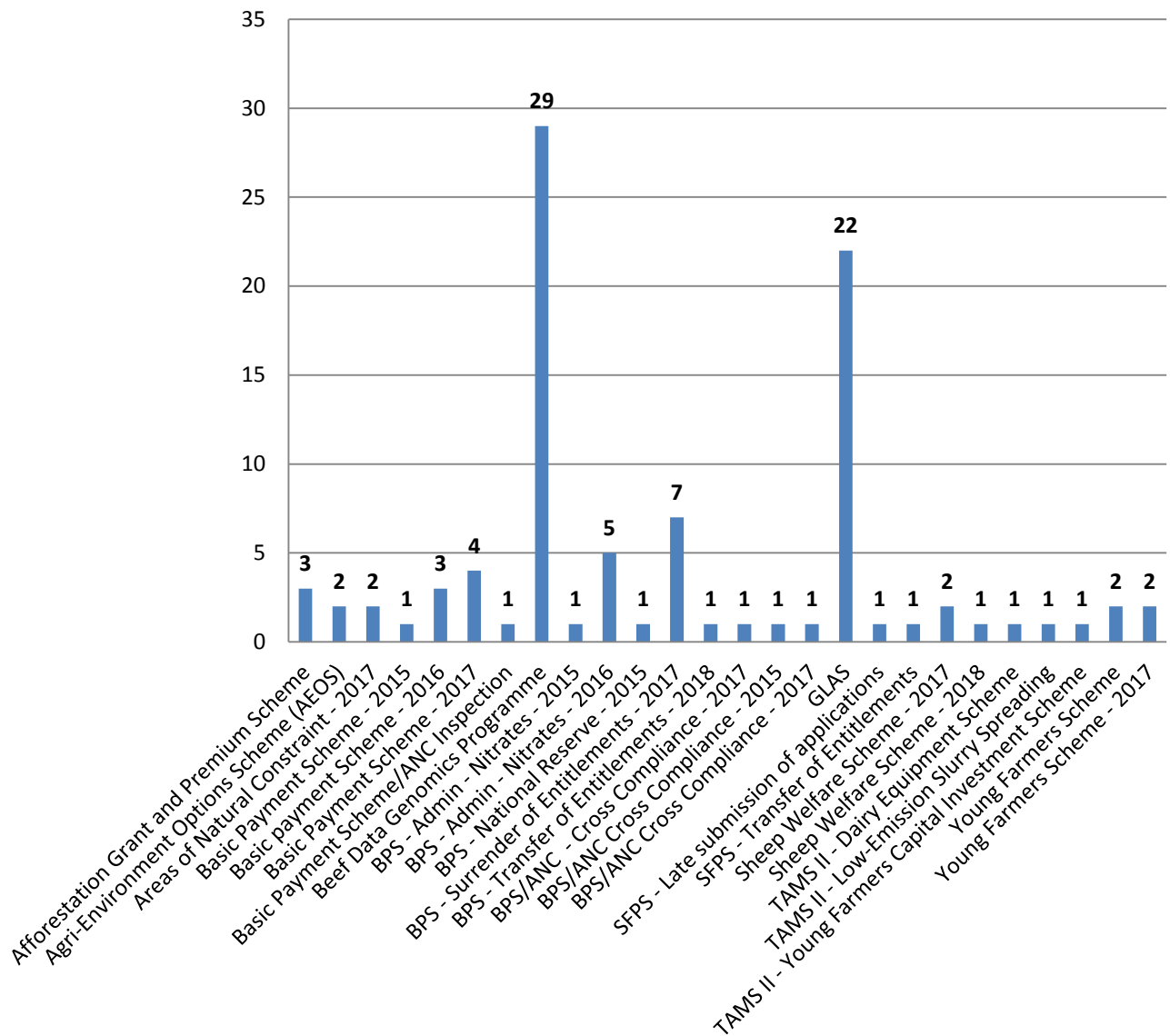
The scheme with the highest number of appeals that were revised by the Department was the Beef Data Genomics (BDG) Scheme and the second highest concerned GLAS appeals.

Of the BDG appeals revised by the Department a total of 14 had been assigned to an Appeals Officer: of those, 4 oral hearings were held and 3 involved cases for which oral hearings were cancelled after assignment to an Appeals Officer once the Department decided to revise its decision. The 7 remaining cases for the BDG that were assigned to the Appeals Officers were revised by the Department after a change in the Terms and Conditions following the consultation with this Office. The Department revised a further 15 BDG decisions before assignment to an Appeals Officer. Some of these decisions involved the issue relating to the terms and conditions referred to above.

In regard to GLAS appeals, 6 appeals that were subsequently revised by the Department had been assigned to Appeals Officers before the revised decision was made. Of those, 3 oral hearings had taken place and 2 oral hearings were cancelled once the Department had revised the decisions. In 1 case, following consultation with the Appeals Officer prior to any oral hearing being arranged, the Department revised the decision. Decisions on 16 GLAS appeals were revised by the Department before assignment to an Appeals Officer.

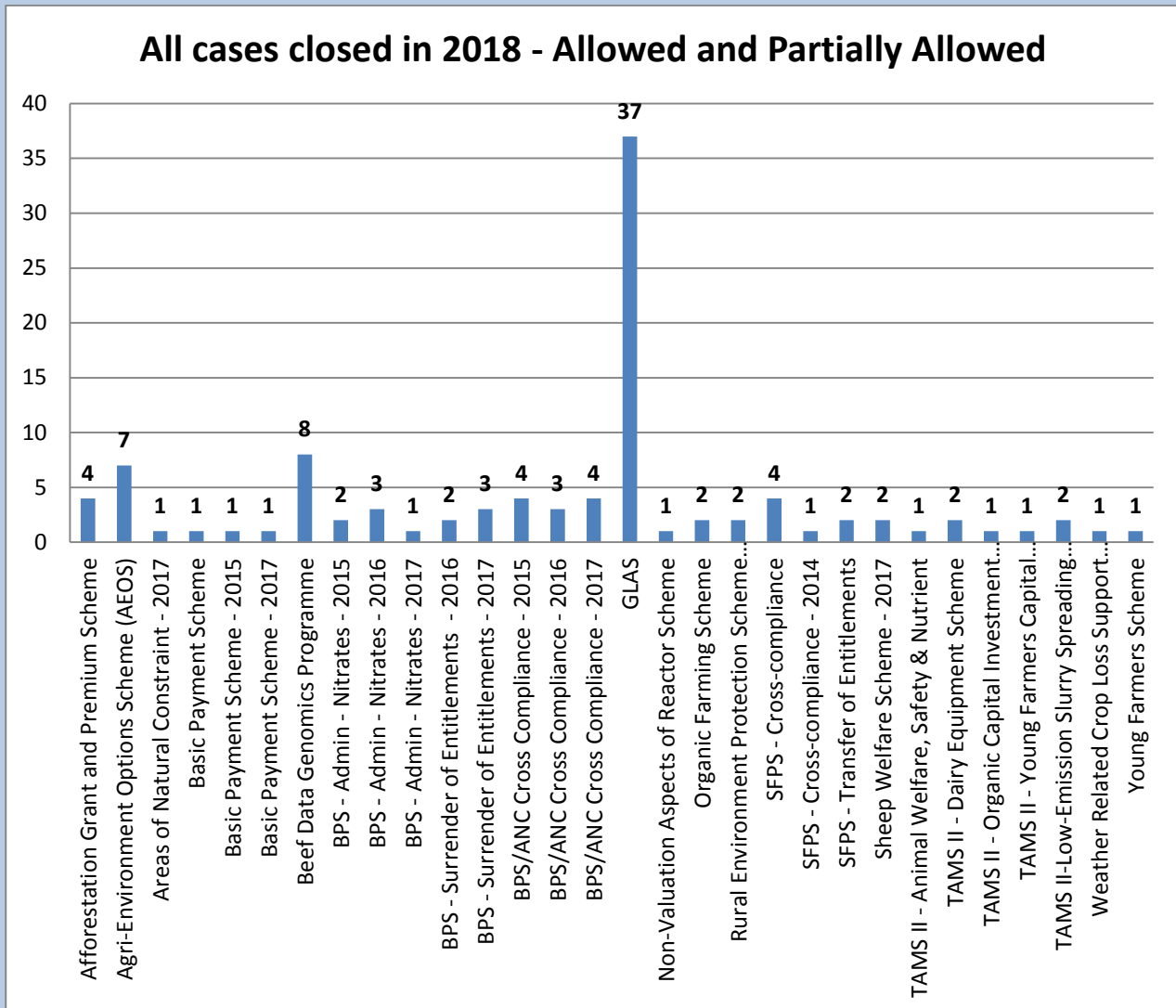
The table below shows more details of schemes for which decisions were revised after the appellant contacted the Appeals Office.

### 2018 Revised by the Department for all cases closed in 2018



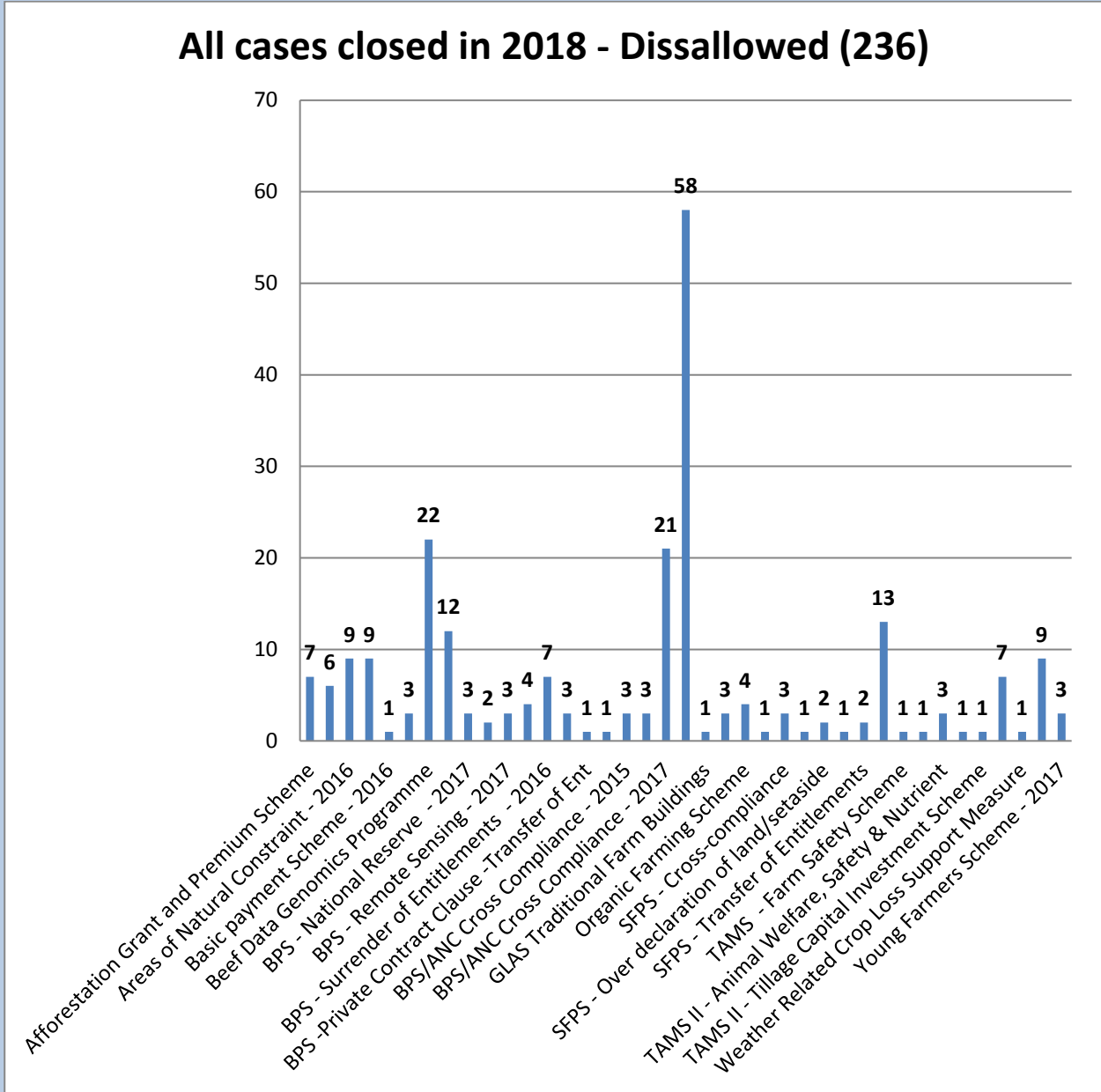
### 3.7.5. Appeals Allowed and Partially Allowed

In regard to appeals that were allowed or partially allowed by Appeals Officers, the scheme with the highest number of appeals in that category was the GLAS. The graph below shows the breakdown for all schemes.



**3.7.6. Breakdown of Appeals Disallowed – All Appeals Closed In 2018**

The scheme with the highest number of appeals disallowed by Appeals Officers was also the GLAS, accounting for 24.57% of all disallowed appeals.



**3.7.7. Table showing RECEIPT and OUTCOME by SCHEME at 31 December 2018 for APPEALS RECEIVED in 2018 which were CLOSED in 2018 (337)**

Scheme ID	Received	Closed	Appeal Allowed	%	Appeal Partially Allowed	%	Revised by Department	%	Disallowed	%	Appeal Withdrawn	%	Appeal Not Valid	%	Out of Time	%	Suspended	%	Open	%
Afforestation Grant & Premium Scheme	13	10	2	20%	1	10%	1	10%	5	50%			1	10%					3	23%
Agri-Environment Options Scheme (AEOS)	13	8	2	25%	3	38%			1	13%			2	25%					5	38%
Areas of Natural Constraint	25	14	1	7%			1	7%	12	86%									11	44%
Basic Payment Scheme	67	23	1	4%			4	17%	3	13%	1	4%	12	52%	2	9%			44	66%
Beef Data Genomics Programme	39	30	1	3%			15	50%	12	40%			1	3%	1	3%			9	23%
BPS - Admin - Nitrates	21	15	2	13%	2	13%	5	33%	6	40%									6	29%
BPS - National Reserve	7	3					1	33%	1	33%					1	33%			4	57%
BPS/ANC - Cross Compliance	43	26	1	4%	4	15%	2	8%	15	58%			3	12%			1	4%	17	40%
BPS - Surrender of Entitlements	36	27	4	15%	1	4%	7	26%	10	37%					5	19%			9	25%
BPS - Transfer of Entitlements	5	2		0%			1	50%									1	50%	3	60%
GLAS	139	102	20	20%	7	7%	18	18%	46	45%	4	4%	1	1%	6	6%			37	27%
Organic Farming Scheme	15	6	2	33%					4	67%									9	60%
Sheep Welfare Scheme	32	18	1	6%			2	11%	11	61%	2	11%	1	6%	1	6%			14	44%
TAMS II - Animal Welfare, Safety & Nutrient Scheme	7	3							2	67%			1	33%					4	57%
TAMS II - Dairy Equipment Scheme	8	3	1	33%	1	33%			1	33%									5	63%
TAMS II - Low - Emission Slurry Spreading Equip Scheme	6	2	1	50%	1	50%													4	67%
TAMS II - Young Farmers Capital Investment Scheme	11	7		0%	1	14%	1	14%	4	57%			1	14%					4	36%
Weather related Crop Loss Support Measure	8	4			1	25%			1	25%	1	25%	1	25%					4	50%
Young Farmers Scheme	30	17	1	6%			4	24%	9	53%			3	18%					13	43%
Other*	31	17					2	12%	8	47%			6	35%	1	6%			14	45%
<b>Total</b>	<b>556</b>	<b>337</b>	<b>40</b>		<b>22</b>		<b>64</b>		<b>151</b>		<b>8</b>		<b>33</b>		<b>17</b>		<b>2</b>		<b>219</b>	

\* Refers to schemes where less than 5 appeals were received

The Outcome of the 337 Appeals that were both received in 2018 and closed in 2018 is not dissimilar from the breakdown for all appeals closed in 2018 - the disallowed is the same at 45%, however the allowed/partially allowed and revised by the Department was lower at 37% and the out of time/withdrawn/invalid was higher at 18%.

### 3.8. Time Period For Receipt Of Department Documents

On receipt of an appeal, the Agriculture Appeals Office requests the Department to provide the relevant documentation/file to the Office within two weeks of the request. This is to ensure that appeals can be allocated to an Appeals Officer without delay. Reminders are issued where required. A number of reminders and repeat reminders were issued by the Appeals Office to the Department in 2018. The average number of days for the return of file documents from the Department was 28 days for appeals received in 2018. This compares with an average of 23 days in 2017. A breakdown of the average number of days for receipt of the Department file documents from the date of request by the Appeals Office is set out below for a selection of schemes (*Statistics in the examples below refer only to a selection of schemes where more than 10 appeals were received*).

Scheme	No. of appeals	Average number of days for return of Department documents
GLAS	139	19
Basic Payment Scheme	67	81
BPS/ANC Cross Compliance - 2016	43	39
Beef Data Genomics Scheme	39	25
BPS - Surrender of Entitlements	36	15
Sheep Welfare Scheme	32	9
Young Farmers Scheme	30	12
Areas of Natural Constraint	25	31
BPS - Admin Nitrates	21	13
Organic Farming Scheme	15	63



### 3.9. Time Taken To Determine Appeals

The Agriculture Appeals Office has set itself a target of three months for closure of an appeal from the time of receipt of the Department file documents until the issue of an appeal decision letter. Due to circumstances outside of the control of the Agriculture Appeals Office, appeals may not be completed within the target time frame. The reasons for failure to close an appeal within the three months from receipt of the Department file can vary and can include delays in obtaining agreement on dates for oral hearings by all parties, resource capacity, complexity of the case and legal issues. For appeals received in 2018, the average time taken to deal with an appeal was 70 days from date of receipt of the Department file. This includes cases that were revised by the Department following intervention by the Appeals Office, prior to assignment of the case to an Appeals Officer. In 2017 the time period was 79 days.

Appeals that were received in 2018 that were closed in 2018 were closed in an average period of 92 days from date of receipt of the appeal. This compares with an average of 99.5 days for closing 2017 cases in 2017.

### 3.10. Number Of Oral Hearings Held In 2018

There were 315 oral hearings held in 2018. The total number of oral hearings in 2017 was 422. The 315 appeals that had an oral hearing in 2018 included appeals received in 2018 and previous years. A total of 45 oral hearings that were scheduled to take place in 2018 were cancelled/postponed - this equates to 12.5% of all hearings scheduled in 2018. Of those cancelled/postponed, 22 were cancelled by the appellant and 19 were cancelled by the Department of which 7 were cancelled because the DAFM revised their decision. 4 were cancelled by Appeals Officers. Of the 315 appeals that were the subject of an oral hearing in 2018, the breakdown of appeal years is as follows

Number of oral hearings held in 2018 (315)	Year in which appeal received
232	2018
78	2017
5	2016

### 3.11. Out Of Time – Appeals received outside the 3 month deadline

Current records indicate that, in 2018, 42 appeals were received outside of the three month deadline. In the case of the 30 appellants who subsequently submitted exceptional circumstances for the delay, 24 appeals were accepted, 5 were rejected and in 1 case the Director sought additional information from the appellant following which the Department revised the decision and the appeal was withdrawn. 12 appellants did not submit exceptional circumstances.

### 3.12. Position At Year End

The status at 31 December 2018 of appeals received in 2018 is set out below, together with, for comparison purposes, the position at 31 December 2017 in respect of appeals received in 2017.

	<b>Position at 31 December 2017</b> <i>Appeals received in 2017</i>	<b>Position at 31 December 2018</b> <i>Appeals received in 2018</i>	<b>Percentage difference</b>
Cases closed	462	337	- 27%
Work in progress – Agriculture Appeals Office	97	163	+ 68%
Awaiting Department response	79	56	- 29%
Total Appeals received	638	556	- 12.85%
Remaining appeals received in the year to be processed	176	219	+ 24%

While the number of days taken to close appeals improved in 2018 compared with 2017, it is evident from the statistics in the table above that when compared with 2017, the number of appeal closures was lower in 2018 than in 2017 and the number of appeals carried over was higher than that carried from 2017 to 2018. The main contributory factors are the additional work taken on by the Appeal Office for the newly established forestry licence appeals service and a number of Appeals Officer vacancies. The Office will continue to endeavor to improve the numbers of appeals closed in the year, reduce processing times, provide quality decisions and to actively engage with Human Resources Division on securing appropriate resource requirements.

### **3.13. The Office Of The Ombudsman**

Under the Agriculture Appeals Act 2001, appellants to the Agriculture Appeals Office may request a review of their case by the Office of the Ombudsman. The appeal file and documents in respect of 16 appeal cases were requested by the Office of the Ombudsman in 2018. 16 appeal files were also requested by the Office of the Ombudsman in 2017. Of the 16 Appeals requested by the Ombudsman in 2018, 12 cases have been dealt with by the Ombudsman of which 1 case was revised by the Department following the Ombudsman's office's examination of the case.

### **3.14. Freedom Of Information**

The Agriculture Appeals Office received 4 formal requests under the provisions of the Freedom of Information Act in 2018.

### **3.15. Litigation**

In 2016, a judgment of a High Court case concerning the Single Payment Scheme found against the DAFM and the Appeals Officer who dealt with the appeal. The case was appealed to the Court of Appeal and, in November 2018, the Court set

aside the findings of the trial judge and found that the Appeals Officer had not erred in law.<sup>2</sup>

### **3.16. Requests For Reviews Of Appeals Officer Decisions**

The legislation provides for reviews of Appeals Officer decisions. The Director of Agriculture Appeals may revise any decision of an Appeals Officer if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts. A request for such a review of a decision may be submitted by an appellant and/or by the Department of Agriculture, Food and the Marine.

Both 2016 and 2017 experienced a 100% increase in requests for reviews of appeal decisions by the Director. The Director is required to determine whether the Appeals Officer made an error in fact or in law following a detailed examination of each case and this can take some time depending on the complexity of the case and other exigencies such as resource capacity and delays in receipt of information requested from the Department.

A total of 17 reviews of Appeals Officer decisions were completed in 2018 of which 11 were requested by appellants and 6 by the Department.

The reason for a change in an appeal decision may include the submission of additional information by the appellant or the Department.

There are currently a number of reviews yet to be finalised and every effort is being made to ensure the reviews are completed.

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<sup>2</sup> (Court ref 2016/440)

## **4. Other Appeal Related Activities Undertaken By The Agriculture Appeals Office**

### **4.1. Legislation**

**4.1.1.** The Schedule of Schemes appended to the Agriculture Appeals Act, 2001, was amended to include additional schemes to allow appeals for those schemes to be submitted to the Appeals Office (S.I. No. 164 of 2018 Agriculture Appeals Regulations, 2018)

**4.1.2.** Section 35 of the Forestry Act 2014 amended the Agriculture Appeals Act, 2001 by providing for a new Forestry Appeals Committee (FAC) to deal with appeals against Department decisions on forestry licence applications for the following:

- (I) the felling or otherwise removing of a tree or trees and the thinning of a forest,
- (II) afforestation,
- (III) forest road works, and
- (IV) aerial fertilisation of forests.

The Appeals Office, in consultation with the Department, drafted a Statutory Instrument (Forestry Appeal Committee Regulations S.I. No. 638 of 2018) for the procedures to be followed by the FAC.

### **4.2. New appeal processes – New Forestry Appeals Committee (FAC)**

In 2018, the Minister established the Forestry Appeals Committee (FAC) to consider appeals against decisions by the Department with regard to applications for forestry licenses.

Appeals Officers were appointed by the Minister to the FAC established by the Minister in 2018.

The management, administration and secretariat support services for the FAC were assigned to the Agriculture Appeals Office which established procedures and documents for receiving and processing appeal requests.

A total of 231 forestry licence appeals were received in 2017 and 2018. 98 such appeals were closed in 2018.

#### **4.3. *Review of the Agriculture Appeals Act, 2001, and Agriculture Appeals Office operations***

The Report on the Review of the Agriculture Appeals Act, 2001 and operations of the Agriculture Appeals Office was published in February 2018. The assessment of that report's recommendations is on-going.

#### **4.4. *Meetings***

- The Office held regular internal meetings in 2018. The main purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the Office. Separately, internal working groups were established to deal with specific matters relating to the work of the Office including the new Forestry licence appeals service.
  
- The Office met once in 2018 with representatives of Farming Organizations.

#### **4.5. *IT system amendments***

The IT database used by the Office to record and track all appeals and their outcomes was created in 2002 with some minor updates since then. The work on the re-development of the system continued in 2018. The Appeals Office was also involved in creating a new database and management information system for the new forestry appeals service. A website for forestry appeals has also been established.

## 5. Selection of Examples from Appeals Officers of Agriculture Appeals Cases dealt with in 2018

### 5.1. Case 01 - 2017 National Reserve (Young Farmer)

The Department deemed a 2017 National Reserve - Young Farmer application to be ineligible due to the gross off-farm income limit of €40,000 being exceeded. The appellant young farmer had formed a registered farm partnership with a parent in 2016 using a joint herd number and two off-farm incomes were added when assessing against the €40,000 limit. The young farmer's off-farm income on its own was below the limit. The farmer's appeal was that, had the 2017 application been to the New Entrant category, only the young farmer's off-farm income would have counted towards the limit. The farmer also appealed that the parent's off-farm income was from a non-permanent Community Employment Scheme.

The 2017 National Reserve Terms and Conditions included the following for off-farm income:

- *A gross off farm income limit of €40,000....*
- *....Registered Farm Partnership – off-farm income of all participants on the herd number to which the Young Farmer(s) is associated is considered.*

The appellant referred to a version of the previous 2015 National Reserve (Young Farmer) Terms and Conditions that stated only the off-farm income of the Young Farmer(s) is considered in a farm partnership. The Department stated a revised version was in place within the 2015 application period that stated the off-farm income of all members of a joint herd number is taken into account.

The appeal concerned the 2017 National Reserve. An applicant agreed to be bound by the 2017 National Reserve Terms and Conditions. The 2017 Terms and Conditions were clear as regards the joint herd-number situation in registered farm partnerships in that the off-farm income of all participants on the herd number to which the Young Farmer(s) is associated is considered.

With regard to the Community Employment Scheme earnings, a sponsor was responsible for the pay of the participant and the sponsor received a grant from the Department of Employment Affairs and Social Protection to compensate for the pay. The Sponsor as employer was fully responsible for all aspects concerning the management and welfare of participants and an employment contract was required with each participant. The pay was subject to PAYE and PRSI, however no USC was applied. The Appeals Officer found the earnings of the parent were not a Department of Employment Affairs and Social Protection direct payment and were correctly interpreted as off-farm income for the 2017 National Reserve. On the basis of the joint herd-number situation both off-farm incomes were required to be combined and exceeded the €40,000 limit.

The Appeals Officer found the requirements for the 2017 New Entrant would not have been met as the Terms and Conditions specified that where a herd-number is registered on behalf of a group under the 'new entrant' category, all persons in control of the group must meet all conditions of the 'new entrant' category with the exception of the educational requirement, meaning both partnership members would have to have met the New Entrant requirements, including to have commenced the agricultural activity at the earliest in 2015 and this was not the case for the parent. The appeal was disallowed.

## **5.2. Case 02 – 2016 Nitrates (Water framework Directive) and Cross Compliance**

A 20% sanction was applied by the Department against the 2018 EU area based payments on the basis that records indicated total Nitrogen (N) from livestock on the farm for 2016 was over 300 kg per hectare and exceeded the permitted Nitrates derogation level of 250 kg per hectare. The Appellant's derogation records were in order.

The farmer appealed that manure was exported during 2016 and temporary grazing was availed of as had been the case in other years. A Record 3 form for the export of the manure and a Record 5 for the temporary grazing were completed and posted on time. Neither Registered Post nor Express Post was used. The farmer



described how they had gone to their advisor for the forms and had visited the importing farmer and the owner of the temporary grazing on the day and posted an envelope with both forms once copied. The Department confirmed the Record 5 was received in December 2016 but the Record 3 was not.

The 2016 Record 3 form by its own terms states that details of exports which occur in 2016 must be submitted on the form by 31 Dec 2016, that the form must be returned to Nitrates Section, and the only acceptable proof of postage will be Express Post Receipt or Registered Post Receipt.

The Department described a robust document handling system for Record 3 and Record 5 forms, from receipt of postage, to listing, processing and filing. The safeguard in place was for a farmer is to obtain an Express Post or Registered Post receipt when sending. The Department based the decision not to accept the Record 3 on the absence of such proof of postage. The Department confirmed the envelope used was not retained and had been disposed of.

In both previous years the appellant had submitted Record 3 and Record 5 forms on the same date, with Record 3 exports to the same farmer as in 2016. The Record 5 was received by the Department in 2016, so rather than a loss in postage, this showed the envelope was received. A postage receipt would not have listed the contents. The appellant had retained a copy of both forms.

On the basis the total circumstances of the case, including that the postage was in this instance shown to have been received, the previous years' submissions of both forms on the same day, and the copied versions, the appeal was allowed.

### **5.3. Case 03 – Areas of Natural Constraints Scheme (ANC)**

An application for the 2016 Areas of Natural Constraints Scheme (ANC) was submitted to the Department. The minimum stocking density requirements for eligible applicants in 2016 was that they must have met 0.15 livestock units per hectare calculated over the twelve months of the calendar year 2016. The applicant

did not meet the eligibility requirements as they did not return their sheep census form within the required deadline. The applicant sought an appeal in relation to this decision stating that the reason they did not submit the census on time was that they were suffering from a medical condition.

The relevant terms and conditions applicable to the 2016 Areas of Natural Constraints are that applicants with ovine herds must have submitted a Sheep/Goat Census form before the closing date. Under EU Regulation 21/2004, all flock owners' sheep keepers are obliged to count the Sheep/Goats present in their flock on their holding, record this number in the flock register and are legally obliged to return this number to the Department via the annual Sheep/Goat Census return. Where flock owners do not have Sheep/Goats at the time of the Census, there is still an onus to complete and return the Census. Flock books will not be accepted by the Department without a valid sheep census except in exceptional circumstances. The closing date for the 2016 Sheep/Goat Census was 29 January 2016.

The Appeals Officer examined the medical evidence and the circumstances concerning the case. They found that the case did not come under the provisions for force majeure as the applicant was involved in carrying out farming activities in 2016 and this contradicted the appellant's claim under the long-term professional incapacity provision of force majeure. The appeal was disallowed.

#### **5.4. Case 04 - Beef Data and Genomics Programme (BDG) 2015-2020**

The appellant joined the Beef Data and Genomics (BDG) 2015 – 2020. In May 2017, the Department notified the appellant that some of the requirements as outlined in the terms and conditions of the Programme had not been completed, and also detailed that for event recording, 26% was not completed and therefore a reduction in payment was to be applied.

The appellant appealed on the grounds that he was not aware of the 150 day rule that calves must be maintained on the holding in order to be eligible for payment, and that he had to sell the animals due to financial difficulties with servicing a loan.

The appellant also outlined that he had another loan to service, which was taken out to pay for a four bay slatted shed that he built to avoid causing pollution and allow him continue suckler farming.

The Appeals Officer, from reviewing the evidence, found that six animals were less than five months of age when sold. The Appeals Officer found that the scheme's terms and conditions outlined that "*calves must be maintained on the holding for at least 5 months*". With the appellant having applied to participate in the scheme, and the scheme's terms and conditions being publicly available, the Appeals Officer found that the grounds of a lack of knowledge of the requirement were not sufficient to excuse from this requirement.

The Appeals Officer considered and acknowledged the appellant's financial difficulties which he had outlined and the farm investments he had made, building a slatted shed for animal housing and slurry storage, and that servicing this loan as well as the other loan he had highlighted would have put him under financial pressure. However the Appeals Officer found no allowance for such factors in the terms and conditions of the scheme against the requirement that calves are maintained on the holding for at least five months. In addition, the Appeals Officer found the scheme's terms and conditions articulate that calves must be maintained on the holding for at least five months "*in order to ensure the validity of some of the data recorded*". The appeal was disallowed.

#### **5.5. Case 05 – Basic Payment Scheme (BPS)**

The Department inspected an appellant's BPS application. Three land parcels were found to be over claimed; this reduced the area of eligible land by 2.46ha. The Department found that the boundary fencing was not sufficient.

The appeal grounds included that there were two ponies on the land in question and that the appellant was not aware that the Department would not accept the fencing that was in place at the time of inspection. When they were told by the inspector that the fencing was not adequate they fenced both plots with timber posts and two strands of barbed wire.

At the oral hearing the Department outlined the reasons why the land was rejected as not being defined by a permanent boundary. They referred to the BPS/ANC Terms and Conditions on fencing and stated that these were sent out to applicants. The appellant outlined how these land parcels were fenced with pigtailed and one strand of wire, and stated they were fenced to the required standard for six months.

In arriving at a determination in this case the Appeals Officer quoted the 'Terms & Conditions for the 2017 EU Basic Scheme (BPS)' on land eligibility:

*In order to draw down payment in respect of your BPS entitlements, you must have an "eligible hectare" to accompany each entitlement.*

*There must be appropriate fencing for the farming enterprise being conducted. Appropriate fencing means stock proof fencing that will adequately control the applicant's and neighbouring farmer's animals. In this regard temporary electric fencing will not suffice as a stock proof barrier between two applicants. In mountain/hill areas this generally means sheep fencing;*

The Appeals Officer accepted that the appellant fenced the land parcels after the inspection and had them fenced for the second half of 2017. The Appeals Officer found that the stockproof standard for fencing outlined in the 2017 BPS Terms and Conditions are required to be in place at all times not just when stock are present. Having the fence in place for half the year is not sufficient to comply with the eligibility criteria and the Terms and Conditions do not allow for any reductions in the applied sanctions because the fencing may have been adequate for part of the year. The appeal was disallowed.

## 5.6. Case 06 – Cross Compliance - 2017 Basic Payment Scheme/Other Area Based Schemes

A BPS/ Cross Compliance inspection was carried out on an applicant's holding in 2017 and a number of non-compliances were found in relation to Identification/ Registration under Statutory Management Requirements 7 and 8 (tagging, registration, passport and herd register issues). The non-compliances were regarded as severe. The overall Cross compliance Result was a 45% Sanction.

Non-compliance penalties had been received in the two years previous to the current penalty. In 2014 the appellant received a 5% sanction for non compliance with Identification/ Registration under Statutory Management Requirements (SMR) 7 and 8. In 2015, the appellant received a sanction of 15% (5 x 3) for non compliance with SMR 7 and 8. In the year of inspection 2017, the appellant received a sanction of 45% (15 x 3) for non compliance under SMR 7 and 8. The main grounds of the appellants' appeal were in regard to on-going medical treatment at the time of inspection.

The Appeals Officer considered the EU Basic Payment Scheme (BPS)/ Greening Payment Terms and Conditions, on Cross Compliance Penalties: *'If a farmer is found to be in breach of Cross Compliance through negligence, a penalty of 3% will normally apply but this can be reduced to 1% or increased to 5% depending on the extent, severity and permanence of the non-compliance. If 'reoccurrence' applies the penalty will be multiplied by 3 to a limit of 15%. Reoccurrence of breaches after this will be considered as Intent'.*

The Appeals Officer considered Article 39 on 'Negligence' in Commission Delegated Regulation (EU) No 640/2014: *'Once a maximum percentage of 15% has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined again, the beneficiary shall be considered to have acted intentionally within the meaning of Article 40'.*

The Appeals Officer found that the previous non-compliance sanction reached a limit of 15%. However, they found no provision in Commission Regulation 640/2014 to multiply by a factor of 3 again, and found that the Regulation requires that the case be classed as intentional non-compliance as per Article 40: *'Where the non-compliance determined has been committed intentionally by the beneficiary, the reduction to be applied to the total amount referred to in Article 39 (1) shall, as general rule, be 20% of that total amount.'*

The Appeals Officer's decision was that the 2017 non-compliance should be considered as the appellant's first sanction under intent and as per the general rule set out in the Regulation, this first occasion of intent should be given a 20% sanction. The appeal was partially allowed.

#### **5.7. Case 07 – Cross Compliance 2017 Basic Payment Scheme/Other Area Based Schemes**

The appellant's holding was subject to an inspection in 2017. The outcome of the inspection was identified non-compliance in Statutory Management Requirements 7 and 8 Animal Identification and Registration. The Formal Decision letter which was subsequently issued imposed a 3% sanction.

At the oral hearing in this appeal it was established that the primary reason for the imposition of the sanction was in relation to tagging issues. At the inspection a number of the appellant's animals had one of their tags altered by the appellant and the altered tags were deemed by the Department to be incomplete and invalid tags leaving the animals with one approved tag.

The oral hearing also established that the number of animals determined by the Department as having only one valid tag was established by a desktop check, and that no accurate count had been conducted on the day of inspection.

In making the determination the Appeals Officer accepted that a number of the appellant's animals were non-compliant with tagging on the day of inspection.

However, on the balance of all the available evidence there was some doubt as to the exact number of non-compliant animals. Given that the weighting which led to the imposition of the sanction was based on an exact number of non-compliant animals which was in question the Appeals Officer allowed the appeal.

#### **5.8. Case 08 – Cross Compliance 2017 Basic Payment Scheme and Other Area Based Schemes**

A farmer submitted their 2017 Basic Payment Scheme application in May 2017. However, two inspections had been carried out by the National Parks and Wildlife Service (NPWS) in relation to Good Agricultural and Environmental Condition standards (GAEC) and the results were cross reported to the Department. The cross reported inspection results showed that 1.2kms of a hedgerow/ditch had been removed without an equivalent length being planted elsewhere in advance. The Department regarded this as a breach of the Good Agricultural and Environmental Conditions standard 7 (GAEC 7). The Department advised the applicant that the removal of the hedgerow without prior replanting is regarded as a removal of a 'landscape feature' and a breach of GAEC 7 and also advised about the sanction applicable. The sanction was appealed.

At the oral hearing, the farmer explained that the original hedgerow consisted of two ditches of brambles with sparse trees which were originally part of an avenue to a house. The land was recently purchased and had been badly neglected. It was contended that the original hedgerow was not stockproof. After the removal, one side of the avenue was replanted and the remainder replanted along another part of the farm. A third party contractor had carried out the hedgerow removal for the farmer. The farmer also advised that personal health reasons had prevented him from replanting the hedgerow before removal. It was also explained that the intention was to improve the farm and create more manageable grazing paddocks.

The Appeals Officer referred to the legislation relevant to the cross compliance requirements for beneficiaries under the CAP, as set out in Regulation (EU) No.



1306/2013 of the European Parliament, in particular at Articles 91 (1), 93(1) and at Annex 11. The requirements in relation to GAEC as set out in the EU legislation are also included in the 2017 EU BPS/Greening Payment Terms and Conditions booklet. Under GAEC 7 a hedgerow is designated as a landscape feature and it cannot be removed unless replaced in advance. In this case, the Appeals Officer found that the replacement hedgerow was not planted in advance, but was replanted afterwards.

In the 2017 BPS/Greening Terms and Conditions booklet, the definition for a hedgerow is broad and includes sparse hedges, and there is no requirement for it to be stockproof. The Appeals Officer found that hedgerows were deemed landscape features since 2009, therefore the requirements of the standard GAEC 7 applied to them. While it was acknowledged that it was difficult to replant hedges on the same location, the Appeals Officer found that the Terms and Conditions do not specify a location for the replanting and it was open to the farmer to carry out the replanting at other locations on his declared holding. The personal health difficulties being experienced by the farmer at the time were acknowledged, but it was also noted that the hedge removal was carried out by a third party contractor.

In relation to the level of sanction applied the Appeals Officer referred to the provisions of Commission Delegated Regulation No. 640/2014. The Department imposed a 5% sanction for the breach with GAEC 7 based on an assessment of the issue and determining the non compliance as negligence, reflecting the provisions of Article 39 of 640/2014. The reporting authority, the NPWS, noted the extent of the loss of hedgerows having caused habitat fragmentation with potential adverse impact on birds and bats that commute between roosts and foraging sites on the farm and adjacent lands. They noted also the loss of feeding habitat for bats and loss of feeding and nesting habitat for wild birds. The severity was noted as having potential to cause a high negative impact on local bat and bird populations, and as regards permanence, it was noted by them that any impacts would be permanent as the hedgerow had been completely removed from its position. In these circumstances, given the severity, extent and permanence of the breach of 1.2 km



of hedgerow removed, the Appeals Officer found that the 5% sanction applied. The appeal was disallowed.

#### 5.9. Case 9 – Green, Low-Carbon Agri-Environment Scheme (GLAS) Tranche 1

The appellant applied for the GLAS Tranche 1. One of the core requirements of the GLAS Terms and Conditions is to undertake to have a farm Nutrient Management Plan (NMP) prepared by a planner within a specified timeframe. A NMP was not submitted by the applicant and the Department wrote to him on the 13 March 2018 rejecting the application from the scheme and requesting a clawback of any monies already paid.

In the appellant's appeal the point was made that he had difficulties with his planner and that this prevented him from submitting his NMP within the specified timeframe. Section 6.2 of the Terms & Conditions for Tranche 1 of GLAS Green, Low-Carbon Agri-environment Scheme is titled Core Requirements and states:

*“All applicants must undertake to have a Farm Nutrient Management Plan prepared for the holding before the end of the first full calendar year in the scheme. Actions involving reduced fertiliser inputs will be subject to a compulsory mid-term review of the nutrient management plan, as directed by the Department.”*

Annex 1A of the Terms & Conditions for Tranche 1 of GLAS Green, Low-Carbon Agri-environment Scheme is titled GLAS Structure, Core Management Requirements and states:

*All of **these requirements are compulsory**:*

- *An approved agricultural planner must prepare the GLAS application*
- *Nutrient Management Planning*
- *Training in environmental practices and standards*
- *Record keeping of actions delivered”*

The Appeals Officer acknowledged the appellants difficulties with his planner which is a matter between the parties concerned and is outside the remit of this office. The appeal was disallowed.

#### 5.10. Case 10 - Green, Low-Carbon Agri-Environment Scheme (GLAS) Tranche 3

The appellant applied for the GLAS Tranche 3. As part of the validation checks land details are cross checked with the Basic Payment Scheme and it was established that a certain parcel of land was not included as commonage in the Department's commonage container.

In the appellant's appeal the point was made that the Land Folio for the parcel stated that the appellant was a full owner as a "tenant in common".

Section 3.8 of the Terms and Conditions for Tranche 3 of the GLAS states: *"Commonage' which may be eligible for payment shall mean lands included in the Department's commonage container and farmed in common."*

Tenants in common are recognised for legal ownership but it is not pertinent to a grazing right qualifying for inclusion in the Commonage Container. Being part of the Commonage Container is part of the first condition under the GLAS and the second condition is that the land must be farmed in common.

Commonage land is land which is open to several parties for the common grazing of animals. Commonage may not be owned by any particular person or group of persons but is accessible to all for the purposes of grazing land in that vicinity. It is consistent with the objectives of the GLAS which is an environmental scheme to assist and preserve the environment quality of lands which are subject to various types of farming.

The Department defines commonage which is consistent with the EU Regulations and which assists in identifying the type of land which is subject to the GLAS in accordance with the objectives and terms and conditions of the scheme.

The appeal was disallowed.

### **5.11. Case 11 - Green, Low-Carbon Agri-Environment Scheme (GLAS) Tranche 3**

The appellant applied to join GLAS (Tranche 3) via the Department's online system in 2016. The Department informed them in 2017, that under the selection criteria the score achieved for the actions claimed on the appellant's application they were classed as a tier 3 applicant and scored 6.0 and thereby did not achieve the pass mark of 16.5. The Department stated that consequently the appellant's application had not been selected for admission to GLAS.

The appellant appealed on the grounds that he had commonage land but the commonage tab did not present for his on line GLAS application and that he would have met the selection threshold if he could have applied on his commonage land. It was mentioned in the grounds of appeal that a relative of the appellant declared the commonage in 2015 for the Basic Payment Scheme (BPS) but passed away later that year.

The Appeals Officer found that the appellant applied for the BPS for the first time in 2016, and as part of this they included commonage land in the lands declared as being at their disposal. The Appeals Officer found in this application the appellant declared two parcels of commonage, with a 1/5<sup>th</sup> commonage fraction claimed in both; with claimed areas of 2.81 hectares and 14.68 hectares for these parcels. However the Appeals Officer found the commonage action was not made available to the appellant at GLAS application stage as his commonage area was not verified under BPS by the Department at that stage. The Appeals Officer found if the commonage action was available to the appellant, he would have achieved tier 1 status and been given priority access into the scheme.

It was noted that the Department issued two letters to the appellant in December 2016 seeking proof of entitlement to claim these commonage parcels advising that otherwise the Department would proceed with processing his BPS application without it. The Appeals Officer found the appellant's agent submitted documentation on the commonage in mid January 2017. The Appeals Officer also found that the Department accepted this commonage evidence and the appellant's BPS payment

issued soon after. However the Appeals Officer found GLAS section of the Department did not accept this for GLAS purposes as the closing date for applications to GLAS was 15 December 2016.

The Appeals Officer considered the Scheme's terms and conditions and relevant GLAS circulars as to commonage requirements and explanatory notes on same.

The Appeals Officer found in particular that:

- the appellant was a first time BPS applicant in 2016, declaring the commonage land on his application form in May 2016, and became a registered herd owner in 2016 and that this condition allowed the appellant be considered an eligible commonage applicant for GLAS 3,
- the appellant submitted supporting documentation to the Department with regard to his right to include commonage land for the 2016 BPS on 2 November 2016 which was before the GLAS 3 application closing date,
- the BPS section of the Department accepted his commonage land as eligible area for 2016 even though he submitted final supporting documentation in mid January 2017, and
- the GLAS administrative infrastructure is strongly supported by the IACS and BPS system, which validated the appellant's right to claim commonage area for 2016 and subsequent years.

The Appeals Officer found that the appellant's claimed commonage area for 2016 BPS should be accepted retrospectively for GLAS 3, the commonage action facilitated and scheme participation allowed. The appeal was allowed.

#### **5.12. Cases revised by the Department - Beef Data and Genomics (BDG) 2015-2020**

A number of appeals received by the Office concerned Department decisions for 2015 born animals which were tested positive for BVD in that year and were not disposed of within 7 weeks of the initial test for BVD resulting in the farmer being excluded from payment for the 2016 scheme.

The 2015 BDG terms and conditions stated that if the animal is not removed within 7 weeks of the initial test the farmer will be excluded from payment for the following year. However, in late 2017, the scheme rules were changed (as is provided for in the Terms and Conditions) and the new rules allowed for the disposal of the animal before the 31 March of the following year, without penalty. This change was then applied to 2016 born animals (i.e. born in the year prior to the change to the rule) but was not applied to 2015 born animals. It was unclear to this Office why some but not all applicants (and/or some but not all animals) were excluded from what is in effect a retrospective application of the new rule. It was, in the view of this Office, unclear from the Terms and Conditions why, for example, if a farmer owned a 2015 born calf and a 2016 born calf that both tested positive and were not removed within 7 weeks, only one calf would be eligible: The Director of Agriculture Appeals wrote to the Department seeking clarification of the terms and conditions. The Department responded by advising that the matter had been considered and that it was decided that the revised rules would apply also to the 2015 year. The decisions under appeal were subsequently revised by the Department in favour of the applicant.

## **6. Suggestions For The Department Of Agriculture, Food And The Marine**

**6.1. All Schemes:** With due regard to the EU legislation governing schemes, it would be helpful if, when issuing decisions that refer to penalties, the Department would refer to the relevant legislation and specific articles in the governing Regulations that underpin the various provisions in the Scheme Terms and Conditions documents, particularly those relating to sanctions where the severity, extent, permanence, duration and reoccurrence of the non compliance needs to be taken into account. It is not always abundantly clear from current Department documents how the specific provisions of the governing legislation are applied to each decision and the text in the Scheme Terms and Conditions documents do not always refer to the legislative Articles supporting the measures/actions/sanctions. It is acknowledged that the list of governing legislation is provided in the Terms and Conditions.

**6.2. All Schemes:** The statistics on appeals received and closed by the Appeals Office show that almost 19% of appeals received in 2018 and closed in 2018 were revised by the Department over the course of the appeal but prior to completion of an Appeals Officer's decision. For most of these cases the Department had already carried out an internal review of the case prior to the submission of the appeal and the Department had not changed its original decision based on the information available to it at that time. It is acknowledged that appellants can sometimes provide more information to the Appeals Office than was made available to the Department and/or that the Appeals Office queries a position taken by the Department in respect of the published rules. It is suggested that when Applicants request the Department to review the original Department decision they might be encouraged by the Department to submit all information that may assist their case. This would assist the Department, the appellant and the Appeals Office to reduce the burden of dealing with an appeal unnecessarily, with consequences for a reduced administrative burden for all and reduced time period of uncertainty for applicants.

**6.3 All Schemes:** In regard to field inspections and with due regard to the governing rules, the Appeals Office believes it is necessary to mention the importance of applicants or their representatives being present during field inspections. It is

suggested that every effort should be made by the Department to contact the applicant or their representative when carrying out field inspections, including those for which advance notice was not given, and that the applicant or his representative is advised of the key specific findings and possible consequences immediately once the findings have been determined. It is suggested also that it might be helpful for all parties if photographs of areas that are indicated to be potential findings of non compliance were taken by both parties during the inspection particularly concerning any non compliances that are the subject of disagreement between the parties on the day.

**6.4 *Area based schemes:*** As mentioned in last year's annual report there would be appear to be an absence of awareness by some applicants of the full extent of the consequences of the significant penalties that can arise for applicants where there is a reduction in eligible area under the BPS or if there is an inconsistency between the information presented in the annual BPS/Other Area Based Schemes application and applicants' approved applications for GLAS etc.. This Office has previously suggested that the practical effect and risk in that regard should be made very clear in the annual terms and conditions accompanying the annual application. As mentioned in the 2017 annual report, a 'Frequently Asked Questions' section of the terms and conditions issued, with practical examples, might assist in this regard.

**6.5 *Department decisions:*** While some improvement has occurred in 2018, not all Department decision letters or statements issued to the Appeals Office identify the scheme that is the subject of the appeal. All Department decision letters issued to appellants must clearly state the specific scheme name, scheme tranche if relevant, and year of the scheme concerned. In particular in regard to the TAMS Tranches, given the large number of TAMS schemes, tranches and revisions of the Scheme Terms and Conditions, it would be very helpful if the Department stated in all reports in such cases to the Appeals Office, what tranche of the TAMS scheme is under appeal.

## **7. Suggestions for scheme applicants**

- 7.1. All Schemes:** As in previous years, *Force majeure* featured regularly in the grounds of appeal. It is therefore relevant to reiterate the points previously made in other annual reports. Appeals Officers must abide by the rules governing the schemes which provide very limited circumstances for allowing appeals on *force majeure* grounds. A key principle when applying *force majeure* is to consider if the circumstances that give rise to the non compliance can be regarded as unforeseeable and outside of the control of the applicant. In particular, when there is a risk identified, applicants would be expected to take action without delay and exercise all due care in order to comply with the requirements. It is important also that applicants inform the Department of any circumstances arising that might be considered as *force majeure* within the required 10 day period.
- 7.2. All Schemes:** Farmers are advised to take care when changing their trading system, i.e. sole trader, partnership or company structure, because, when they enter into a contract with the Department, any change in the name or of the applicant/beneficiary, for example, by changing from joint applicants to a partnership or from a partnership to a limited company, during the contract period can have serious consequences such as rejection from the scheme and recoupment of funds paid.
- 7.3. All Schemes:** Give the higher percentage of appeals that were successful because the Department revised its decision after the appellant contacted the Appeals Office, it is relevant to again refer to the Department review procedure open to applicants. All farmers who receive a Department decision against their application may request an internal review by the Department of that decision before appealing to the Appeals Office. When requesting such a review, it is suggested that farmers ensure that all relevant information supporting their case is submitted as part of their request to the Department. Ensuring the Department is fully informed of all of the circumstances may result in the original decision being overturned by the Department prior to an appeal being submitted to this Office, thereby saving time for the applicant.



- 7.4. All Schemes:** In relation to field inspections and with due regard to the governing rules, it is suggested that applicants or a representative on their behalf remain present during field inspections. Contact names and numbers should be provided to the Department in advance in case unannounced inspections occur. Photographs should be taken where possible of areas that are indicated as potential findings of non compliance
- 7.5. All Schemes:** During the year, it was noted that issues continue to arise regarding proof of postage: applicants should as far as possible use the recommended postal facility stated in the terms and conditions when posting important documents.
- 7.6. Cross Compliance Statutory Management Requirements for Animal Identification and Registration:** Animal identification and registration is a critical component of the Irish livestock industry. Traceability is vitally important in the food sector particularly in relation to health aspects and also in the support of exports to foreign markets. Compliance with the statutory management requirements relating to animal identification and movements is essential. Failure to adhere to them carries consequences, not only for the individual concerned in the form of penalties, but also for in the wider context of the Irish livestock sector.
- 7.7. Cross Compliance GAEC:** Farmers should note the need to adhere to the standards for good agricultural and environment conditions, known as GAEC, particularly with regard to hedgerow removal. GAEC standards focus on soil, protection and maintenance of soil organic matter, avoiding the deterioration of habitats, and water protection. In relation to hedgerow removal, the effects of this can be wide reaching to the environment, destroy habitats and have a detrimental effect on bio-diversity. Farmers should be particularly aware when removing landscape features such as hedgerows of the damage to the habitat that ensues, and also of the penalties that are applicable if the hedgerow is not re-planted in advance.

- 7.8. Beef Data Genomics:** It is suggested that farmers take note of the requirement to retain calves for 5 months in order to qualify for payment.
- 7.9. GLAS:** Throughout the year, this Office has noted issues regarding non fulfillment of the priority action. It is essential that farmers realize that the priority action under GLAS must be fulfilled. This is particularly important where the applicant has only one priority action.
- 7.10. Young Farmers Scheme:** Farmers should note that the 5 year period for the payment under this scheme starts from the date of obtaining a herd number. An applicant may not always receive 5 years payment under the scheme, but may only be eligible for 3 or 4 years, depending on the date of obtaining the herd number.
- 7.11. Organic Scheme:** The organic licence subscription needs to be paid every year to ensure compliance with the scheme and payment. Failure to do so may result in exclusion from the scheme and recovery of payments made by the Department.
- 7.12. Area Based Schemes:** The application for the Basic Payment Scheme (BPS) is also the application for other Area Based Schemes. There is therefore intrinsic direct link between the annual application and commitments and undertakings already approved under multi-annual Area Based schemes such as GLAS. Consequently a declaration of area size and use must be consistent in the annual BPS/Other Area Based Schemes application with information in applications and approvals already issued and approved for the other Area Based Schemes. A difference in area size or usage declared on the annual application or found on inspection can have a direct effect on payments relating to commitments and actions already approved for other Area Based Schemes resulting in significant penalties and claw back of previous year payments. Applicants therefore need to ensure that the information declared on their annual application is consistent with whatever commitments they have made and which have been approved. Applicants needs to familiarise themselves with the consequential effect of a non-compliance with a requirement of one scheme on other Area Based Schemes. In addition, on

receipt of notification of a proposed penalty/reduced area/non compliance on any scheme, applicants should immediately ascertain from the Department what the consequences are, if any, for other schemes before a final decision is made by the Department and when considering appealing such decisions. Relatively minor reductions proposed including those identified following Remote Sensing inspections should be closely examined in that context.

**7.13. TAMS II: Young Farmers Capital Investment Scheme.** One of the eligibility requirements of this scheme is that the farmer must set-up for the first time within 5 years of the date of receipt of an application under this Scheme. One of the criteria used for the date of set-up is the date of application for registering as a sole or joint user of a herd number/other Department identifier. Some young farmers use the date that they received their herd number rather than the date they applied. Farmers should check with the Department for the date they applied for their herdnumber.

**7.14. Schemes that require multi-annual commitments/actions:** As referred to in previous years, applicants should ensure any land leases are for a period equal to or later than their contract term. Before taking any decisions in respect of approved commitments/actions (including but not limited to sale of land, non renewal of leases, or, decisions not to commence or complete actions included in their multi-annual contract), applicants should check the details of their contract with the Department including expiry dates, the terms and conditions of the scheme and/or obtain the Department's view in writing prior to proceeding with such decisions.

**7.15. Areas of Natural Constraints:** As mentioned in previous years, applicants need to familiarise themselves with the penalties that may arise arising for failure to submit the Sheep Census form by the appropriate deadline. Consideration should be given to using the online facility.

**7.16. Appeal submission – three month deadline:** If a farmer submits an appeal outside the three month deadline for receipt of appeals, the farmer should state and

provide supporting documents to explain why the appeal was submitted late – farmers should note that these reasons are not necessarily the same grounds of appeal submitted against the Department’s decision.

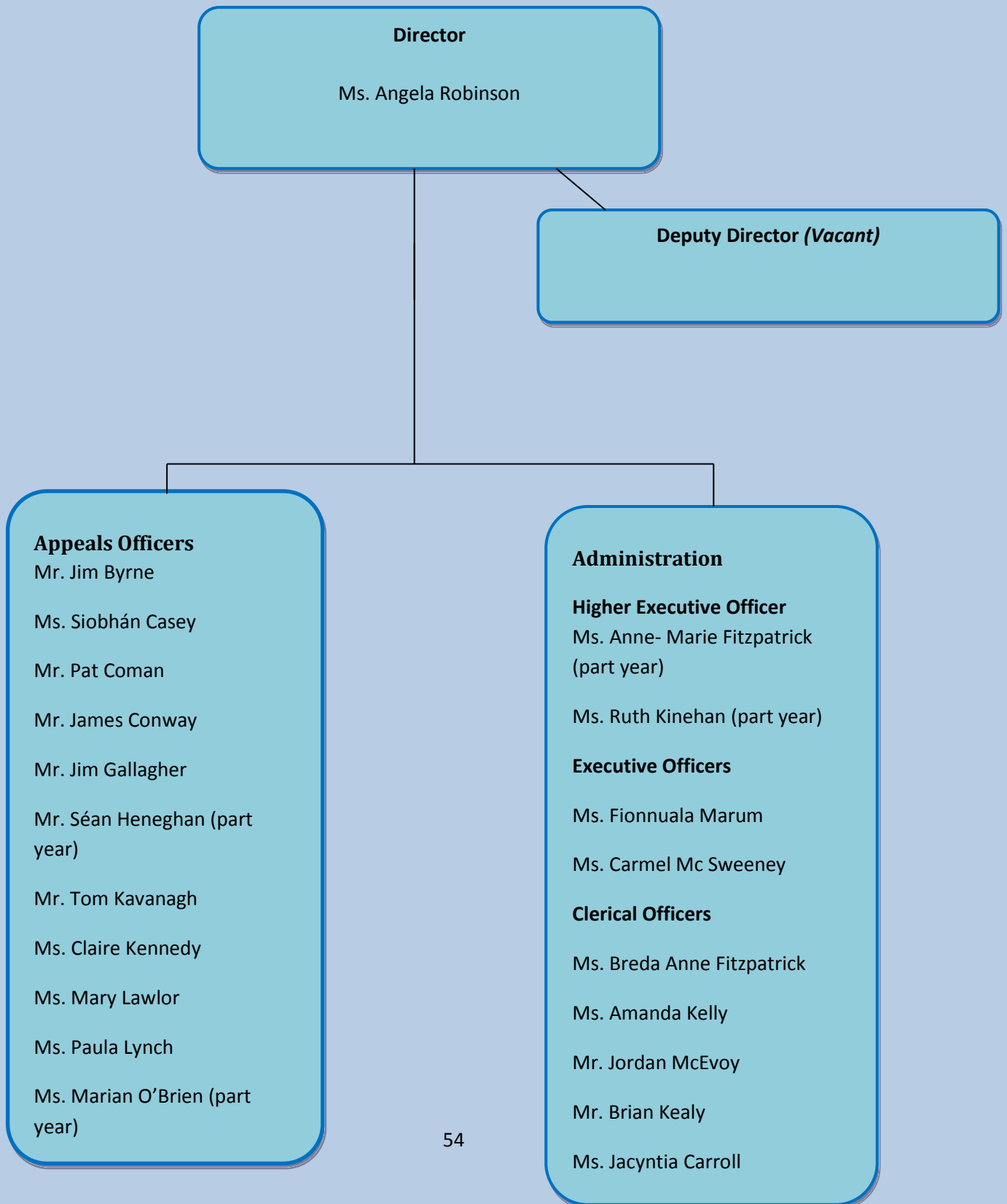
**7.17. *Appeal submission – Department decision letter.*** When submitting an appeal, farmers should always include a copy of the Department decision which is the subject of their appeal. This will assist in expediting the appeal and determine if the appeal is valid.

## **Appendices**

Appendix A	Organisation Chart
Appendix B	Agriculture Appeals Act 2001 and Section 35 of the Forestry Act 2014 amending the Agriculture Appeals Act 2001
Appendix C	SI. 193/2002, Agriculture Appeals Regulations 2002
Appendix D	Reference to other relevant legislation

Appendix A

Agriculture Appeals Office  
Organisation Chart 2018



## Appendix B



Number 29 of 2001

### AGRICULTURE APPEALS ACT, 2001

#### ARRANGEMENT OF SECTIONS

##### Section

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

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

##### SCHEDULE

##### Schemes

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##### Acts Referred to

Diseases of Animals Acts, 1966 to 2001

National Beef Assurance Scheme Act, 2000, No. 2

Ombudsman Act, 1980, No. 26





Number 29 of 2001  
AGRICULTURE APPEALS ACT, 2001

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

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

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

“Director” means Director of Agriculture Appeals;

“functions” includes powers, duties and obligations;

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

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

(2) In this Act—

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

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

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

(d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.

Appointment of appeals officers.

2.—The Minister may appoint such and so many of his or her officers or, following selection at competitions held by the Civil Service and Local Appointments Commissioners, other persons holding positions within the Civil Service, as he or she considers appropriate, to be appeals officers for the purposes of this Act.

Director of Agriculture Appeals

3.—The Minister shall, following selection at a competition held by the Committee on Top Level Appointments in the Civil Service or the Civil Service and Local Appointments Commissioners, appoint a person holding a position within the Civil Service as the chief appeals officer who shall be known as the Director of Agriculture Appeals, and is in this Act referred to as the “Director”.

Deputy Director of Agriculture Appeals.

4.—One of the appeals officers shall be designated by the Minister to act as the deputy for the Director when he or she is not available.

Functions of appeals officers.

5.—(1) The functions of appeals officers shall be to consider and make determinations on appeals made by affected persons against decisions taken by officers of the Minister in respect of applications for entitlement under the Schemes set out in the Schedule.

(2) The Minister may, from time to time, amend by regulations the Schedule so as to add to or delete from the Schedule any Scheme or part of a Scheme.

Independence of appeals officers.

6.—Appeals officers shall, subject to this Act, be independent in the performance of their functions.

#### Right of appeal.

7.—(1) Where a person is dissatisfied with a decision given by an officer of the Minister in respect of that person's entitlement under any of the Schemes set out in the Schedule, the decision shall, on notice of appeal being given to the Director, within the prescribed time and in the prescribed form, be referred to an appeals officer.

(2) Regulations may provide for the procedure to be followed on appeals under this Act.

(3) An appeals officer, when deciding a question referred under subsection (1), shall not be confined to the grounds on which the decision of the deciding officer was based, but may decide the question as if it were being decided for the first time.

(4) An appeals officer shall determine an appeal, as soon as is practicable, having regard to any guidelines issued or regulations made in this regard by the Minister.

#### Oral hearings.

8.—(1) An appeals officer shall, if so requested by the Appellant, hold an oral hearing for the purpose of an appeal referred to him or her under this Act.

(2) An oral hearing under this section shall be held in private.

(3) An Appellant may represent himself or herself or be represented by another person at the oral hearing of his or her appeal.

(4) Where an Appellant is represented by another person at the oral hearing of his or her appeal, the appeals officer hearing the appeal may examine the Appellant, if the appeals officer considers it necessary.

(5) An appeals officer, on the hearing of any matter referred to him or her under this Act, shall have the power to take evidence on oath or affirmation and for that purpose may administer oaths or affirmations to persons attending as witnesses at such hearing.

#### Decisions.

9.—(1) The decision of an appeals officer and the reasons for making that decision shall be notified in writing to the Appellant.

(2) A document purporting to be a decision made under this Act by an appeals officer and to be signed by him or her shall be prima facie evidence of the making of the decision without proof of the signature of such officer or his or her official capacity.

(3) The decision of an appeals officer on any question referred to him or her under section 7(1) shall, subject to sections 10 and 11, be final and conclusive.

Revised Decisions by Director and appeals officers.

10.—(1) An appeals officer may, at any time revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which it was given, or if it appears to him or her that there has been any relevant change of circumstances since the decision was given.

(2) The Director may, at any time, revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.

(3) A revised decision given under this section shall take effect from such date as the appeals officer concerned determines or considers appropriate having regard to the circumstances of the case.

Appeals to High Court.

11.—Any person dissatisfied with—

(a) the decision of an appeals officer, or

(b) the revised decision of the Director,

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

Representations under National Beef Assurance Scheme Act, 2000.

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

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

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

Representations by certain animal and poultry dealers.

13.—(1) Where representations are made to the Minister under Article 8(1) of the Diseases of Animals Acts, 1966 to 2001 (Approval and Registration of Dealers and Dealers' Premises) Order, 2001 (S.I.

No. 79 of 2001), the Minister shall, upon receipt of such representations refer them, as soon as may be, to the Director for advice.

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

(3) The Minister shall have regard to any advice given to him or her under this section before revoking or suspending a registration or refusing to register a person or premises under the aforesaid Article 8.

Annual reports.

14.—(1) As soon as may be after the end of each year, but not later than 6 months thereafter, the Director shall make a report to the Minister of his or her activities and the activities of the appeals officers under this Act during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) A report under subsection (1) shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.

(3) The Director shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as he or she may specify concerning his or her activities or the activities of appeals officers under this Act.

Regulations.

15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.

(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

Laying of regulations before Houses of Oireachtas.

16.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to anything previously done thereunder.

Expenses of Minister.

17.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Amendment of First Schedule to Ombudsman Act, 1980.

18.—Part I of the First Schedule to the Ombudsman Act, 1980, is amended by the substitution for “Department of Agriculture” of the following:

“Department of Agriculture, Food and Rural Development Appeals Officers under the Agriculture Appeals Act, 2001”.

Short title.

19.—This Act may be cited as the Agriculture Appeals Act, 2001.

SCHEDULE (as amended by SI No. 164 of 2018)

**Schemes**

Afforestation Grant and Premium Scheme  
Agri-Environment Options Scheme (AEOS)  
Animal Welfare, Recording and Breeding Scheme for Suckler Herds (AWRBS)  
Areas of Natural Constraints (ANC)  
Areas of Specific Constraint (Island Farming) scheme  
Basic Payment Scheme (BPS)  
Beef Data Programme (BDP)  
Beef Genomics Scheme (BGS)  
Beef Data and Genomics Programme (BDGP)  
Bio Energy Scheme  
Burren Farming for Conservation Programme  
Burren Programme  
Dairy Efficiency Programme  
Depopulation Scheme  
Disadvantaged Areas Scheme (DAS) excluding Land Parcel Identification System Review 2013 (LPIS Review 2013)  
Farm Improvement Scheme  
Forest Environment Protections Scheme (FEPS)  
Forest Genetic Resources Reproductive Material: Seed Stand & Seed Orchard Scheme  
Forest Roads Scheme  
Green, Low-Carbon, Agri-Environment Scheme (GLAS)  
Greening Payment  
Grassland Sheep Scheme (GSS)  
Hardship Grant Scheme  
Income Supplement Scheme  
Innovative Forest Technology Scheme — Central Tyre Inflation  
Installation Aid Scheme (IAS)  
Knowledge Transfer Programme (KT)  
Native Woodland Conservation Scheme  
Native Woodland Scheme  
Neighbourwood Scheme  
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors  
Organic Farming Scheme  
Prevention and Restoration of Damage to Forests: Reconstitution of Woodland Scheme (Windblow)  
Protein Aid Scheme  
Reconstitution of Woodland Scheme  
Reconstitution Scheme (Chalara Ash Dieback) 2014-2020  
Rural Environment Protection Scheme (REPS)  
Scheme of Early Retirement from Farming  
Scheme of Grant-Aid for the Development of the Organic Sector  
Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow

Housing)

Scheme of Investment Aid for Farm Waste Management (FWM)

Scheme of Investment Aid for the Development of the Commercial Horticulture Sector (excluding decisions on approval of applications)

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

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

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

Sheep Welfare Scheme

Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No 1782/20031 and Land Parcel Identification System Review 2013 (LPIS Review 2013)

Sow Housing (Animal Welfare) Scheme

Support for Collaborative Farming Grant Scheme

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

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

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

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

Traditional Farm Building Grant Scheme 2017 and 2018

Upland Sheep Payment Scheme

Weather Related Crop Loss Support Measure

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme.

.



*Extract from*

**FORESTRY ACT 2014<sup>i</sup>** (amending Agriculture Appeals Act)

PART 11

Amendment of Agriculture Appeals Act 2001

35. The Agriculture Appeals Act 2001 amended—

(a) in section 5—

- (i) in subsection (1), by substituting “Schedule 1” for “the Schedule”, and
- (ii) by substituting for subsection (2) the following:

“(2) The Minister may, for the purpose of—

- (a) the reorganisation of schemes,
- (b) deleting spent schemes,
- (c) giving persons an appeal in respect of applications under schemes that may come into existence, or
- (d) in the case of any enactments or statutory instruments, giving persons an appeal in respect of applications under enactments or statutory instruments that may be passed or made (and not for the time being set out in Schedule 2),

amend by regulations Schedule 1 or 2, as appropriate, by adding an item to, or deleting an item from, either of those Schedules.”,

(b) in section 7(1) by substituting “Schedule 1” for “Schedule”,

(c) by inserting the following after section 14:

“Establishment of Forestry Appeals Committee and its function

14A. (1) The Minister shall establish a committee, which shall be known and is in this Act referred to as the Forestry Appeals Committee, consisting of a chairperson and such and so many other members (not being less than 2) as the Minister determines.

(2) The function of the Forestry Appeals Committee shall be to hear and determine appeals specified in subsection (4).

(3) An officer of the Minister shall be eligible for appointment as a member (including as chairperson) of the Forestry Appeals Committee but, in a

case where a majority (or all) of the members of the Committee are such officers, a majority of such officers shall be of a grade senior to the grade of the officer who made the decision, the subject of the appeal to the Committee.

- (4) Where a person is dissatisfied with a decision made by the Minister or an officer of the Minister under an enactment or statutory instrument set out in Schedule 2, he or she may appeal to the Forestry Appeals Committee against the decision and, on the hearing of the appeal, the Committee may confirm, cancel or vary the decision as it thinks fit.
- (5) The decision of the Forestry Appeals Committee on such an appeal shall, subject to subsection (6), be final and conclusive.
- (6) Any person dissatisfied with a decision of the Forestry Appeals Committee may appeal that decision to the High Court on any question of law.”,
- (d) by renumbering the Schedule as Schedule 1 and inserting the following Schedule after it:

“Schedule 2

*Section 7 of the Forestry Act 2014*

Regulation 3 of the European Communities (Forest Consent and Assessment) Regulations 2010 (S.I. No. 558 of 2010)

Regulation 3 of the European Communities (Aerial Fertilisation) (Forestry) Regulations 2012 (S.I. No. 125 of 2012)”.

Schedule 2 was amended by SI 219 of 2017 as follows:

*Section 14A*

Section 7 of the Forestry Act excluding grants arising under the schemes mentioned in Schedule 1.

The Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to a licence for afforestation, felling of trees, forest road construction or aerial fertilisation of forests.”.

## Appendix C



S.I. No. 193 of 2002

### AGRICULTURE APPEALS REGULATIONS 2002

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

#### Citation and Commencement

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

#### Definitions

2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

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

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

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

#### Distribution of references to appeals officers.

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

Decisions which may be appealed and transitional arrangements.

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

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

Submission of appeal and information to be supplied by Appellant

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

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

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

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

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

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

Notification of appeal and information to be supplied.

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

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

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

Notice of appeal.

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

Further information to be supplied and amendment of pleadings.

8. The appeals officer to whom an appeal is referred may at any time – require the Appellant, the deciding officer, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal, allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and fix the period for the furnishing of any such statement or particulars upon such terms as he or she may think fit.

Summary appeals.

9. Where an appeals officer is of the opinion that any appeal referred to him or her is of such a nature that it can properly be determined without an oral hearing, and such a

hearing has not been requested under section 8 of the Act, he or she may decide the appeal without such hearing.

#### Hearings.

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

#### Failure to attend hearing.

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

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

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

#### Procedure at hearing.

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

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

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

#### Decision of Appeals Officer.

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

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

GIVEN under my Official Seal,

8 May 2002

JOE WALSH TD

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Minister for Agriculture, Food and Rural Development

## Appendix D

### Other relevant legislation :

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

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

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

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

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

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

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

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

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

S.I. No. 219 of 2017 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017

S.I. No. 164 of 2018 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2018

S.I. No. 68 of 2018 Forestry Appeals Committee Regulations 2018

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

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<sup>i</sup> Number 31 of 2014