

An Oifig Achomhairc  
Talmhaíochta

Agriculture  
Appeals Office



**2019**

**ANNUAL REPORT**

**of the**

**AGRICULTURE APPEALS OFFICE**



**To the Minister for Agriculture, Food and the Marine,**

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act, 2001, the report of the Agriculture Appeals Office for 2019 is hereby submitted.

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*21 May 2020*

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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 2019 Agriculture Appeals Office's Annual Report. Section 14 of the Agriculture Appeals Act 2001, as amended, requires the Director of Agriculture Appeals to submit an annual report to the Minister for Agriculture, Food and the Marine and for copies of the report to be laid before each House of the Oireachtas.

The Agriculture Appeals Office was established in 2002 to deliver an independent agriculture appeals service for scheme applicants who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine ("the Department") concerning their participation in designated schemes of the Department. In 2017, the Agriculture Appeals Act, 2001, was amended to include appeals against decisions of the Department on forestry licence applications. In 2018, the Minister established the Forestry Appeals Committee (FAC) to consider such appeals and appointed Appeals Officers to the FAC. The administrative and secretariat support functions for the FAC were assigned to the Agriculture Appeals Office. The FAC is chaired by an independent Chairperson.

This annual report includes the following:

- a statistical breakdown of agriculture appeals dealt with by the Office in 2019 and the outcome of those appeals;
- examples of agriculture appeal cases determined by Appeals Officers in 2019;
- suggestions for the Department's consideration in respect of issues arising in appeals;
- suggestions for scheme applicants that might assist in improving the awareness of scheme issues arising.

Appeals Officers are members of the FAC and the Office provides all necessary administrative support to the Committee. The FAC Regulations require the FAC to submit a report in writing to the Minister in relation to the performance of its functions as an appeals body. It is not the purpose of this report to fulfil that function. However, in the context of reporting on the activities of the Director and Appeals Officers, this report provides some statistics on the number of appeals received against Department decisions on forestry licence applications.



In 2019, the Agriculture Appeals Office received 570 agriculture appeals, an increase of 2.5% on 2018. The scheme that was the subject of the highest number of agriculture appeals received in 2019 was the Green Low-Carbon Agri-Environment Scheme (GLAS).

The number of agriculture appeals closed in 2019 was 491 including appeals received in previous years, a reduction of 6% compared with the number of appeals closed in 2018.

The outcome of all agriculture appeals closed in 2019 was as follows<sup>1</sup>:

- 44% allowed, partially allowed, or, the Department decision was revised in favour of the appellant after the appeal was submitted,
- 43% of appeal disallowed,
- 13% of appeals withdrawn, invalid, or received after the 3 month deadline.

Of the 43% agriculture appeals disallowed, the highest number concerned appeals against GLAS decisions. The highest number of appeals allowed or partially allowed was for the Basic Payment Scheme (BPS).

The number of forestry licence appeals received by the Office in 2019 was 489 which was more than double the combined total received in 2017 and 2018 (231).

I thank my colleagues in the Agriculture Appeals Office, including those who left the Office during 2019, for their continued commitment to the delivery of independent and efficient appeals services.

I thank the former Chairperson of the FAC, Mr. Bart Brady, and the current Chairperson, Mr. Des Johnson, for their positive collaboration and interaction with the Agriculture Appeals Office team during 2019.

*Angela Robinson*

*Director of Agriculture Appeals*

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<sup>1</sup> Numbers were rounded to the nearest percentage point



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

### **2.1 Appeal services provided by the Agriculture Appeals Office**

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 independent functions of the Director and the Appeals Officers and the scheme decisions that may be appealed. Schedule 1 to the Act includes a list of schemes implemented by the Department. Appellants who are dissatisfied with decisions of the Department concerning their participation in the schemes listed in Schedule 1 to the Act may submit an appeal to the Agriculture Appeals Office.

One of the main features of the agriculture 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. 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.

Oral hearings may also be held for Forestry Licence appeals. Decisions on forestry licence appeals are published on the Agriculture Appeals Office website.

### **2.2 Purpose of this Report**

This report fulfils the legal requirement of Section 14 of the Agriculture Appeals Act, 2001, which requires the Director of Agriculture Appeals to submit an annual report to the Minister for Agriculture, Food and the Marine on her activities and the activities of Appeals Officers during 2019. The report concerns primarily activities directly related to agriculture appeals. However this report provides some information on procedures and statistics for forestry licence appeals received and processed during 2019. Regulation 11 (3) of the Forestry Appeals Regulations 2018 (S.I. No. 68 of 2018) provides for separate reporting arrangements for the FAC.



### **2.3. Mission Statement of the Agriculture Appeals Office**

The mission of the Agriculture Appeals Office was changed in 2019 to include the support now provided to the FAC. The mission of the Office is as follows:

*“To provide an independent, accessible, fair, efficient and timely agriculture appeals service for scheme applicants appealing against decisions issued under designated Department of Agriculture, Food and the Marine schemes, and to support the delivery, through membership and administrative support, to the Forestry Appeals Committee, of an appeals service for decisions issued by the Department of Agriculture, Food and the Marine on forestry licences, and to deliver those services in a courteous manner.”*

### **2.4. Procedures Manual**

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

### **2.5. Overview of the Agriculture Appeal Procedure**

- Scheme applicants must complete a Notice of Appeal form which must be submitted to the Agriculture Appeals Office together with a copy of the Department decision under appeal. The Department decision under appeal must concern a scheme included in Schedule 1 to the Agriculture Appeals Act, 2001, as amended.
- For agriculture appeals, appellants can download the Agriculture Appeals Procedure Information Note and the Notice of Appeal Form from the Agriculture Appeals Office website [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie). Appeals may be posted to the Agriculture Appeals Office or may be submitted by e-mail to [appeals@agriappeals.gov.ie](mailto:appeals@agriappeals.gov.ie). However the Notice of Appeal Form must be completed and signed.
- 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 may only be accepted by the Director if there are exceptional circumstances for a failure to meet the deadline.
- Appeals are checked on receipt to establish their validity.
- 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 currently aims to hold oral hearings in a location that is convenient 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 and informal,
  - the appellant is present and may bring representatives,
  - the Department is represented.
- The Appeals Officer considers all the evidence from both the Department and the appellant 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 their decision 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 the Office of the Ombudsman and/or in the High Court on a point of law.

## **2.6 Overview of Forestry Licence Appeal Procedure**

- Applicants or third parties who are dissatisfied with a decision by the Minister for Agriculture, Food and the Marine or an officer of the Minister concerning a licence application must complete a Forestry Licence Notice of Appeal form and submit it to the Forestry Appeals Committee at the Agriculture Appeals Office.





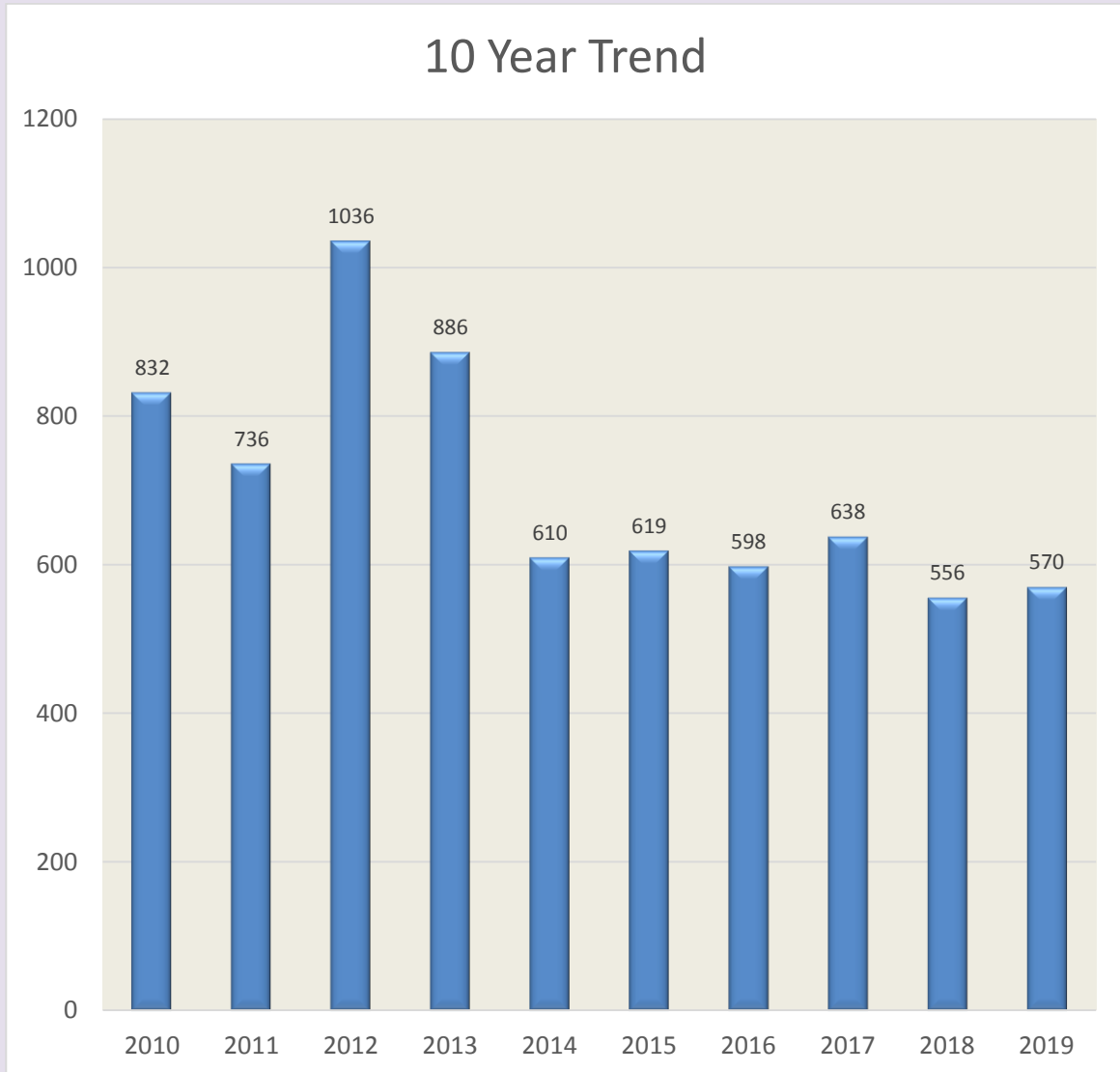
- For forestry licence appeals, appellants may download the Forestry Licence Notice of Appeal Form from the website. In addition to posting appeals to the Agriculture Appeals Office, appeals may be submitted by e-mail to: [forestry@agriappeals.gov.ie](mailto:forestry@agriappeals.gov.ie). The Notice of Appeal Form must be completed and signed.
- Appellants have 28 days from the date of the Department's decision on a forestry licence application to lodge an appeal to the Office. An appeal received after 28 days will be deemed invalid and will be rejected.
- Appeals are checked on receipt to establish their validity including that the grounds of appeal are specific to the licence decision.
- Appeals are generally dealt with in the order that they are received.
- On receipt of a valid appeal, the 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 and, where the appellant is not also the applicant, to the applicant.
- On receipt of the Department file and statement, the appeal, in consultation with the FAC, is scheduled for hearing.
- If an oral hearing of the appeal is requested, the appellant and applicant(s) will be advised.
- Oral hearings of appeals are generally held in the Agriculture Appeals Office, Portlaoise.
- Where multiple appeals are received for one licence, all appeals will be heard at one hearing.
- The FAC considers all the evidence from all parties to the appeal including any evidence presented at an oral hearing. When the FAC makes a determination on the appeal, the written decision, setting out the reasons for that decision, is notified to all parties to the appeal. FAC decisions are posted on the website of the Agriculture Appeals Office.



### 3. STATISTICS ON AGRICULTURE APPEALS DEALT WITH IN 2019

#### 3.1. Total Agriculture Appeals Received

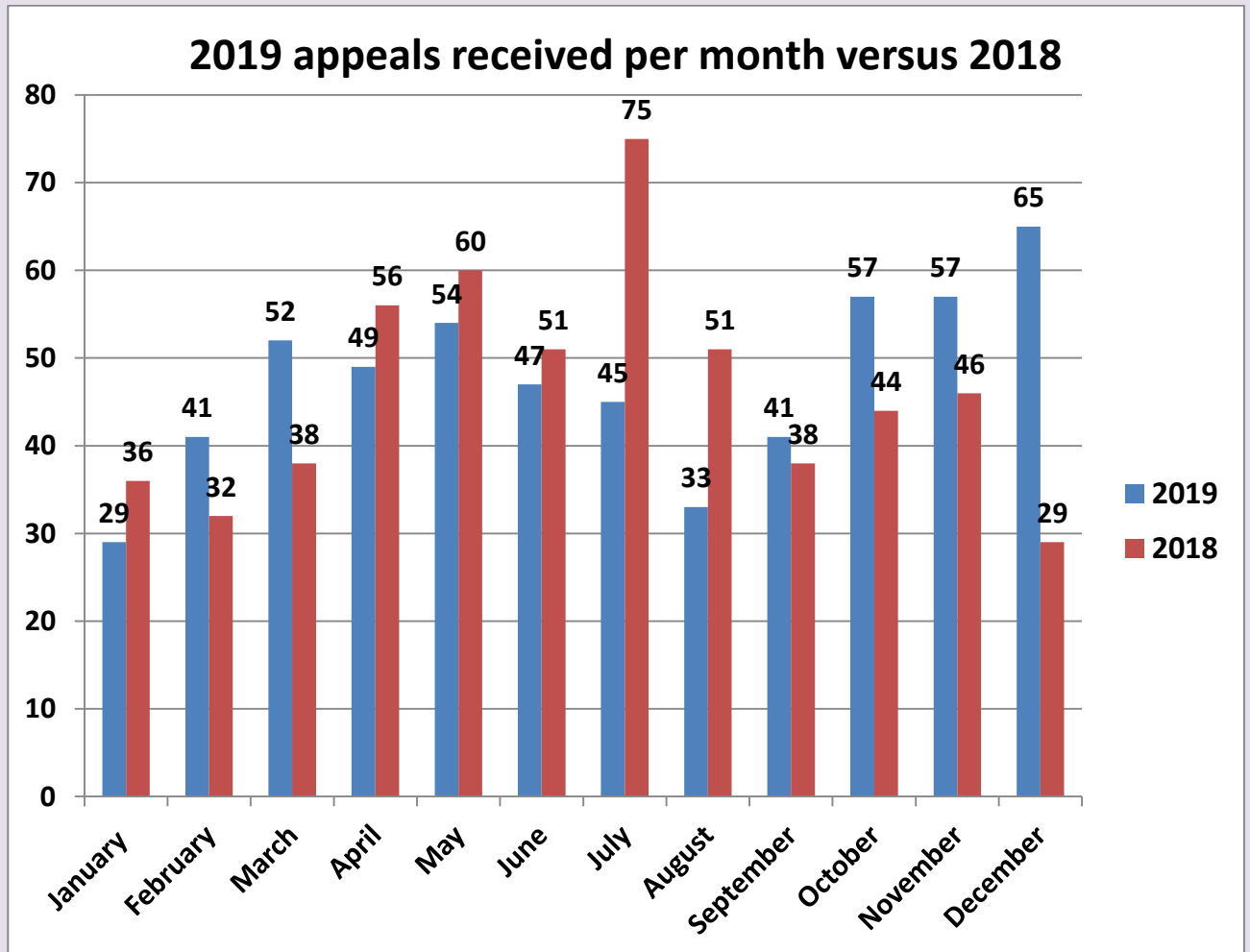
570 appeals were received in 2019, an increase of 2.5% when compared with 556 appeals received in 2018. The number of appeals received in 2019 is lower than the 10 year annual average of 708 appeals, as shown in the following table:





### 3.2. Agriculture 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 2019 compared with 2018.

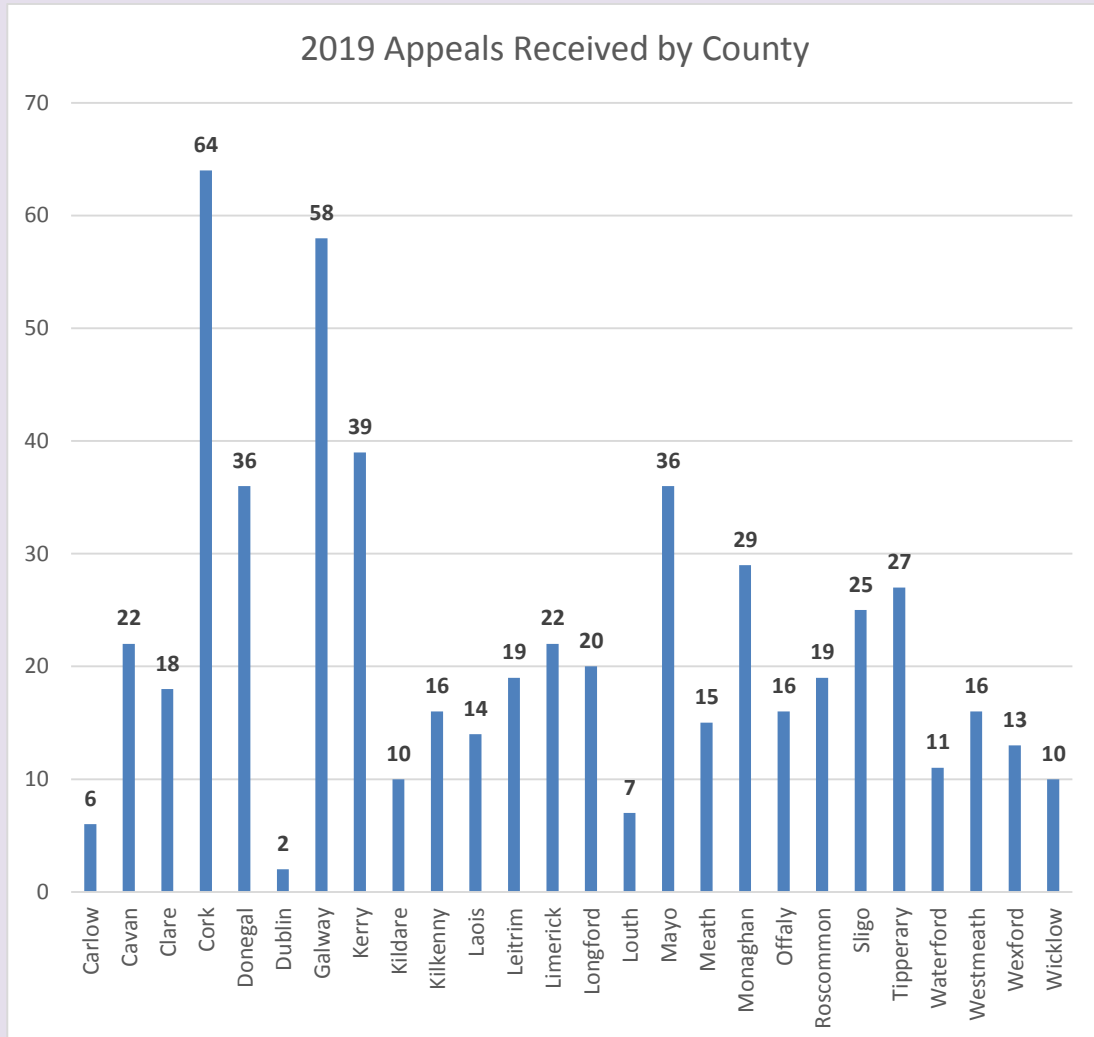


As indicated in the Table above, the highest number of appeals received in the year was in December 2019. The majority of those appeals concerned the Beef Exceptional Aid Measure (BEAM).



### 3.3. Agriculture Appeals Received Per County

The Appeals received per county was as follows:

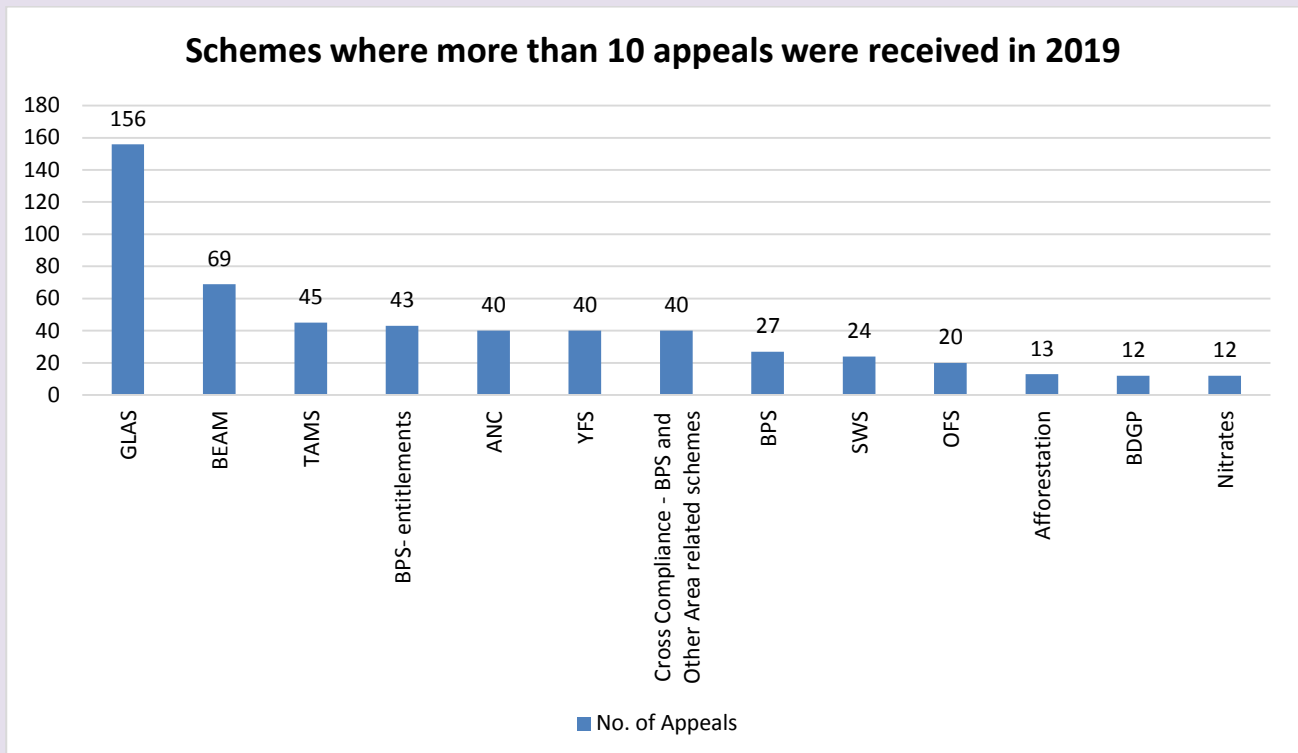


As shown in the graph above, County Cork (64 appeals) and County Galway (58 appeals) were the counties with the highest number of appeals received in 2019.



### 3.4. Agriculture 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 541 appeals of the 570 received in 2019.



The number of appeals received in 2019 was highest for the following schemes:

Green Low Carbon Agri-Environment Scheme (GLAS)	c.27%
Beef Exceptional Aid Measure (BEAM)	c.12%

The Department's findings in respect of the schemes appealed included the following:

#### GLAS

- Low Input Permanent Pasture action: no owned bovines, heather, parcel not stock proofed, feeding of forage to cattle taking place on the parcel.
- Coppicing action: coppicing not carried out or not carried out on location indicated.
- Protection of Watercourses from Bovines action: no bovines on holding, inadequate fencing of the watercourses.



- Failure to complete an action over the term of the contract.
- Ineligible land found on BPS check; use declared on the BPS (and other Area schemes) annual application was different to that undertaken in the original application for GLAS.

**BEAM**

- Milk suppliers non-compliant due to the number of dairy cows;
- Animals not presented for slaughter by the farmer applying for the measure.; in some cases animals were sold by a farmer to another herdowner and the animal was sold for slaughter within a few days of sale;
- Animals presented for slaughter outside of reference dates;
- Late applications.

**3.5. Agriculture Appeals Received by Scheme - comparison between 2019 and 2018**

The reasons for differences in appeal numbers per scheme each year may arise for 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 level of penalty imposed, and the date of the final Department decision. The table below shows the comparison on numbers of appeals received in 2019 and 2018 for some schemes.

<b>2019 Top 10 Schemes appealed</b>		<b>2018 Top 10 Schemes appealed</b>	
<b>Scheme ID</b>	<b>No. of appeals</b>	<b>Scheme ID</b>	<b>No. of appeals</b>
GLAS	156	GLAS	139
Beef Exceptional Aid Measure (BEAM) Scheme (new Scheme)	69	Basic Payment Scheme	67
Targeted Agricultural Modernisation Scheme (TAMS)	45	Cross Compliance - Basic Payment Scheme/Areas of Natural Constraint and Other Area Based Schemes	43
Basic Payments Scheme - Entitlements	43	Beef Data Genomics Programme	39
Areas of Natural Constraint	40	Basic Payment Scheme - Surrender of Entitlements	36
Young Farmers Scheme	40	Sheep Welfare Scheme	32
Cross Compliance - Basic Payment Scheme and Other Area Based Schemes	40	Areas of Natural Constraint	25
Basic Payment Scheme	27	Basic Payments Scheme – Admin – Nitrates	21
Sheep Welfare Scheme	24	Organic Farming Scheme	15
Organic Farming Scheme	20	Agri- Environment Options Scheme (AEOS)	17



### 3.6. Number of Agriculture Appeals Closed

There were 491 appeal cases closed in 2019. This compares with 520 cases that were closed in 2018. The cases closed included appeals that were received in 2018 and in previous years as set out in the following Table:

<b>Year in which Agriculture Appeals were received</b>	<b>Number of Agriculture Appeals Closed in 2019</b>
2019	274
2018	208
2017	9
<b>Total</b>	<b>491</b>

There will always be a carry over of appeals into subsequent years. The reasons for carry-over of appeals from previous years can include the timing of the receipt of the appeal (i.e. received towards the previous year end), availability of parties to attend oral hearings, the complexity of the appeal, the need to obtain legal advice on matters linked to the appeal and time taken by appellants and/or the Department to revert with additional information requested.

In regard to the reduction in numbers of appeals closed in 2019 when compared with 2018, it is relevant to mention that a number of Appeals Officer vacancies remained unfilled in 2019 for some time. Those vacancies are now filled. In addition, as mentioned in the introduction to this report, Appeals Officers, in addition to their agriculture appeals work, are members of the Forestry Appeals Committee dealing with appeals against forestry licences.



### 3.7. Outcome of Agriculture Appeals Closed In 2019

There are a number of possible outcomes to appeals which are described below.

#### 3.7.1. Terminology used for Outcome of Agriculture Appeals

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

**Appeal Allowed** This category includes cases where the Appeals Officer, having considered the case put forward, decided 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 in favour of the appellant prior to completion of the appeals process. Reasons for revising a decision may include additional information provided 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 was no Department decision relevant to the appeal.

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

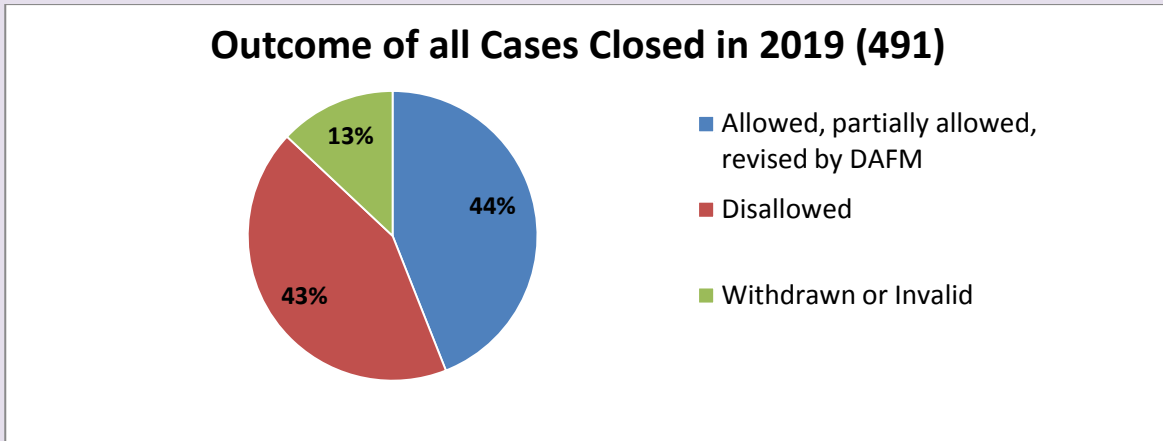
**Appeal Disallowed** This category includes cases where an Appeals Officer, following consideration of the case and all relevant information, decided that the grounds of appeal do not warrant overturning the sanction imposed by the Department.



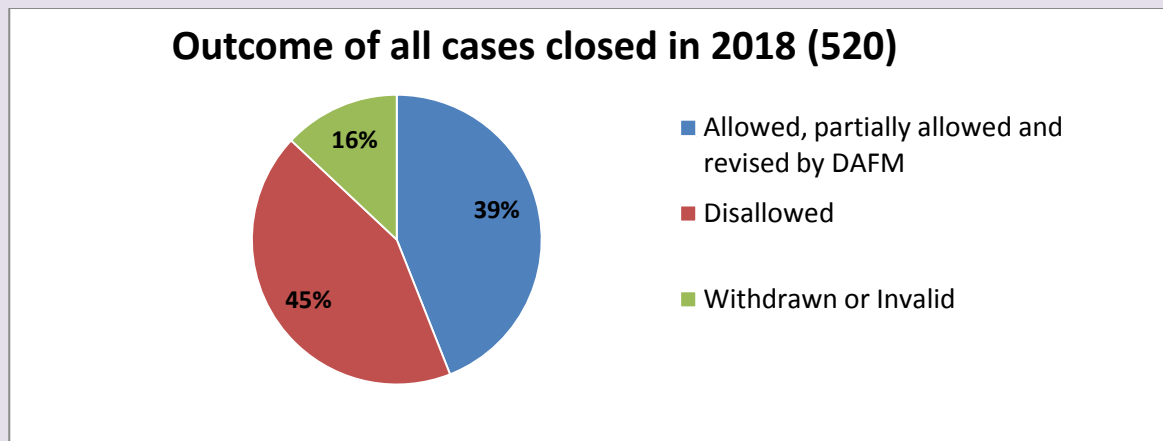


### 3.7.2. Outcome of Agriculture Appeals Closed in 2019

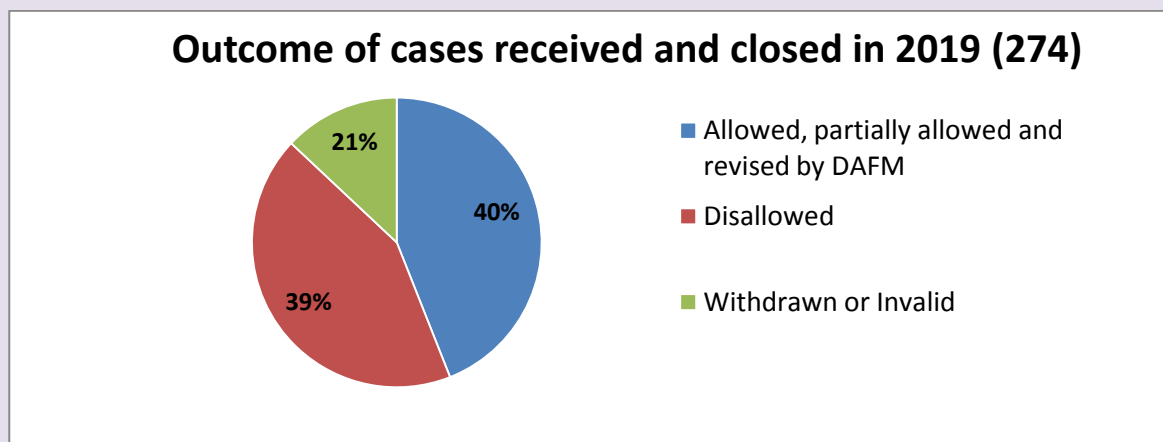
The outcome of all cases closed in 2019 was as follows (includes appeals received in years prior to 2019 and received in 2019<sup>2</sup>):



This compares with the Outcome of all cases closed in 2018 as follows:



The outcome for appeals that were both received and closed in 2019 was as follows:



<sup>2</sup> Numbers were rounded to the nearest percentage point

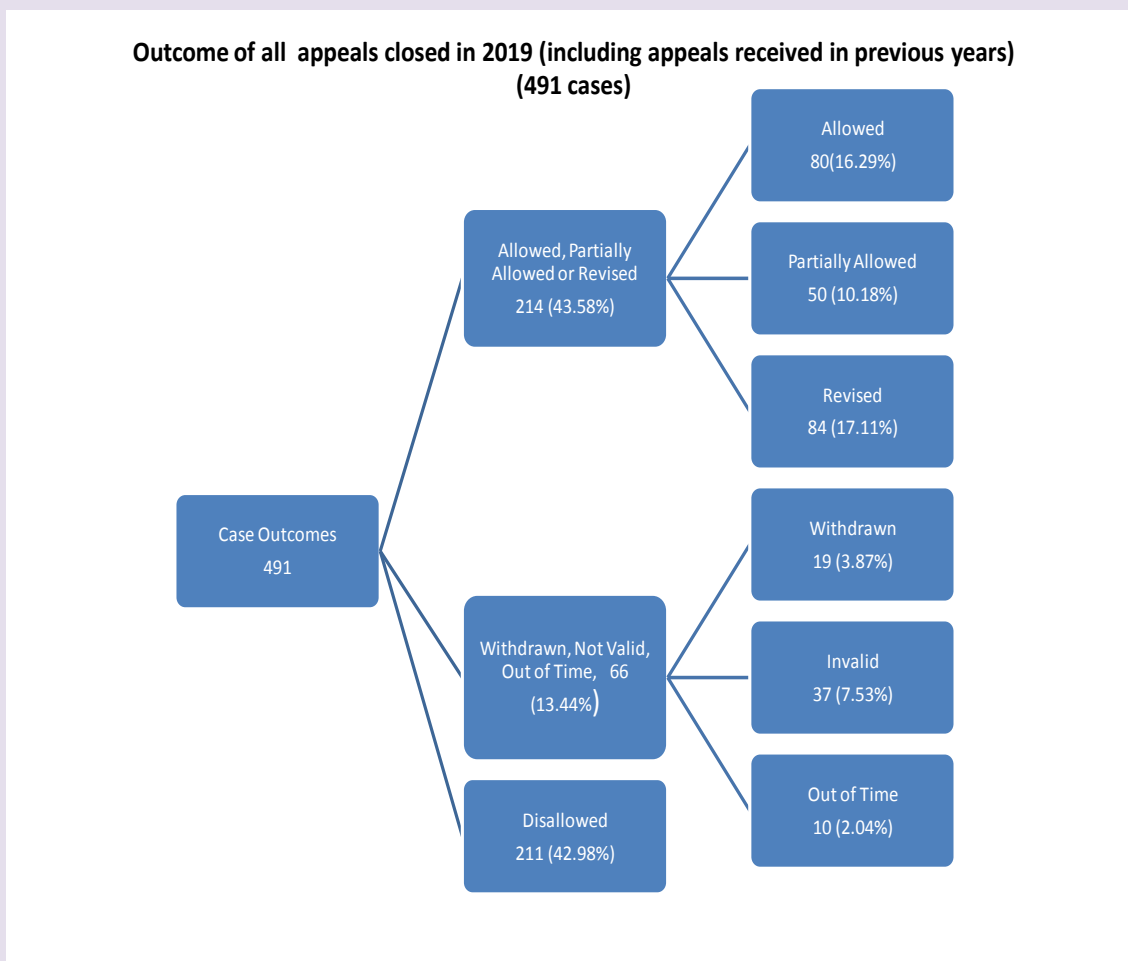


The table below includes the number of appeals for each category of outcome for all appeals closed in 2019.

<i>Appeal Decision Results</i>	<i>Number of all agriculture appeals closed in 2019 (491)</i>	<i>Percentage</i>
Allowed, Partially Allowed or Revised by the Department (all Appeals closed in 2019)	214	44%
Appeals Withdrawn, Invalid and Out of Time (all Appeals closed in 2019)	66	13%
Disallowed (all Appeals closed in 2019)	211	43%

### 3.7.3. Breakdown of outcomes of all appeals closed in 2019

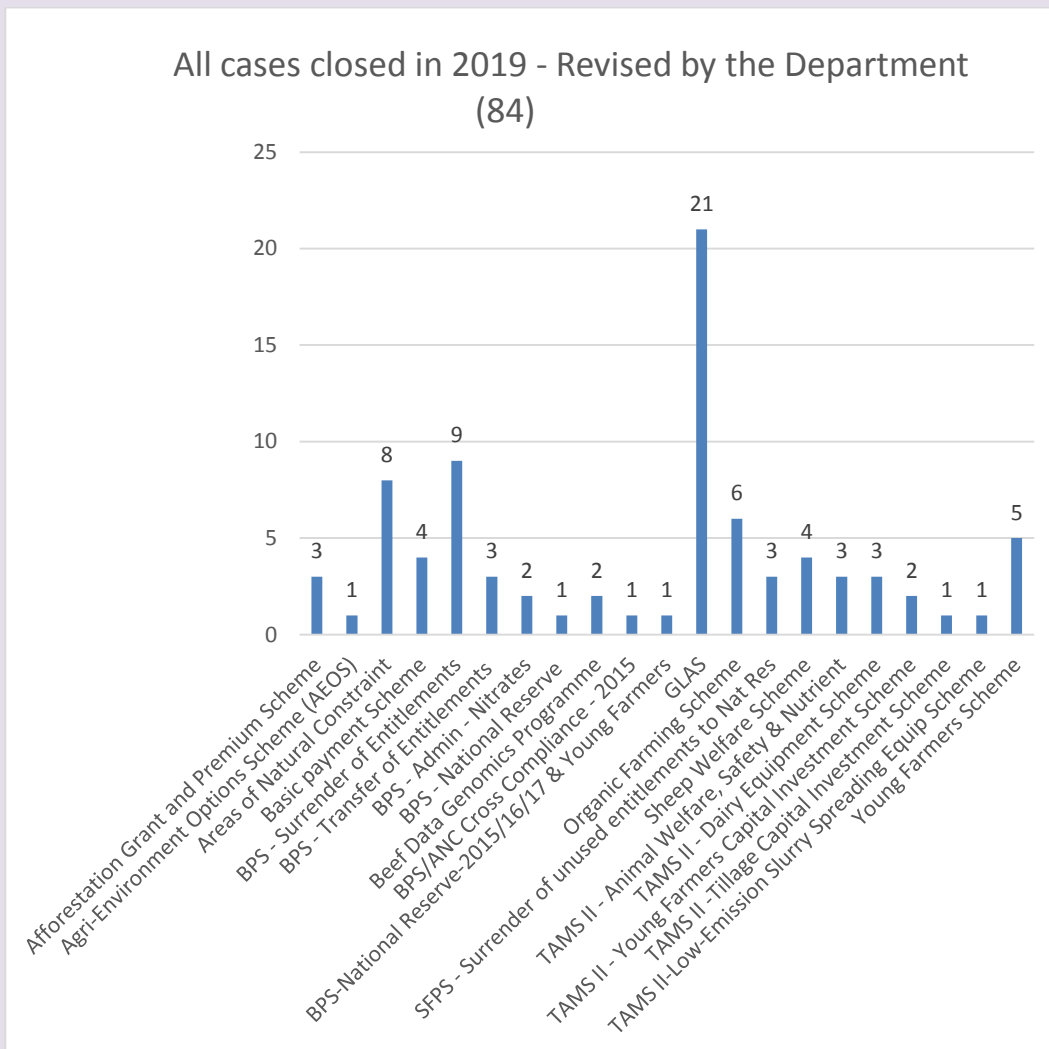
The chart below gives a further breakdown of the individual categories for outcomes referred to in the preceding Table and Graphs.





### 3.7.4. Decisions Revised by the Department in favour of Appellants - 84 Cases

In the category “*appeal allowed, partially allowed or revised by the Department*”, the number of decisions that were ‘*revised by the Department*’ in favour of appellants (84) was slightly higher than the number that was ‘*allowed*’ by Appeals Officers (80). The reasons for such revisions in 2019 concerned mainly the submission of additional information not previously made known to the Department and/or queries raised by this Office once the appeal was submitted to the Agriculture Appeals Office. The graph below shows the breakdown of schemes that were the subject of appeals in the “*revised by the Department*” category.



The highest categories of schemes for which decisions were revised by the Department concerned appeals against GLAS decisions and BPS Entitlements.

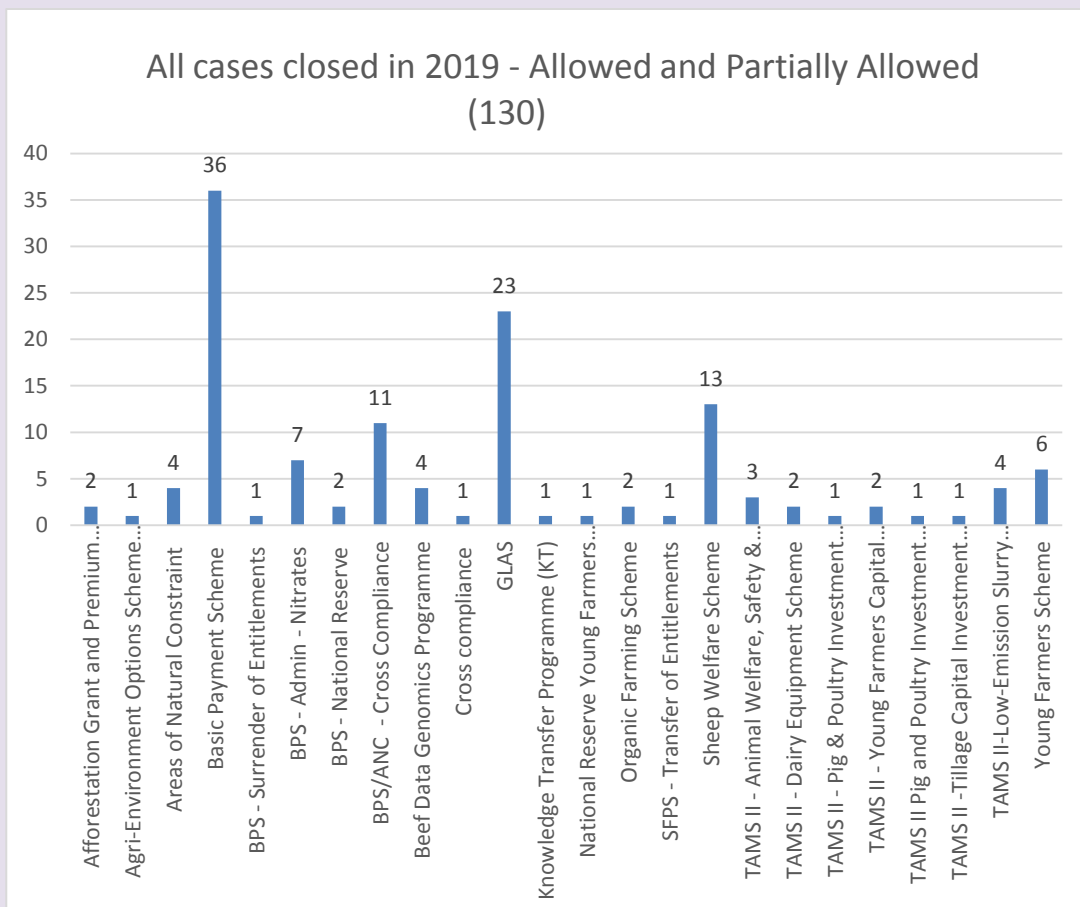


Of the GLAS appeals, a total of 7 had been assigned to an Appeals Officer of which 1 oral hearing had been held and 6 involved cases for which oral hearings were cancelled after assignment to an Appeals Officer once the Department decided to revise its decision. The Department revised a further 14 GLAS decisions before assignment to an Appeals Officer.

Of the appeals involving BPS Surrender of Entitlements, 5 appeals that were subsequently revised by the Department had been assigned to Appeals Officers. Of those, 1 oral hearing had taken place and 3 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 4 other appeals were revised by the Department before assignment to an Appeals Officer.

### 3.7.5. Appeals Allowed and Partially Allowed

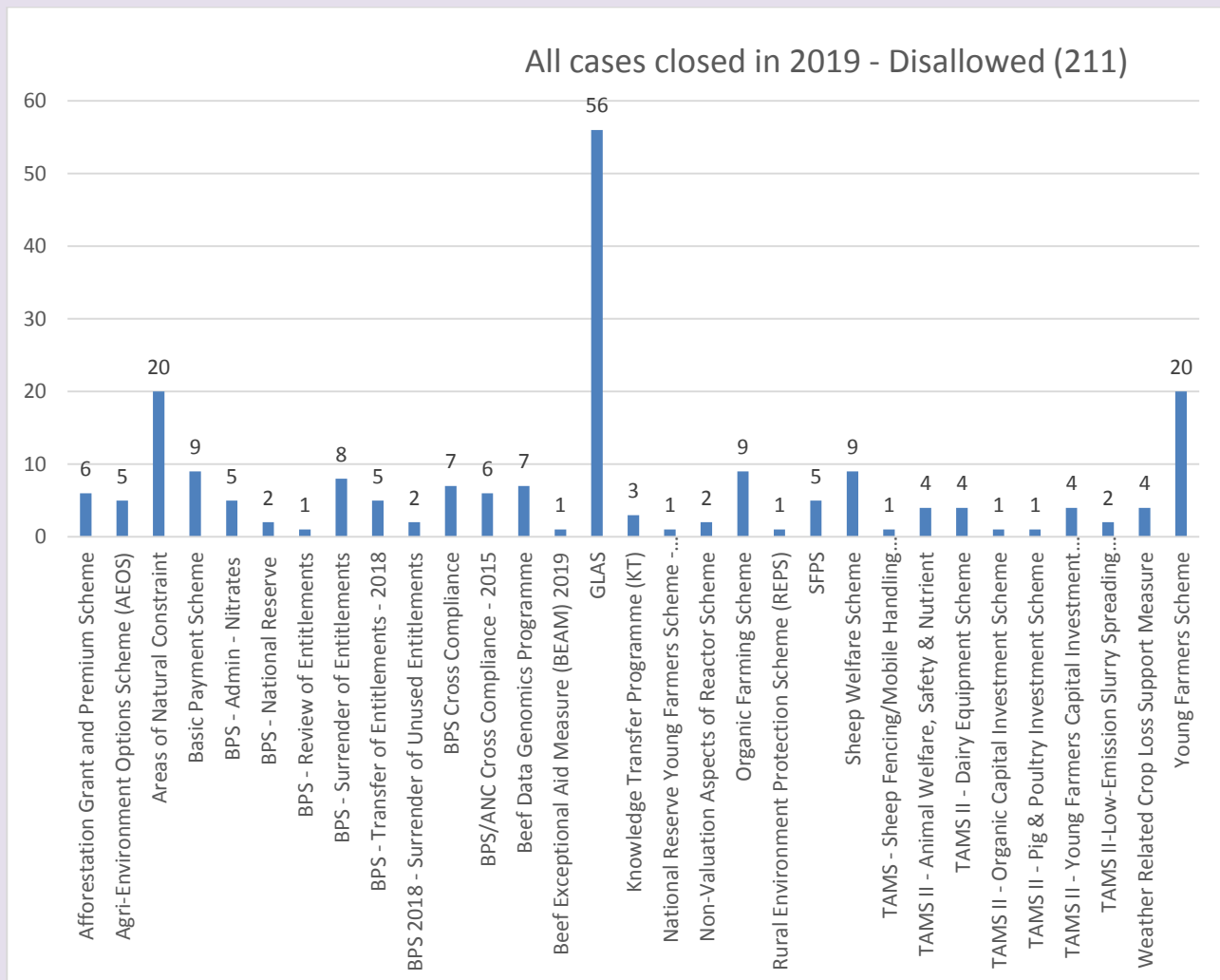
The scheme with the highest number of appeals that were included in the category allowed (80) and partially allowed (50) was the Basic Payment Scheme. The graph below shows of the breakdown of appeals that were allowed and partially allowed for all schemes.





### 3.7.6. Breakdown of Appeals Disallowed – All Appeals Closed in 2019

The scheme with the highest number of appeals disallowed by Appeals Officers was the GLAS, accounting for 26.54% of all disallowed appeals.



### 3.7.7. Appeals Received in 2019 which were Closed In 2019 (274)

The table below shows details of appeals received in 2019 that were closed in 2019 and the outcome by scheme of those appeals - unlike the previous tables and graphs it does not include appeals still open that were carried over and closed in 2019. The Outcome of the 274 Appeals that were both received in 2019 and closed in 2019 was 39% disallowed, 40% allowed/partially allowed/ revised by the Department in favour of appellants and 21% were out of time/withdrawn/ invalid.

Scheme (Appeals received and closed in 2019)	Received in 2019	Closed in 2019	Appeal Allowed	%	Appeal partially Allowed	%	Revised by Dept	%	Disallowed	%	Appeal Withdraw	%	Appeal Not Valid	%	Out of Time	%	Suspended	%	Open	%
Afforestation Grant and Premium Scheme	12	8			1	13%	3	38%	4	50%									4	33%
Areas of Natural Constraint	40	27	2	7%			8	30%	10	37%	1	4%	6	22%					13	33%
Basic Payment Scheme	28	11			1	9%	4	36%	3	27%	1	9%	2	18%					17	61%
BEAM 2019	69	6							1	17%	3	50%	2	33%					63	91%
Beef Data Genomics Programme	12	8	1	13%			1	13%	4	50%	1	13%	1	13%					4	33%
BPS - National Reserve	8	5	1	20%			2	40%	2	40%									3	38%
BPS - Admin - Nitrates – 2016	12	9	2	22%	3	33%	2	22%	2	22%									3	25%
BPS - Surrender of Entitlements	28	19	1	5%			9	47%	6	32%	1	5%	2	11%					9	32%
BPS - Transfer of Entitlements	12	9					1	11%	7	78%							1	11%	3	25%
BPS Cross Compliance– 2016	36	18			1	6%	1	6%	7	39%	5	28%	1	6%	3	17%			18	50%
GLAS	157	74	7	9%	8	11%	16	22%	32	43%	1	1%	5	7%	4	5%	1	1%	83	53%
Organic Farming Scheme	20	9	1	11%			4	44%	4	44%									11	55%
Sheep Welfare Scheme	24	18	4	22%	7	39%	3	17%	2	11%	1	6%	1	6%					6	25%
TAMS II - Animal Welfare, Safety & Nutrient	12	6	1	17%	1	17%	1	17%	2	33%					1	17%			6	50%
TAMS II - Dairy Equipment	11	6					1	17%	3	50%	1	17%	1	17%					5	45%
TAMS II - Young Farmers Capital Investment Scheme	13	4			1	25%	2	50%	1	25%									9	69%
Young Farmers Scheme	36	20	1	5%			3	15%	13	65%	2	10%	1	5%					16	44%
Other*	40	17	1	6%	1	6%	2	12%	3	18%	1	6%	9	53%					23	58%
<b>Grand Total</b>	<b>570</b>	<b>274</b>	<b>22</b>		<b>24</b>		<b>63</b>		<b>106</b>		<b>18</b>		<b>31</b>		<b>8</b>		<b>2</b>		<b>296</b>	

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

### 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 2019. The average number of days for the return of file documents from the Department was 19 days for appeals received in 2019. This compares with an average of 28 days in 2018. 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	157	21
BEAM	69	13
TAMS	45	23
BPS – Entitlements	41	10
Areas of Natural Constraint	40	20
Young Farmers Scheme	36	9
Cross Compliance - Basic Payment Scheme and Other Area Based Schemes	54	26
Basic Payment Scheme	27	27
Sheep Welfare Scheme	24	13
Organic Farming Scheme	20	56

### 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 might not be completed within that target time frame. The reasons for appeals being closed outside the three month period varies and can include delays in



agreeing dates for oral hearings with all parties, complexity of cases, legal issues, time taken by appellants and/or the Department to revert with additional information requested, and resource capacity. For appeals received in 2019, the average time taken to close an appeal was a little over the three month period (102 days) from date of receipt of the Department file.

### **3.10. Number of Oral Hearings held in 2019**

There were 248 oral hearings held in 2019. This compared with 315 held in 2018. The 248 appeals that had an oral hearing in 2019 included appeals received in 2019 and previous years. 35 oral hearings that were scheduled to take place in 2019 were cancelled/postponed - this equates to 12.5% of all hearings scheduled in 2019. Of those cancelled/postponed, 17 were cancelled by appellants and 10 were cancelled by the Department of which 7 were cancelled because the Department revised their decision. 8 were cancelled by Appeals Officers. Of the 248 appeals that were the subject of an oral hearing in 2019, the breakdown of appeal years is as follows:

<b>Number of oral hearings held in 2019 (248)</b>	<b>Year in which appeal received</b>
153	2019
88	2018
6	2017
1	2016

### **3.11. Out of Time/Late Appeals received outside the 3 month deadline**

The records indicate that, in 2019, 22 appeals were received outside of the three month deadline. 11 appellants subsequently submitted exceptional circumstances for the delay and of which 8 appeals were accepted. 11 appellants did not submit exceptional circumstances.





### 3.12. Appeals Outstanding at Year End

The status at 31 December 2019 of appeals received in 2019 is set out below, together with, for comparison purposes, the position at 31 December 2018 in respect of appeals received in 2018.

	<b>Position at 31 December 2018 <i>Appeals received in 2018</i></b>	<b>Position at 31 December 2019 <i>Appeals received in 2019</i></b>	<b>Percentage difference</b>
Cases closed	337	274	- 19%
Work in progress – Agriculture Appeals Office	163	232	+ 42%
Awaiting Department response	56	64	+ 14%
Total Appeals received	556	570	+ 2.5%
Remaining appeals received in the year to be processed	219	296	+35 %

While the number of days taken to close appeals improved in 2019 compared with 2018, it is evident from the statistics in the table above that when compared with 2018, the number of appeal closures was lower in 2019 than in 2018 and the number of appeals carried over was higher than that carried from 2018 to 2019. The main contributory factors included the significant additional forestry licence appeals work taken on by the Appeal Office, a number of Appeals Officer vacancies and the complexity of appeals. The Office will continue to endeavour to increase the numbers of appeals closed each year, reduce processing times, and provide quality decisions.



### **3.13. The Office of the Ombudsman**

The Agriculture Appeals Act, 2001, provides that appellants may request a review of their case by the Office of the Ombudsman. The appeal file and documents in respect of 20 appeal cases were requested by the Office of the Ombudsman in 2019. Of the 20 appeals requested by the Ombudsman in 2019, 7 cases have been closed by the Ombudsman of which 1 case had the Department decision was revised by the Department following the Ombudsman's Office examination of the case.

### **3.14. Freedom of Information**

The Agriculture Appeals Office received 2 requests under the provisions of the Freedom of Information Act in 2019.

### **3.15. Litigation**

The Agriculture Appeals Act provides that appellants may appeal their case to the High Court on a point of law. No legal proceedings were initiated in 2019.

### **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.

25 reviews of Appeals Officer decisions were completed in 2019 of which 18 were requested by appellants and 7 by the Department. The reviews closed were received in the years prior to 2019. The outcomes of the reviews requested by the appellants were that 4 decisions by Appeals Officers were partially revised in favour of the appellant and in 1 case the Department revised the initial decision in favour of the appellant. In regard to the Department requests for a review of Appeals Officer's decisions, 4 of the decisions of the Appeals Officer were unchanged after the review and 2 were partially revised. There are currently a number of reviews yet to be finalised and every effort is being made to ensure the reviews are completed.



## **4. OTHER APPEAL RELATED ACTIVITIES UNDERTAKEN BY THE AGRICULTURE APPEALS OFFICE**

### **4.1. Legislation**

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. 556 of 2019 Agriculture Appeals Regulations).

### **4.2 Forestry Appeals Committee (FAC)**

The FAC is based in the Agriculture Appeals Office which provides all administrative and secretariat support to the Committee. Appeals Officers are members of the FAC which was established in 2018. A Department decision on a forestry licence may be the subject of multiple appeals. There has been a substantial increase of forestry licence appeals year on year as shown below. FAC decisions may confirm, cancel or vary the Department decision.

<i>Year</i>	<i>Appeals</i>	<i>Licences</i>
2017	34 appeals concerning	22 licences
2018	197 appeals concerning	147 licences
2019	489 appeals concerning	311 licences

Most appeals were submitted by third parties. 150 forestry licence appeals were closed in 2019. Of those, 32 FAC appeal decisions confirmed the licences under appeal, 27 FAC appeal decision varied the licences under appeal and 91 FAC appeal decisions cancelled the licences under appeal or the appeal was withdrawn.

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

The Programme for a Partnership Government (2016) included a commitment to review the Agriculture Appeals Act, 2002. The Report on the Review of the Agriculture Appeals Act, 2001 and Operations of the Agriculture Appeals Office was published in February 2018. Following consultation by the Department with stakeholders, the assessment of the Report's recommendations is on-gong. Some recommendations will require amendments to the Act.



#### **4.4. Agriculture Appeals Office IT systems**

Work on the re-development of the IT database for recording and reporting on appeals continued in 2019 and the new database was rolled out in December 2019. The Agriculture Appeals Office was also involved in creating a new recording and reporting database for the new forestry appeals service. The work on that revised system was on-going at the end of 2019.

#### **4.5 Legal Training**

In addition to training courses undertaken by individual officers as part of their PMDS learning and development plan, a bespoke legal training course was undertaken by Agriculture Appeals Office staff.

#### **4.6. Business Plan**

The 2019 Business Plan formed the basis for the work of the Office and is subject to regular review. Targets included in the business plan were monitored regularly.



## 5. **APPEALS OFFICERS' SELECTION OF EXAMPLES OF AGRICULTURE APPEALS CASES DEALT WITH IN 2019**

### **Case 01 - 2017 Beef Data and Genomics Programme**

A farmer submitted a Beef Data and Genomics Programme application and was accepted into the scheme. The farmer wrote to the Department seeking to terminate their contract under force majeure because of a medical condition. The Department agreed to this request removing the appellants from the BDGP scheme without penalty. The Department decision was that the farmer was not eligible for payment for the 2017 BDGP because the first round of payments was not issued to applicants until the middle of December 2017. The farmer appealed the decision to the Agriculture Appeals Office on the grounds that they should be paid for 2017 because they had complied with all of the requirements in 2017 before the contract was terminated. The farmer had completed the surveys, genomic testing, carbon navigator and training as required under the programme.

The terms and conditions BDGP state that in order to receive full payment, the applicant must successfully complete all of the Programme requirements. The Appeals Officer found that the farmer had complied with all of the requirements of the terms and conditions Beef Data Genomics Programme for 2017 so therefore was entitled to their full BDGP payments for 2017.

The appeal was allowed.

### **Case 02 Basic Payment Scheme Unused Entitlements**

A farmer received a notification from the Department in relation to the removal of unused entitlements to the National Reserve. The Department's records showed that the applicant had not used 100% of their entitlements at least once out of the two consecutive years (2016 and 2017). The farmer appealed the decision to the Agriculture Appeals Office on the grounds that the first notification of the loss of their entitlements was in January 2018. They had received no correspondence prior to their annual application for the 2017 Basic Payment Scheme (BPS) and other area based scheme applications). The application was completed online and the appellant's grounds were that at no point was the issue of entitlement outlined



or flagged anywhere: it was submitted that the 2017 BPS application had a box on the front page which outlines any entitlements that were subject to the two year rule but that in this instance the box was empty. The appellant's view was that the Department should not be able to take back the entitlements without some warning system. The appellant also submitted medical evidence under the provisions of force majeure.

The Appeals Officers determined that there is provision for force majeure which include circumstances such as death of the participant, long term professional incapacity, a natural disaster or an outbreak of disease affecting all or part of the livestock on the farm and that, in general, force majeure or exceptional circumstances are unforeseen in nature and are shown to have prevented the applicant meeting what was required of them. In this case the farmer was aware of the circumstances that led to the surrender of the entitlements before 2017. The Appeals Officer found that the farmer's health problems did not constitute force majeure as they continued to farm and their condition pre-dated the non-use of the BPS entitlements.

The appeal was disallowed.

### **Case 03 Organic Farming Scheme**

A farmer was participating in the Organic Farming Scheme and an inspection was carried out on their holding by the organic control body. During this inspection two non-compliances were found: one for cattle housed with no additional bedding and one for sheep being fed non-organic nuts. A penalty was applied. The farmer submitted an appeal to the Agriculture Appeals Office on the grounds that their farm is located in a very isolated area with the nearest source of straw being thirty miles away and that they had continuously used straw but had just run out at the time of the inspection and were awaiting a new delivery. In relation to the use of non-organic sheep nuts the farmer state that the local store is located nineteen miles from their farm and had no organic sheep feed in stock when the farmer called so he bought a small quantity of beef nuts to tide him over. The farmer also referred to the pressure they were under due to the bad winter and the drought in the summer coupled with poor prices. They also said that they had a long history of organic farming and had a



significant track record. The appellant also advised that at the time of the inspection the weather was bad and there were delays in getting the straw.

The Appeals Officer found that the Regulations for the scheme are clear on what is required to participate in the Organic Farming Scheme. Participation in the scheme is voluntary and it is the responsibility of the farmer to ensure that there is adequate feed and straw for their animals even in the difficult circumstances if they are to adhere to the Organic Farming requirements.

The appeal was disallowed.

#### **Case 04 Beef Exceptional Aid Measure**

A farmer submitted a Beef Exceptional Aid Measure application to the Department for payment for animals which they sold in the mart in October and November 2018. The Department rejected the application stating the farmer was not in compliance with the terms and conditions of BEAM as the animals were sold at the mart to another herdowner. The farmer submitted an appeal to the Agriculture Appeals Office on the grounds that they sold the animals in the mart and the animals were slaughtered within the 30 days.

Sections 9.1.1 and 9.2 provide as follows;

*“9.1.1. Bovine animals aged over 12 months presented to a slaughtering establishment in the period 24 September 2018 to 12 May 2019 inclusive at a rate of € 100 per animal subject to a maximum of 100 such animals per eligible herd...”*

*9.2 Where an animal under 9.1.1 has been presented for slaughter by an agent or by a dealer within 30 days of purchase, including those purchased in the mart, payment may issue to the immediate previous herdowner or in respect of the previous eligible herdnumber, where that herdowner is an applicant.”*

The Appeals Officer found that all of the animals that the farmer sold in October and November 2018 were slaughtered within a couple of days. The records show that the mart moved them to herd owners who were not registered as either a dealer or an agent registered by the Department.

The appeal was disallowed.



**Case 05 Targeted Agricultural Modernisation Scheme II Dairy Equipment Scheme**

The applicants applied to the TAMS II Dairy Equipment Scheme for four investment items. The application was approved. The work was completed and the applicant submitted his payment claim to the Department. On examination of the supplied documentation the Department noted that one of the investment items had been paid for by a third party and was subject to a 7 year loan agreement between the third party and the applicants. The investment item would not be owned by the applicants until the loan had been paid off. The applicant was subsequently notified of an over-claim penalty by the Department which he appealed.

Section 8 of the TAMS II Dairy Equipment Scheme terms and conditions is called Completion of work and Claims for Payment and states: *“Grant aid will not be paid in respect of new equipment or investments unless full ownership therefore has been transferred to the applicant prior to the lodgement of the payment claim. Full ownership is defined as when the applicant has fully paid for the investment from their bank account.”*

Annex B of the TAMS II terms and conditions is titled Schedule of Penalties and states:

Offence	Penalty
Over-claim of eligible expenditure by more than 10%	Subtraction of over-claim from eligible amount payable

On examination of all available information including matters arising at the oral hearing the Appeals Officer found that a third party paying for a portion of the investment clearly fell outside the scheme terms and conditions and found that the penalty was justified.

The appeal was disallowed.

**Case 06 Young Farmers Scheme 2017**

The applicant applied to the Young Farmers Scheme in 2017. His application was selected for inspection in 2018. The inspection finding was that the applicant was deemed ineligible for the Young Farmer Scheme as they were not deemed to be in financial control of the holding.





Section 1.2 of the 2017 Young Farmer Scheme terms and conditions is titled Eligibility of Young Farmer(s) in a Group – Young Farmers Scheme and states;

*Where a young farmer undertakes the farming activity as part of a group e.g. in a joint herd number, a registered farm partnership or a company, the group will be considered eligible for the Young Farmers scheme if the following conditions are met;*

*\* At least one person in the group must meet the definition of Young Farmer as outlined in section 1.1 above;*

*\* That Young Farmer must exercise effective and long term control either solely or jointly within the group in terms of decisions related to the management, benefits and financial risks of the group. Such control is demonstrated as follows:*

*\* the young farmer's name is on the herd number;*

*\* the young farmer's name is on the bank account used for the purposes of the receipt of payments under the Basic Payment Scheme and Young Farmers Scheme.*

*\* Companies Only - the Young Farmer must be a Director and minimum 20% shareholder in the Company;*

*\* all persons who participate in the group must complete a National Reserve/Young Farmers Scheme Declaration form confirming that the young farmer has effective control, either solely or jointly with the other members of the group. This declaration form is available with the scheme application form and on the Departments website and must be submitted with the Young Farmer Scheme application again.*

Section 5.6 of the terms and conditions is titled Inspections and states;

*Applicants under the Young Farmers scheme may be subject to inspection. Such inspection may take the form of on-the-spot inspections or administrative checks.*

*In the case of administrative checks applicants may be asked to submit original hard copies of supporting documentation for verification purposes.*

*The on-the-spot inspection will involve two elements as follows:*

*(i) a check to determine if the land declared is eligible, which can be undertaken by means of field visits on the ground or by means of Remote Sensing using up-to-date satellite imagery;*

*(ii) a check to see if the young farmer is in managerial and financial control, either solely or jointly with others as the case may be, by means of a visit to the holding(s). In addition they*



*will be asked to provide original documentation to demonstrate that they meet the age and educational requirements. In the case of a share farming arrangement they must provide a copy of the agreement for inspection. With regards to managerial control applicants will have to demonstrate that they are actively involved in the running of the farm and show full knowledge of the day to day management of all enterprises on the holding (including in the case of Joint herds and Companies). In the case of Partnerships and Sharefarm arrangements, applicants will be required to demonstrate knowledge of all the enterprises for each herd number in the Partnership/ Share farm. Applicants will also be required to demonstrate full financial control (solely or as part of a group) and control of the land. Applicants will be asked to provide documentation to evidence the managerial and financial control.”*

On examination of all available evidence the Appeals Officer was of the view that the appellant was *exercising “effective and long term control either solely or jointly within the group in terms of decisions related to the management, benefits and financial risks of the group”*. Their name was on the herd number and the joint bank account used for the purposes of the receipt of BPS and YFS payments, the only 2 specified payments referenced in the scheme terms and conditions. In respect of section 5.6 of the scheme terms and conditions, the Appeals Officer was cognisant of the fact that in regard of the inspection the Department found no issues regarding their involvement with the running of the farm and knowledge in respect of the farming operation.

Based on matters arising at the oral hearing and the Department’s file, the Appeals Officer found that the applicant fulfilled all the eligibility requirements with regard to being in financial control of as laid out in Section 1.2 of the 2017 Young Farmers Scheme Terms and Conditions.

The appeal was allowed.

### **Case 07 Basic Payment Scheme – Cross Compliance**

The applicant’s holding was subject to a cross compliance inspection. The outcome of the inspection was a noted non-compliance with SMR 1 and the applicant was informed that a 20% sanction was being applied. The non-compliance found was that there was an unlined



earthen lagoon present on the holding at the time of inspection which had a concrete floor and earthen walls.

S.I No. 605 of 2017 is titled the European Union (Good Agricultural Practice For Protection of Waters) Regulations 2017. Section 2 of the Regulations is titled Purpose and Regulations and states: *“The purpose of these Regulations is to give effect to Ireland’s Nitrates Action Programme for the protection of waters against pollution caused by agricultural sources. The set of measures in these regulations provides a basic level of protection against possible adverse impacts to waters arising from the agricultural expansion targets set under Food Harvest 2020.”*

Section 7 of the Regulations is titled Provision and management of storage facilities and states:

*“7. (1) Storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps shall be maintained free of structural defect and maintained and managed in such manner as is necessary to prevent run-off or seepage, into groundwater or surface water, of such substances.*

*7. (2) Storage facilities being provided on a holding on or after 31 March 2009 shall –*

*(a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of a substance specified in sub-article (1), and*

*(b) comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.*

The Department’s minimum specification for Earth-Lined Slurry/Effluent Stores and Ancillary Works (S131) under the heading “A. Introduction” states: *“An earth-lined slurry/effluent store (ELS) is different from other stores for holding animal slurries and farm effluents. Instead of the slurry being contained by steel, concrete, or plastic-based materials, a liner is formed from either compacted layers of subsoil which will provide an impervious liner or in some situations from naturally occurring impervious material. An ELS is an*



*accepted way of increasing the slurry storage capacity on farms provided they are properly sited and constructed.*

*Because an ELS depends entirely on subsoil to prevent leaks, such a store shall only be built after a “Site Assessment Report” has been completed by a Local Authority approved site assessment expert. A planning application is then prepared, and together with the completed and signed assessment report, is sent to the Local Authority for application for full planning permission. All earth-lined slurry/effluent stores require planning permission.....”*

From an examination of all available documentation and matters arising at the oral hearing it was clear that no Site Assessment Report had been conducted by the Local Authority and that planning permission had not been sought.

The appeal was disallowed.

### **Case 08 – Green Low-Carbon Agri-Environmental Scheme Tranche 1**

The appellant was informed by the Department that their plan was being rejected as they had not met the requirement to attend a GLAS training course by 31 December 2018.

The appellant could not find a GLAS Training Course to attend and their Advisor did not provide training. The appellant was not informed of this at time of application by the Department.

The appellant contended that Department had a responsibility to ensure Advisors ran training courses and if not to make arrangements to facilitate farmers on a course.

The Appeals Officer obtained statistics on the number of GLAS Training Courses that ran in the relevant timeframe and that were not fully subscribed, particularly in the appellant’s own county. The Department stated that they would have directed appellant to these courses if contacted but they were not contacted. It was submitted by the Department that both the appellant and their advisor were reminded multiple times in advance of the deadline of the need to train and the consequences for not doing so. The Department was not bound by



legislation or in the Terms and Conditions to be responsible for notifying applicants of courses or advertising courses. In these circumstances the Appeals Officer found that it was not impossible for the appellant to attend the training within the required timeframe as there were courses available.

It was submitted also that the Department was not obliged by legislation or in the Terms and Conditions to place responsibility on the advisor neither to provide training nor to take responsibility for informing applicants as to whether their advisors were providing training. The Department indicated that they were not in a position at the time of application to know whether GLAS advisors would provide training and this fact was accepted by the Appeals Officer. The Department was not required by legislation or in the Terms and Conditions to provide training courses (either directly themselves or indirectly via approved Advisors) when advisors did not.

It was accepted by the Appeals Officer that it was more difficult for the appellant to attend the required training when the approved advisor was not providing such training. However, the Appeals Officer found that the onus to attend the training within the required time frame was a core requirement of GLAS and was found to ultimately reside with the appellant.

The appeal was disallowed.

### **Case 9 – Green Low-Carbon Agri-Environmental Scheme Tranche 3**

The Department received a GLAS 3 application from the appellant in December 2016 and awarded a contract with a commencement date of 1 January 2017. The appellant had been a registered organic producer up to 31 December 2016 and ceased being so from 1 January 2017.

The Department's pre-payment validations in late 2018 flagged an issue arising from the data recorded for the organic scheme. In January 2019 the Department rejected the application on the basis that the appellant was no longer a participant in the organics scheme and being an organic farmer had given rise to this GLAS 3 contract being a '*Tier 1*' approval.



The appeal grounds included that none of the GLAS actions chosen required organic status, and Organic Farming Scheme participation up to the end of 2016 had ruled out a greater proportion of the farmland from any area based GLAS action.

At the hearing the Department gave evidence that a Circular 37/2015 set out consequences for failing to adhere to the criteria that promoted the application to Tier 1 status and while organic farming does not earn a payment under GLAS it does qualify an applicant for Tier 1 access.

The appellant's advisor gave evidence that the appellant was still registered as organic when GLAS 3 opened for applications but had withdrawn from both organics and the Organic Farming Scheme before the GLAS 3 contract commenced and there was no facility for modification of present to future farming system on the application system. The evidence from the oral hearing was that the GLAS application did flag the application as a possible Tier 1 but did not specify the reason for the Tier 1 possibility.

The appellant provided evidence of e-mail contacts with their organic licensing body and with the Department in which the appellant confirmed their withdrawal from the Organic Farming Scheme and that they would not be renewing their organic licence.

**Circular 37/2015** issued to GLAS Advisors and included that the withdrawal of a "*Priority Environmental Asset (PEA) action will result in the rejection of the application and termination of the contract ... An action that promoted the application to Tier 1 status will result in the rejection of the application and termination of the contract*".

It was submitted by the Department that the responsibility rested with the appellant to have familiarised themselves with the GLAS Terms and Conditions, the Specification and any amendments thereof and with the consequences for breaches of the Scheme. The Terms and Conditions had informed appellants and their advisors that registered organic farmers would get priority access to the scheme and through this the appellant was entitled to priority access to the scheme as the appellant was a registered organic producer on application date. The Appeals Officer found the GLAS 3 Terms and Conditions clear at point 13.2: *Where approval is granted under tier 1 or tier 2 at least one action in the relevant tier must be*



*delivered for the full contract period. Failure to retain the tier status under which the application was approved into the Scheme will result in termination of the GLAS contract and reimbursement of all aid already paid.* The Appeals Officer found that organic farming, while a qualifying criterion under Tier 1(b) is not an action under the GLAS Specification and the appellant did not fail to continue delivering an action. The Appeals Officer also found that the GLAS 3 penalty schedule makes no mention of organics. However the Appeals Officer found the specific content of Circular 37/2015 did provide direction to planners concerning the withdrawal of Priority Environmental Asset actions under GLAS and the Appeals Officer found the content of Circular 37/2015 compelling and that organics must be dealt with in the same manner as other tier promoting criteria.

The Department through 17.3 of the GLAS 3 Terms and Conditions applied the provisions of Article 3 of Commission Implementing Regulation (EU) No 809/2014 concerning actions in GLAS. Article 3 states at paragraph 1 that an aid application, application for support, payment claim or other declaration may be totally or partially withdrawn at any time in writing. Article 3 states at paragraph 3 that withdrawals in accordance with paragraph 1 shall put beneficiaries into the position they were in before the submission of the documents in question or part thereof. The Appeals Officer found that the appellant did notify the Department prior to any inspections or validations and before their contract commencement of their exit from organics and that the provisions of Article 3 required that withdrawals in accordance with paragraph 1 shall put beneficiaries into the position they were in before the submission of the documents in question or part thereof.

Having regard to those provisions and to the particular circumstances of the case including the timing of the communications with the Department and EU regulation requirements, the Appeals Officer's decision was that the appellant should remain in GLAS 3 as a non-organic farmer for the duration of their contract subject to meeting all other criteria.

The appeal was allowed.



### **Case 10 - Green Low-Carbon Agri-Environmental Scheme Tranche 1**

The appellant joined GLAS in 2015. Following an inspection in 2018, the Department notified the appellant of a non compliance with the terms and conditions of the Scheme with regard to the Low Input Permanent Pasture (LIPP) action, outlining the reason to be the presence of a ring feeder in the LIPP parcel and cattle being outwintered there and that therefore a reduction in payment was to be applied.

The appellant appealed on the grounds that he accepted cattle were being outwintered and he was using a ring feeder, but that it was all within a very small area, highlighting the significant difference in the area of the LIPP parcel and the actual area being taken up by the outwintering, so a reduced penalty was sought. The appellant also claimed the number of animals outwintered was small, that he only let out cows as they calved, that he always uses this area for outwintering as he found it suitable as it was a rocky area with little soil, and that by restricting the animals to this confined area he was protecting the rest of his land, some of which was included in the penalty. It was also outlined that the appellant was taking steps to improve his wintering facilities.

The Appeals Officer, from reviewing the evidence, found that poaching was found in the area being used to outwinter animals and having a ring feeder present. The Appeals Officer found that this poaching was a breach of cross compliance under Good Agricultural and Environmental Conditions (GAEC) and that a penalty had been applied to the appellant's area based schemes under cross compliance for that reason. The Appeals Officer found the Scheme's terms and conditions states that *“any breach of the baseline cross-compliance or greening elements on which a GLAS commitment is based will result in no payment for that commitment for a full calendar year”*.

The Appeals Officer acknowledged the appellant was taking steps to improve his wintering facilities and that the extent of the financial penalty applied was significant and challenging for the Applicant. However the Appeals Officer found that the Scheme's penalty schedule set out that a baseline Cross Compliance breach associated with a LIPP parcel resulted in a 100% penalty for the LIPP action for one year and that a GLAS circular in 2017 clarified that any supplementary feeding of forage to cattle is not allowed in a LIPP parcel. The Appeals Officer also found the appellant claiming to not being aware that the confined area





where the outwintering took place was in his LIPP area did not absolve the Applicant from the requirement and commitments given under the Scheme.

The appeal was disallowed.

### **Case 11 - Green Low-Carbon Agri-Environmental Scheme Tranche 2**

An application was made to join GLAS 2 in December 2015. The Department accepted the application with a contract commencement date of 1 of January 2016.

In February 2019, an inspection was carried out on the farm and non-compliance was found in relation to the Wild Bird Cover action - it was found that the action was not completed in 2018. This resulted in no payment for this action for the year in question and as it was the Tier 2 action the entire application was rejected.

The appeal was on the grounds that all works required were completed and in order. The appellant was the primary carer for a relative who died early in 2019 after a long illness and it was submitted that this was the reason the Wild Bird Cover was not sown in 2018. An oral hearing was held.

The Department's representatives gave details of the GLAS rules and outlined the application details, contract details and advised that Wild Bird Cover was not sown in 2018. As it was the appellant's only Tier 2 action the entire GLAS application was rejected. It was stated by the Department that force majeure could not apply.

The appellant gave details of their relative's illness and the circumstances of the non compliance. The appellant's representative referred to the strict criteria that were used in making this decision and to the proportionality of the penalty.

Further medical documentation was provided to the Appeals Officer after the oral hearing. The Appeals Officer partially overturned the Department's decision on the grounds of force majeure and taking account of the rules for withdrawing payments. In their decision the



Appeals Officer had regard to the Terms and Conditions of the Scheme, the relevant EU legislation and the particular circumstances of this case.

The appeal was partially allowed.

### **Case 12 - Green Low-Carbon Agri-Environment Scheme Tranche 3**

An application was made to join GLAS 3 in December 2016. The Department accepted the application with a contract commencement date of 1 January 2017.

An inspection took place on the appellant's farm and noncompliance was found on four actions: bat boxes and bird boxes were not installed by 31 May 2017 as required by GLAS 3 specifications; conservation of Solitary Bees (Sand) action was not delivered by 31 of May 2017 as required by GLAS specifications and the Wild Bird Cover action was not managed in accordance with the GLAS specifications. This resulted in no payment for this action for the year in question.

The appeal was on the grounds that the bird and bat boxes could not be sourced on time due to high demand and shortages and that due to the nature of the soil, most sowing of wild bird cover does not take place until well into May. It was a little after the deadline for the action that the bird cover was sown. The appeal grounds also were that all works were completed in accordance with scheme requirements and subsequently the records were completed entirely truthfully. The appellant's grounds included also that although the deadlines for the actions in question were marginally missed, all the aims of the scheme were achieved on the date of inspection. The appellant's view was that the penalties for extremely minor discrepancies on completed GLAS actions were unfair and certainly not in keeping with the spirit of the scheme.

At the oral hearing the Department representative gave details of the contract. They outlined that the problem with the Wild Bird Action was a management issue, no kale was found at the inspection, it was sown late and the date was firmly set. The bird and bat boxes were installed after the required date. The Department also referred to the Wild Bird Cover action as being the action with the highest payment under the Scheme and that it was a one-year



penalty that was imposed and not a five-year penalty. The Department also advised that it is the farmer who makes the decision on what actions are in his plan.

The appellant's representatives outlined the difficulties of getting a contractor and correct seed mixtures and that the appellant filled in the documents truthfully reflecting what was on the ground, that they kept to the spirit of the Scheme and were honest and that the goals and objectives of GLAS were met.

In their decision the Appeals Officer had regard to the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to this case. The Appeals Officer referred to the relevant GLAS 3 Specifications for bird Boxes, Bat Boxes, Solitary Bees and Wild Bird Cover.

The appeal was disallowed.

### **Case 13 - Green Low-Carbon Agri-Environment Scheme Tranche 2**

An appellant applied for GLAS in 2015. The application fulfilled the eligibility criteria and his application was successful. The appellant was admitted to GLAS 2 with a contract commencement date of 1 January 2016. A number of options on different parcels were selected:

- Conservation of Solitary Bees,
- Protection of Watercourses from Bovines on three separate parcels,
- Low-input Permanent Pasture (whole of parcel),
- Low-input Permanent Pasture (part of parcel),
- Wild Bird Cover

With these actions, the application was ranked as a possible Tier 1 application.

However during the Department's prepayment validation checks it was identified that six parcels for various different actions were no longer being claimed by the appellant on their annual application for the Basic Payment and other Area Base Schemes including GLAS. Section 8.5 of the Scheme Terms and Conditions stated that "*the claimed area of parcels declared on the GLAS screen in the Annual Basic Payment Scheme application is deemed to be the area claimed for payment.*" The appellant was advised about this by the Department.



A letter was issued to the farmer to advise about the consequences and to explain about the penalty. In this case, the penalty was rejection from the Scheme and clawback of all monies paid under GLAS to date. The appellant sought a review by the Department including grounds that referred to medical circumstances. The Department wrote to the appellant explaining that parcels had been transferred to another herdowner and had been claimed by that herdowner in 2018. The parcel containing the appellant's only priority action was included in the transfer and the transfer had also not been carried out within the requirements of the Scheme Terms and Conditions. They advised the appellant that they had no option but to uphold their decision.

An appeal was received in the Agriculture Appeals Office. In the appeal the appellant set out the extenuating circumstances which gave rise to the transfer of the parcels. An oral hearing took place and the appellant described more fully at the oral hearing the nature of the exceptional circumstances and how they had affected him. They wished to exit from the GLAS contract without any clawback and wished to claim Force Majeure. They undertook to submit further evidence relating to the circumstances and supplied that as agreed. On receipt of the additional evidence, the Department reviewed the case again in the light of the additional information and medical evidence and decided, under the provisions of Force Majeure, to accept the appellant's request for withdrawal from the GLAS contract and not to recoup the clawback.

The original Department decision was revised by the Department in favour of the appellant and after assignment to an Appeals Officer.

#### **Case 14 - Appeal in relation to Areas of Natural Constraints Schemes (ANC)**

An application was made for the Areas of Natural Constraint Scheme in 2017. The appellant was informed by the Department that they would not receive payments under the Areas of Natural Constraint Scheme (ANC) for 2017. The reason for this decision was that they did not maintain the required number of livestock on their farm for the stipulated period.

The appeal was on the grounds that the applicant had been very unwell having had a stroke. Medical documents were provided. The appellant had to sell cattle due to ill health they did



have enough levels of stock in the 2017 period by way of owning horses and donkeys, both of which produced off-spring. They subsequently sold the horses and donkeys in the 2018 and did not have the logbooks which were given to the new owners. They asked that consideration be given to their ill health and previous stocking rates to allow the subsidies for the relevant 2017 year.

At the oral hearing, the Department's representative gave the background and details of the application. They outlined the stocking rate requirements, referred to the appellant's illness going back to 2014 and that fact that they had enough stock in 2016. The Department outlined how they were unable to change the decision on the grounds of Force Majeure as the year the appellant had the stroke was not relevant to their 2017 application.

The appellant's representative gave details of the health issues involved and of the appellant's health deteriorating in 2017 and other information they considered relevant to the appellant's circumstances and non compliance. The appellant's representative also referred to the penalty being disproportionate and grounds of force majeure due to appellant's serious illness. Further medical documentation was provided to the Appeals Officer after the oral hearing.

In their decision, the Appeals Officer had regard to the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to this case. Considering the medical evidence supplied after the oral hearing which detailed the serious deterioration in appellant's health and memory in 2017 and taking account of the particular circumstances of the case, the Appeals Officer overturned the Department's decision on the grounds that force majeure was applicable in this case.

The appeal was allowed.

### **Case 15 - Sheep Welfare Scheme**

A farmer applied for the Sheep Welfare Scheme on 25 January 2018. The Department deemed his application ineligible for payment because he failed to use an independent laboratory approved by the Department in line with the Terms and Conditions of the Scheme.



The appellant submitted in his grounds of appeal that they were not aware that their vet had switched laboratories but that they had trusted their vet and that the laboratory results were correct. The appellant submitted that there was a drought in 2018 and also there was also a family bereavement.

The Appeals Officer took into consideration the requirements in the Terms and Conditions of the Sheep Welfare Scheme 2018 (Section 13 Scheme Actions Parasite control (Faecal egg count) and Annex 1 of the Terms and Conditions)

The Appeals Officer found that the onus is on the farmer to use a Department approved laboratory to carry out the test.

The appeal was disallowed.

### **Case 16 - Nitrates**

The Department stated that the appellant had breached the Nitrates Regulations as they had exceeded the limit of 170kgs per hectare. The Department's records reflected that the amount of Nitrogen from livestock manure applied to lands (including that deposited by animals) on the appellant's holding was 182kgs per hectare which resulted in a penalty of 3%.

The Department explained that the Nitrates calculation included the animals on the holding for the calendar year and the land claimed on the annual application for the annual Basic Payment and other area based schemes (BPS) and that while land claimed on a BPS application which is listed as "forestry eligible" is eligible for payment under the BPS scheme, it is not included in the Nitrates calculation.

The appellant stated that they had two forestry contracts since 2011/2012 and that part of the plantation was not planted due to overhead wires and that there was a corridor which is eligible for grazing and as permanent pasture. The appellant submitted that a Department inspection occurred in 2019 and that it was concluded by the Department that the corridor was eligible and that the maps would be updated.



The Department stated that the land claimed on the appellant's 2017 BPS application was 10.52 ha and that this was not sufficient to cover all of the 12.55 entitlements, they concluded at the hearing that there were no maps on the file to verify the area not planted as referred to by the appellant.

As a result of further investigations by the Appeals Officer, the Department concluded that it was obvious from the ortho photography and the inspection result that there was access to these areas and that the land had been grazed and was eligible.

The original Department decision was revised by the Department in favour of the appellant and after assignment to an Appeals Officer.

## **6. SUGGESTIONS FOR CONSIDERATION BY THE DEPARTMENT**

### **6.1 Area Based Rural Development Schemes including Environmental Schemes - Commitments and Actions**

- A number of appeals concerned actions undertaken on a location other than that indicated in the application and approved contract. It may be helpful for applicants if the Department was to consider highlighting in their communications, at the time of approval of contracts and in the terms and conditions, that actions and commitments on must be undertaken in the exact location marked on the map in the application.
- A number of appellants' appeal grounds referred to the proportionality of the Department penalties for failure to deliver an action which resulted in Department decisions to exclude them from the Scheme concerned and to recoup payments already made on all actions, not only the non compliant action. It would appear that there continues to be a lack of awareness by farmers that failure to implement all actions in GLAS contracts for the period of the contract (which may exceed five years) may result in exclusion from the scheme before expiry date and total recoupment for all scheme payments already made. This is also relevant when schemes ending overlap with the period of new similar schemes being introduced. It may be helpful for applicants if the Department was to consider ways of enhancing awareness of the potential for exclusion and claw back requirements in the annual terms and conditions. It may also be helpful if



each Department decision issued referred to the relevant EU Regulation requirements for withdrawal and the rules for reductions of payment and recoupment.

## **6.2 Targeted Agricultural Modernisation Schemes**

- The way in which applicants pay for an asset claimed for can vary. It may be helpful if the Department gave consideration to enhancing applicants' awareness that payment must be made in full and that full ownership of the asset must pass to the applicant before the payment claim for grant aid is submitted. Efforts to enhance awareness of the consequences of an applicant's change of status over the period of the contract may also assist.

## **6.3 All Schemes**

- It may be helpful if consideration could be given to photographing relevant areas/evidence of non compliance found at inspections as this would assist assessment during the course of an appeal. Such photographs can be geo-tagged and date stamped.

## **6.4. All Schemes:**

- As shown in this report 17% of all appeals closed in 2019 had the original Department decision revised by the Department in favour of the appellants before the full appeals process had been completed. This is despite the fact that a review process is in place in the Department for decisions on non-compliance. The reasons for the revised Department decision include additional information being provided by appellants to the Appeals Office which is forwarded to the Department for comment and queries raised by the Appeals Office with the Department. While the onus is on appellants to provide all relevant information to the Department during their interactions with the Department, it may be helpful if the Department might give consideration to examining ways to ensuring that appellants provide all relevant information to the Department as part of the Department review process.

## **6.5 Department decisions letters**

- It is relevant to mention again this year the importance of the Department review decision letters clearly identifying the specific scheme name.





## **6.6 Young Farmers Scheme and Areas of Natural Constraints**

- A number of appeals received in 2019 concerned the Young Farmers Scheme and farmers (or their advisors on their behalf) unknowingly excluding themselves from participation in the Young Farmers Scheme by unintentionally not ticking the Young Farmers Scheme checkbox when completing their Basic Payment Scheme application. A number of appeals were received in 2019 from farmers who hold lands designated in Areas of Natural Constraints but who had failed to tick the box to apply for the scheme in 2019. As it is extremely unlikely that farmers would intentionally wish to exclude themselves from both of these Schemes, it may be helpful if the Department gave consideration to assessing if automatic notification to farmers already in the schemes concerned could issue proper to the deadline for applications advising them that they have excluded themselves from the and what they need to do if this is an error and they wish to participate in the Scheme.

## **7. SUGGESTIONS FOR CONSIDERATION BY SCHEME APPLICANTS**

### **7.1 Scheme rules**

- It is relevant to note that 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 their decision. It is important therefore that applicants familiarise themselves with the terms and conditions and guidelines of schemes before submitting their claims.

### **7.1 Cross Compliance**

- Cross Compliance with the requirements of Good Agricultural and Environmental Condition (GAEC) and all Statutory Management Requirements (SMRs) is a prerequisite for the schemes: infringements can have serious consequences leading to penalties on the payments across all schemes. The penalties multiply significantly on reoccurrence. Applicants should continuously familiarise themselves with the requirements and regularly check that there is no breach of the SMR requirements.



- Nitrates non-compliances particularly with regard to inadequate farm management and holding facilities for soiled water and pollution of waters continue to feature at appeal level. There must compliance with the legal requirements of the Nitrates Regulations. In particular in the context of the changing weather patterns and changing patterns in farming it is suggested that farmers may wish to consider arranging for additional infrastructure to deal with volumes of soiled water.

## 7.2 All Schemes

- *Force majeure*: The principle of Force Majeure, as mentioned in previous annual reports, needs to be strictly interpreted, in accordance with the governing EU Regulations and the European Court of Justice interpretation. The burden of proof rests with applicants to prove an event was sudden and unforeseen. When seeking to rely on Force Majeure, an applicant needs to set out in detail the sudden and unforeseen circumstances for failure to comply with the requirements.
- *Change of applicant name*: A number of appeals involving multiannual contracts and purchases of assets concerned applicants being excluded from the schemes because applicants changed their trading status, i.e. sole trader, partnership or company structure. Participants in schemes who intend to change their status should contact the Department before making any changes to their status.
- *Review of Department decision*: As mentioned in section 6 above, 17% of appeals closed in 2019 concerned decisions that were revised by the Department in favour of the appellant after the appeal was received by the Agriculture Appeals Office but prior to completion of the appeals process. Scheme applicants should endeavour to provide as much information as possible to the Department as part of the Department's internal review process before the Department finalises the decision.
- *Annual application for multi annual schemes*: The annual application to the BPS includes other Area Based schemes. Applicants are declaring in the annual application that they comply with the annual terms and conditions. This compliance is required in addition to the obligations arising from the terms and conditions applying at the time of



approval of the multi annual contracts for the multi annual schemes and any amendments to those requirements arising thereafter. Cross checks are carried out by the Department on the annual declarations and this includes, for example, check on land use declared in the annual application and against the use approved in the scheme contract which could have been agreed some years previously. Change of use or area declared in the annual application that differs from that approved can result in significant penalties including exclusion from the scheme and recoument of all payments already made. Similarly, non compliance with land eligibility requirements of the Basic Payment Scheme resulting in a reduced area may have consequences for the payments on the other area based schemes. It is essential that applicants examine the terms and conditions of their initial approval for entry into the multiannual schemes including actions and land use approved as well as examining the annual terms and conditions and the contract expiry date. As the years under contract progress, it is important for applicants to remain vigilant ensuring that their commitments and actions comply with the terms of their contract as initially approved and that the requirements are fulfilled until the expiry date included on the contract.

- *Ineligible land:* Applicants may wish to note that the terms and conditions for the BPS and other area related schemes provide that the burning of growing vegetation on uncultivated land between 1 March and 31 August is illegal and, where land has been burned in that period, it is not in a state suitable for grazing or cultivation and therefore is not eligible for the remainder of the year, with very limited exceptions that must have been the subject of advance notification to the relevant bodies. In the case of land designated as Special Area of Conservation (SAC) and/or Special Protection Area (SPA) the NPWS must always be consulted in advance of any burning at any time throughout the year. Where burning occurs on land designated as SAC and/or SPA penalties will apply.

### **7.3 Basic Payment Entitlements**

- Farmers who do not use their entitlements in two successive years will lose the unused entitlements. Farmers should take appropriate measures to ensure that any lands and/or entitlements leased out by them (even if entitlements were used in the previous year) are



fully used in accordance with the scheme requirements including being subject to an agricultural activity and otherwise compliant. Leased out entitlements may also be lost if the lessee does not all their entitlements and the leased entitlements are of the lowest value.

#### **7.4 Targeted Agricultural Modernisation Schemes**

- Applicants should ensure adherence to the rule that payment for investment made by the farmer must be made in full before submission of the payment claim.
- Applicants should ensure that there are no differences between the area dimensions originally applied for and approved and the area dimensions subsequently claimed. Differences between the approval and the claim may be considered to be an over claim or a failure to fulfil the terms of the approval leading to significant penalties.
- Applicants should ensure that ownership of an asset purchased has transferred to the applicant prior to submission of the claim.

#### **7.5 On line applications – specific declarations required per scheme**

- A number of appeals concerned the failure by applicants to tick boxes that were relevant to their participation in a scheme. As the application form for the Basic Payment and other Area based schemes is an annual application and requires annual declarations of participation it is important that applicants and their advisors take their time and exercise due care when answering each of the questions in the form and in particular regarding questions on their participation in the scheme.

#### **7.6 Appeal submission – Department decision letter:**

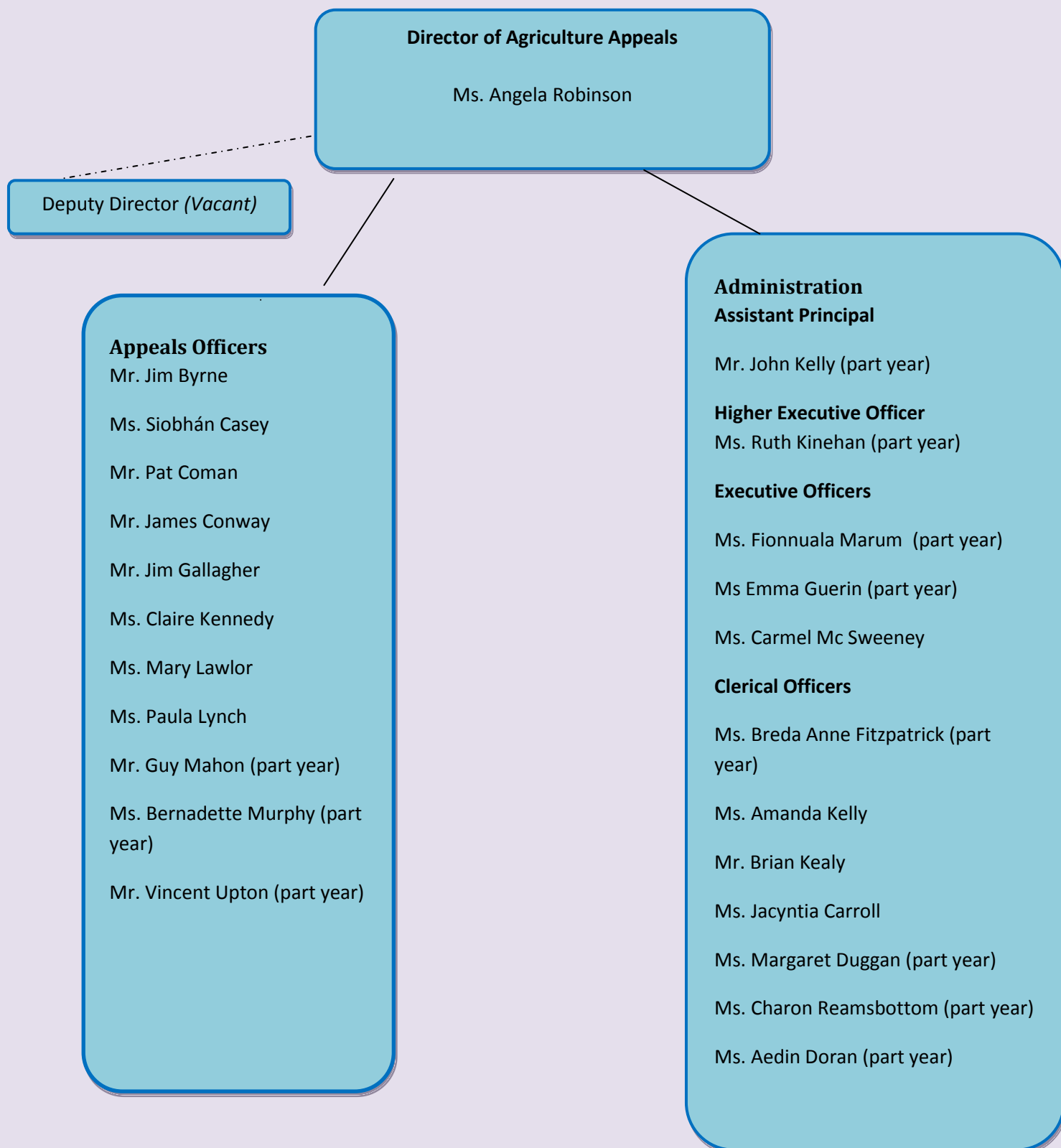
- When submitting an appeal, farmers should always include a copy of the Department decision which is the subject of their appeal. This will assist in expediting the appeal and determine if the appeal is valid.



## **Appendices**

Appendix A	Organisation Chart
Appendix B	Agriculture Appeals Act, 2001, and Section 35 of the Forestry Act 2014 amending the Agriculture Appeals Act
Appendix C	S.I. No. 193/2002, Agriculture Appeals Regulations 2002
Appendix D	Reference to other relevant legislation

Appendix A  
Agriculture Appeals Office  
Organisation Chart 2019



## 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

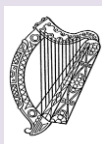
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##### Acts Referred to

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. (*repealed by Schedule 1 Animal Health and Welfare Act 2013*)

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. (*repealed by Schedule 1 Animal Health and Welfare Act 2013*)

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. <sup>3</sup>—(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.

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<sup>3</sup> See Extract from Forestry Act below (Amended Agriculture Appeals Act adding new Section 14 A)

## **SCHEDULE 1 (As amended by S.I. No. 556 of 2019)**

### **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 Environmental Efficiency Pilot (BEEP)  
Beef Exceptional Aid Measure (BEAM)  
Beef Genomics Scheme (BGS)  
Beef Data and Genomics Programme (BDGP)  
Bio Energy Scheme  
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  
Grant-Aid Scheme for Marts to facilitate their operation as Central Points of Recording (CPRS)  
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 in relation to applications for approval for inclusion in the scheme – 1<sup>st</sup> stage)

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 1782/2003<sup>4</sup> 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

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<sup>4</sup> OJ L270, 21.10.2003, p.1

- (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