

An Oifig Achomhairc
Talmhaíochta

Agriculture
Appeals Office



2020

ANNUAL REPORT

of the

AGRICULTURE APPEALS OFFICE



To the Minister for Agriculture, Food and the Marine,

I hereby submit the Annual Report of the Agriculture Appeals Office pursuant to the provisions of Section 14(1) of the Agriculture Appeals Act, 2001 (as amended). This is the 19th Annual Report submitted in relation to the work of the Agriculture Appeals Office since its establishment in 2002.

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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.

Contents

		Page no(s)
1	Introduction by the Director & Deputy Director	3
2	Overview of the Agriculture Appeals Office	5
2.1	<i>Appeal services provided by the Agriculture Appeals Office</i>	5
2.2	<i>Purpose of this Report</i>	5
2.3	<i>Mission Statement of the Agriculture Appeals Office</i>	6
2.4	<i>Procedures Manual</i>	6
2.5	<i>Overview of the Agriculture Appeals Procedure</i>	6
2.6	<i>Overview of the Forestry Licence Appeals Procedure</i>	8
3	Statistics on Agriculture Appeals dealt with in 2020	9
3.1	<i>Total Agriculture Appeals Received</i>	9
3.2	<i>Agriculture Appeals received per month</i>	9
3.3	<i>Agriculture Appeals received per county</i>	11
3.4	<i>Agriculture Appeals received per scheme</i>	12
3.5	<i>Number of Agriculture Appeals closed</i>	13
3.6	<i>Outcome of Agriculture Appeals closed in 2020</i>	14
3.6.1	<i>Terminology Used for Outcome of Agriculture Appeals</i>	14
3.6.2	<i>Outcome of All Appeals Closed in 2020</i>	15
3.6.3	<i>Breakdown of Outcomes of All Agriculture Appeals Closed in 2020</i>	17
3.6.4	<i>Decisions Revised by the Department in Favour of Appellants</i>	17
3.6.5	<i>Appeals Allowed and Partially Allowed</i>	19
3.6.6	<i>Breakdown of Appeals Disallowed</i>	20
3.7	<i>Time period for receipt of Department documents</i>	20
3.8	<i>Time taken to determine appeals</i>	21
3.9	<i>Number of Oral Hearings held in 2020</i>	22
3.10	<i>Out of Time/Late Appeal – received outside the 3-month deadline</i>	22
3.11	<i>Status of Appeals Outstanding at 2020 Year End</i>	23



3.12	<i>The Office of the Ombudsman</i>	23
3.13	<i>Freedom of Information & Access to Information on the Environment</i>	23
3.14	<i>Litigation</i>	24
3.15	<i>Requests for Review of Appeal Officer decisions</i>	24
4	Other Appeal Related Activities Undertaken by the Office	25
4.1	<i>Legislation</i>	25
4.2	<i>Forestry Appeals Committee</i>	25
4.3	<i>Review of the Agriculture Appeals Act 2001</i>	26
4.4	<i>Agriculture Appeals Office IT Systems</i>	26
4.5	<i>Business Plan</i>	26
5	Examples of Agriculture Appeal Cases Decided by Appeals Officers in 2020	27-47
6	Suggestions for the Department of Agriculture, Food and the Marine	47
7	Suggestions for Consideration by Scheme Applicants	49
8	Examples of Reoccurring Compliance Issues for Farmers	52
 <i>Appendices</i>		
A	Organisation Chart	56
B	Agriculture Appeals Act 2001	57
C	SI. 193/2002, Agriculture Appeals Regulations 2002	69
D	Other relevant legislation	74



1. INTRODUCTION

We are pleased to present the 2020 Annual Report of the Agriculture Appeals Office which affords us the opportunity to document what we have achieved as an Office over the past year. One of our main objectives is to provide a fair and efficient appeals service to applicants of Schemes administered by the Department of Agriculture, Food and the Marine. The Office also provides administrative and secretariat support to the Forestry Appeal Committee (FAC) and all Agriculture Appeals Officers are also appointed as members of the FAC. In 2020 there was a significant increase in the number of agriculture appeals received by the Office rising from 570 appeals in 2019 to 760 in 2020 representing a 33% increase. The number of forestry appeals received in 2020 also increased significantly from 489 appeals in 2019 to 874 appeals in 2020 and had a significant impact on available Appeals Officer resources and on the administrative section within the Appeals Office. In the 4th quarter legislative changes for FAC appeals brought increased demand on our resources. Despite these increases and the many challenges posed by the COVID-19 pandemic in 2020, we continued to deal with appeals as effectively and efficiently as possible. While there was a reduction in the number of agriculture appeals closed in 2020, this was mainly due to COVID-19 restrictions as one of the main features of the appeals service provided by the Office is the right of an appellant to an oral hearing. While the Office adapted to the situation by offering remote hearings or the option to have the case decided without an oral hearing, many appellants requested that the appeal be delayed until such a time as an oral hearing could be held. Remote hearings were held where appellants requested one and non-oral hearing cases were prioritised during restricted periods

The Annual Report includes the following information:

- a statistical breakdown of agriculture appeals dealt with by the Office in 2020 and the outcome of those appeals.
- examples of agriculture appeal cases determined by Appeals Officers in 2020.
- 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.

The outcome of all agriculture appeals closed in 2020 is as follows:

- 39% allowed, partially allowed, or, the Department decision was revised in favour of the appellant after the appeal was submitted,
- 51% of appeals disallowed,
- 10% of appeals withdrawn, invalid, or received after the 3-month deadline.

We would like to express our gratitude to our colleagues in the Agriculture Appeals Office, including those who left the Office during 2020, for their ongoing commitment and hard work in delivering a fair and timely appeals service. We would also like to thank the Chairperson of the FAC, Mr. Des Johnson, and all those who engaged with us to help achieve our objectives during the year.

Lynda O'Regan

Pat Coman

Director

Deputy Director



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 pursuant to the Agriculture Appeals Act 2001, as amended. 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 to the Office. Schedule 1 to the Act includes a list of schemes administered by the Department of Agriculture, Food and the Marine (The Department). Farmers who are dissatisfied with decisions of the Department concerning their entitlement under the schemes listed in Schedule 1 to the Act may submit an appeal to this Office.

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 as members of the FAC. The FAC is chaired by an independent Chairperson. The Appeals Office provides administrative and secretariat support to the FAC.

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 2020. The report primarily concerns activities directly related to agriculture appeals. However, this report also provides some information on procedures and statistics for forestry licence appeals received and processed during 2020. Regulation 14(4) of the amended Act provides for separate reporting arrangements for the FAC.



2.3. Mission Statement of the Agriculture Appeals Office

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 setting out procedures to be followed by the Office. The Procedures Manuals for Agriculture Appeals and Forestry Licence appeals can be accessed on the website, 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 listed 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 Office’s website 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. 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 which led to the delay in submitting the appeal.
- Appeals are checked on receipt to establish their validity.
- 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 for consideration and determination.
- Appellants may opt to have an oral hearing as part of their appeal, and this is notified to the Office on the Notice of Appeal Form. Where possible, the Office aims to hold oral hearings in a location that is convenient for the appellant. An Appeals Officer may hold a number of hearings on the same day in a particular region. The key features of an oral hearing are that:
 - they are 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 a 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 of an Appeals Officer where it has been established that there has been a mistake in relation to the law or the facts of the case.
- An appeal to this Office does not preclude an appellant from raising their case with the Office of the Ombudsman and/or the High Court on a point of law.



2.6 Overview of Forestry Licence Appeal Procedure

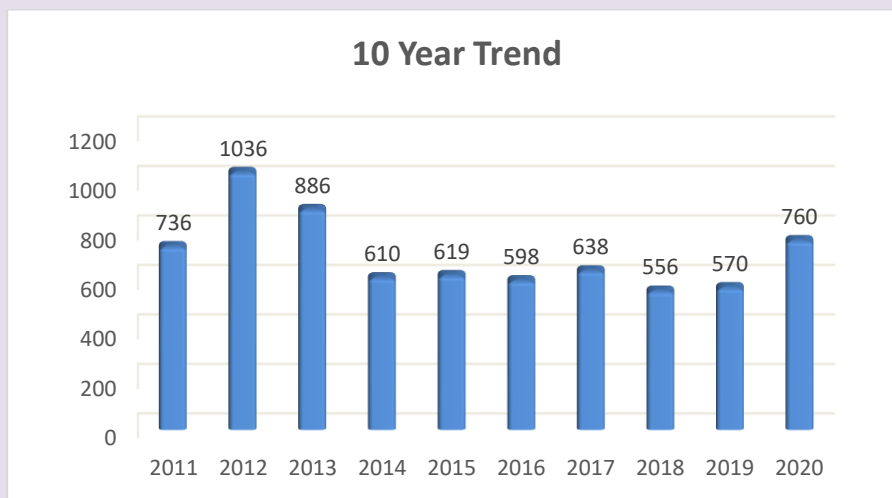
- Applicants or third parties who are dissatisfied with and wish to appeal a decision of the Minister for Agriculture, Food and the Marine concerning a forestry licence application must complete a FAC Notice of Appeal Form and submit it to the Forestry Appeals Committee located at the Agriculture Appeals Office.
- Appellants may download the FAC Notice of Appeal Form from the website. The Notice of Appeal Form must be completed and signed.
- From 6th of October 2020, in accordance with the Forestry Appeals Committee Regulations S.I. 418 of 2020 a fee of €200 per appeal is applicable to forestry licence appeals. Licence appeals submitted from that date must be accompanied by the relevant fee. The fee may be included by way of postal order, bank draft or cheque with the FAC Notice of Appeal Form. Payment should be made payable to the 'Forestry Appeals Committee'. Failure to submit the fee with an appeal will result in the appeal being deemed invalid and rejected.
- Appellants have 28 days from the date of the Department's decision on a forestry licence application to lodge an appeal to the FAC. An appeal received after 28 days will be deemed invalid and will be rejected.
- Appeals are checked on receipt to establish their validity which includes a check to ensure the grounds of appeal are specific to the licence decision.
- On receipt of a valid appeal, the Office forwards the appellant's grounds of appeal to the Department along with a request for any information, documents, and items relevant to the appeal 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 is scheduled for hearing.
- Where multiple appeals are received for one licence, all appeals may 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 an appeal, the written decision, setting out the reasons for that decision, is notified to all parties to the appeal. FAC decisions are published on the FAC section of the Agriculture Appeals Office website www.agriappeals.gov.ie.



3. STATISTICS ON AGRICULTURE APPEALS DEALT WITH IN 2020

3.1. Total Agriculture Appeals Received

760 appeals were received in 2020, an increase of 33% when compared with 570 appeals received in 2019. The number of appeals received in 2020 is higher than the 10-year annual average of 701 appeals, as shown in the following table:

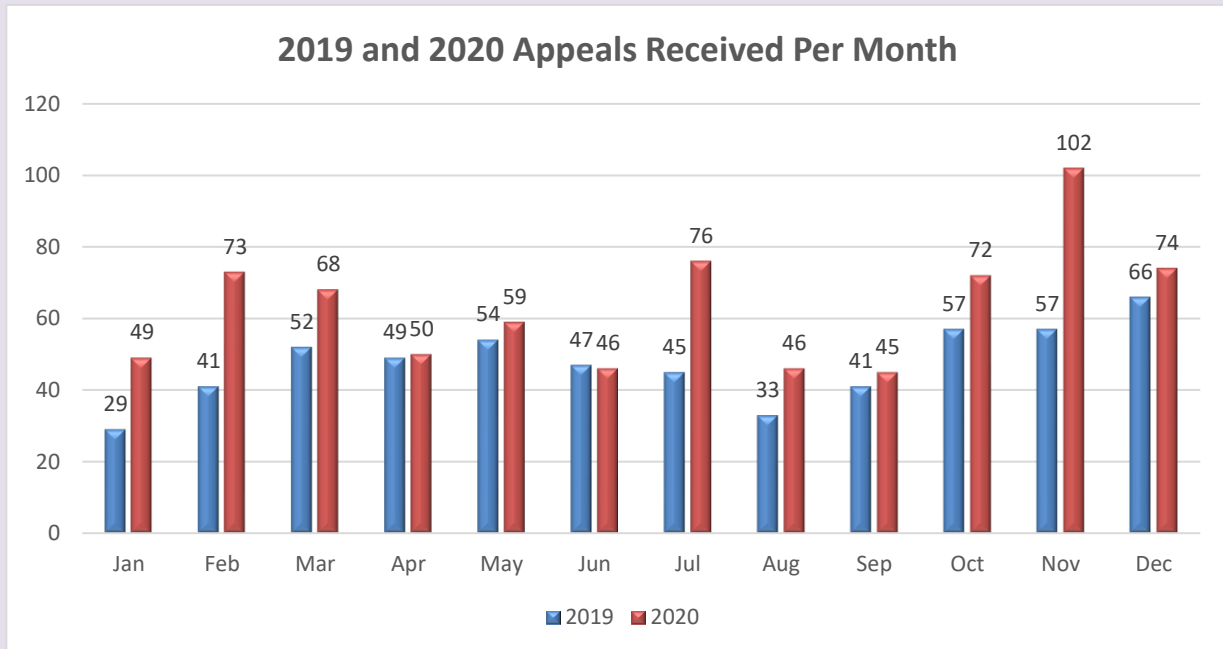


3.2. Agriculture Appeals Received Per Month

The number of appeals received per month may be 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 2020 compared with 2019.

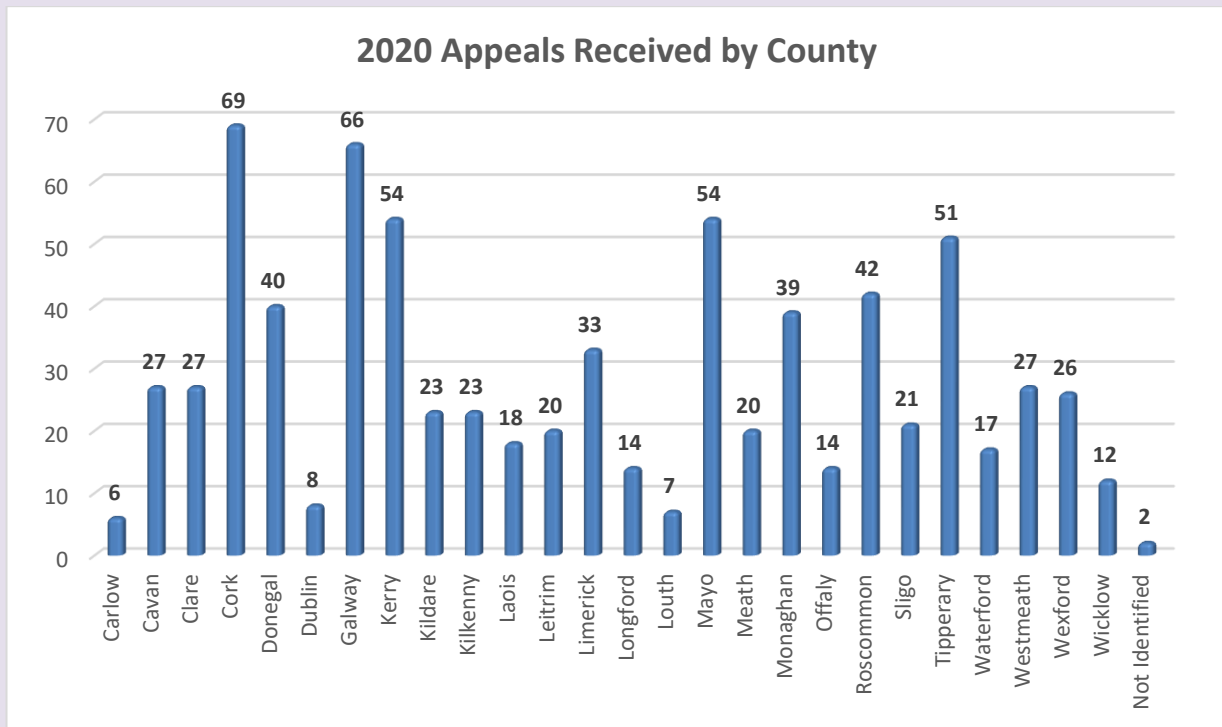


The highest number of appeals was received in November 2020. The majority of those appeals concerned the Green, Low-Carbon, Agri Environment Scheme (GLAS) and Beef Finisher Payment (BFP) Schemes.



3.3. Agriculture Appeals Received Per County

A breakdown of agriculture appeals received per County is set out hereunder.

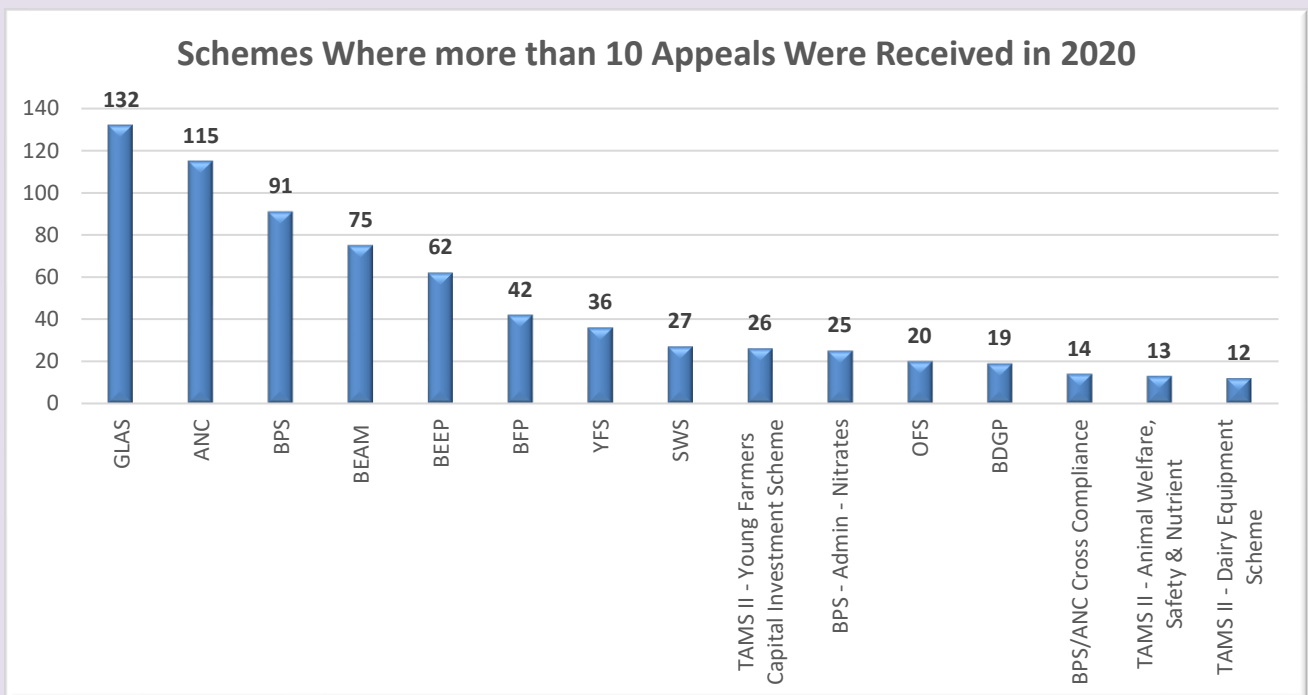


The highest number of appeals were received from Cork (69 appeals) and Galway (66 appeals) in 2020



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 709 appeals of the 760 received in 2020.



The number of appeals received in 2020 was highest for the following schemes:

Green Low Carbon Agri-Environment Scheme (GLAS) c.17%

Areas of Natural Constraint (ANC) c.15%



3.5. Number of Agriculture Appeals Closed

In 2020, the Office closed 358 agriculture appeal cases. This compares with 491 cases that were closed in 2019. The cases closed include appeals that were received in 2020 and in previous years as set out in the following Table:

Year in which Agriculture Appeals were received	Number of Agriculture Appeals Closed in 2020
2020	158
2019	189
2018	9
2017	2
Total	358

The reasons for carryover of appeals may include the timing of receipt of the appeal (i.e. received towards the previous year end), timing of receipt of Department statement and file, availability of parties to attend oral hearings, the complexity of the appeal, the need to obtain legal advice and time taken by appellants and/or the Department to revert with additional information requested.

The reduction in the number of appeals closed in 2020 compared to 2019 was mainly due to the challenges faced by the Office as a result of the COVID-19 pandemic. In line with Government Guidance, the Office had to suspend the holding of oral hearings in March 2020 and resumed the holding of hearings with the easing of restrictions in September 2020. In line with Government Guidance we had to again suspend the holding of oral hearings in late October until December 2020. The Office engaged with appellants throughout 2020 with regard to this issue. Options to have the appeal decided without an oral hearing or to have the



hearing held remotely were offered to appellants. The majority of appellants opted to have an oral hearing at a later stage. Non-oral hearing cases were prioritised during the restricted periods in 2020.

3.6. Outcome of Agriculture Appeals Closed in 2020

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

3.6.1. 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.

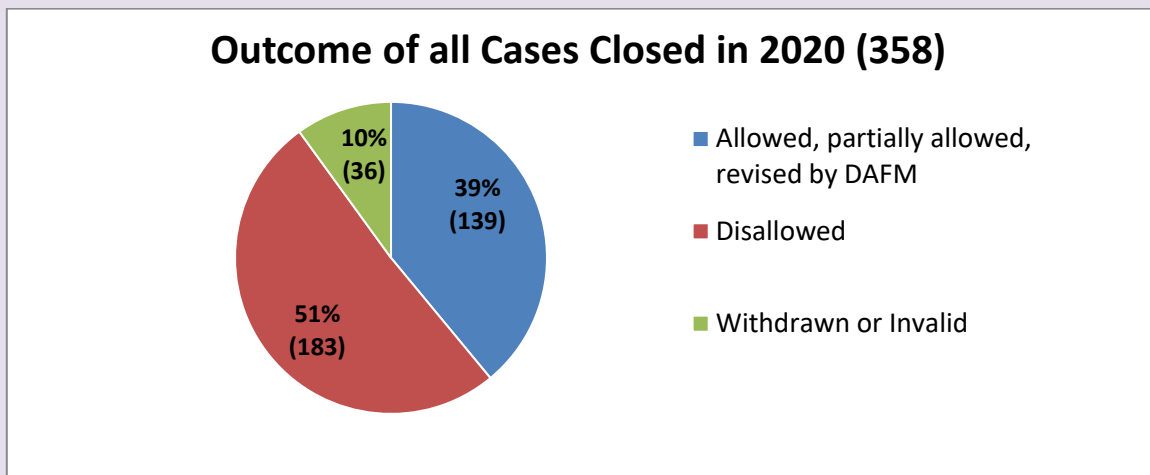


Out of time This category includes appeals that were received after the three-month deadline since the date of the Department decision.

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.

3.6.2. Outcome of All Appeals Closed in 2020

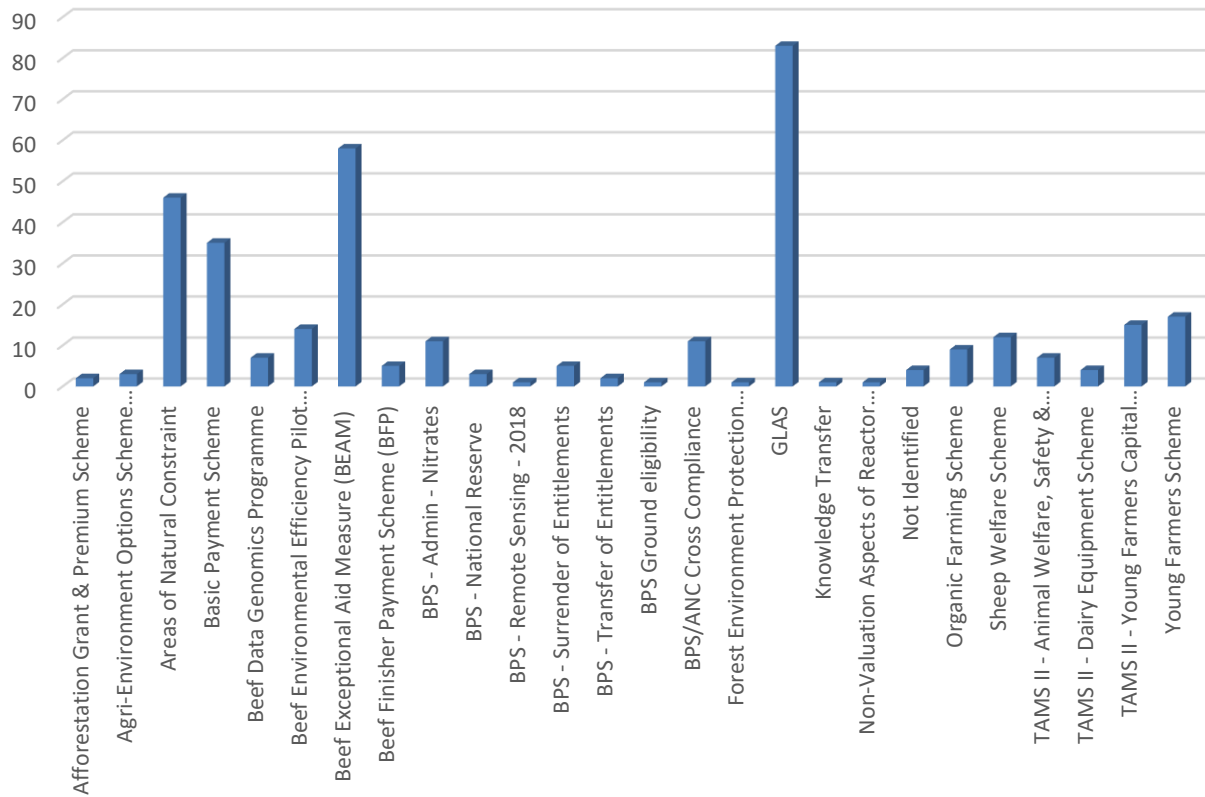
The outcome of all cases closed in 2020 was as follows (includes appeals received in years prior to 2020 and received in 2020¹):



¹ Numbers were rounded to the nearest percentage point



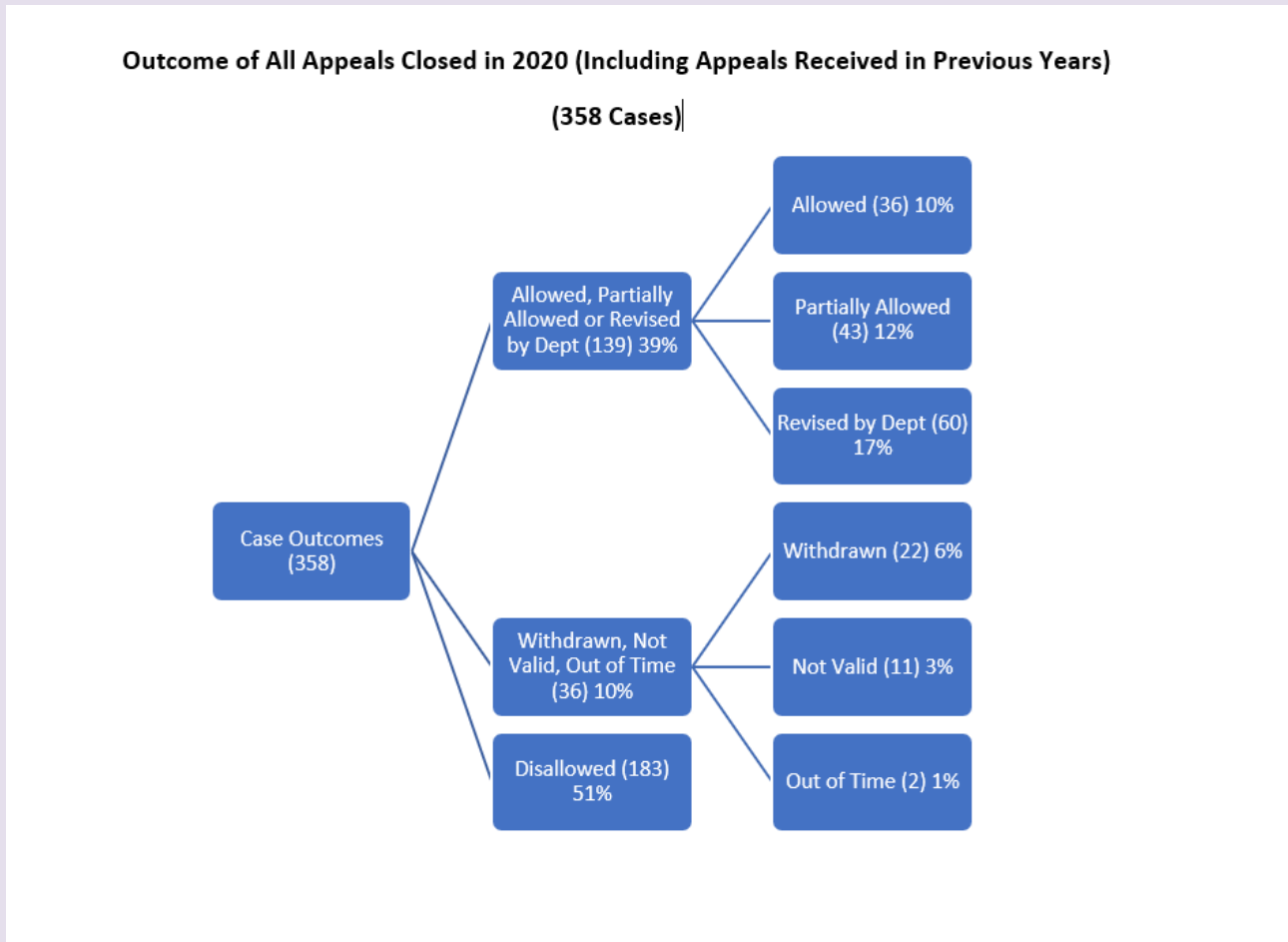
All cases closed 2020 per scheme (358)





3.6.3. Breakdown of outcomes of all appeals closed in 2020

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

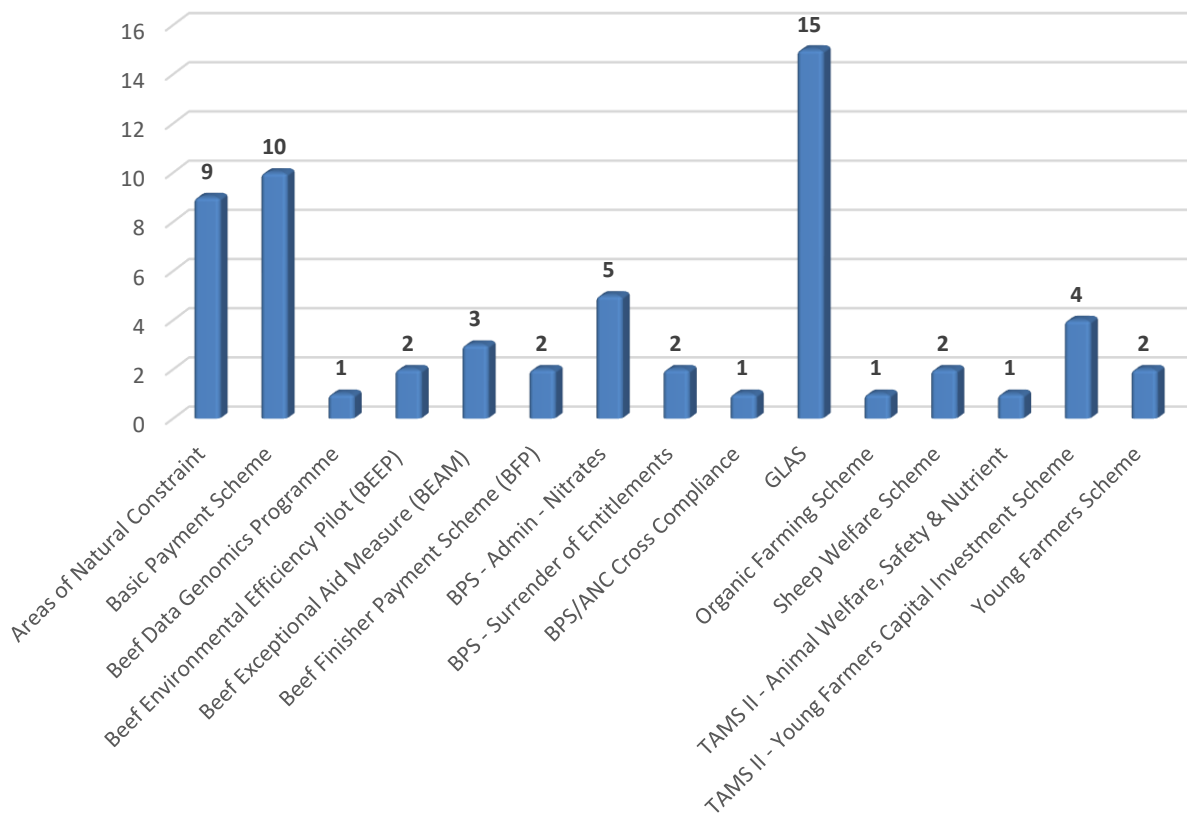


3.6.4. Decisions Revised by the Department in favour of Appellants - 60 Cases

There were 60 cases revised by the Department in favour of the appellant after submission of an appeal to this Office in 2020. The reasons for such revisions in 2020 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.



Cases Revised by the Department 2020 by Scheme (60)



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

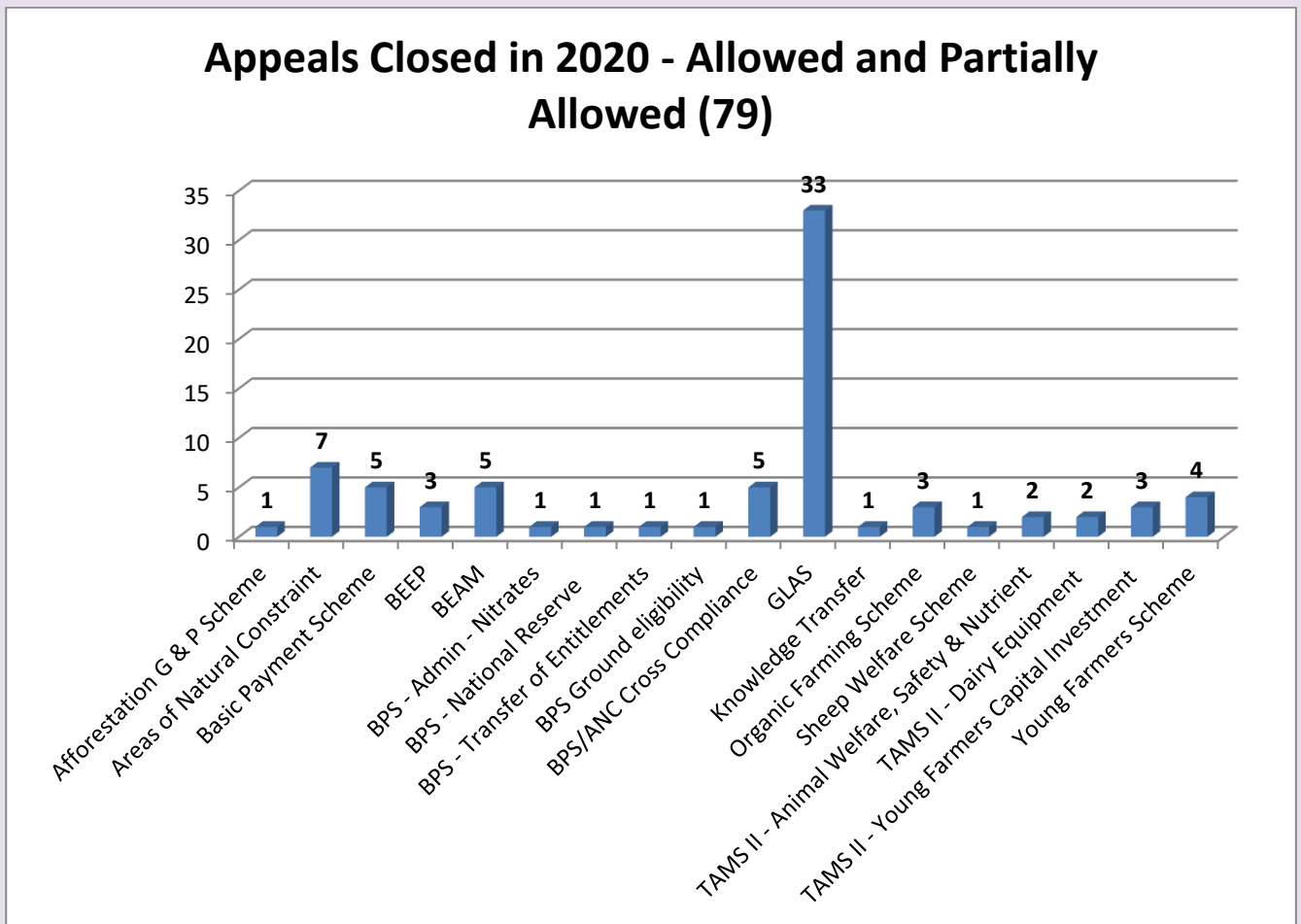
Of the GLAS appeals, a total of 7 had been assigned to an Appeals Officer of which 3 oral hearings were held before the Department revised its decision. The Department revised a further 8 GLAS decisions before assignment to an Appeals Officer.

Of the appeals involving Basic Payment Scheme, 4 appeals that were subsequently revised by the Department had been assigned to Appeals Officers. Of those, 3 oral hearings had taken place. Decisions on 6 other appeals were revised by the Department before assignment to an Appeals Officer.



3.6.5. Appeals Allowed and Partially Allowed

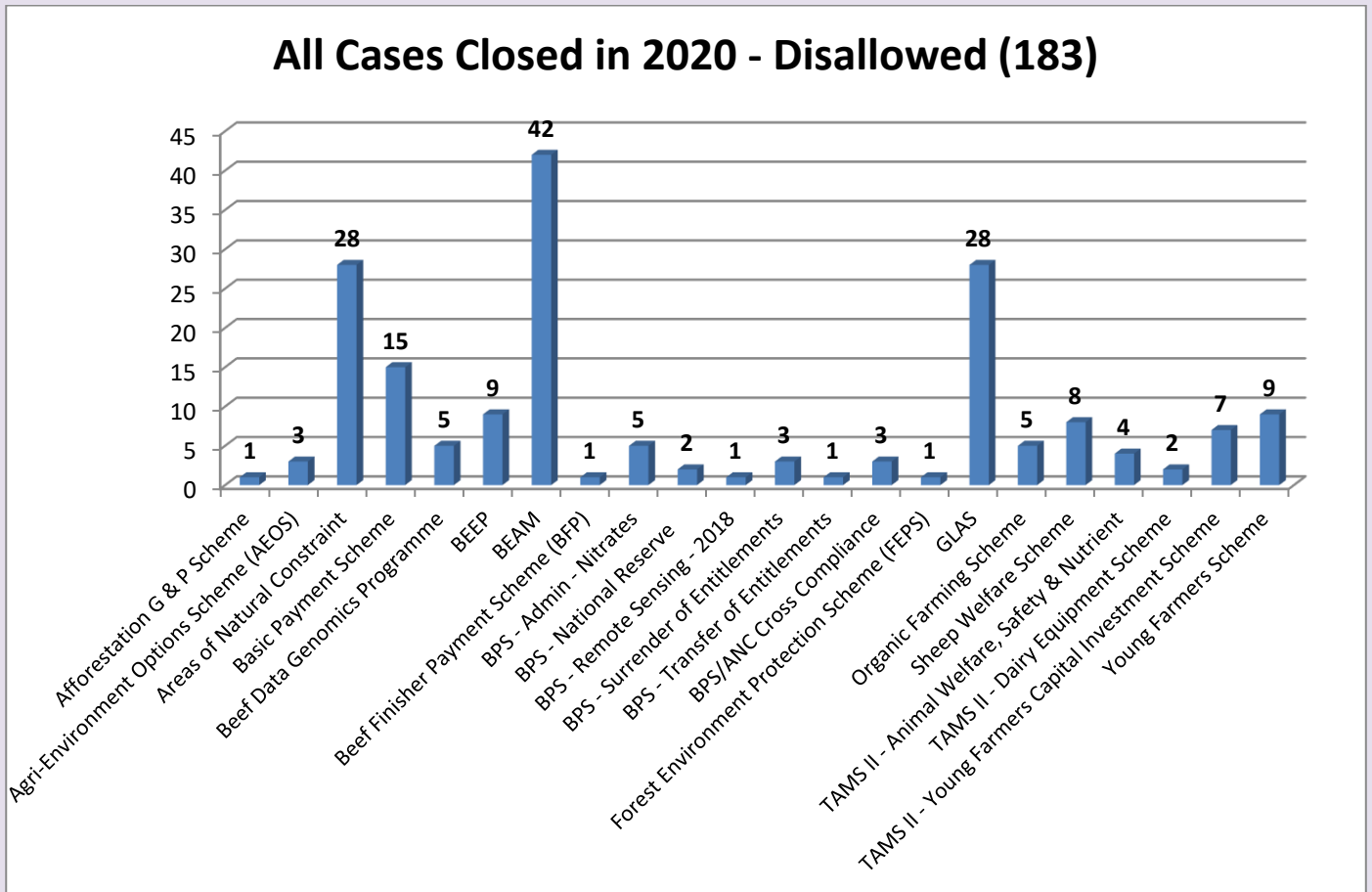
The scheme with the highest number of appeals that were included in the category allowed (36) and partially allowed (43) was the Basic Payment Scheme. The graph below shows of the breakdown of appeals that were allowed and partially allowed for all schemes.





3.6.6. Breakdown of Appeals Disallowed

The scheme with the highest number of appeals disallowed by Appeals Officers was the Beef Exceptional Aid Measure Scheme, accounting for 23% of all disallowed appeals.



3.7. 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 2020. The average number of days for the return of file documents from the Department was 32 days for appeals received in 2020. This compares with an average of



19 days in 2019. 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
Areas of Natural Constraint	115	65
Basic Payment Scheme	91	33
BEAM	75	27
Beef Data Genomics Programme (BDGP)	19	33
Beef Environmental Efficiency Pilot (BEEP)	62	19
Beef Finisher Payment Scheme (BFP)	42	19
GLAS	132	26
Organic Farming Scheme	20	92
Sheep Welfare Scheme	27	9
Young Farmers Scheme	36	31

3.8. 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. In addition to the impact of COVID-19 and FAC commitments, 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 2020, the average time taken to close an appeal was 103 days from date of receipt of the Department file.

3.9. Number of Oral Hearings held in 2020

There were 135 oral hearings held in 2020. This compared with 248 held in 2019. The 135 appeals that had an oral hearing in 2020 included appeals received in 2020 and previous years. 59 oral hearings that were scheduled to take place in 2020 were cancelled/postponed - this equates to 30% of all hearings scheduled in 2020. These include cancellations due to revised decisions by the Department, requests by appellants and COVID-19 related issues. Of the 135 appeals that were the subject of an oral hearing in 2020, the breakdown of appeal years is as follows:

Number of oral hearings held in 2020 (135)	Year in which appeal received
40	2020
92	2019
3	2018

3.10. Out of Time/Late Appeals received outside the 3-month deadline

The records indicate that, in 2020, 52 appeals were received outside of the three-month deadline. 37 appellants subsequently submitted exceptional circumstances for the delay and of which 32 appeals were accepted. 15 appellants did not submit exceptional circumstances.



3.11. Status of Appeals Outstanding at 2020 Year End

The status at 31 December 2020 of outstanding appeals is set out below:

Position at 31 December 2020 (Appeals received in 2020)	
Total received 2020	760
Total carried over from previous years	319
Closed 2020	358
Appeals on Hand 31/12/2020	721

3.12. 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 17 appeal cases were requested by the Office of the Ombudsman in 2020. Of the 17 appeals requested by the Ombudsman in 2020, 5 cases have been closed by the Ombudsman, and the decision of the Appeals Office was upheld following the Ombudsman’s Office examination of each case.

3.13. Freedom of Information and Access to Information on the Environment

The Agriculture Appeals Office received 3 requests under the provisions of the Freedom of Information Act in 2020.

Agriculture FOI Request 2020	Forestry FOI Request 2020
1	2



The Agriculture Appeals Office as administrative support for the FAC also dealt with 9 Access to Information on the Environment (AIE) requests in relation to forestry licence appeals.

3.14. 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 2020 for agriculture Appeals.

3.15. Requests for Reviews of Appeals Officer Decisions

The legislation provides that the Director may revise any decision of an Appeals Officer if it appears to 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. The legislation further provides that an Appeals Officer may, at any time, revise a decision, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts or where there has been any relevant change in circumstances since the decision was given.

25 reviews of Appeals Officers decisions were completed in 2020 of which 20 were requested by appellants and 5 by the Department. The outcome of the reviews completed in 2020 can be broken down as follows:

Of the 20 reviews requested by Appellants:

- 2 were partially revised by the Director
- 2 were revised by Appeals Officers
- 1 was partially revised by an Appeals Officer
- 1 was revised by the Department
- 14 remained unchanged



Of the 5 reviews requested by the Department:

- 5 remained unchanged
- 1 was withdrawn by the Department

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. 415 of 2020 Agriculture Appeals Regulations).

4.2 Forestry Appeals Committee (FAC)

The FAC is based in the Agriculture Appeals Office and the Appeals Office provides all administrative and secretariat support to the FAC. Appeals Officers are also appointed as members of the FAC. 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 Licence Appeal Status		2018	2019	2020	Total
No. of appeals		197	489	874	1,560
No. licences appealed		150	311	582	1,043



The Forestry (Miscellaneous Provisions) Act 2020 (the Act) was enacted on 6th October 2020 and this provides for, inter alia, Divisions of the FAC. Since November 2020, four Divisions of the FAC hear appeals.

4.3. Review of the Agriculture Appeals Act, 2001

The Programme for Government; Our Shared Future (2020) includes a commitment to establish an independent Agriculture Appeals Review Panel in legislation. In addition, the Report on the Review of the Agriculture Appeals Act, 2001 and Operations of the Agriculture Appeals Office, published in February 2018, includes this and a number of further recommendations. The assessment and implementation regard the Agriculture Appeals Review Panel and the Report's recommendations is ongoing. Some recommendations will require amendments to the Act. Recommendations in place at the end of 2020 include the appointment of a Deputy Director, bespoke legal training for Appeals Officers, engagement with the farm bodies involved in the Farmer's Charter of Rights Monitoring Committee, and the holding of remote oral hearings.

4.4. Agriculture Appeals Office IT systems

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 2020.

4.5. Business Plan

The 2020 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. EXAMPLES OF AGRICULTURE APPEALS CASES DECIDED BY APPEALS OFFICERS DURING 2020

Case 01 - Beef Exceptional Aid Measure (BEAM)

A farmer sought a derogation in relation to the 5% Nitrates reduction required by the Beef Exceptional Aid Measure (BEAM) on foot of reduced stocking rates during the relevant reference period (1 July 2018 to 30 June 2019) brought about by a TB outbreak in 2017/2018 and subsequent compulsory disposal of livestock.

The farmer sought that the average number of suckler cows held during those years be used to calculate the number of suckler cows eligible for BEAM, as again due to the TB outbreak, this would more accurately reflect the number held. The Department of Agriculture, Food and the Marine refused payment on the average number of suckler cows as only beef breed female animals with progeny born in the year 2018, which were sired by a beef breed bull were eligible for BEAM.

The farmer also sought that the average stocking rate for 2017, 2016 and 2015 be used as the Nitrates reduction base as this would more accurately reflect the normal stocking rates on the farm. The Department refused the Nitrates Reduction Derogation since the TB outbreak had not occurred during the reference period.

The application of Force Majeure/Exceptional Circumstances was examined given as the nature of the grounds.

The Appeals Officer was satisfied that the nature and purpose of the aid paid under BEAM in respect of suckler cows is to provide aid relating to losses incurred associated with the suckler cows held by applicants in the 2018 - 2019 period, as a result of market disturbance in the Irish beef sector. Therefore, the Appeals Officer could not apply Force Majeure/ Exceptional Circumstances to allow BEAM payments for losses on suckler cows that the farmer did not possess and for which losses were not incurred during the 2018 - 2019 period. The Appeals Officer found that there were no circumstances where such a BEAM payment could be allowed.



The Appeals Officer found it reasonable and credible to accept that the farm would not have been fully re-stocked within the Nitrates reference period given the nature and scale of the TB depopulation in 2017/2018 and that the TB outbreak could not have been foreseen or prevented by the farmer. The Appeals Officer was satisfied to apply Force Majeure to allow the Nitrogen reduction base to be calculated based on the average to the previous 3 years stocking rates.

The appeal was partially allowed

Case 02 – Sheep Welfare Scheme (SWS)

A farmer had chosen Mineral Supplementation of Ewes Post Mating (Action A) and Mineral Supplementation of Lambs Pre-Weaning (Action B) as their Sheep Welfare Scheme (SWS) Actions.

The Department of Agriculture, Food and the Marine issued the farmer a decision seeking to recoup SWS payment because a reference number of 53 breeding ewes was assigned for the duration of the Scheme but the farmer had only declared 19 breeding ewes on their 2018 Census Return.

The farmer appealed this decision to SWS Section on medical grounds seeking that *Force Majeure* grounds be accepted.

The Appeals Officer determined that SWS payments cannot issue for costs not incurred. The payment would not have been issued had DAFM been notified as required of the reduction in breeding ewe numbers. The farmer did not have the additional ewes in their possession on which to carry out the treatments. The Appeals Officer found that *Force Majeure/ Exceptional Circumstances* could not be applied to prevent recoupment of 2018 SWS payments on animals not in the farmer's possession and for costs not incurred. The medical grounds while very serious and which could directly impact the farmer's ability to farm, were found to pre-date the SWS Application and therefore the farming constraints brought about by the circumstances could not be considered unforeseen at the time of application.

The appeal was disallowed



Case 03 - Sheep Welfare Scheme (SWS)

Under the Sheep Welfare Scheme in 2017, the farmer was assigned a reference number of 43 breeding ewes based on the average number of breeding ewes declared on their 2014 and 2015 Annual Sheep Census returns. The farmer was refused an increase in the reference number to reflect larger numbers of ewes kept in subsequent years in line with their Sustainable Management Plan in GLAS 1.

The farmer appealed that they were obliged to increase sheep stock numbers under a Sustainable Management Plan in GLAS 1 and that most of their holding is designated Natura 2000 area. The farmer advised that their GLAS planner recommended a minimum stocking level of 169 sheep from 2016 to avoid under-grazing in line with the GLAS requirements for Farmland Habitat.

The Appeals Officer took into consideration the requirements in the Terms & Conditions of the Sheep Welfare Scheme 2017, especially:-

3. Obligations of Scheme Applicants / Participants

“Each scheme participant is obliged to –

- *Comply with the Terms and Conditions of the scheme and fully complete their two chosen actions.*
- *Submit an accurately completed annual Sheep Census return to the Department for 2016 and for each year of the Scheme, within the set deadlines.*
- *Maintain the requisite number of breeding ewes in line with most recent census return – in particular, where an applicant is approved into the scheme on the basis of a particular reference number of breeding ewes, this number of ewes must be retained and made available for inspection where required.*

7. Eligible Breeding Ewe Numbers

The eligible number of breeding ewes will be the average number of breeding ewes declared on the 2014 and 2015 Sheep Census returns. Applicants must also declare breeding ewes on the 2016 Sheep Census return.



This number will form a Reference Number for payment for the duration of the Scheme and will not increase, except where required in line with GLAS obligations, as outlined below....

Where applicants are also GLAS participants and are required to increase their number of breeding ewes in line with GLAS obligations under Commonage Management Plans (CMP) in order to comply with their individual minimum requirement, the increased number returned on the Sheep Census return each year will become the Reference Number - until the defined number on the CMP is reached or the deadline for reaching same is passed.

The Appeals Officer found that, while increases in sheep numbers are allowed for GLAS participants under a Commonage Management Plan, there are no such allowances outlined for GLAS participants with Sustainable Management Plans which are required where there are privately owned Natura 2000 lands.

The Appeals Officer acknowledged the reason for the building up of sheep numbers on the holding each year in line with the requirements of the farmer's GLAS plan and within the confines of the GLAS scheme. However, the Sheep Welfare Scheme is a separate scheme with its own Terms & Conditions under which there is no provision to allow an increase in sheep numbers for GLAS participants other than the circumstances outlined in Paragraph 7 of the Terms & Conditions under a Commonage Management Plan.

The appeal was disallowed.

Case 04 – Green, Low-Carbon, Agri-Environment Scheme (GLAS) 1

The farmer was an approved GLAS 1 participant with selected actions of Protection of Watercourses from Bovines (low status), Low-Input Permanent Pasture and Protection of Watercourses from Bovines (general status).

The Department of Agriculture Food and the Marine, during the course of validation checks for 2019 payment, identified that the parcels which contained the GLAS actions had either



been designated as forestry parcels or were no longer claimed on the farmer's annual Basic Payment Scheme application. They advised the farmer about the failure of the validation checks, the reasons for the failure and that this contravened the requirements of Clause 8.9 of the GLAS 1 Terms and Conditions. As a consequence, the GLAS application was rejected and recoument was sought of all monies paid.

The grounds of the appeal related to matters of ill health and consequential retirement from farming and that the Department were aware that the farmer was retiring. Medical evidence regarding the health issues was provided. The Terms and Conditions including Specifications of GLAS 1, which reflect the underlying EU legislation, apply in full and the following are relevant extracts:

8.9. Actions whether on owned leased or rented land must be delivered for the entire period of the contract subject to the provisions of section 12.

12. GLAS and Afforestation

Afforestation is fully compatible with GLAS and is recognised as contributing to the creation of a valuable landscape mosaic at farm-level. However, the flexibility which applied previously whereby parcels which were in payment under an agri-environment scheme could be converted to forestry without penalty is no longer available under the EU Rules and Regulations governing the new Programme. Nevertheless, it is important to note that GLAS is not a whole-farm scheme and opportunities continue to exist for afforestation and for other Forestry Schemes on parcels which are not in GLAS. Applicants and their Advisors should look at the opportunities afforded by both schemes when planning for GLAS.

13. Failure to Continue or Complete Actions

13.1. Where all or part of an action is not continued for the duration of contract, all or part of the aid paid in respect of the action shall be reimbursed and penalties may apply.

13.2. The re-imbusement of aid will not be required in the following cases:

13.2.1. Where a participant has ceased farming and has completed three years of the action undertaken;



13.3. Transformation of a commitment into a Forestry commitment is not provided for under the governing regulations and the exemption from recoupment where land is subsequently afforested will not apply under GLAS. However, GLAS is not a whole farm scheme and parcels other than those declared for GLAS may be used for Forestry schemes. Advisors in preparing applications should ensure that parcels on which GLAS commitments are to be delivered will be available for the contract period.

The *Force Majeure* provisions are also relevant. Article 2(2) of Regulation (EU) 1306 of 2013 of the European Parliament and of the Council sets out where *Force Majeure* can be recognised, and these are also covered by clause 20 in the GLAS 1 Terms and Conditions.

The Appeals Officer examined the GLAS Terms and Conditions and the underlying EU legislation. They found that the farmer did not complete the contract for the full contracted duration to 2020, and this was in breach of the provisions of Clause 8.9 quoted.

In relation to the medical grounds, the Appeals Officer examined the health issue in the context of *Force Majeure*. The criteria under which "*Force Majeure*" or "exceptional circumstances" can be considered are set down in Article 2 of EU Regulation 1306/2013 (and at Section 20 of the Scheme Terms and Conditions). The EU legislation was examined in detail and also the contents of the Commission Notice C (88) 1696 October 1988 concerning *Force Majeure* in European agricultural law. However, having considered the circumstances of the case in the light of the EU Regulation and Commission Notice on *Force Majeure*, unfortunately the conclusion was reached that they did not satisfy the very strict criteria for exceptional circumstances.

In relation to the ground of appeal that the Department knew about the farmer's retirement, the Appeals Officer examined the Department's records and noted that the Department had carried out a Cross Compliance Inspection on the farm in April 2019 and had noted the retirement. Therefore, the Department was aware of the farmer's retirement at the time. However, matters were confused because the farmer had subsequently submitted a 2019 and a 2020 application for BPS (submitted in error). It was also found that the farmer had not notified the GLAS Section of the Department about either the health issues or the retirement.



The Appeals Officer found part of the land on which the GLAS actions were committed was subsequently afforested, and that the farmer had leased out the balance of the land.

With regard to Section 13.2.1 of the GLAS 1 Terms and Conditions quoted above, the Appeals Officer found that the farmer had completed 3 years of the actions undertaken and that they had ceased farming on retirement. The Appeals Officer also considered Term and Condition 13.3 applied with regards to the afforested area.

The Appeals Officer found that the recoupment of GLAS monies should be confined only to the land where actions were committed to under GLAS and subsequently afforested and that the remaining leased out area was excused recoupment under 13.2.1 of the Terms and Conditions.

The appeal was partially allowed.

Case 05 - Beef Exceptional Aid Measure (BEAM)

The farmer had applied unsuccessfully to the Department of Agriculture, Food and the Marine for the inclusion in BEAM of animals slaughtered one day after the final day of the BEAM reference period.

The Terms and Conditions of BEAM defines an eligible animal as follows:

“Eligible animal” shall mean those bovine animals identified on AIM at midnight on 29 July 2019 as either those aged over 12 months presented to a slaughtering establishment approved under the European Communities (Food and Feed Hygiene) Regulations (SI 432 of 2009) in the period 24 September 2018 to 12 May 2019 inclusive, and/or those beef breed female animals with progeny born in the year 2018, which were sired by a beef breed bull.

The Department found that, as the animals in question were slaughtered on 13 May 2019 (outside the reference period of BEAM), they were not eligible animals.



The farmer advised that, while the cattle were slaughtered on 13 May 2019, the cattle arrived at the slaughtering establishment on 12 May 2019 and provided evidence of same.

The appeal was allowed as the Terms and Conditions of BEAM define an eligible animal in terms of the date the animal was presented to a slaughtering establishment rather than the date of slaughter. The animals in question, which were presented to a slaughtering establishment on 12 May 2019, are eligible animals under the T&Cs of the BEAM as they were presented to a slaughtering establishment within the reference period set down in the Terms and Conditions.

The appeal was allowed

Case 06 - Beef Exceptional Aid Measure (BEAM)

A farmer submitted a BEAM application to the Department of Agriculture Food and the Marine for payment on 9 animals which they sold in the mart during the timeline outlined in the BEAM Terms and Conditions. The animals were slaughtered within 30 days of being sold by the farmer.

The Department rejected the application stating that the farmer was not in compliance with the Terms and Conditions of BEAM as the animals were sold to another herdowner before being slaughtered.

The farmer appealed the decision on grounds they had sold the animals in the mart and all of the animals were killed within the 30 days as set out in the Terms and Conditions of the scheme.

Section 9.1.1. of the *BEAM Terms and Conditions* provides that-

“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.”



Section 9.2. provides that-

“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 herd number, where that herdowner is an applicant. “

The Appeals Officer examined the file and noted that all of the animals were sold and subsequently slaughtered in accordance with the dates and timeframe stated in the Terms and Conditions of the BEAM scheme. However, the Terms and Conditions require that for payment to issue to the immediate previous herdowner or in respect of the previous eligible herd number, where that herdowner is an applicant, the animals must be presented for slaughter by the applicant or an agent or dealer as defined by the Terms and Conditions.

The records showed that the mart sales of the animals were recorded to other herdowners and not to registered dealers or agents and were subsequently presented for slaughter by the purchasing herdowners. The Appeals Officer found that the farmer’s animals were not in compliance with section 9.2 of the BEAM Terms and Conditions and were not eligible animals for payment under the scheme.

The appeal was disallowed.

Case 07 - Green, Low-Carbon, Agri-Environment Scheme (GLAS) 1

The farmer successfully applied to GLAS 1. In May 2020 the farmer was informed by the Department of Agriculture, Food and the Marine that two of their GLAS land parcels were not listed in their 2019 Basic Payment Scheme application form and were rendered ineligible for GLAS. Also, as the scheme Terms and Conditions had not been complied with, their application was being rejected and a claw-back would apply. The farmer was of the view that *Force Majeure* for an unforeseen circumstance was applicable in this case.

The farmer appealed to the Agriculture Appeals Office.



At the oral hearing the farmer accepted that they had sold the GLAS parcels concerned and they were aware of the consequences. The farmer stated that a parcel of land had become available close to home and to afford it they had to sell the GLAS parcels which were at a distance. The farmer stated that while accepting the penalty they felt the claw-back was harsh.

Section 2 of the GLAS I Terms and Conditions is titled General Provisions. Paragraph 2.6 states:

Commitments shall be for a minimum period of five years.

Section 7 of the Terms and Conditions is titled Eligibility and states:

To be eligible to participate a farmer shall... 7.3 have all lands farmed declared in the applicant's name on the Integrated Administration and Control System (IACS).

Section 8 of the Terms and Conditions is titled Application Procedure. Paragraph 8.9 states:

Actions whether on owned, leased or rented land must be delivered for the entire period of the contract

Section 13 of the Terms and Conditions is titled Failure to Continue or Complete Actions. Paragraph 13.1 states:

Where all or part of an action is not continued for duration of contract, all or part of the aid paid in respect of the action shall be reimbursed and penalties may apply.

In arriving at a decision the Appeals Officer considered all available evidence including matters arising at the oral hearing, and concluded that the terms of the GLAS contract had been broken as the commitments had not been undertaken for the five year period of the contract.

The Appeals Officer concluded that *Force Majeure* was not applicable in the circumstances. An opportunity for farm consolidation had been availed of in the knowledge that the action taken would have consequences with regard to the GLAS contract and obligations entered into.

The appeal was disallowed.



Case 08 - Targeted Agricultural Modernisation Scheme (TAMS) II – Young Farmers’ Capital Investment Scheme

An online application was made to the Young Farmers’ Capital Investment Scheme on 26 June 2020. The farmer was subsequently informed by the Department of Agriculture, Food and the Marine that they were ineligible for the scheme. The reason given was that the farmer’s date of set-up with the Department was greater than five years from the date of submission of the application.

The farmer appealed the decision. At a remote oral hearing the farmer’s planner submitted that they had been late in making the application on the farmer’s behalf owing to a bereavement. The Department made the point that the farmer had obtained a herd number on 22 June 2015 which was in excess of five years from the date of submission of the application.

Section 2 of the Young Farmers’ Capital Investment Scheme Terms and Conditions is titled Definitions:

“Agent” means a person authorised by the Department to apply on behalf of an applicant for the purposes of this scheme.

“date of set-up” means the earliest of the following dates.....

Date of application for registering as a sole or joint herd number/other Department identifier; ...

Section 3 of the Young Farmers’ Capital Investment Scheme Terms and Conditions is titled Eligibility. Paragraph 3.1 is titled General Requirement and states:

The Scheme is open to farmers who: ...

(ii) Meet the requirements of set-up for the first time within five years of the date of receipt of an application under this Scheme.

Section 13.4 of the Young Farmers’ Capital Investment Scheme Terms and Conditions is titled Eligibility Force Majeure or Exceptional Circumstances and states:



Without prejudice to the actual circumstances to be taken into consideration in individual cases the following categories of force majeure may be recognised by the Department so that the partial or full reimbursement of aid received by the beneficiary may not be required: -

- *death of the beneficiary.*
- *long-term professional incapacity of the beneficiary.*
- *expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application.*
- *a severe natural disaster gravely affecting the holding.*
- *the accidental destruction of livestock buildings on the holding.*
- *an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively.*

The Appeals Officer fully reviewed the facts and contentions of the case presented by the farmer and the Department at the oral hearing. The Appeals Officer also examined the farmer's appeal documentation and the Department's file. In arriving at their determination, the Appeals Officer had regard to the scheme Terms and Conditions and relevant EU legislation. The farmer had approached their planner in sufficient time to lodge the application and the bereavement that occurred for the planner and submitted as grounds did not meet the *Force Majeure* provisions.

The Appeals Officer concluded that the Department had correctly applied the scheme Terms and Conditions in this instance.

The appeal was disallowed.

Case 09 – Targeted Agricultural Modernisation Scheme (TAMS) II Dairy Equipment Scheme

A farmer made an online application for grant aid under TAMS II Dairy Equipment Scheme. Approval was issued and a claim was submitted for payment. On the online payment claim form the box for investment for a 'meal bin on a new base' was not ticked as completed and



no payment was received by the farmer for this investment. A review was sought from the Department of Agriculture, Food and the Marine and the refusal of payment was upheld.

The farmer appealed the decision on the grounds that the basis for rejecting the payment was incorrect and likely to be based on an administrative check on the file where the reviewer was not fully aware of all of the facts of the case and information arising from the pre-populated drop down menu. The check indicated that the meal bin was not claimed; this was incorrect as there is a selection tick on the screen beside Meal Bin under the completed Investment Screen. There was no tick for 'Completed' under the category 'Meal Bin on a New Base'; however, the 'Meal Bin on existing Base' was ticked 'Completed'. The grounds included that the Department had sent the farmer a query letter regarding a Meal Bin with 'no receipt'. The farmer had responded by uploading a Meal Bin receipt on the Department claim system. However, the receipt was uploaded under the wrong category, but the Department should have spotted this. Also, this receipt document was verified by the Department under the incorrect subject category and this disadvantaged the farmer's claim. The Department were aware the meal bin was claimed but didn't associate it with the correct item. There were approximately 20 documents uploaded on the system for this claim and this was the only document uploaded incorrectly. The farmer felt an allowance should have been made for this obvious error. An oral hearing was not requested.

The Appeals Officer reviewed the facts and contentions of this case as presented by the farmer and the Department. In arriving at a determination in this case they 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 paragraph 3.3 of TAMS II Dairy Equipment Scheme Terms and Conditions.

3.3 Responsibility of Applicants and/or Agent.

The Appeals Officer also referred to: Working Document AGR 49533/2002 on the concept of obvious error according to Article 12 of Commission Regulation (EC) No 2419 of 2001, and to Article 4 of Commission Implementing Regulation EU 809 of 2014 under the heading of Correction and Adjustment of Obvious Errors. Regulation EU 809 of 2014 is one of the EU Regulations that the TAMS II Terms and Conditions implement.



The Appeals Officer found that the farmer acted in good faith, and found that in accordance with the provisions of Article 4 of Regulation 809 of 2014 the incorrect claim for the Meal Bin should be recognised as an obvious error in the circumstances of this case and the item should be paid for in full.

The appeal was allowed.

Case 10 Areas of Natural Constraints Scheme (ANC)

The farmer submitted a 2019 Basic Payment Scheme (BPS) application online. On the system the farmer is requested to tick the box to confirm application for payment under the Areas of Natural Constraints (ANC) Scheme. If the box is not ticked and there is eligible ANC land, the farmer is further requested to tick 'I want to apply for ANC' or 'I do not want to apply for ANC'. In this instance, as the 'I do not want to apply for ANC' box was ticked, no 2019 ANC scheme application was processed, and no payment issued to the farmer under the 2019 ANC scheme.

The farmer appealed the decision on grounds they were elderly, got confused and made a mistake by not checking the box for the ANC scheme. They submitted that they find the paperwork involved hard to deal with and had no one to help them with their application.

In reaching a determination on the appeal, the Appeals Officer is required to have regard to the EU Regulations, national legislation, guidelines and Terms and Conditions that govern the scheme. They must also have regard to the principles of natural justice.

The relevant 2019 ANC Terms and Conditions are as follows-

Page 1 - Important - This document contains the Terms and Conditions for the 2019 Areas of Natural Constraints (ANC) Scheme and Areas of Specific Constraints (Island Farming) (ASC) Scheme and should be read in full and in conjunction with the Terms & Conditions of the 2019 Basic Payment and other area-based Schemes.



Application for the ANC/ASC scheme must be made using the Basic Payment Online Application system by ticking the appropriate box on the Online application at www.agfood.ie

2. How to Apply for ANC / ASC – Mainland and Islands

Application for the 2019 ANC/ASC Schemes must be made using the 2019 Basic Payment and other Area-based schemes online application. It is necessary to tick the appropriate ANC applicant box and applicants or his/her authorised agent must ensure that they have done so and completed all other relevant areas of the Basic Payment and other area-based schemes application in order to lodge a valid claim. The closing date for applications is 15th May 2019. Applications may be submitted up to midnight on that date.

5. Scheme Requirements and Eligibility

To be eligible for payment under the 2019 ANC/ASC Scheme an applicant must in their own right:

- *Submit, via the Basic Payment Online application system, a valid 2019 Basic Payment Scheme and other Area-based Schemes application form by the deadline of 15th May 2019 and confirm application for ANC/ASC Schemes by ticking the ANC applicant box.*

The Appeals Officer in determining the appeal found that the farmer, in signing their 2019 BPS application, declared they were aware of the conditions attaching to the schemes for which the application was made, as set out in the 2019 Help Sheet/Terms and Conditions and agreed to comply fully with those requirements. The farmer ticked the box that said ‘I do not want to apply for ANC’ for 2019. The Appeals Officer found it was clear from the evidence that the farmer made a genuine mistake; however, no application was made and the onus was on the farmer, as the beneficiary of the payments under the scheme, to have full knowledge of the requirements involved.

The appeal was disallowed.



Case 11 - Areas of Natural Constraints Scheme (ANC)

When submitting their 2019 Basic Payment Scheme (BPS) application the farmer omitted to tick the ANC application box. They were informed by the Department of Agriculture, Food and Marine (DAFM) that they would receive no 2019 ANC payments. A review was sought, and the original decision was upheld.

The decision was appealed on the grounds of serious health issues and severe stress the farmer was suffering from. The farmer was also dealing with a divorce at this time. Medical documentation was provided to verify their condition. An oral hearing was not requested.

The Appeals Officer reviewed the facts and contentions of this case as presented by the appellant and the Department. In arriving at a determination in this case they had regard to the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to this case. They also had regard to the rules of natural justice.

The Appeals Officer referred to paragraph 4 of 2019 ANC Terms and Conditions which deals with late applications. They also referred to paragraph 5 of ANC Terms and Conditions which deals with eligibility. They quoted Article 75 of Commission Regulation (EC) No 1122 of 2009 which outlines the conditions in which *Force Majeure* can apply; and also quoted Article 31 of Regulation (EC) No 73/2009 which further defines acceptable reasons for the application of *Force Majeure*.

Taking into account the medical evidence that was provided the Appeals Officer found the provisions for *Force Majeure* due to long term professional incapacity of the farmer were applicable in this case.

The appeal was allowed.

Case 12 - Areas of Natural Constraints Scheme (ANC)

The farmer applied for the 2019 Basic Payment Scheme and other Area-based Schemes; this application also included an application under the 2019 Areas of Natural Constraints Scheme (ANC).



In implementation of Council Regulation (EC) No 21/2004 all flock owners and sheep/goat keepers are obliged to count the sheep/goats present in their flock on their holding and to submit this number to the Department via the annual Sheep/Goat Census return. The Sheep Census returns for 2018 were accepted by the Department of Agriculture, Food and the Marine up to the 15th May 2019 for ANC purposes. The farmer submitted their annual Sheep/Goat Census return on the 31st May 2019, outside of the specified timeframe, and the Department deemed the 2019 ANC application was ineligible for payment.

The farmer appealed against the decision on grounds they were unable to send the annual Sheep Census form on time due to ill health and wished to appeal on medical grounds. The farmer submitted medical evidence from their doctor that they had taken seriously ill at the time of the closing date for the annual 2018 Sheep/Goat Census return.

The Appeals Officer took into consideration the following requirements in the Terms & Conditions for the Areas of Natural Constraints (ANC) 2019

5. Scheme Requirements and Eligibility

“To be eligible for payment under the 2019 ANC/ASC Scheme an applicant must in their own right:

- *Submit, via the Basic Payment Online application system, a valid 2019 Basic Payment Scheme and other Area-based Schemes application form by the deadline of 15th May 2019 and confirm application for ANC/ASC Schemes by ticking the ANC applicant box.....*
- *In the case of sheep and goats, a valid sheep census must be submitted for the year in question within the specified timelines.*

The Appeals Officer also examined the medical evidence submitted and fully accepted the medical evidence relating to the period surrounding the closing date for the 2018 Sheep/Goat Census return and that the exceptional circumstances which prevailed effected the farmer’s ability to submit the annual Sheep Census return in a timely manner.



The appeal was allowed.

Case 13 - Basic Payment Scheme (BPS) – Cross Compliance Good Agricultural and Environmental Condition (GAEC) 7 and Statutory Management Requirement (SMR) 2 (relating to Landscape Features and the Conservation of Wild Birds)

The farmer was a participant in the 2019 BPS. At a Cross-Compliance inspection, the Department of Agriculture, Food and the Marine established that hedgerows were removed and were not replaced. In addition, the hedgerow was found to have been removed during the bird nesting season (1 March to 31 August). The Department notified the farmer that a 20% intent sanction would be applied to their 2019 BPS payment under Good Agricultural and Environmental Condition (GAEC) 7 and Statutory Management Requirement (SMR) 2 (relating to Landscape Features and the Conservation of Wild Birds).

The farmer appealed against the decision on the following grounds:

The hedge was removed in August when most nesting birds have fledged.

The land had just been purchased and the farmer needed to carry out works before conditions became too wet.

- The farmer had purchased hedging in June but was advised not to plant the hedging until October or November.
- The farmer was of the belief that the closed season had changed to 31 July and that they were within the correct time of year for removing of the hedging.
- This was a genuine error and there was no intention to break rules of cross compliance.
- Any penalty should only apply to the land area where hedges were removed, not to the entire holding.

The Appeals Officer found that:



- As hedgerow was removed during the bird nesting season and prior to replacement hedgerow being put in place, the farmer did not comply with SMR 2 and GAEC 7 and did not adhere to the 2019 BPS T&Cs.
- The 2019 BPS Terms and Conditions and the *Explanatory handbook for Cross Compliance Requirements* clearly set out the position both in relation to the removal of hedgerows and to the months in which hedgerows cannot be cut, along with the potential of a sanction for non-compliance.
- Accordingly, there was no justification or valid reason for overturning the Department's decision to apply a sanction. Nor, given the clarity in the 2019 BPS Terms and Conditions and in the *Explanatory Handbook for Cross Compliance Requirements* regarding hedgerows, was there a justification or valid reason for reducing the 20% intent sanction.

The appeal was disallowed.

Case 14 - Basic Payment Scheme (BPS) and the Areas of Natural Constraints (ANC) Scheme, Cross Compliance: Statutory Management Requirement (SMR) 7 (*Identification and registration of animals*).

The farmer was an applicant under the 2019 BPS and ANC Schemes. In 2019 a full cross-compliance inspection was carried out on the farmer's holding and the following non-compliances were found:

- Intermixing of cattle with those of another herd.
- A number of animals on the holding with one ear tag missing.

The Department of Agriculture, Food and the Marine applied a sanction for the non-compliances found. The farmer appealed the Department's decision.

With regard to the Identification and Registration rules under Statutory Management Requirement 7, the requirements as set out in the EU legislation are included in the 2019 EU BPS/Greening Payment Helpsheets/Terms and Conditions. The relevant part relating to cross compliance under BPS is at the section headed Cross-Compliance at page 30 of that document.



The Explanatory Handbook for Cross Compliance Requirements, which must be read in conjunction with the 2019 EU BPS/Greening Payment Helpsheet/Terms and Conditions, states the following regarding SMR 7 at pages 28 and 29:

AIM System Database - Notifications of births, movements and deaths

You must:

- *Notify all births and movements of bovines to the AIM system database.*
- *Obtain, in advance, a Compliance Certificate (application for permit to move animals – form NBAS 31b) for all direct purchases and sales/movements to other farmers/dealers/agents. The seller is responsible for obtaining the Compliance Certificate prior to the movement off the holding*

You must not:

- *Move an animal onto or off the farm without having a valid Compliance Certificate*

Tagging

You must:

- *Use only approved ear tags on both ears*

The Appeals Officer found that, at the Cross-Compliance inspection, it was observed by the Department's Inspectors that a number of animals were intermixing with animals from another herd. This was not in dispute. However, a Compliance Certificate had not been obtained prior to the movement. The Inspectors also observed a number of animals with one ear tag. These findings constituted breaches of the requirements of SMR 7 (*Identification and registration of animals*), as set out in the EU legislation and in the 2019 EU Basic Payment Scheme Greening Payment Helpsheet/Terms and Conditions and the document entitled Explanatory Handbook for Cross-Compliance Requirements, where it specifically emphasises and states as an imperative that no movements can take place without obtaining in advance a Compliance Certificate and also that ear tags must be used in both ears. (The legislation relevant to the Cross-Compliance requirements for beneficiaries under the CAP is set out in



Regulation (EU) No. 1306/2013 of the European Parliament, in particular at Articles 91 (1), 93(1) and at Annex 11).

In relation to the sanction, the Appeals Officer examined the relevant EU legislation and the Terms and Conditions. Because the farmer had a previous sanction within a three-calendar year period, the repetition rules required by EU Regulation applied and resulted in the level of the sanction being augmented to 15%.

Having considered the evidence, facts and circumstances of the case, the Appeals Officer concluded that the Department had correctly applied the legislation and the Terms and Conditions and had applied the correct sanction for the breaches.

The appeal was disallowed.

6. SUGGESTIONS FOR CONSIDERATION BY THE DEPARTMENT

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

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. 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 individually to each. It may also be helpful if each Department decision letter 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 that is 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. It may be helpful if the Department gave clear instructions in relation to the issue of lease agreements with financial institutions and the payments to the vendor of the asset. A lease agreement with a financial company is not acceptable and payment must be from the applicant to vendor. A payment from a financial institution to a vendor is ineligible.

6.3 Young Farmer's Scheme

A 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. The scheme conditions specify that the young farmer's name be on the bank account used for the purposes of the receipt of payments under the Basic Payment Scheme and Young Farmers Scheme but does not specify further. Whereas the young farmer must meet checks that are carried out to establish if s/he is in control of the farming operation in the case of a single farmer or jointly in control in the case of joint farmers, partnerships or companies, these checks include for detailed evidence of financial control of the farming operation. It should be set out clearly for applicants what is meant by benefits and risks, and financial control.

A number of appeals 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 box when completing their Basic Payment Scheme application. As it is extremely unlikely that eligible young farmers would intentionally wish to exclude themselves from the Scheme, it may be helpful if the Department gave consideration to assessing if automatic notification could issue advising such young farmers that they have excluded themselves from the Young Farmers Scheme and what they need to do if this is an error and they wish to participate in the Scheme.

6.4. Inspections

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 should be geo-tagged, timed and dated. This information should be stored for each photograph.

Inspection reports on land eligibility should include any detail of the evidence found on land in respect of “no agricultural activity” findings, for example to include descriptions in respect of the vegetation, access, evidence and/or checks for animal tracks etc...as this would assist assessment during the course of an appeal.

6.5 Department decisions letters

It is important the Department review decision letters clearly identify the specific scheme name and refer to the Term and Condition that is deemed to have been breached.

6.6 Areas of Natural Constraints Scheme

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 the Scheme, it may be helpful if the Department gave consideration to assessing if automatic notification could issue to farmers previously in the scheme, who declare eligible disadvantaged land, advising them that they have excluded themselves from the Areas of Natural Constraints Scheme 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 important that applicants familiarise themselves with the Terms and Conditions and guidelines of schemes before submitting their claims.



7.1 Cross Compliance

Requirements of Good Agricultural and Environmental Condition (GAEC) and all Statutory Management Requirements (SMRs) are a prerequisite for the schemes. Infringements can have serious consequences leading to penalties on the payments across all schemes. The penalties can be significant where a non-compliance is deemed intentional and/or can multiply significantly on reoccurrence of breaches. Applicants should continuously familiarise themselves with the requirements and regularly check that there is no breach of the GAEC or SMR requirements.

Nitrates non-compliances particularly with regard to inadequate management of organic manures, soiled water and the pollution of waters continue to feature at appeal level. There must be compliance with the legal requirements of the Nitrates Regulations. Farmers should at all times be aware of storage requirements for their herd size and ensure that they meet the requirements in full. Nitrates Derogation farmers should be at all times aware of the specific requirements on them in lieu of the higher organic nitrogen limit afforded them.

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. . When seeking to rely on Force Majeure in their appeal, an applicant needs to set out in detail the sudden and unforeseen circumstances, with evidence, for failure to comply with the requirements.

Sole trader, Registered Farm Partnership, Limited Company or other entity: A number of appeals involving multiannual contracts and purchases of assets concerned applicants being excluded from the schemes and sought recoupment from because of a change of entity, i.e. sole trader, registered farm partnership or company structure. This has significant implications



for multiannual contracts and for Basic Payment Scheme entitlements and should always be clarified with the relevant sections of the Department prior to any changes being undertaken.

Review of Department decision: 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: Farmers should always be conscious of their contract end date. 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, that 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 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 entitlements leased out by them 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 use all of their entitlements and the leased entitlements are of the lowest value.

7.4 Appeal submission – Department decision letter:

When submitting an appeal, farmers should always use the Notice of Appeals Form which is published at www.agriappeals.gov.ie and 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.

Appeals must be made within 3 months of the date of notification of the Department's decision being appealed against. Where this time period cannot be met owing to exceptional circumstances a case can be made to the Director for consideration.

8. EXAMPLES OF REOCCURRING COMPLIANCE ISSUES FOR FARMERS

General Issues

- Late registration of animals
- Not ensuring animal movement compliance returns are made
- Animal identification issues, including not keeping animals fully tagged
- Not ensuring logon access to Ag Food is up to date, or ensuring sufficient internet access exists to complete online registrations / applications with the Department



Green Low Carbon Agri-Environment Scheme (GLAS)

- Low Input Permanent Pasture action: no owned bovines, heather growth on plots, parcel not stock proofed, supplementary 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 within specified time or 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.
- Failure to maintain the eligibility criteria throughout the full period of the contract
- Wild Bird Cover action not delivered or not to specification
- Rare Breeds not maintained as per GLAS Specification

Beef Exceptional Aid Measure (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 subsequently sold for slaughter within a few days;
- Animals presented for slaughter outside of reference dates;
- Late applications.

Areas of Natural Constraints (ANC)

- Application box not ticked, and no application made
- Minimum stocking density not maintained and/or 7 consecutive months of minimum stocking period not met



Young Farmers Scheme (YFS)

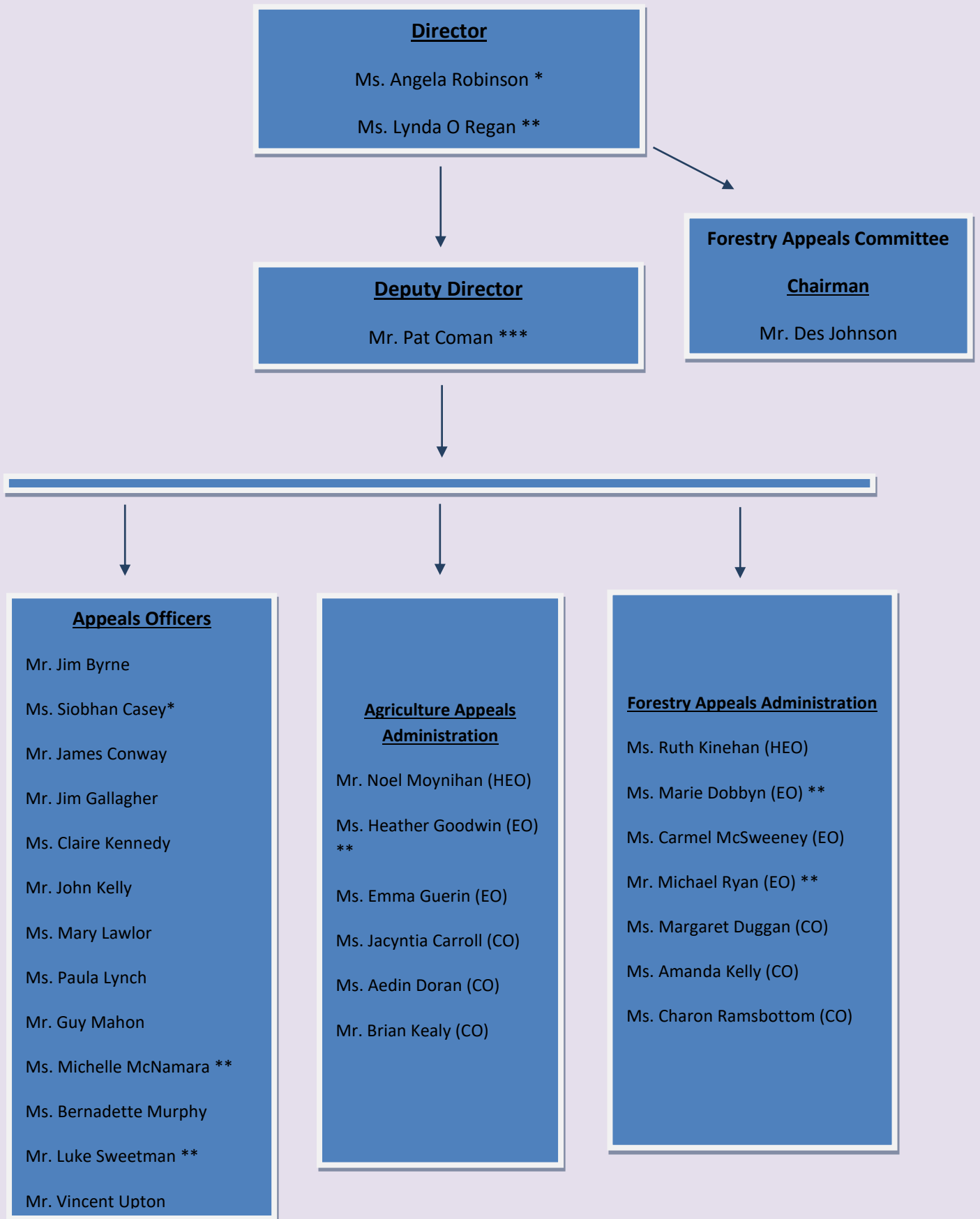
- Application box not ticked, and no annual application made
- Young farmer not exercising effective and long-term control either on their own or jointly



Appendices

- | | |
|------------|---|
| Appendix A | Agriculture Appeals Office 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



* Left Office during 2020

**Joined Office during 2020

*** Appointed during 2020

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

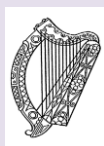
Schemes

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. ²—(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.

² See Extract from Forestry Act below (Amended Agriculture Appeals Act adding new Section 14 A)

Laying of regulations before Houses of Oireachtas.

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

Expenses of Minister.

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

Amendment of First Schedule to Ombudsman Act, 1980.

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

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

Short title.

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

SCHEDULE 1 (As amended by S.I. No. 415 of 2020)

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 Environmental Efficiency Programme – Suckler (Beep-S)

Beef Exceptional Aid Measure (BEAM)

Beef Finisher Payment Scheme (BFP)

Beef Genomics Scheme (BGS)

Beef Data and Genomics Programme (BDGP)

Bio Energy Scheme

Burren Programme

Calf Investment Scheme (CIS)

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 – 1st 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 1782/2003³ 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)

The Dairy Equipment Scheme

The Poultry Welfare Scheme

The Sheep Fencing/Mobile Handling Equipment Scheme

The Sow Housing Welfare Scheme

The Rainwater Harvesting Scheme, and

The Farm Safety Scheme

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

The Animal Welfare, Safety and Nutrient Storage Scheme

³ OJ L270, 21.10.2003, p.1

The Dairy Equipment Scheme

The Low-Emission Slurry Spreading (LESS) Equipment Scheme

The Organic Capital Investment Scheme

The Pig and Poultry Investment Scheme

The Young Farmers Capital Investment Scheme, and

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.

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

Minister for Agriculture, Food and Rural Development

Appendix D

Amendments to the Agriculture Appeals Act 2001:

33 of 2004. Public Service Management (Recruitment and Appointments Act 2004, amending the Agriculture Appeals Act 2001

31 of 2014. Forestry Act 2014, amending the Agriculture Appeals Act 2001

15 of 2013. Animal Health and Welfare Act 2013, amending the Agriculture Appeals Act 2001

15 of 2020. Forestry (Miscellaneous Provisions) Act 2020, amending the Agriculture Appeals Act 2001

Statutory Instruments made under the Agriculture Appeals act 2001:

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

S.I. No. 556 of 2019 Agriculture Appeals Act (Amendment of Schedule) Regulations 2019

S.I. No. 415 of 2020 Agriculture Appeals Act (Amendment of Schedule) Regulations 2020

S.I. No. 418 of 2020 Forestry Appeals Committee Regulations, 2020

Copies of all legislation are available on the Irish Statute Book website www.irishstatutebook.ie.