

An Oifig Achomhairc
Talmhaíochta

Agriculture
Appeals Office



2021

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 20th 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.

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1. INTRODUCTION

We are pleased to submit the 20th Annual Report of the Agriculture Appeals Office for 2021. As well as fulfilling its primary function as an Annual Report to the Minister for Agriculture, Food and the Marine, we hope that the Report will prove helpful to persons preparing an appeal and provide useful information to all interested parties.

One of the main objectives of this Office 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.

Notwithstanding the challenges we faced in 2021 arising from the ongoing pandemic, the Office made excellent progress in processing and concluding appeals. 2021 saw a 6% increase in the number of agriculture appeals received by the Office, rising from 760 appeals in 2020 to 809 in 2021. Against this there was a very notable increase in cases closed by the office, up from 358 in 2020 to 757 in 2021 and significant credit is due to the Appeals Officers and administrative staff in bringing about these results.

While there had been a reduction in the number of agriculture appeals closed in 2020 over previous years, this was mainly due to COVID-19 restrictions which caused the suspension of oral hearings - one of the main features of the appeals service provided by the Office. While the Office adapted to the situation by offering remote hearings, many appellants requested that their appeal be delayed until such a time as in-person hearings could be held which resulted in a significant number of requests for hearings being carried into 2021. With the easing of restrictions in 2021, the Office resumed in-person hearings and 282 oral hearings were held around the country in 2021 compared to 135 in 2020.

The number of forestry appeals submitted to FAC in 2021 reduced significantly from 874 in 2020 to 149 in 2021; however, there was a carryover of 776 appeals from 2020 that had to be determined in 2021. The FAC determined a total of 662 appeals in 2021 and this placed increased demands on the available resources of the Office to deal with agriculture appeals. Once the backlog of forestry appeals had reduced by mid-2021, a reallocation of resources took place which contributed to the increase in the number of agriculture appeals closed.



The Annual Report includes the following information:

- a statistical breakdown of agriculture appeals dealt with by the Office in 2021 and the outcome of those appeals.
- examples of agriculture appeal cases determined by Appeals Officers in 2021.
- 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 2021 is as follows:

- 37% allowed, partially allowed, or the Department decision was revised in favour of the appellant after the appeal was submitted,
- 38% of appeals disallowed,
- 25% of appeals withdrawn, invalid, or received after the 3-month deadline.

We are extremely grateful to our colleagues in the Agriculture Appeals Office, including those who left the Office during 2021, for their ongoing commitment and hard work in delivering a fair and timely appeals service. This is especially so at a time of unprecedented challenge, professionally as well as personally for many. Our achievements in 2021 would not have been possible without their professionalism, dedication and commitment. We would also like to thank the Chairperson of the FAC, Mr. Des Johnson, the Deputy Chairpersons and external members and all those who engaged with us to help achieve our objectives during 2021.

Lynda O'Regan

Director

Pat Coman

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. The FAC is chaired by an independent Chairperson and consists of a number of external members, some of whom are appointed as Deputy Chairpersons, additionally all Agriculture Appeals Officers are appointed as members of the FAC. 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 2021. 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 2021. Section 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 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 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 (FAC) 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.
- At the start of 2021 relevant forestry licence decisions underwent a 28-day period during which the applicant or any other party who was dissatisfied with the decision could appeal the decision to the independent FAC. In July 2021, S.I. No. 353 of 2021 amended this period to 14 days from the date of the Minister's decision. During this period, no forestry operations may be commenced on foot of the appealed licence. 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 where the FAC considers such a hearing is required. When the FAC makes a determination on an appeal, the written decision, setting out the reasons for that



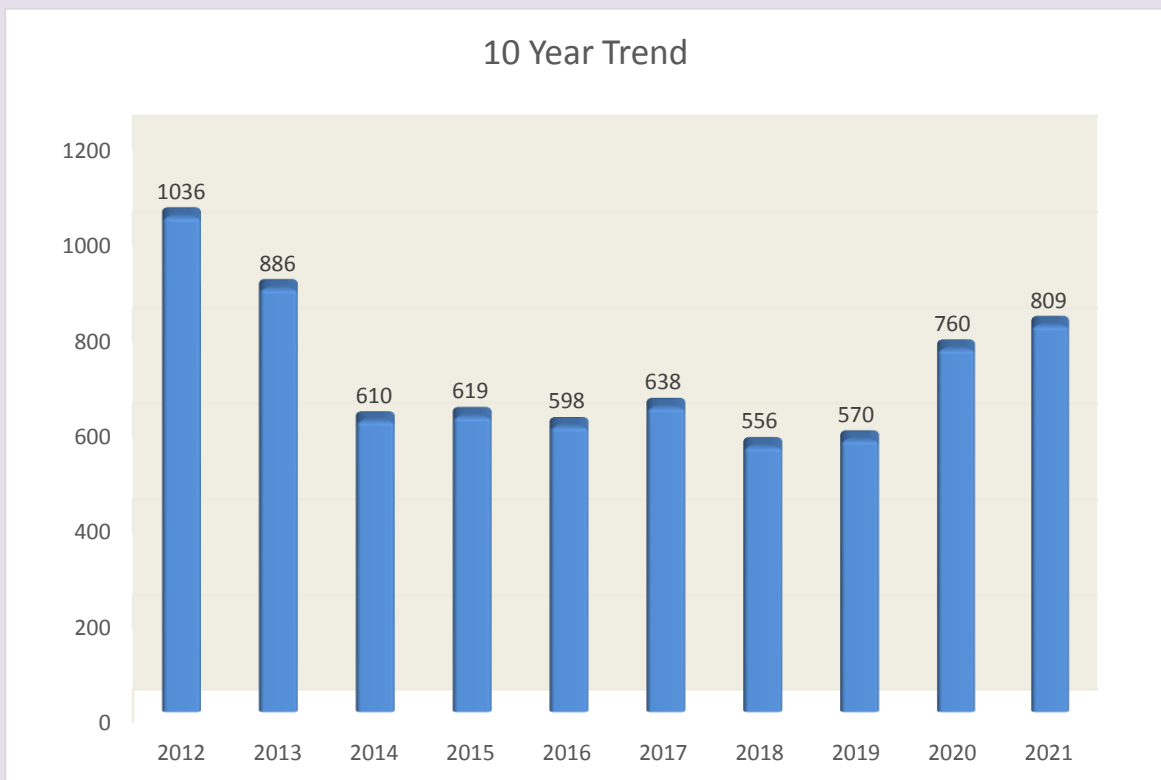
decision, is notified to all parties to the appeal. FAC decisions are published on the FAC section of the Agriculture Appeals Office website www.agriappeals.gov.ie.



3. STATISTICS ON AGRICULTURE APPEALS DEALT WITH IN 2021

3.1. Total Agriculture Appeals Received

809 appeals were received in 2021, an increase of 6% when compared with 760 appeals received in 2020. The number of appeals received in 2021 is higher than the 10-year annual average of 708 appeals, as shown in the following table:

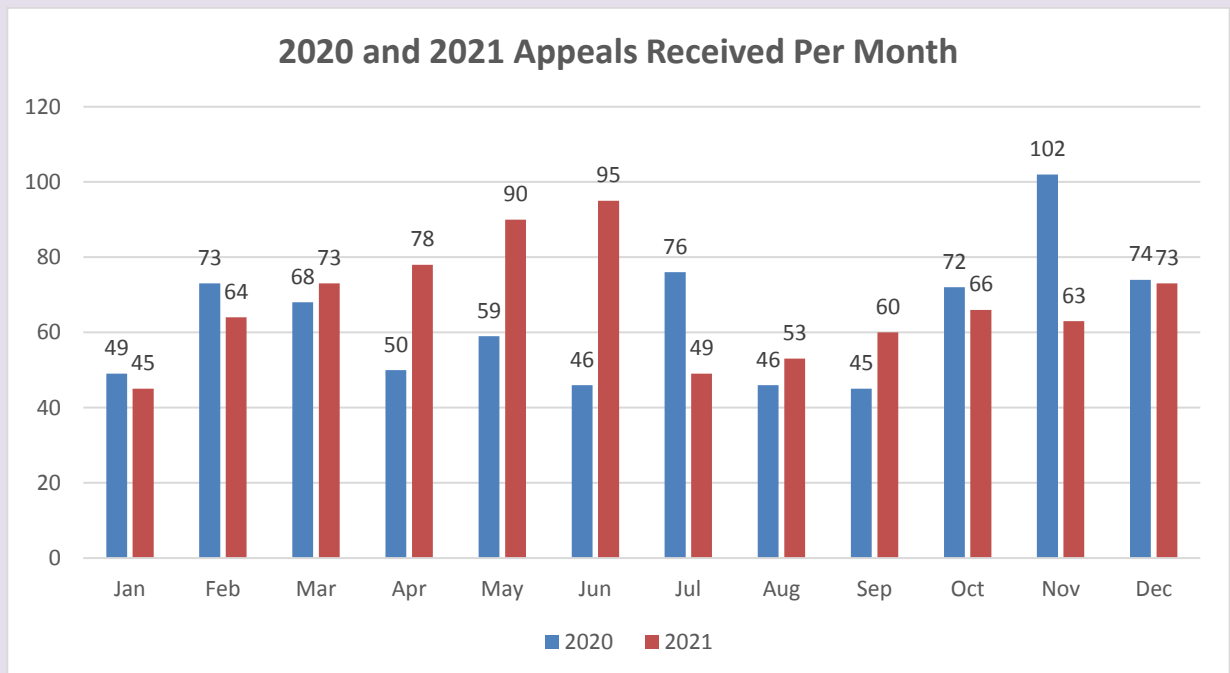




3.2. Agriculture Appeals Received Per Month

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 2021 compared with 2020.

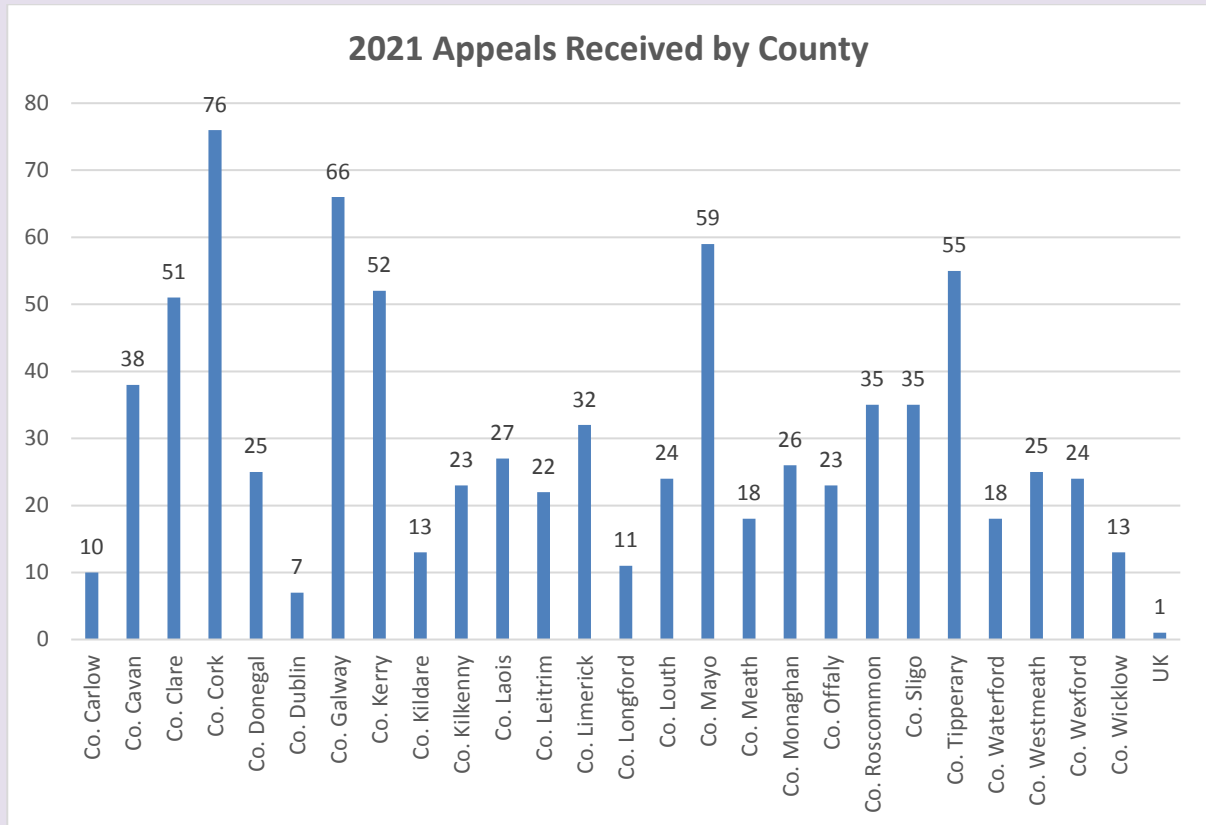


The highest number of appeals was received in June 2021. The majority of those appeals concerned the Beef Data and Genomics Programme (BDGP) and the Basic Payment Scheme (BPS).



3.3. Agriculture Appeals Received Per County

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

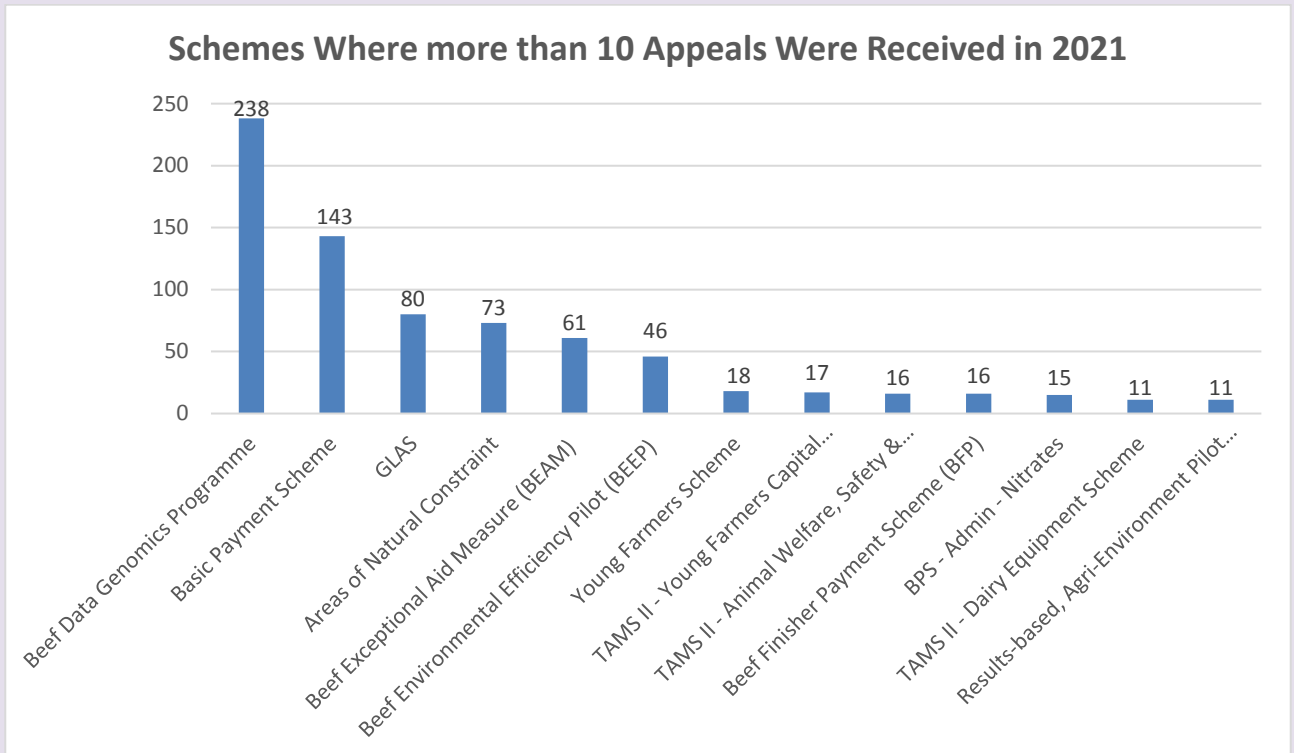


The highest number of appeals were received from Cork (76 appeals) and Galway (66 appeals) in 2021



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 745 appeals of the 809 received in 2021.



The number of appeals received in 2021 was highest for the following schemes:

Beef Data Genomics Programme (BDGP)	c.29%
Basic payment Scheme (BPS)	c.18%



3.5. Number of Agriculture Appeals Closed

In 2021, the Office closed 757 agriculture appeal cases. This compares with 358 cases that were closed in 2020. The cases closed include appeals that were received in 2021 and in previous years as set out in the following Table:

Year in which Agriculture Appeals were received	Number of Agriculture Appeals Closed in 2021
2021	221
2020	447
2019	84
2018	5
Total	757

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.

In line with Government Guidance on the COVID 19 crisis, the Office had to suspend the holding of oral hearings in January 2021 and resumed the holding of hearings with the easing of restrictions in June 2021. The Office engaged with appellants throughout 2021 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 in person oral hearing at a later stage. Non-oral hearing cases were prioritised during the restricted periods in 2021.



3.6. Outcome of Agriculture Appeals Closed in 2021

There are several 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.



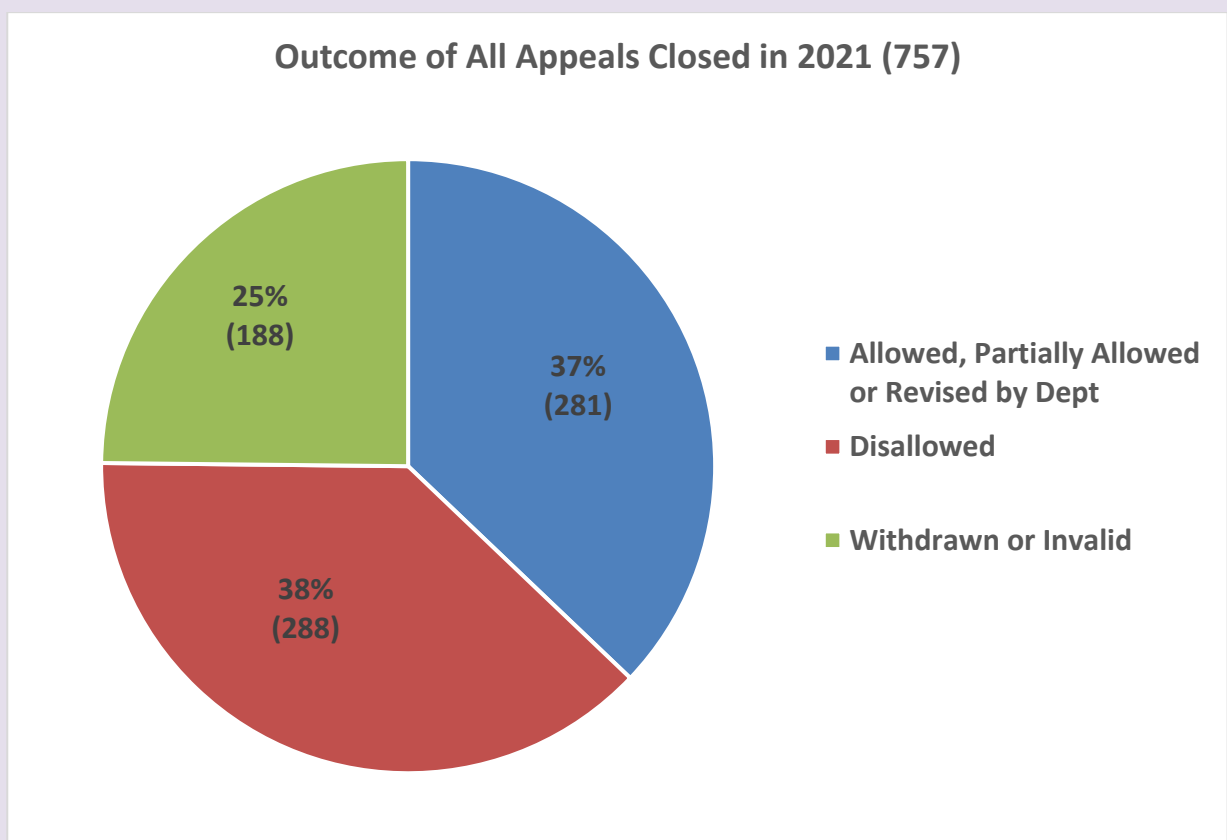
Appeal Disallowed This category includes cases where an Appeals Officer, following consideration of the case and all relevant information, decided that the grounds of appeal do not warrant overturning the sanction imposed by the Department.

Appeal Withdrawn This category includes cases where an appellant withdraws an appeal in writing at any stage.



3.6.2. Outcome of All Appeals Closed in 2021

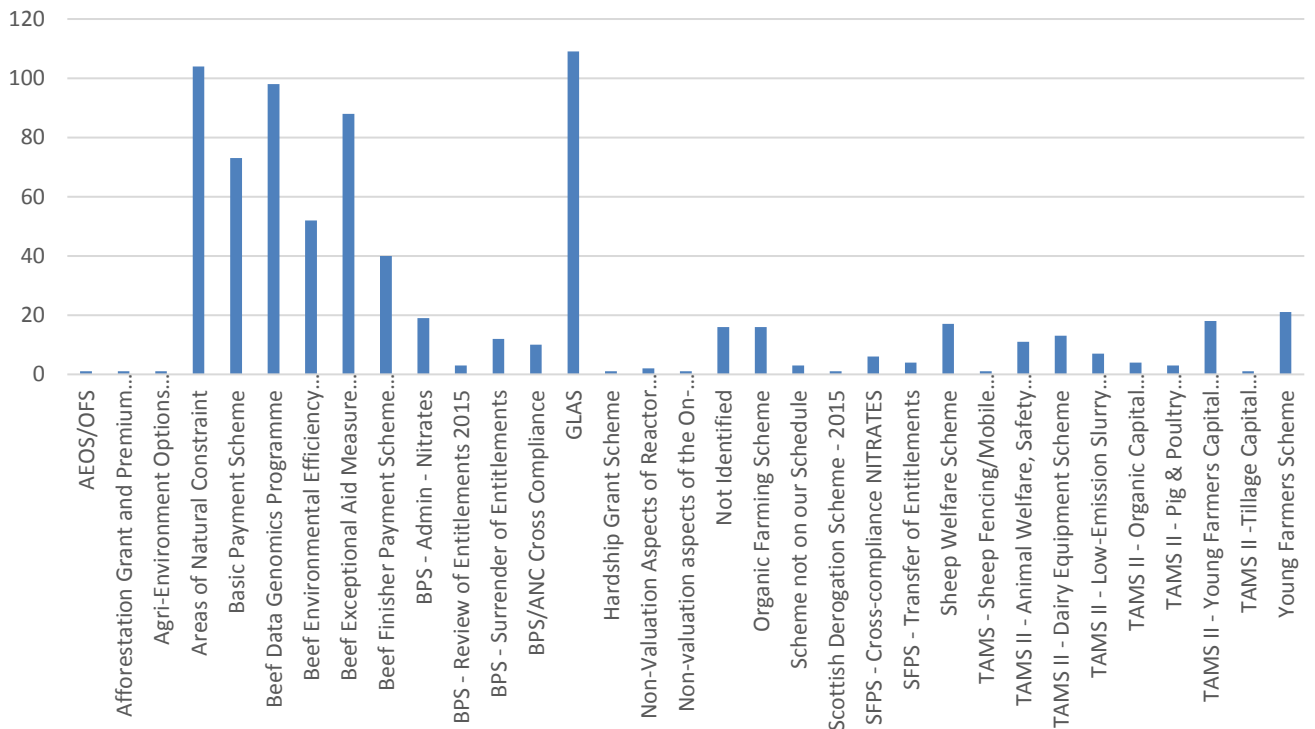
The outcome of all cases closed in 2021 was as follows (includes appeals received in years prior to 2021 and received in 2021¹):



¹ Numbers were rounded to the nearest percentage point



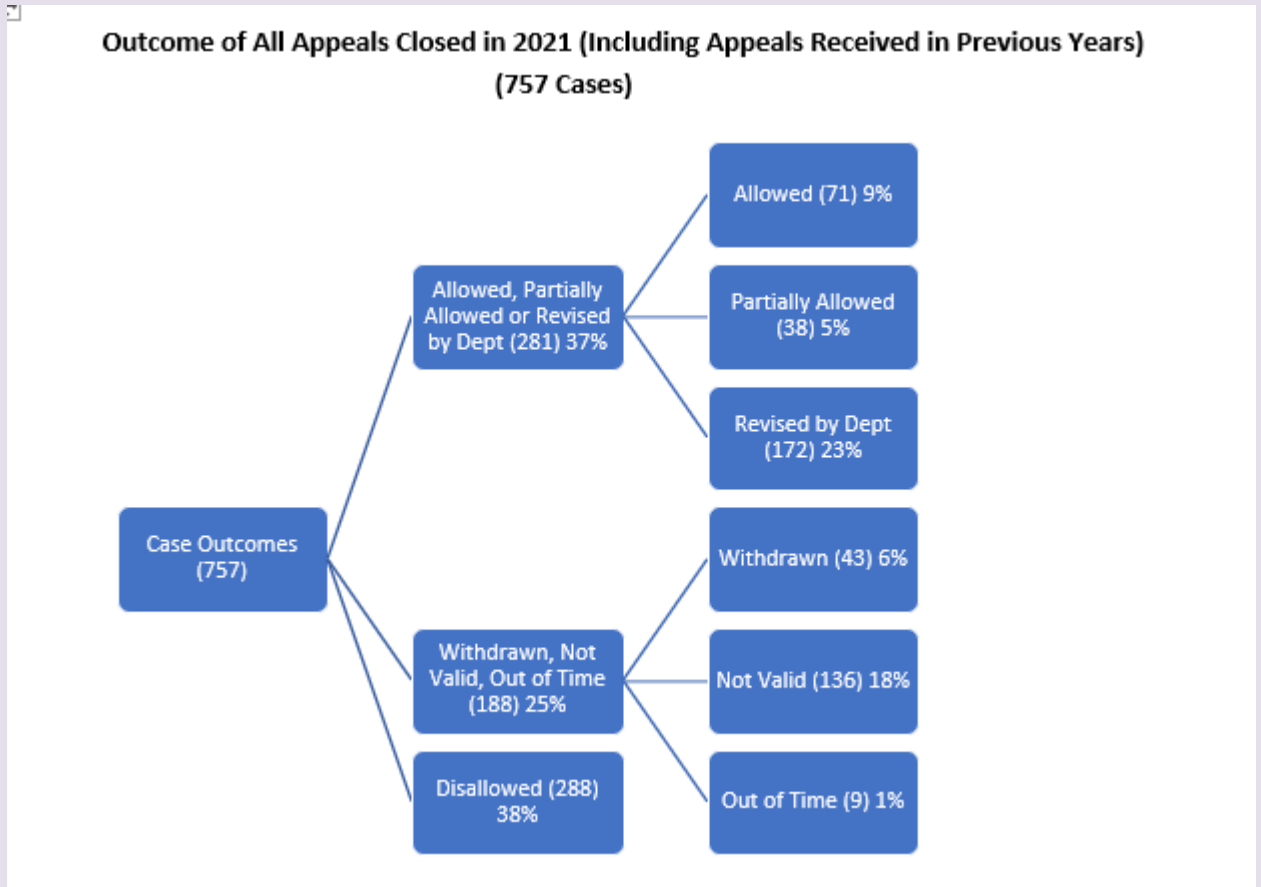
All Cases Closed 2021 Per Scheme (757)





3.6.3. Breakdown of outcomes of all appeals closed in 2021

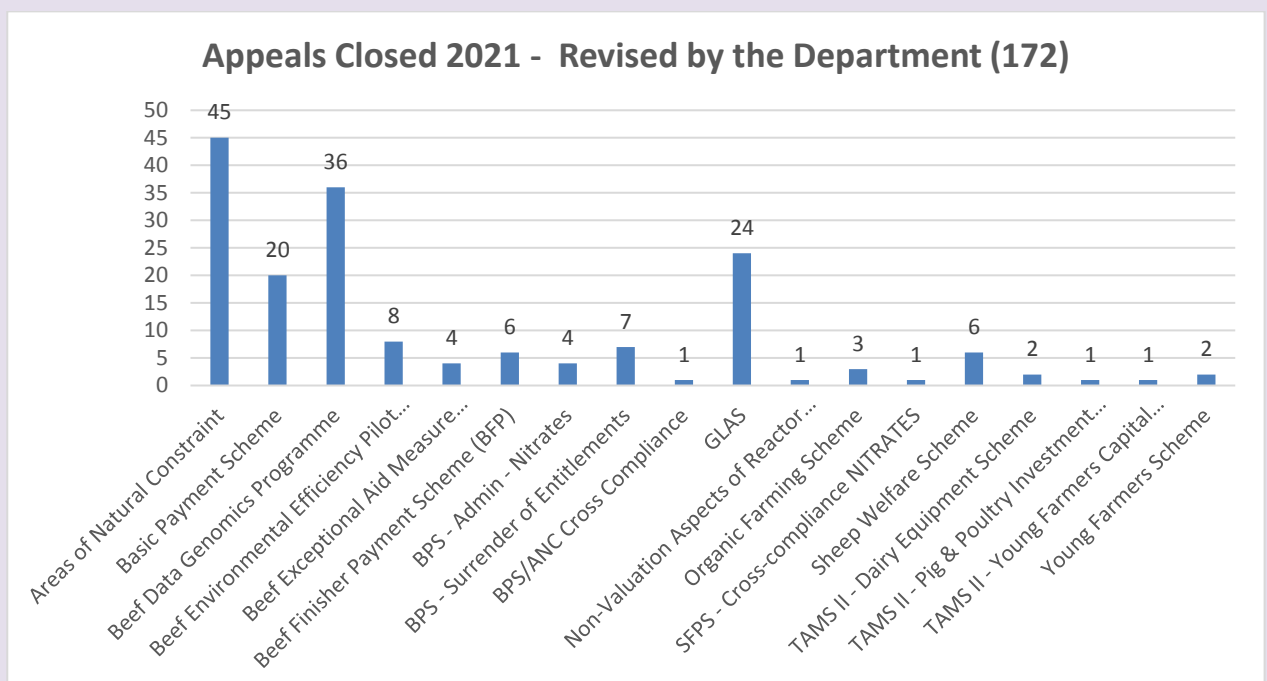
The chart below gives a further breakdown of the individual categories for outcomes referred to in the preceding Table and Graphs.





3.6.4. Decisions Revised by the Department in favour of Appellants - 172 Cases

There were 172 cases revised by the Department in favour of the appellant after submission of an appeal to this Office in 2021. The reasons for such revisions in 2021 generally concerned the submission of additional information not previously made known to the Department and/or queries raised by this Office once the appeal was submitted to the Agriculture Appeals Office. The graph below shows the breakdown of schemes that were the subject of appeals in the “revised by the Department” category.



The highest categories of schemes for which decisions were revised by the Department concerned appeals against Areas of Natural Constraints (ANC) scheme and BDGP decisions.

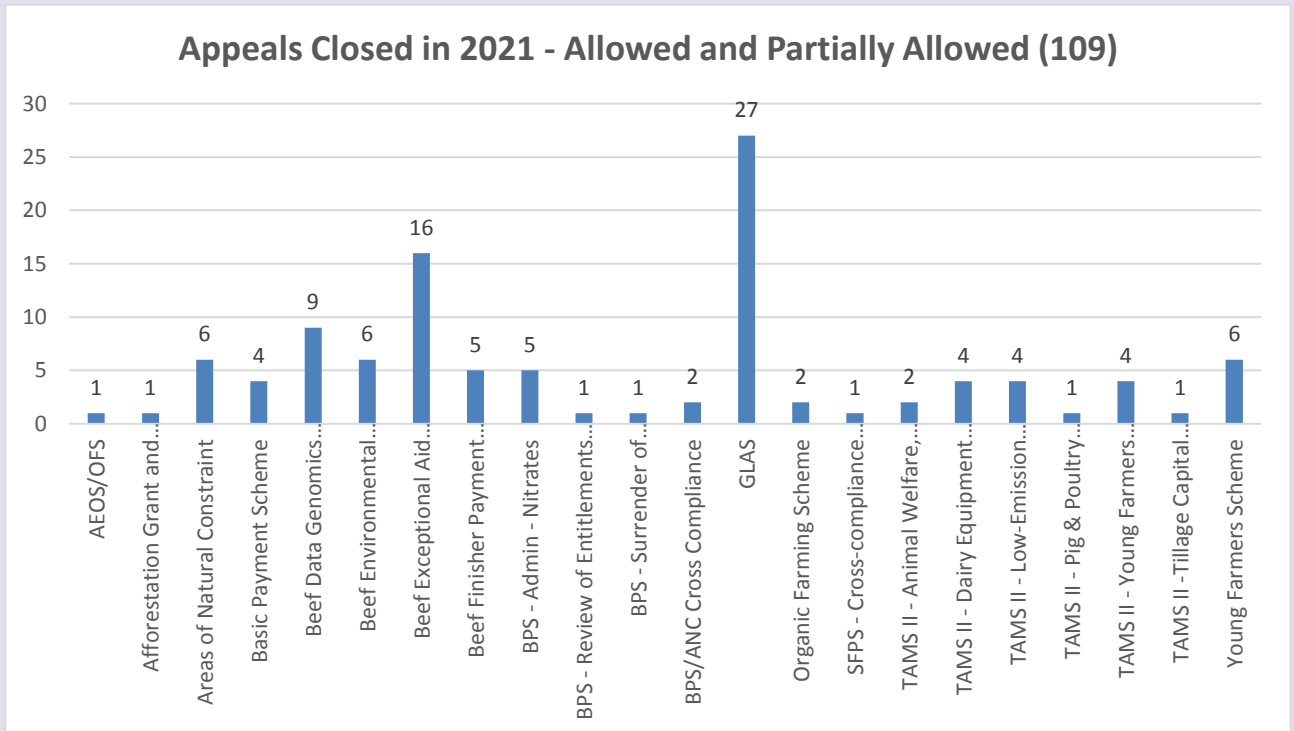
Of the ANC appeals, a total of 10 had been assigned to an Appeals Officer of which 5 oral hearings were held before the Department revised its decision. The Department revised a further 35 ANC decisions before assignment to an Appeals Officer.

Of the appeals involving BDGP, 11 appeals that were subsequently revised by the Department had been assigned to Appeals Officers. Of those, 4 oral hearings had taken place. Decisions on 25 other appeals were revised by the Department before assignment to an Appeals Officer.



3.6.5. Appeals Allowed and Partially Allowed

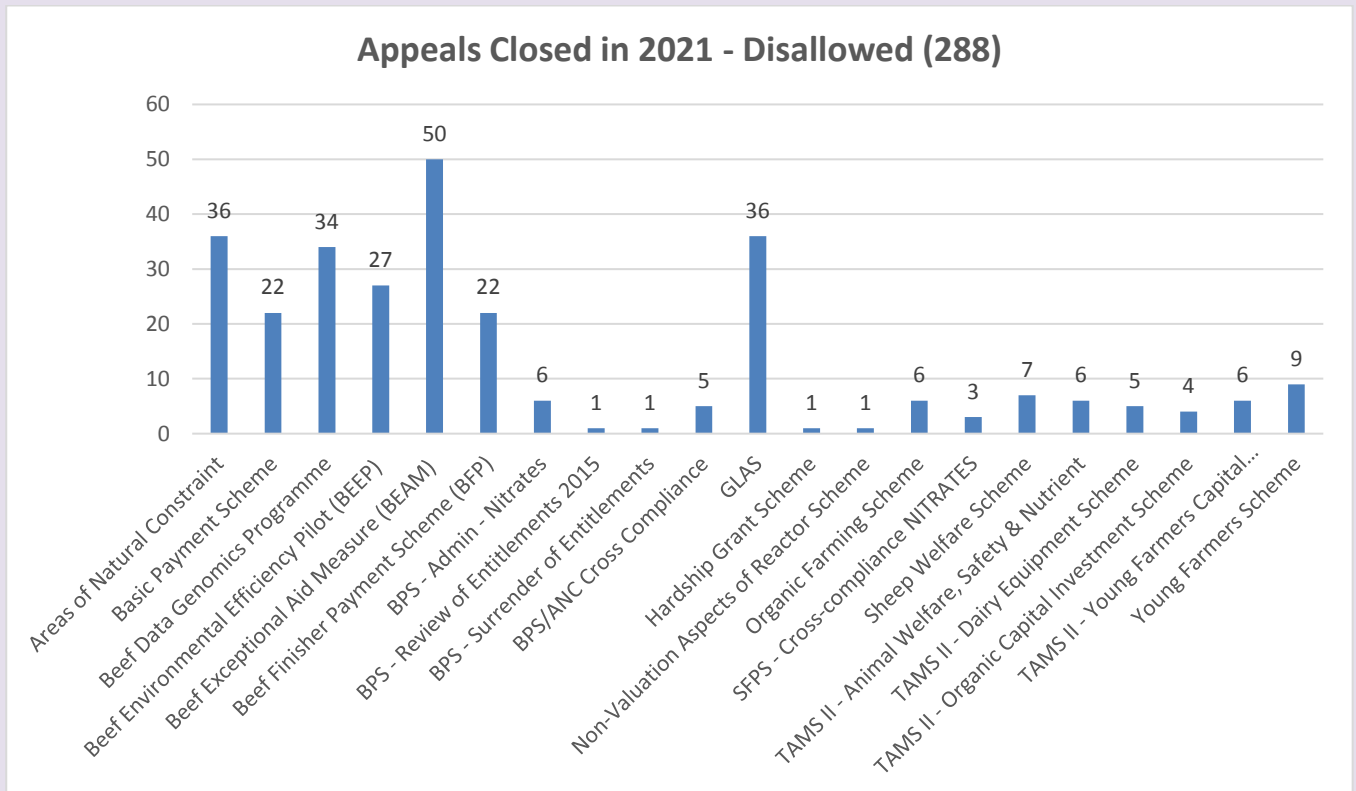
The scheme with the highest number of appeals that were included in the category Allowed (71) and Partially Allowed (38) was the GLAS. The graph below shows of the breakdown of appeals that were Allowed and Partially Allowed for all schemes.





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 (BEAM), accounting for 17% 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 2021. The average number of days for the return of file documents from the Department was 30 days for appeals received in 2021. This compares with an average of 32 days in 2020. 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	73	57
Basic Payment Scheme	143	21
BEAM	61	44
Beef Data Genomics Programme (BDGP)	238	38
Beef Environmental Efficiency Pilot (BEEP)	46	34
Beef Finisher Payment Scheme (BFP)	16	43
GLAS	80	22
TAMS II – Dairy Equipment Scheme	11	60
TAMS II - Young Farmers Capital Investment Scheme	17	11
Young Farmers Scheme	18	11



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 and assignment of the appeal to an Appeals Officer 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 2021, the average time taken to close an appeal was 124 days from date of receipt of the Department file.

3.9. Number of Oral Hearings held in 2021

There were 282 oral hearings held in 2021. This compared with 135 held in 2020. The 282 appeals that had an oral hearing in 2021 included appeals received in 2020 and previous years. 101 oral hearings that were scheduled to take place in 2021 were cancelled/postponed - this equates to 26% of all hearings scheduled in 2021. These include cancellations due to revised decisions by the Department, requests by appellants and COVID-19 related issues. Of the 282 oral hearing's held in 2021, the breakdown of appeal years is as follows:

Number of oral hearings held in 2021 (282)	Year in which appeal received
93	2021
160	2020
27	2019
2	2018



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

The records indicate that, in 2021, 82 appeals were received outside of the three-month deadline. 54 of these appeals were accepted by the Director after consideration of the Appellant's case that exceptional circumstances were causal of the delay.

3.11. Status of Appeals Outstanding at 2021 Year End

The status at 31 December 2021 of outstanding appeals is set out below:

Position at 31 December 2021	
Total received 2021	809
Total carried over from previous years	717
Closed 2021	757
Appeals on Hand 31/12/2021	769

3.12. The Office of the Ombudsman

The Ombudsman Act 1980 (as amended), provides that appellants may make a complaint to the Office of the Ombudsman following the decision of an Appeals Officer. The appeal file and documents in respect of 5 appeal cases were requested by the Office of the Ombudsman in 2021. Of the 5 appeal files requested by the Ombudsman in 2021, we have not been informed to date that any of the 5 cases have been closed by the Ombudsman.



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 2021.

Agriculture FOI Request 2021	Forestry FOI Request 2021
6	1

The Agriculture Appeals Office as the administrative support for the FAC received and closed 165 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. Appellants may also apply to the High Court to take judicial review proceedings. Judicial Review legal proceedings were initiated in 2021 in one Agriculture Appeals case and is scheduled to be heard during 2022.

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 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 or where there has been any relevant change in circumstances since the decision was given.



29 reviews of Appeals Officers decisions were completed in 2021 of which 25 were requested by appellants and 4 by the Department. The outcome of the reviews completed in 2021 can be broken down as follows:

Of the 25 reviews requested by Appellants:

- 2 were partially revised by the Director
- 1 was revised by the Director
- 1 was revised by an Appeals Officer
- 21 remained unchanged

Of the 4 reviews requested by the Department:

- 2 remained unchanged
- 2 were revised by the Director



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. 368 of 2021 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.

Since the FAC was established, the number of appeals significantly increased year on year up to 2020 and significantly reduced during 2021 following the introduction of legislative changes to The Forestry (Miscellaneous Provisions) Act 2020 in October 2020. The following table outlines the trend from 2018 to 2021: -

Appeals Trend

	2017	2018	2019	2020	2021	Total
*Appeals received	34	197	489	874	149	1,742
Licence decisions appealed	21	150	311	582	107	1,171
Licence decisions closed 31/12/21	21	150	309	565	92	1,137

** There can be more than one appeal against a licence decision of the Minister*



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.

A measure introduced under the amendments to the Agriculture Appeals Act 2001 by the Forestry (Miscellaneous Provisions) Act, 2020 was the introduction of a fee for the lodging of an appeal. The fee is currently set at €200 per individual appeal. In 2020, the FAC received on average 80 appeals per month. In 2021 the FAC received on average 13 appeals per month.

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 other recommendations. Some recommendations will require amendments to the Act. Recommendations in place at the end of 2021 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, formal induction training for newly appointed Appeals Officers, the publishing a Code of Practice for Appeals Officers, the holding of case conferences, and the holding of remote oral hearings for appellants. The assessment and implementation regarding the Agriculture Appeals Review Panel and other recommendations is ongoing. During 2021, engagement took place with relevant stakeholders, including representative bodies, regarding implementing the recommendations and establishing the Independent Review Panel and work is progressing on the required amendments to legislation.



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 completed in early 2021.

4.5. Business Plan

The 2021 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 2021

Case 01: Beef Finisher Payment (BFP) 2020

The farmer applied online to participate in the Beef Finisher Payment Scheme (BFP). However, the Department of Agriculture, Food and the Marine (DAFM) rejected the application on the basis that the farmer had not made a 2020 Basic Payment Scheme (BPS) application and had not fulfilled requirement 7.3 of the Terms and Conditions which states that an eligible applicant shall; *be farming a holding in respect of which a valid Basic Payment Scheme application is submitted in 2020 to the DAFM prior to the 30 September 2020*. A review was sought, and the DAFM upheld its decision.

The farmer appealed on grounds they applied for BFP as they had 40 eligible animals and were registered with the Bord Bia Quality Assurance Scheme. The farmer had not applied for 2020 BPS as they did not have BPS entitlements and had no communication from the DAFM regarding BPS. The farmer contended that circumstances where an applicant had not made a 2020 BPS application due to lack of BPS entitlements were not directly addressed in the BFP Terms and Conditions. The farmer did not see any public awareness campaign advising farmers of their option to submit a blank 2020 BPS application when having no entitlements. The farmer also contended that an active herd-number with eligible animals should have been enough to demonstrate active farming and that a 2020 BPS application should not have been necessary to show active farming.

The Appeals Officer noted that the provisions of 7.3 of the BFP 2020 Terms and Conditions state that an eligible applicant shall be farming a holding in respect of which a *valid Basic Payment Scheme application is submitted in 2020* to the DAFM prior to the 30 September 2020. The Appeals Officer found this BFP provision to be in direct conflict with the provisions of the BPS 2020 Terms and Conditions which provide that BPS 2020 applications received after 09 June 2020 are not valid. It follows therefore that 2020 BPS applications submitted after 09 June 2020 and up to and including 30 September 2020, but accepted for BFP, were not valid. The Appeals Officer considered that a



2020 BPS application, as in this case, submitted in November 2020, was no more invalid than the latter cohort which were accepted for BFP. In order to compliment and not contradict the 2020 BPS Terms and Conditions, the last acceptable day for a ‘valid BPS application’ for the purposes of BFP should have been 09 June 2020. The Appeals Officer therefore concluded that the 2020 BPS application submitted in November 2020 in this case should be accepted for the purposes of BFP.

In addition, the Appeals Officer was not satisfied that it was clear from the BFP Terms and Conditions that farmers not eligible to receive 2020 BPS payments could and should lodge a 2020 BPS application. Also, no additional information appeared on the BFP online application system to direct what to do in such circumstances. There was no evidence presented that the farmer had received any correspondence from the DAFM regarding 2020 BPS/ANC. The Appeals Officer recognised that it was open to potential applicants to engage an agent who likely would appreciate the technicalities of the provision but considered that the BFP Terms and Conditions should have given clear direction since the intention was that such applicants would be eligible once otherwise compliant. The Appeals Officer did not consider it reasonable to expect that potential applicants would clearly interpret from the provision at 7.3 that they should lodge an application for the 2020 BPS although they were ineligible for that scheme.

The Appeals Officer also noted the objective of BFP was to provide support for beef finishing farms in Ireland which had been severely impacted by the economic effects of the Covid-19 pandemic. This objective of the BFP was met in this case. Additionally, the Appeals Officer noted that there was no area-based component of the BFP related to the area declared on the 2020 BPS application. The Appeals Officer was satisfied the holding was actively farmed by the farmer in 2020. There were 40 eligible cattle slaughtered within the required reference period and the holding was registered for the *Beef Quality Assurance Scheme*. Additionally, throughout 2020 over 80 animals were slaughtered or sold, the majority of which were carried on the holding for approximately 2 years.

The appeal was allowed.



Case 02: Green Low-Emission Agri-Environment Scheme (GLAS) 3

During the third year of their Low-Emission Agri-Environment Scheme (GLAS) 3 contract the farmer's agent notified the Department of Agriculture Food and the Marine (DAFM) that a lease on some of the land parcels containing GLAS 3 actions would not be extended; one of these parcels contained the farmer's priority Wild Bird Cover action. The DAFM responded that as the action which gained the farmer Tier 2 access to GLAS 3 was on a parcel no longer being leased, the application would be rejected in line with the DAFM GLAS Circular 37/2015 which states that the *“withdrawal of a Priority Environmental Asset will result in the rejection of the application and the termination of the contract”*. Further to this, section 8.5 of the scheme Terms and Conditions states that *“the claimed area of parcels declared on the GLAS screen in the annual Basic Payment Scheme (BPS) application is deemed to be the area claimed for payment”*. If the parcel is no longer being leased it will no longer be claimed on the associated BPS application. The farmer sought a review of this decision, and the rejection from GLAS 3 was upheld on the basis that all GLAS actions, whether on owned, leased or rented land, must be delivered for the entire period of the contract.

The grounds of appeal included that the landlord breached the leasing arrangement by terminating the five-year lease early, and this was through no fault of the farmer, and was outside the farmer's control. Grounds also included financial difficulty as a result of recoupment imposed by the DAFM decision. An oral hearing of the appeal was conducted, the evidence included a copy of a written lease, with lease term equal to the duration of the GLAS contract. The farmer had the land for 2019 (the 3rd GLAS year) and the land was on their BPS application that year also. The loss of the land also had implications for BPS entitlements in 2020. Also, that owing to the Tier system in GLAS 3 the application was being rejected, whereas had the farmer applied under Tier 3 instead of Tier 2 they would still be in GLAS 3 on their remaining actions.

The Appeals Officer had regard to the GLAS 3 Terms and Conditions, especially those relating to eligibility for the scheme, to Article 35 of Commission Delegated Regulation (EU) No. 640/2014 in respect of refusal or withdrawal of aid in matters of eligibility and non-compliance with commitments or other obligations, and to Article 63 of Regulation (EU) No 1306/2013 of the European Parliament



and of the Council provides in respect of undue payments and administrative penalties.

The Appeals Officer found that when the farmer entered GLAS 3 they entered a 5-year contract with the Department to fulfil certain commitments/actions for the duration of the scheme, and it was clear they were unable to fulfil all of their action commitments because of the termination of the lease.

On examination of all the available documentation referenced above The Appeals Officer found the Wild Bird Cover action was not in fact an eligibility criterion of the scheme, but instead a commitment. The Appeals Officer found that Article 35 (2) of Regulation 640/2014 makes provision in the event of non-compliance for the support claimed to be refused or withdrawn in full or in part. Article 35 (3) makes it clear that when deciding upon the rate of refusal or withdrawal of support in respect of non-compliance that account be taken of severity, extent, duration, and reoccurrence.

The Appeals Officer found the DAFM were correct to reject the actions on the leased land from the farmer's GLAS 3 contract, including the Wild Bird Cover action and, under the regulatory provisions, to seek recoupment of any monies paid for these actions. However, taking into consideration the provisions of Article 63 of Regulation (EU) No 1306/2013 and Article 35 of Commission Delegated Regulation (EU) No 640/2014, the Appeals Officer found that the GLAS contract should remain in place for the actions on the remaining lands and there should be no recoupment of monies for those remaining actions.

The appeal was partially allowed.



Case 03: Cross Compliance affecting payments under the 2020 EU Basic Payment Scheme, the Greening Payment and other 2020 Area Based Schemes

The Department of Agriculture, Food and the Marine (DAFM) received a cross report from the relevant County Council, following an inspection conducted by officials in October 2020, that slurry/soiled water was discharging from a farmyard to a field drain and going directly to a local river. The inspection arose from a finding of a heavy water pollution incident where slurry was back traced to the farmyard in question. The cross report informed that previous inspections had taken place in October and November 2019 and details of those inspections were provided. Photographic evidence was included with the cross report. A letter had also issued from the County Council to the farmer in November 2019 seeking remedial works be completed. In October 2020 it was found that a channel running alongside a farm roadway to the dairy was constructed to divert surface water to a land drain. It was found that the farm roadway was soiled, and that slurry/soiled water was escaping into the channel and discharging from there to a field drain via a pipe. It was found that the field drain discharged to a local river, and it was found that sewage fungus was evident in this river.

In January 2021 the DAFM notified the farmer that there was reoccurrence involved and a 20% ‘intent’ sanction was applied to their payments due to Cross Compliance breaches under Statutory Management Requirement (SMR) 1 (Nitrates). An internal review was sought from DAFM with evidence from the farmer’s agricultural consultants. In the review decision the sanction was upheld. The decision was appealed.

The grounds of appeal included the absence of written notice and instruction from the County Council and the farmer was all the times undertaking improvement works. It was contended that an open concrete channel existed in the farmyard for collecting rainwater from machinery & storage sheds on higher ground, taking the water to a drain; the channel was also collecting rain / rainwater runoff from fields on higher ground, and has since been fully piped and the channel closed. Also, there was a concrete kerb installed on the farm road some years earlier to prevent soiled water from entering drains and this shows there was no ‘intent’ in what was found. Photographic evidence was provided. Further grounds were that a break point had been installed on the roadway to divert any excessive



rainwater away to an open channel (which was being maintained at the time with a road sweeping unit) and away from a tank. The grounds put forward accepted that when heavy rainfall coincides with cows using the farm roadway an element of soiled water would escape despite the farmer's best efforts. The farm has a number of grazing platforms, and the roadway is not in use at all times as a result; also, cows are never held on the roadway. All new buildings have been constructed in a manner to ensure no runoff. It was contended that once direction was provided on what works were required to meet the requirements, these were undertaken without any hesitation.

The Appeals Officer conducted an oral hearing of the appeal. At the hearing the DAFM outlined the background to the sanction and the off-farm effects found. The European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017 were referred to as setting out the requirements regarding storage of effluents, soiled water, and general practises to ensure water quality is protected. The farmer's side responded and provided background to the works undertaken and the grounds of appeal.

The Appeals Officer had regard to the Terms and Conditions with regards cross compliance responsibilities and that all beneficiaries must comply with the SMRs in respect of the environment, climate change, good agricultural condition of land, public, animal and plant health and animal welfare. Failure to do so may lead to a loss of payment under all of the above schemes and may also apply to more than one scheme year. Where a non-compliance is determined intentional, the reduction shall normally be 20% but this may be reduced to 15% or increased up to 100% depending on the reoccurrence, extent, severity and permanence of the non-compliance found. The penalty may also be extended outside of the year of the finding.

The Appeals Officer also had regard to the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017 and the minimisation of soiled water

5. (1) An occupier of a holding shall take all such reasonable steps as are necessary for the purposes of minimising the amount of soiled water produced on the holding.



(2) Without prejudice to the generality of sub-article (1), an occupier of a holding shall ensure, as far as is practicable, that—

(a) clean water from roofs and unsoiled paved areas and that flowing from higher ground on to the farmyard is diverted away from soiled yard areas and prevented from entering storage facilities for livestock manure and other organic fertilisers, soiled water, and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps and

(b) rainwater gutters and downpipes where required for the purposes of paragraph (a) are maintained in good working condition.”

Section 6 of the Regulations states as follows:

"6. (1) Livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps arising or produced in a building or yard on a holding shall, prior to its application to land or other treatment, be collected and held in a manner that prevents the run-off or seepage, directly or indirectly, into groundwaters or surface waters of such substances.

(2) The occupier of a holding shall not cause or permit the entry to waters of any of the substances specified in sub-article (1).”

In making an application to the 2020 BPS and other area-based schemes the farmer had agreed that the details supplied on their application, along with any supporting documentation, may be made available to any other Department, Agency or Body for the purposes of cross-compliance controls or for evaluation purposes.

With regard the findings of the discharge, the Appeals Officer was satisfied from the evidence from the County Council inspection in October 2020 that slurry/soiled water was discharging from a pipe on the farmyard to a field drain going directly to the local river, and this was an intent breach of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017. The sanction was also required to take account of reoccurrence as there had been a cross compliance breach under this SMR within the previous 3 years.



With regard to actions taken to address the findings, the Appeals Officer was cognisant of the findings from the day of the inspection and the significant off-farm impact that the escape of slurry/soiled water from the holding had on water bodies in the locality.

The Appeals Officer found there was insufficient grounds to overturn the 20% sanction for breach of SMR 1.

The appeal was disallowed.



Case 04: Beef Exceptional Measure (BEAM) 2015-2020

The farmer applied for the Beef Exceptional Aid Measure (BEAM) 2015-2020. Under the BEAM Terms & Conditions animals eligible for payment are bovine animals aged over 12 months that were presented to a slaughtering establishment in the period 24 September 2018 to 12 May 2019. The Department of Agriculture Food and the Marine (DAFM) rejected the BEAM application as not in compliance with the Terms and Conditions as all 23 animals were sold by the farmer on 14 May 2019, outside of the eligibility period, and were ineligible for payment. An internal review by the DAFM upheld the rejection of the application.

The decision was appealed against on grounds the herd was restricted under the Disease Eradication Programme from April 2019, and the farmer could not move any stock until all test reactors were removed and slaughtered. The test reactors were valued on 01 May 2019, follow up blood tested on the 07 May 2019 and removed on the 09 May 2019. With the consequence that the earliest date the 23 animals under appeal could be slaughtered was the 14 May 2019.

The Appeals Officer reviewed the facts and circumstances particular to this case in compliance with the legislation and with the Terms and Conditions of BEAM, and had particular regard to the following;

9. Payment rates

9.1. Payments for the Measure shall be calculated on the basis of the following eligible animals within eligible herds:

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



The Appeals Officer found the eligibility period for the slaughtering of animals is set out clearly in the BEAM Terms and Conditions. During consideration of the appeal, the Appeals Officer received confirmation from the DAFM that the only dates on which the farmer was prohibited from slaughtering animals from the herd under the restriction provisions were from the 23 April to 26 April 2019, those being the dates when the animals in the herd were undergoing a TB skin test.

The Appeals Officer found the 23 animals at appeal were slaughtered on the 14 May 2019, a date which was outside of the timelines specified in the BEAM Terms and Conditions for payment. The Appeals Officer found the DAFM had correctly applied the Terms and Conditions in this case.

The appeal was disallowed.



Case 05: Areas of Natural Constraints Scheme (ANC) 2019

The farmer was an applicant for the 2019 Areas of Natural Constraints Scheme (ANC). The farmer was informed by the Department of Agriculture, Food and the Marine (DAFM) that they did not meet the ANC stocking density requirement to have at least 0.15 livestock units per hectare on their holding for a minimum period of seven consecutive months and were ineligible for payment under the scheme as a result.

The farmer appealed on grounds that their herd was restricted under the TB Eradication Schemes, that the DAFM removed one animal under the TB rules, two animals had died, and a number of finished animals were sent to slaughter per their normal farming practice. The farmer claimed to have been unable to continue holding onto the finished stock on welfare grounds as they were housed and finished. The farmer claimed to be unable to source good quality cattle on the market within 10 days of the derestriction of their herd – this is a requirement in the ANC Terms and Conditions. The farmer instead purchased a number of store cattle between September and December 2019 when the type of cattle suitable for the farming system (coming off grass) became available.

The herd restriction period was from mid-March 2019 to mid-August 2019 in this instance and, per the Terms and Conditions of the ANC scheme, restricted herds are required to meet the minimum required stocking density within 10 days of the date of derestriction.

The Appeals Officer had regard to the Terms and Conditions for the ANC 2019 which require;

7. Stock Retention Period

The retention period for the 2019 scheme is 7 consecutive months within the calendar year i.e. 1st January 2019 to 31st December 2019, where the stocking density on the holding has to be equal to or greater than 0.15 livestock units per forage hectare.



In cases where a holding has been restricted due to the presence of an animal disease (e.g. TB) applicants are required to meet the minimum required stocking density within 10 days of the date of derestriction.

The Appeals Officer found the ANC Terms and Conditions were clear in respect of the stocking requirements. The Appeals Officer had regard to the Animal Welfare legislation in assessing the grounds of appeal and the duty of care that rested on the farmer in respect of having a large number of finished stock housed. The Appeals Officer found the farmer had given full consideration to the welfare and safeguard of the animals by slaughtering them when they were fit in order to prevent any unnecessary suffering or endangering of the health or welfare of these animals while housed on the holding within slatted units. The Appeals Officer accepted the herd restriction impacted on the farmer's annual stock management and accepted that the quality and type of animal needed to maintain the standard within their herd may not have been present on the market within the 10-day timeframe set out in the Terms and Conditions.

The appeal was allowed



Case 06: Beef Data Genomics Programme (BDGP) (extension) 2021

The farmer participated in the Beef Data Genomics Programme (BDGP) 2015. The programme was to run until 2020. A decision was made by the Department of Agriculture, Food and Marine (DAFM) to extend the programme for year 2021, with the programme open to participants who met the requirements for the 2015-2020 programme.

The farmer was informed they were deemed ineligible for the BDGP 2021 extension as they had not met the BDGP requirement to have an eligible stock bull on their holding on 30 June 2019. A review was sought on the basis that the farmer intended to use 100% Artificial Insemination (AI) from then. The DAFM upheld its decision on the matter. The decision was appealed.

The grounds of appeal were that the bulls in the herd were not used for breeding and 100% 5-star AI bulls are used and based on this use of 5-star AI bulls, the farmer should be allowed participate in the BDGP extension.

The DAFM responded that the farmer had used a bull in 2019 but did not have an eligible stock on 30 June 2019.

The Appeals Officer had regard to the BDGP 2021 Terms and Conditions,

4. Eligibility

To be eligible to apply to participate in the Programme, an applicant (inter alia):

- Must have met the Stock Bull/AI requirement of Programme in 2019



The Terms and Conditions for the 2015 to 2020 BDGP were also relevant

10 Requirements of the programme

Requirement 4 - Replacement Strategy - Applicants will be required to maintain a proportion of high genetic merit animals on their holding as detailed below:

Stock Bull Replacements - For applicants using a stock bull, at least one stock bull on the holding on 30th June 2019 must have been a genotyped 4 or 5 star bull on either the Terminal or Replacement index (on a within or across breed basis) at the time of purchase.

The Appeals Officer found some of the calves born in the farmer's herd in 2020 were sired by a stock bull rather than by AI and there was no 4- or 5-star genotyped stock bull(s) on the holding on 30 June 2019. The Appeals Officer found that compliance with requirement 4 (replacement strategy) of clause 10 of the 2015-2020 Terms and Conditions is an eligibility requirement set out for in the 2021 BDGP (extension) Terms and Conditions. As a result, the Appeals Officer found that compliance with this requirement was necessary for eligibility for the 2021 extension, even in the case where it is intended to only use AI in a future breeding program. The Appeals Officer found the requirement was not met and the farmer was correctly deemed ineligible.

The appeal was disallowed.



Case 07: Areas of Natural Constraints Schemes (ANC) 2020

The farmer made application to the 2020 Basic Payment Scheme (BPS). This online application facility also included an option to apply for payment of the 2020 Areas of Natural Constraints (ANC) Scheme. When completing the BPS online application, the applicant is requested to tick an application box onscreen to confirm application for the ANC Scheme. The farmer did not complete the ANC application tick box on their online application and no payment issued under the ANC scheme. Following enquiry, the Department of Agriculture, Food and the Marine (DAFM) confirmed to the farmer that: *“when completing the Basic Payment Online application, you were requested to tick the box to confirm that you wished to apply for payment under the ANC. If you did not tick the box and had eligible ANC land, you were further requested to tick “I want to apply for ANC” or “I do not want to apply for ANC”. As you ticked that you did not want to apply for ANC, no ANC application was processed. As a result, no payment issued for the 2020 ANC Scheme”*. The decision was appealed.

The farmer acknowledged in their grounds of appeal that they did not tick the appropriate box, but this was due to a misunderstanding of the Terms and Conditions and not being familiar with the online application process. The farmer submitted that the lands were eligible lands for the ANC Scheme and historically they had been compliant with the ANC Scheme.

The Appeals Officer had regard to the Terms and Conditions of the Scheme, the relevant EU legislation, and the circumstances particular to this case. The ANC Scheme is implemented pursuant to EU Regulation 1305/2013.

The 2020 ANC Scheme Terms and Conditions set out as follows.

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



Applications for the 2020 ANC/ASC Schemes must be made using the 2020 Basic Payment and other Area-based schemes online application. It is necessary to tick the appropriate ANC applicant box and applicants or their authorised agent must ensure that they have done so. It is also necessary to ensure that all other relevant areas of the Basic Payment and other area-based schemes application are completed in order to lodge a valid claim. The closing date for applications is 15th May 2020. Applications may be submitted up to midnight on that date.

5. Scheme requirements and eligibility

To be eligible for payment under the 2020 ANC/ASC Scheme an applicant must in their own right: Submit via the Basic Payment Online Application Online system, a valid 2020 Basic Payment Scheme and other Area-based Schemes application form by the deadline of 15th May 2020 and confirm application for ANC/ASC Schemes by ticking the ANC applicant box.

From the evidence the Appeals Officer found that the online application details screen provides options to tick boxes for a number of schemes including ANC and to confirm application for payment under the ANC Scheme. If this ANC application box is not ticked and there is eligible ANC land, the applicant is further requested to tick either 'I want to apply for ANC' or 'I do not want to apply for ANC'. This was a two-step process where the applicant had, on two occasions, to make the choice about ANC before progressing. The ANC application cannot be completed unless either one of these boxes are "ticked". In the farmer's case, as the box stating 'I do not want to apply for ANC' was ticked, no ANC application was processed and, consequently, no payment issued under the 2020 ANC scheme.

The Appeals Officer acknowledged the farmer continues to farm in the same manner each year and had not changed their farm activity. However, the Appeals Officer found the ANC scheme is an annual scheme with separate Terms and Conditions for each year and applicants must submit an application each year. The farmer had successfully applied online in both previous years 2018 and 2019.



The Appeals Officer found there were adequate explanations provided both in the Terms and Conditions and during the 2020 online ANC application process. While it was clear to the Appeals Officer the farmer had made a genuine mistake, the onus was on them as the beneficiary of the payments under the ANC scheme to have full knowledge of the requirements, and the decision of the DAFM was in accordance with those Terms and Conditions.

The appeal was disallowed



Case 08: Young Farmers Scheme (YFS)

The farmer was an applicant under the Young Farmers Scheme (YFS) and was farming in a Registered Farm Partnership (RFP). The farmer/RFP was the subject of an on-the-spot inspection by the Department of Agriculture Food and the Marine (DAFM) to check for compliance with the rules of the YFS during March 2020. The on-the-spot inspection involved two parts. The first was to check that the land was eligible and in this instance no issue arose with regards land eligibility. The second part was to check that the young farmer is in managerial and financial control, either solely or jointly with others as the case may be. In addition, participants must be able to demonstrate that they meet the age and educational requirements.

The on-the-spot inspection process required a check of the first, the largest and the second last transactions done for both livestock sales and purchases. In this case the largest purchase was of eleven bovines during 2019 and was found not to have been paid from a bank account on which the young farmer was named and instead was paid for from an account in the sole name of the young farmer's parent.

Following a response to the Control Report, the DAFM issued a decision deeming the young farmer ineligible for the YFS payment as livestock purchases did not transact through a bank account in which the young farmer was named. The farmer sought a review from the DAFM. The DAFM upheld the original decision citing the young farmer failed to demonstrate full financial control of the holding in 2019.

The grounds of appeal included that the RFP runs a dairy farm and the RFP, of which the young farmer is a member, had full financial control of the farm operation, and everything is purchased through the farm bank account (evidence was provided). The purchase at issue was of eleven dairy cows and coincided with a breakdown in internet banking when on site to make this purchase. Another member of the RFP, paid for them out of his own bank account to which a weekly sum was being transferred from the RFP bank account for the purpose of building up monies for animals, machinery,



etc. The RFP's accountant had been consulted on this matter. The loss of the YFS payment was considered significant. While the weekly payment was noted, the DAFM evidence included that the amount paid for the eleven animals was not reflected on a reciprocal payment from the RFP account to the other account.

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

The Terms and Conditions for the 2019 EU Basic Payment Scheme (BPS)/Greening Payment and Other 2019 Area-Based Schemes required.

Section 3: Young Farmers Scheme

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

- *At least one person in the group must meet the definition of Young Farmer*
- *That Young Farmer must exercise effective and long-term control either solely or jointly within the group in terms of decisions related to the management, benefits and financial risks of the group. Such control is demonstrated as follows:*
 - *the young farmer's name is on the herd number;*
 - *the young farmer's name is on the bank account used for the purposes of receipt of payments under the Basic Payment Scheme and Young Farmers Scheme;*
- *All persons who participate in the group must complete a National Reserve/Young Farmers Scheme Declaration form confirming that the young farmer has effective control, either solely or*



jointly with the other members of the group. This declaration form is available with the online scheme application form and also available on the Department's website.

In the event of a young farmer being selected for inspection under the Young Farmers Scheme additional checks will be 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.

5% of applicants under the Young Farmers Scheme will be selected for inspection to ensure compliance with the rules of the scheme. Documentary evidence to verify that the 'young farmer' is solely or jointly in control of the holding will be sought as part of the inspection process. In this regard, irrespective of whether the young farmer is solely or jointly in control of the holding, there is a requirement to demonstrate such managerial and financial control. This includes the young farmer's name on invoices and receipts and on the bank account used for all the transactions or business of the holding."

The Appeals Officer found all other transactions for the farming enterprise were done through the RFP bank account including payments for insurance, wages, tags, animal feed, fertiliser, marts, and payments received from the DAFM and from creameries etc. Only one payment, that for the eleven dairy cows was not paid from the RFP account. The Appeals Officer noted the DAFM had otherwise found the young farmer demonstrated they were actively involved in the running of the farm and showed full knowledge of the day-to-day management of the holding.

The Appeals Officer found the young farmer was undertaking their farming activity as part of a group i.e. in an RFP, and that they had demonstrated and carried out effective and long term financial control jointly within the RFP. The Terms and Conditions outlined at Section 3 how this control can be demonstrated, and the young farmer had met each condition vis; their name is on the herd number, their name is on the bank account used for the purposes of the receipt of payments the various Department schemes and that a YFS Declaration Form had been completed. The members of the RFP



are jointly registered as herd owners, make joint scheme applications, receive joint scheme payments, provided evidence of receipts for payments relating to farm operations, provided bank account details and a breakdown of farm sales and purchases. In relation to the payment for the eleven cows paid by cheque from an account on which the young farmer was not named, this was one payment when there was an issue experienced with internet banking.

The Appeals Officer found on balance of all of the evidence submitted that the young farmer was exercising “effective and long-term control either solely or jointly within the group in terms of decisions related to the management, benefits and financial risks of the group”.

The appeal was allowed.



Case 09: Cross Compliance (GAEC 7) affecting payments under 2019 Basic Payment Scheme and other area related schemes

The farmer's holding was subject to a full cross compliance inspection by the Department of Agriculture, Food and Marine (DAFM) in 2019, and non-compliance was identified with regard to Good Agricultural and Environmental Condition (GAEC) 7. The non-compliance was notified to the farmer along with a resulting sanction and comprised of 270 metres of landscape feature (drain) removal and a 5% sanction applied. Also, a replacement drain(s) of 270 metres was required be put in place within 12 months of penalty notice letter. An internal review was sought from the DAFM and the decision and sanction were upheld. The matter was appealed.

The grounds of appeal questioned whether the drain should be considered a landscape feature, rather it was an area prone to flooding that had been rectified. The farmer's father had tried to create a drain to remove excess water from the area, the drain area had become intractable, and an animal had been lost there in 2016 (knackery evidence provided). The area had been piped in 2016 to prevent more accidents occurring.

The Appeals Officer conducted an oral hearing of the appeal. The farmer's agricultural advisor gave evidence the drain was man-made and was cleaned every year and was also dry for 6 months of the year but would flood each year and a works vehicle had gotten stuck there. The drain was a hazard and was removed for safety reasons. Added evidence was that trees had been planted in other areas of the farm over the past number of years. The DAFM responded that if a drain was to be removed another drain of equal length had to be created and it did not necessarily have to be in the same area of the farm, and this had not happened in this instance.

The Appeals Officer had regard to the Terms and Conditions of the Scheme, and the relevant EU legislation. The 2019 Basic Payment Scheme (BPS) Terms and Conditions under the heading Landscape Features and the sub heading Definition of hedgerows, trees in a line and drain/ditch, national monuments is stated; *Hedgerows, trees in a line and drains/ditches are designated as*



Landscape Features under GAEC and are eligible for payments under the BPS and other area-based schemes. Under GAEC 7 beneficiaries are obliged to retain and maintain designated landscape features.

A drain/ditch, for the purpose of Cross Compliance is an open trench, which is dug to improve the drainage of agricultural land. it generally starts within the holding and is linked directly or indirectly through other drains, to a stream or river, which passes through or alongside the holding. it may contain water permanently or only following heavy rain.

Under the sub heading Hedgerows, trees in a line and drains/ditches requirements is stated;

Where, in exceptional circumstances, it is necessary to remove a hedgerow, remove a line of trees or fill in a drain for good reasons such as farmyard expansion, the farmers may do so provided a new hedgerow, new line of trees or drain of equal length and like for like i.e. a hedgerow is replaced with a hedgerow comprising of traditional hedgerow species is planted or dug in advance of the removal of the old hedgerow, line of trees or drain on the farmers holding....

Where it has been detected that a landscape feature has been removed/damaged in previous years, a sanction may be applied in the current year i.e. the year of the finding. In addition to the application of the sanction, a new hedgerow, line of trees or drain/ditch of equal length to the feature removed, must be planted or dug within 12 months. Otherwise, a further cross compliance sanction will be applied. ...

Where new hedgerows are planted or drains dug to replace hedgerows or drains removed, these become landscape features once the old hedgerow or drain is removed and consequently must be retained. Hedgerows or lines of trees planted under AEOS or GLAS are additional and cannot be accepted as replacement hedgerows for hedgerows removed.

The Appeals Officer also found the Explanatory Handbook for Cross Compliance Requirements makes it clear that drains and ditches are landscape features and can only be removed if a replacement drain is dug in advance of the removal. It is also made clear that a farmer can only replace like with like, and that sanctions will be imposed if this does not happen.



On examination of all available evidence the Appeals Officer found there had been a drain of 270 metres in place, and that at the time of the cross-compliance inspection the drain had been removed and had not been replaced prior to its removal. The Appeals Officer found the drain was a landscape feature as defined in the 2019 BPS Terms and Conditions, and where a drain was considered a hazard then the prior creation of a drain of equal length elsewhere on the holding would have prevented any sanction. The Appeals Officer found that the sanction imposed by the Department following the cross-compliance inspection to be the correct sanction in this case.

The appeal was disallowed



Case 10: Organic Farming Scheme (OFS)

The farmer had commenced in the Organic Farming Scheme (OFS) during 2015. On 30 October 2019 the Organic Section of the Department of Agriculture, Food and Marine (DAFM) received notice from the organic licencing body that the farmer was lapsed as a member from September 2019 to September 2021. Subsequently, the DAFM issued a decision to the farmer that as they had lapsed as a licenced organic operator, all aid paid under the OFS was required to be repaid. This decision was appealed against, and the Appeals Officer conducted an oral hearing of the appeal.

The evidence included that a September 2019 inspection carried out by the organic licencing body had revealed a Level 2 Intermediate Infringement, and a Level 3 Critical Infringement; animals had been found grazing “rented” non-organic land and as a consequence non-organic feed was fed to herbivores. The farmer had been under warning from previous inspections that future findings at Level 3 or above would result in the withdrawal of their licence in its entirety under a Level 4 Manifest Infringement subject to confirmation from DAFM. The body applied a Level 4 Manifest Infringement and the farmer’s licence was withdrawn for a period of two years. This sanction was confirmed by the Organic Unit of DAFM.

The farmer contended there was no Level 3 or Level 4 infringement and previous infringements had all been rectified, the land in question was availed of from a person who had left the organic scheme, and the intention was to till and grow a crop on the land and not to put livestock on it, but the owner had refused permission to do so. The farmer had taken silage from the land and sold this, and never had cattle on the land, and had confirmation from the silage purchaser and the silage contractor. Ongoing medical issues of a serious nature were also evidenced.

The Appeals Officer noted the inspection which identified the non-compliance was conducted by the certifying organic body and cross reported to the DAFM.

The Appeals Officer had regard to the OFS Terms and Conditions, which at Section 10 states.



c. Withdrawal of the licence by the Department or OCB within the terms of the OFS contract shall mean termination from the Scheme and full recoupment of all aid paid, including interest payable under S. I. No. 13 of 2006.

Annex 2 of the Terms and Conditions is titled Administrative Penalties and states;

c. The revoking of the organic licence will result in the termination of the contract and the full recoupment of all aid paid under the scheme including, where applicable interest payable under SI No. 13 of 2006.

Article 30 of Council Regulation (EC) NO 834/2007 is titled Measures in case of infringements and irregularities and states;

1. Where an irregularity is found as regards compliance with the requirements laid down in this Regulation, the control authority or control body shall ensure that no reference to the organic production method is made in the labelling and advertising of the entire lot or production run affected by this irregularity, where this would be proportionate to the relevance of the requirement that has been violated and to the nature and particular circumstances of the irregular activities. Where a severe infringement or an infringement with prolonged effect is found, the control authority or control body shall prohibit the operator concerned from marketing products which refer to the organic production method in the labelling and advertising for a period to be agreed with the competent authority of the Member State.

2. Information on cases of irregularities or infringements affecting the organic status of a product shall be immediately communicated between the control bodies, control authorities, competent authorities and Member States concerned and, where appropriate, to the Commission. The level of communication shall depend on the severity and the extent of the irregularity or infringement found....

The Catalogue of Infringements under the heading “Note on the Suspension of Operators” states;

Article 30 (1) of Council Regulation (EC) 834/2007 provides that:



"where a severe infringement or an infringement with prolonged effects is found, the control authority or control body shall prohibit the operator concerned from marketing products which refer to the organic production method in the labelling and advertising for a period to be agreed with the competent authority of the Member State ".

In Ireland either type of breach (severe infringement or an infringement with prolonged effect) is referred to as a 'manifest infringement'. The period during which an operator is prohibited from marketing organic products should be considered on a case-by-case basis. However, to ensure the Irish Control Bodies adopt a broadly consistent approach, the following framework should be applied.

The Framework - Two years will generally be seen as the appropriate period of prohibition for a severe infringement or an infringement with a prolonged effect. This prohibits the licensee to trade in any organic product for a period of two years.....

Annex II of the Catalogue of Infringements details the various non-compliance issues and whether they are Level 1, 2, 3 or Level 4.

In this case the inspection Compliance Report stated; *It was noted at the scheduled 2019 inspection that in-conversion animals had been grazing non-organic land thereby non-organic feed was fed to herbivores which is classified as a Level 3 Irregularity/Critical Non-Compliance.* The inspection also noted issues with licence renewal documentation and a failure by the farmer to attend a mandated Organic Production Course. The Appeals Officer received confirmation of past inspections which resulted in the issue of a notice that future infringements arising at Level 3 or above would result in the withdrawal of the farmer's licence in its entirety under a Level 4 Manifest Infringement subject to confirmation by the Organic Unit of the DAFM. The Appeals Officer accepted the evidence that the farmer's cattle were grazing the lands on the day of inspection by the organic certification body. The Appeals Officer noted the silage contractor's evidence related to 2018 and not the inspection year, also the silage purchaser's letter related to April 2019 and not the inspection period.



Following examination of the evidence, the Appeals Officer found the decision taken by the organic certification body and endorsed by the DAFM to suspend the farmer's licence for two years from September 2019 was provided for in regulations. However, regarding the recoupment requirement, the Appeals Officer found the medical evidence compelling in the case and considered the force majeure provisions as laid out in the scheme Terms and Conditions and in Article 2 of Regulation (EU) No 1306/2013 were applicable regards long-term professional incapacity. So, while otherwise upholding the consequences of the decision to suspend the organic licence, the Appeals Officer deemed the recoupment of all aid paid should not apply in this particular case.

The appeal was partially allowed.



Case 11: TAMS II Animal Welfare Safety and Nutrient Storage Scheme (AWSNSS).

Application was made to the TAMS II Animal Welfare Safety and Nutrient Storage Scheme (AWSNSS) in June 2017, and the Department of Agriculture, Food and the Marine (DAFM) issued approval in September 2017 with a requirement for the approved works to be completed and payment claim be submitted by 04 September 2018. However, the farmer submitted the payment claim in June 2019. The DAFM issued a decision that no payment would accrue as the payment claim was 84 calendar days after the latest date for valid receipt (included a penalised late period). An internal review was sought and in August 2019 the DAFM upheld the decision to refuse grant aid. The decision was appealed.

The grounds of appeal included delays in receiving and installing the applied-on equipment due to difficulties on the supplier's part. The farmer experienced problems contacting the supplier and was then informed that the installation would be done during November 2017, but this was subsequently cancelled due to poor weather. A re-scheduled installation was again cancelled, and the supplier's representative was not answering phone calls. The farmer contended further problems arose when incomplete equipment was delivered, and the fitters were unable to install it, with the result the farmer was unable to get the works completed and get the application submitted on time. The farmer provided documentary evidence in support.

With the agreement of the farmer, the Appeals Officer, held an oral hearing of the appeal through remote means. The DAFM gave evidence regards relevant dates and confirmed the farmer had not availed of the scheme provision to seek an extension to the time allowed for completion and payment claim. The farmer's evidence included that they were aware of the deadline and were at all times trying to get the works completed and claimed for – and believed a correct supply and installation was no more than one day's work but instead they were frustrated by delays and incomplete provision of parts. Grounds of ill health were raised, and medical evidence was submitted by the farmer in support.



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

The Appeals Officer found the Terms and Conditions very specific in that the responsibility is on the applicant for the accuracy of any information or documentation provided and the applicant must familiarise themselves with the scheme Terms and Conditions, the Specifications and any amendments thereof and with the consequences for breaches of the scheme.

Paragraph 8.0 of the Terms and Conditions states in respect of completion of work and claims for payment *that all works must be completed, and claims must be submitted within six months of approval in the case of certain equipment and within twelve months in the case of structures and fixed equipment from the date of issue of approval/extension or by a date specified in the letter of approval, whichever is earlier (See Annex B for more details).*

In cases where work has commenced and/or deposits paid but additional time is needed to complete investment work or finalise supporting documentation, an application for an extension can be applied for. Extensions are only applicable to 12-month approvals. Approvals with a three-year completion time frame are not eligible to apply for an extension. The extension will be for a maximum of six months starting from the original completion date. The extension will be granted only for structures and fixed investments where work has commenced, or deposit paid for certain mobile investments. The application for an extension must be lodged together with documentary evidence to the online system between the start of the eighth month and before the end of the eleventh month following the original date of approval.

The Appeals Officer was cognisant that the farmer received approval in September 2017 and that the date to have work completed and all claims submitted was in September 2018. However, the payment claim was made in June 2019. The penalty section at Annex C of the Terms and Conditions specified late claim penalties of a 1% reduction in grant-aid per week or part thereof that the claim exceeded



the claim deadline, and a 100% penalty where the claim was submitted 13 weeks or more late. The farmer's claim was 84 days after the end of this period and incurred a 100% penalty.

Regards the medical case raised, the Appeals Officer noted that the Terms and Conditions required that cases of force majeure or exceptional circumstances be notified to the DAFM and that this did not happen in this case. Evidence of a medical condition which lasted from February 2018 until June 2019 was provided. However, the Appeals Officer found the illness evidenced did not constitute grounds on which to invoke the provisions for force majeure or exceptional circumstances in this particular case. The Appeals Officer found that the Terms and Conditions of TAMS II Awnss had provision for a six-month extension to be granted in certain circumstances when difficulties are encountered, but the farmer had made no application to the DAFM for the extension to be considered.

The Appeals Officer considered the grounds regards delay with the supplier to be a matter between the farmer and their supplier. The farmer was bound by the scheme Terms and Conditions and the Appeals Officer found the Terms and Conditions and the letter of approval were clear on the completion date and the extension provision, the farmer had one year from the approval date to complete the works and could have made a case and sought a 6-month extension. The Appeals Officer found the penalties for late submission are set out in Annex C the penalty schedule and were correctly applied by the DAFM in this case.

The appeal was disallowed



Case 12: TAMS II Animal Welfare Safety and Nutrient Storage Scheme (AWNSS) - Sheep Fencing.

An application under the TAMS II Animal Welfare Safety and Nutrient Storage System Scheme (AWNSS) was submitted and approved. A claim for payment was submitted in February 2020, and the case was subject to prepayment checks by the Department of Agriculture Food and the Marine (DAFM). These checks found the farmer did not own and possess the required minimum number of 40 sheep at the time of application to the scheme or at the time of submitting the payment claim and did not hold an average number of 40 sheep and the claim was deemed ineligible. An internal review was requested and the outcome of the DAFM review was to uphold the decision of nil payment.

The grounds of appeal included that the farmer had fulfilled the condition on the Department's Approval Letter regarding the number of sheep i.e. having 40 sheep at the latest by the date the payment claim is submitted, that 40 sheep were purchased in September 2019, prior to the payment claim in February 2020, that the approval letter had not stated that a yearly average of 40 sheep was needed and that sheep could not be kept until there was fencing erected.

An oral hearing was conducted at which the DAFM explained the purpose of the reference to the number of sheep required, and that the requirement came about in collaboration with the Farming Bodies. The wording at paragraph 6.2 of the Terms and Conditions was amended to reflect the necessity to have sheep, and the wording in the Letter of Approval was also amended. The DAFM also explained that at the time of application there were no sheep on the holding, and there were none again when inspected, therefore based on the provisions of the Terms and Conditions, the payment claim was rejected.

The farmer explained sheep farming was a new enterprise and the land needed to be fenced off properly prior to any sheep purchase, the fencing was erected in Summer 2019 and sheep were purchased in September 2019.



The Department's representative explained the process involved in the change regarding the requirement on sheep numbers, starting with the Ministerial Order. They also explained that the new conditions were in place at the time of the approval of the farmer's application. The farmer emphasised that the average annual number of 40 sheep is not specified in the approval letter issued. The DAFM acknowledged ambiguity between the Terms and Conditions and the letter of Approval.

In deciding the appeal, the Appeals Officer had regard to the Terms and Conditions of the Scheme and relevant guidelines, the relevant EU legislation and the circumstances particular to the case.

At paragraph 6.2 of the Terms and Conditions for the TAMS II Awnss relating to claim, the following is stated:

To qualify for sheep fencing an applicant must own and possess a yearly average of 40 adult sheep (weaned lamb or older) at time of application or at the latest by the date the claim is submitted for payment. Applicants must maintain a sheep enterprise for at least five years from the date of payment of grant aid.

However, the letter of Approval that issued contained other specific contract requirements including, as an 'Additional Conditions' clause to the contract, the following condition regarding the number of sheep:

You must have 40 or more sheep at the latest by the date your payment claim is submitted in order to qualify for payment for sheep fencing. Sheep must be owned and farmed for at least 5 years from the date of payment, otherwise recoupment of the grant for sheep fencing will apply.

The Appeals Officer acknowledged that the DAFM applied the Terms and Conditions resulting in the 100% penalty. However, the Appeals Officer also took into consideration the condition included in



the Department's Approval letter, which they found is also a condition of the contract, and under this condition the question of a yearly average did not arise. The Appeals Officer found there was an ambiguity between the condition at 6.2 of the Terms and Conditions and the 'Additional Conditions' clause inserted on the Department's Approval letter which the farmer had fulfilled by purchasing 40 sheep prior to the claim for payment. The evidence also showed the farmer had continued in sheep farming and now held much higher numbers.

The Appeals Officer, having regard to the Contra Proferentem Rule, found the 'Additional Conditions' clause of the Department's Approval letter should be relied upon in this case, and that the claim for payment should be eligible.

The appeal was allowed.



Case 13: Beef Data and Genomics Programme (BDGP) 2021

The farmer had sought inclusion in the 2021 extension of the Beef Data and Genomics Programme (BDGP) 2015-2020 from the Department of Agriculture, Food and the Marine (DAFM). The extension was open to BDGP participants who met specific requirements from the BDGP 2015-2020 Terms and Conditions. The DAFM deemed the farmer had not fulfilled the Stock Bull/AI requirement of the BDGP 2015-2020, and as a result were ineligible to extend their participation into the 2021 transitional year. An internal review was sought, and the decision was upheld.

The grounds of appeal included that the farmer had submitted a DNA sample for a bull on time, but the result was a 3 Star rating and the time period for replacement, up to 30 June 2019, had elapsed by the time of the result and for to obtain a 4 or 5 star rated bull. The grounds also included matters of a medical nature for consideration under force majeure provisions.

An oral hearing was conducted by the Appeals Officer. At the oral hearing the DAFM outlined the Bull Replacement requirement. To be eligible to join the transitional year 2021, there must have been a stock bull on the Appellant's holding on 30 June 2019, that was genotyped 4 or 5 Star on either the Terminal or Replacement index (on a within or across breed basis) at the time of purchase. The extension of the BDGP to 2021 was only open to those who satisfied the eligibility conditions, and the bull replacement requirement was an eligibility condition. The DAFM deemed the farmer did not have an eligible stock bull on their holding on 30 June 2019.

The farmer had sent the DNA sample for analysis on 05 May 2019 which the laboratory received on 08 May 2019, but despite phone calls the result of a 3 Star rating was only obtained on 25 July 2019. The Appellant contended that if they had known earlier about the 3 star result they would have purchased a 4 star replacement immediately and they understood the DAFM would have allowed a period of time to get a 4 star bull. In any event a new bull was purchased in September 2019. The farmer added that the 3 Star stock bull was, in their opinion, a very good bull and they



felt sure the bull was 4 star or 5 Star quality and was awarded this star rating the following year. Documented medical evidence was submitted, be taken into account under Force Majeure.

The DAFM side explained that the bull replacement requirement for BDGP had been covered in the Training for participants, and that the DNA sampling kit had been sent out in November 2018 and it had taken 7 months for to be sent back, this period for DNA sampling was provided to accommodate the high number of participants in the programme. The acquisition of a 4-star bull in September 2019, unfortunately did not meet the requirement as it was outside of the time frame.

The Appeals Officer in deciding the appeal was bound by the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to the case. The BDGP 2015- 2020 Terms and Conditions, at the Section entitled *Requirements of the Programme* for the BDGP 2015-2020, set out the replacement strategy

Stock Bull Replacements

For applicants using a stock bull, at least one stock bull on the holding on 30th June 2019 must have been a genotyped 4 or 5 Star bull on either the Terminal or Replacement index (on a within or across breed basis) at the time of purchase. This bull should be retained on the holding and where it is replaced in the period to 30th June 2020, it must be replaced by a bull of equivalent genetic merit i.e., a genotyped 4 or 5 Star bull on either the Terminal or Replacement index (on a within or across breed basis) at the time of purchase.

Also, the BDGP 2021 eligibility criteria in the Terms and Conditions included that to be eligible to apply to participate in the Programme, an applicant:

- *Must have met the Stock Bull/AI requirement of Programme in 2019*

The Appeals Officer found the farmer did not comply with the bull replacement requirement for 2019 and this was a breach of the specific eligibility condition under the BDGP 2021 Terms and Conditions. The Appeals Officer noted the subsequent DNA evaluation showed the 3 Star bull on



the holding in June 2019 acquired a 4 Star rating in January 2021 but found this did not remove or satisfy the requirement for a 4 or 5 Star rating on 30 June 2019 – a mandatory eligibility requirement.

As regards the time period involved in DNA sample analysis, the Appeals Officer was cognisant the sampling kit was issued in November 2018, and the sample was only submitted in May 2019, albeit before the June 2019 deadline. The Appeals Officer took into account there was flexibility afforded by the DAFM for DNA results received after the deadline, in cases where the rating achieved was a 4 or 5 star and where the bull was on the holding on 30 June 2019, but this did not arise in this instance as the bull was rated a 3 star.

The Appeals Officer had noted the BDGP Terms and Conditions strongly cautioned participants in relation to the stock bull: *Applicants using stock bulls are strongly advised to introduce 4 or 5 Star bulls at the next replacement date to avoid compliance difficulties and potential clawback of payments later in the Programme.* The potential for compliance difficulties/clawbacks is flagged.

The Appeals Officer examined the evidence submitted for consideration under force majeure and the pressures that the circumstances evidenced would have caused. In relation to the Force Majeure circumstances, the Force Majeure provisions are set out in the 2021 BDGP Terms and Conditions, and reflecting the underlying EU legislation, and acknowledged the medical issues and anxieties experienced but had to balance this with the fact the farmer continued to otherwise carry on their farming activity. There was a relatively long period of time available for the farmer to submit the DNA sample, and the BDGP Terms and Conditions did caution each applicant regarding the stock bull replacement requirement and the possibility of non-compliance/clawback arising there from. On this basis, the Appeals Officer deemed the provisions of Force Majeure could not be applied in this case.

The appeal was disallowed.



Case 14: Green, Low-Carbon, Agri-Environment Scheme (GLAS), Tranche 2

The farmer commenced a Green, Low-Carbon, Agri-Environment Scheme (GLAS) – Tranche 2 contract in January 2016. The actions for which they were approved, and which formed the basis of their GLAS contract with the Department of Agriculture Food and the Marine (DAFM), were 1. Low-input Permanent Pasture, 2. Planting a Grove of Native Trees, 3. Bat Boxes and 4. Vulnerable Water - Protection of Watercourses from Bovines. The farmer's application had gained 'tier 2' access to the scheme because of the Protection of Watercourses from Bovines action.

A pre-payment validation check, during 2020, identified that the land parcel containing the Protection of Watercourses from Bovines action was no longer being claimed, and because the application was ranked as a tier 2 application under the scheme ranking system, the DAFM issued a decision to terminate the farmer's participation in GLAS 2 and imposed a claw back of all payments issued to date under GLAS 2. The decision was appealed.

The Appeals Officer conducted an oral hearing of the appeal. The grounds of appeal included that the farmer had to sell the land parcel to Iarnrod Eireann to facilitate the closure of a level crossing, and a letter from Iarnrod Eireann was provided on this point. Level crossings were being closed for public safety and this level crossing was the only access the farmer had to the land parcel. There were no access roads or right of ways to otherwise gain access from the other side of the railway and the parcel is between the railway line and the river. Iarnrod Eireann acquired the parcel of land and subsequently sold same to a person with adjacent land. The farmer believed they had no option but to accede to Iarnrod Eireann's demands.

The DAFM were unable to state definitively that the parcel was the subject of a Compulsory Purchase Order, and for this reason, the DAFM could not overturn the decision made. The DAFM submitted that the land parcel was claimed by another farmer and this along with the fact that there was not a CPO contributed to their decision on the matter. The DAFM advised that the full five-year term was necessary to achieve the objectives of the scheme.



Subsequent to the oral hearing the Appeals Officer received confirmation from Iarnrod Eireann that Level Crossings pose a risk to the safety of the user and to those using rail transport, that the option of seeking a CPO is there but not used if agreement can be reached instead. Iarnrod Eireann also submitted that alternative access would have required purchase of 3rd party lands and agreement was not available, and that similar situations elsewhere had not led to penalties.

This new information was provided to the DAFM for reply and there was no change to the DAFM position on the matter, the land was sold by agreement and not through CPO.

The Appeals Officer had regard to the Terms and Conditions of GLAS 2, to Commission Delegated Regulation (EU) No 640/2014 and to Council Regulation (EU) No 1306/2013.

The Appeals Officer acknowledged the lists of circumstances described as Force Majeure, in the Terms and Conditions and in the governing EU regulations are not exhaustive lists of when *Force Majeure/Exceptional Circumstances* may apply. These lists are instead without prejudice to the actual circumstances to be taken into consideration in individual cases.

The Appeals Officer found from the evidence that the Level Crossing was closed as it posed a risk to the safety of the user and to those using rail transport. If the farmer had sought to delay this process, this would have extended the risk posed. Essentially the farmer would have been seeking to delay a project by a state body to enhance public health and safety. The options available to the farmer were to cooperate with a safety initiative of a state body or to seek to delay the initiative to improve safety for the public.



The concept of *Force Majeure/exceptional circumstances* should be interpreted and applied restrictively. In this case, the Appeals Officer accepted that there were unusual circumstances outside of the farmer's control. When commencing the GLAS contract, the farmer did not know that the Level Crossing would be closed with the knock-on consequences in terms of access to the parcel and did not know to avoid the risk. The Appeals Officer accepted the circumstances were unforeseeable and so improbable that the farmer, exercising all due care, might consider the risk to be negligible. In view of the foregoing, the Appeals Officer found that exceptional circumstances were applicable.

In view of the regulatory provisions, the Appeals Officer decided that payments under the Protection of Watercourses from Bovines action should not be clawed back by the DAFM and that the contract should remain in place for the other actions on the remainder of the farmer's holding.

The appeal was allowed



Case 15: Cross Compliance, Statutory Management Requirement 7- Animal Identification and Registration, affecting payments under the Basic Payment Scheme (BPS) 2019 and other area related schemes.

The farmer had made application for payment under the 2019 Basic Payment Scheme (BPS) and Other Area Based Schemes. A Cross-Compliance inspection was undertaken on the farmer's holding in early 2019 in relation to Statutory Management Requirement (SMR) 7 – Animal Identification and Registration. Non compliances were found in relation to SMR 7, these are summarised as follows:

- No passports available for 10 cattle
- 9 cattle registered to the herd but not present on the farm
- Bovine Herd Register not maintained for over 18 months
- 8 calves not registered within 27 days of birth
- 16 cattle with only one official identification tag

The Department of Agriculture Food and the Marine (DAFM) issued a notification of the outcome of the inspection and a sanction of 5% was applied. An internal review was sought from the DAFM. However, the outcome of the review was to uphold the decision to impose the 5% sanction for breach of cross compliance requirements. The decision was appealed against.

The grounds of appeal included the effects of severe ill health and dependency on others to meet the requirements. On a date following receipt the appeal the farmer had very sadly passed away. An oral hearing of the appeal was held by the Appeals Officer and included the legal representatives of the farmer's estate.

The DAFM set out that there was no full remediation of the animal identification and registration issues found at inspection and a sanction of 5% was applied to the BPS 2019.



The farmer's representatives confirmed they were not disputing the inspection findings, the issue was with the imposition of such a sanction where the farmer was elderly, struggled with technology and found the requirements around identification and registration of bovines very difficult, especially when combined progressive ill health and extended hospital stays, including in intensive care, and was very private about his business to those who wanted to assist him.

The Appeals Officer reviewed the facts of this case, was bound by the Terms and Conditions of the Schemes and the relevant EU legislation and had regard to the principles of natural justice in carrying out their functions.

In examining the case, the question at appeal was the imposition of the 5% sanction and in this regard the Appeals Officer considered the provisions of Force Majeure/Exceptional Circumstances provided for in the EU Regulations governing the BPS and Cross Compliance. The Appeals Officer had regard to certified medical evidence regarding poor health during the year of inspection, hospitalisations, and ongoing medical investigations at the time of the inspection findings.

The EU legislation provides for the application of Force Majeure/Exceptional Circumstances at Article 2 (2) of Regulation 1306/2013 states:

2. For the purposes of the financing, management and monitoring of the CAP, 'force majeure' and 'exceptional circumstances' may, in particular, be recognised in the following cases:

(a) the death of the beneficiary.

(b) long-term professional incapacity of beneficiary.

(c) a severe natural disaster gravely affecting the holding.

(d) the accidental destruction of livestock buildings on the holding.



(e) an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively.

(t) 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.

The Appeals Officer was satisfied the breaches found were not in compliance with the basic requirements of SMR 7 as regards animal identification and registration and these findings were not in dispute. The Appeals Officer was satisfied from the medical evidence that the farmer suffered long-term and debilitating illness during 2019 and the period related to the inspection findings. The Appeals Officer found these were exceptional circumstances, where serious long-term illness led to professional incapacity to carry out the business of farming, and that the provisions of Force Majeure should apply and that the sanction be overturned.

The appeal was allowed.



6. SUGGESTIONS FOR CONSIDERATION BY THE DEPARTMENT

6.1 Targeted Agricultural Modernisation Schemes

The way in which applicants pay for an asset that is claimed for can vary. It might be helpful if the Department gave consideration to enhancing applicants' awareness that the asset must have been paid for in full from their own bank account and that full ownership and possession of the asset must have passed to the applicant before the payment claim for grant aid is submitted.

Where the Department applies a sanction leading to a nil grant payment, the claim should be fully assessed to as to otherwise ascertain the validity of the claim. The assessment so done would give full information on the overall merits of any subsequent appeal.

Sanctions should be definitive when set out for in the Terms and Conditions, avoiding terminology such as 'may' when specifying the rate or level of sanction. This is especially relevant where the holding or conditions concerned have been deemed to have been artificially created for the purpose of drawing down or maximising benefits under the Scheme.

6.2 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 Farmer's Scheme but does not specify further. 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 and these checks include detailed evidence of financial control of the farming operation. It should be set out clearly for applicants what is meant by benefits, risks and financial control.



6.3 Inspections

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 of and/or checks for animal tracks etc with reference to geo-tagged photographs and maps. This would assist assessment during the course of an appeal.

6.4 Department Decision Letters

It is important the Department decision and review letters clearly identify the specific scheme name, the relevant year, refer to the Term and Condition that is deemed to have been breached and set out the penalty applied.

6.5 Areas of Natural Constraints Scheme

As it is unlikely that active farmers with qualifying land would intentionally wish to exclude themselves from the Areas of Natural Constraints Scheme, it may be helpful if the Department gave consideration to assessing if automatic notification could be issued to farmers previously in the scheme who declared 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.

6.6 Farm Partnerships / Limited Companies

A farm partnership is not a legal entity and is instead a partnership of individuals who are legal entities. The Department might consider inserting a clarification in relevant Scheme Terms and Conditions on this. A limited company is a legal entity.



6.7 Penalties and Sanctions

Penalty notifications and decision letters applying sanctions should in all cases clearly identify the Scheme name and the particular Term(s) and Condition(s) under which the penalty/sanction is applied and where the penalty/sanction is provided for, bearing in mind the requirement for decision makers to give reasons for decisions.

6.8 Beef Finisher Scheme and Active Farmer

The Department should have clear and attainable guidelines on qualifying requirements for farmers who do not hold Basic Payment Scheme entitlements for to be considered an active farmer for this category of scheme.

6.9 Period of Appeal and the Outcome of an Appeal

During the period of an appeal, the Department should have regard to assessing compliance in the normal manner especially where multi-annual commitments arise.

Under the provisions of the Agricultural Appeals Act, the decision of an appeals officer is full and final and must be implemented. Likewise, where a decision is later revised by the Director or an Appeals Officer then the revised decision is full and final and must be implemented. This is stated without prejudice to any challenge to the High Court.

6.10 Cross Compliance Cross-Reporting from other Authorities

The Department should consider requesting certain content for cross reports from other authorities such as descriptive narratives, geo-tagged photographic evidence, along with assessment under each of the factors of severity, extent, duration and reoccurrence. Such reports might also indicate if the breach the subject of the report is considered intentional or negligence and should set out the reasons where so considered.



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.

7.2 Cross Compliance

Applicants should continuously familiarise themselves with the requirements of Good Agricultural and Environmental Condition (GAEC) and all Statutory Management Requirements (SMRs) and regularly check that there is no breach of the GAEC or SMR requirements.

All farmers 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. This is especially important where herd size is increasing. 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.

7.3 All Schemes

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



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. Farmers should also examine carefully actions and land use approved, as well as the annual Terms and Conditions and the contract expiry date.

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. In the case of land designated as Special Area of Conservation (SAC) and/or Special Protection Area (SPA) the NPWS must always be consulted for permission in advance of any burning. Where burning occurs on land designated as SAC and/or SPA penalties apply.

Nitrates: In the case of multiple herds (partnership etc), the parties should be aware that the manure produced in all of the herds is assessed against the land area declared on the Basic Payment Scheme application, and (pro rata) the area on any Nitrates Record 5 form, in that year.

7.4 Basic Payment Entitlements

Farmers who do not use their Basic Payment Scheme 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 being otherwise compliant. Farmers should at all times be aware of the entitlement related requirements and if unsure should seek advice and/or information.



7.5 Appeal submission – Department decision letter:

When submitting an appeal, farmers should always use the Notice of Appeal Form which is published at www.agriappeals.gov.ie and include a copy of the Department decision which is the subject of their appeal. The grounds of appeal must also be provided. This will assist in expediting the appeal and in determining 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 tagging and/or 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 at the correct location.
- 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.
- Failure to maintain the eligibility criteria throughout the full period of the contract
- Wild Bird Cover action not delivered or delivered and not maintained to specification



- Rare Breeds not maintained as per GLAS Specification

Beef Exceptional Aid Measure (BEAM)

- 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.

Beef Data Genomics Programme (BDGP)

- Replacement stock bull requirements not met.
- Insufficient numbers of animals genotyped.



Organic Farming Scheme (OFS)

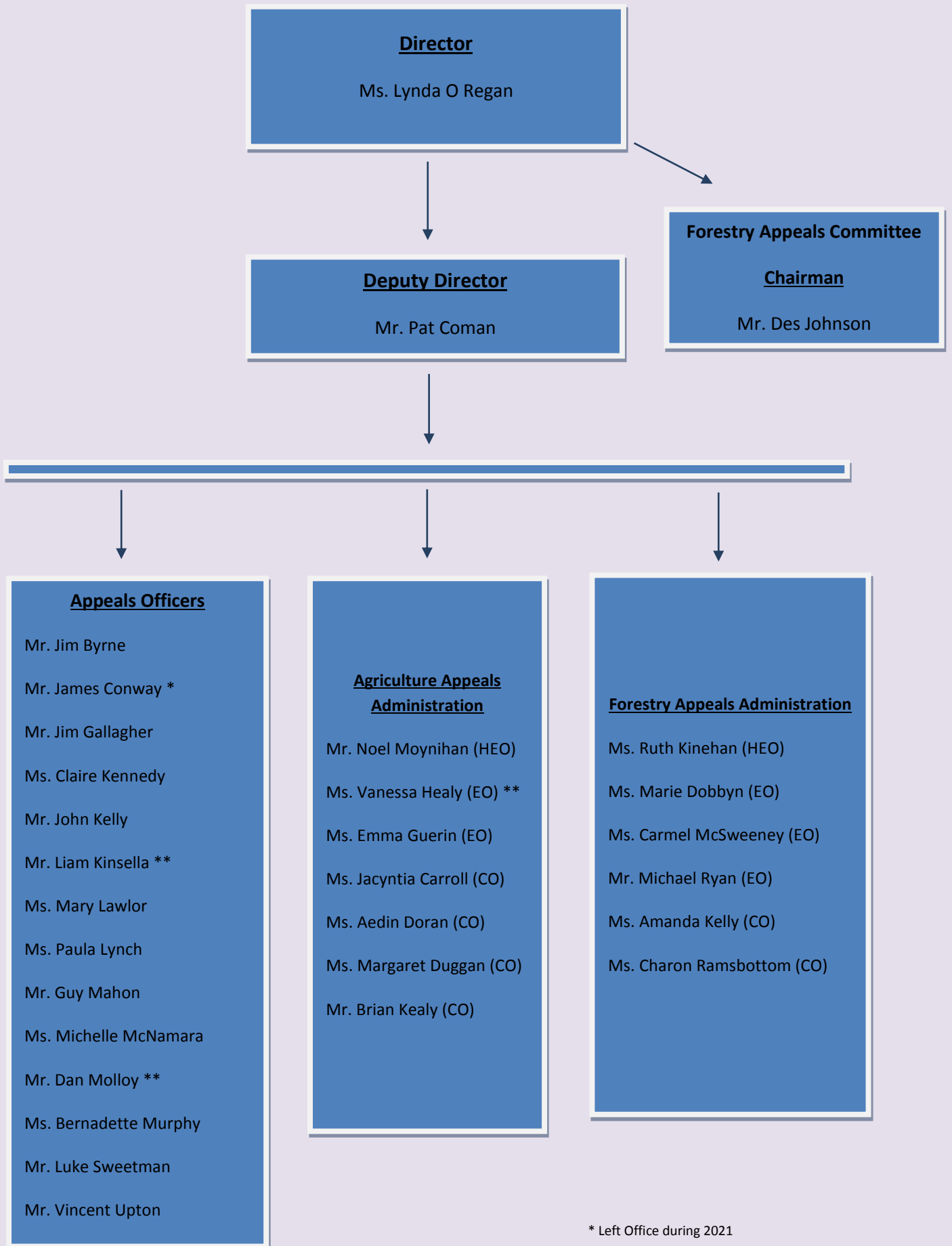
- The applicant is fully responsible for maintaining their organic licence and status, the Appeals Officer has no statutory role regards the awarding or withdrawal of an organic licence.
- OFS participants must remain aware that withdrawal of the organic licence by the Department or by the Organic Certifying Body, OR allowing their organic licence to lapse, within the term of an OFS contract shall mean termination from the Scheme and recoupment of all aid paid.



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 2021

**Joined Office during 2021

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. 368 of 2021)

Schemes

Afforestation Grant and Premium Scheme

Agri-Environment Options Scheme (AEOS)

Agri-Environment Pilot Project

Agri-Environment Training Scheme

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 Pilot - Suckler (BEEP-S)

Beef Exceptional Aid Measure (BEAM)

Beef Finisher Payment (BFP)

Beef Genomics Scheme (BGS)

Beef Data and Genomics Programme (BDGP)

Bio Energy Scheme

Burren Programme

Calf Investment Scheme (CIS)

Dairy-Beef Calf Programme

Dairy Efficiency Programme

Depopulation Scheme

Disadvantaged Areas Scheme (DAS) excluding Land Parcel Identification System Review 2013

(LPIS Review 2013)

Farm Improvement Scheme

Forest Environment Protections Scheme (FEPS)

Forest Genetic Resources Reproductive Material: Seed Stand & Seed Orchard Scheme

Forest Roads Scheme

Grant-Aid Scheme for Marts to facilitate their operation as Central Points of Recording (CPRS)

Green, Low-Carbon, Agri-Environment Scheme (GLAS)

Greening Payment

Grassland Sheep Scheme (GSS)

Hardship Grant Scheme

Income Supplement Scheme

Innovative Forest Technology Scheme – Central Tyre Inflation

Installation Aid Scheme (IAS)

Knowledge Transfer Programme (KT)

Native Woodland Conservation Scheme

Native Woodland Scheme

Neighbourwood Scheme

Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors

Results-based, Agri-Environment Pilot Project (REAP)

Organic Farming Scheme

Organic Farming Scheme 3

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) 4 [368]

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 1782/2003 and Land Parcel Identification System Review 2013 (LPIS Review 2013)

1 OJ L270, 21.10.2003, p.1

Sow Housing (Animal Welfare) Scheme

Straw Incorporation Measure (SIM)

Support for Collaborative Farming Grant Scheme

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

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

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

- (a) The Animal Welfare, Safety and Nutrient Storage Scheme

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

Traditional Farm Building Grant Scheme 2017 and 2018

Upland Sheep Payment Scheme

Weather Related Crop Loss Support Measure

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme.'''.

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. 368 of 2021 Agriculture Appeals Act (Amendment of Schedule) Regulations 2021

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.