



# **AGRICULTURE APPEALS OFFICE**

## **ANNUAL REPORT**

**2013**

## **To the Minister for Agriculture, Food and the Marine, Mr. Simon Coveney T.D.**

Cuirim tuairisc maidir le gnómharta na hOifige Achomhairc Talmhaíochta i 2013 faoi do bhreith de réir fhorálacha Ailt 14(1) den Acht Achomhairc Talmhaíochta, 2001.

In accordance with the provisions of Section 14(1) of the Agriculture Appeals Act 2001, the report of the Agriculture Appeals Office for 2013 is hereby submitted.

Miriam Cadwell  
Director

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

*“The mission of the office is to provide an independent, accessible, fair and timely appeals service for Department of Agriculture, Food and the Marine scheme applicants, and to deliver that service in a courteous and efficient manner.”*

The function of the Agriculture Appeals Office is to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine in relation to the schemes set out in the Schedule to the Agriculture Appeals Act 2001. 886 appeals were received in 2013 across the various schemes.

This report sets out the major developments during the year and provides a statistical breakdown of the office’s work up to 31 December 2013. To illustrate the type of issues that gave rise to appeals and the consideration given to these issues by Appeals Officers, it contains a cross-section of cases determined by Appeals Officers during the year.

In 2013, this Office oversaw the Disadvantaged Areas Scheme Committee which examined appeals from applicants whose stocking density under the 2011 Disadvantaged Areas Scheme was less than 0.3 livestock units per hectare, for reasons outside their control. The Disadvantaged Areas Scheme Committee comprised of Appeals Officers and an independent Chairperson, Mr Pdraig Gibbons.

The work carried out by the Single Payment Appeals Committee which continued to examine appeals arising from the Single Payment Scheme during 2013 is also outlined. The Single Payment Appeals Committee chaired by Mr John Duggan also comprised of Appeals Officers from this office.

As well as fulfilling its primary function as a report to the Minister for Agriculture, Food and the Marine, I hope that this report will be of use to Scheme Applicants, the Department of Agriculture, Food and the Marine and other interested parties.

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

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Miriam Cadwell  
Director  
June 2014

## **2. Agriculture Appeals Office**

The Agriculture Appeals Office is an independent agency established in 2002 to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine concerning designated schemes operated by the Department. The Agriculture Appeals Act 2001, along with the Agriculture Appeals Regulations 2002, as amended, set down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals. The establishment of the Agriculture Appeals Office put the appeals process for Department of Agriculture, Food and the Marine schemes on a statutory basis. Appeals Officers are independent under the Act. In line with the office's mission statement, the office aims to be client friendly and to deliver its service in a courteous and efficient manner. One of the main features of the office is the right of an appellant to an oral hearing where an Appeals Officer brings together the appellant and the Department officials to hear both sides of a case and ask questions. Following consideration of all of the facts of a case, comprehensive decision letters are issued to both the appellant and the Department.

### **Procedures Manual**

Under the Freedom of Information Act 1997, this office is legally obliged to prepare a Procedures Manual, outlining information about the Agriculture Appeals Office and details of internal rules, procedures and interpretations used by Appeals Officers. The Procedures Manual can be accessed on our website, [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie) and contains the following:

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

### **Business Plan**

The 2013 Business Plan forms the basis for the work of the office and is subject to regular review.

### **Website**

Useful information is available at the Agriculture Appeals Office website: [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie) where appellants can download the 'Information Note and Notice of Appeal' form. While an appeal may be lodged without using this form all the information set out on the form should be submitted. Appeals may be lodged online to the e-mail address: [appeals.office@agriculture.gov.ie](mailto:appeals.office@agriculture.gov.ie)

### **Co-operation with the Department of Agriculture, Food and the Marine**

Ongoing contact with various divisions of the Department of Agriculture, Food and the Marine to discuss various issues that arise from appeal cases continued in 2013.

### **Meetings of Appeals Officers**

Six meetings of Appeals Officers were held in 2013. The principal purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the office.

### **Freedom of Information**

The office received four formal requests under the provisions of the Freedom of Information Act.

### **The Office of the Ombudsman**

Under the Agriculture Appeals Act 2001, appellants to this office may request a review of their case by the Office of the Ombudsman. 11 appeals received during 2013 were referred to the Ombudsman in 2013, of which 5 decisions have been received back. There were no occurrences in 2013 where the Ombudsman requested this office to amend its decision.

### 3. Appeals Procedure and Oral Hearings

382 oral hearings were held in 2013. 235 of these dealt with appeals submitted in 2013, 135 with appeals submitted in 2012 and 12 were in relation to appeals submitted in 2011.

Appeals are generally dealt with in the order that they are received. On receipt of an appeal, this office:

- Requests the relevant file from the Department of Agriculture, Food and the Marine, and
- asks that the relevant Division of the Department provide a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed.

On receipt of the file from the Department, the Director allocates the case to an Appeals Officer. At that stage, the Appeals Office contacts the appellant regarding the case and to make arrangements for an oral hearing, if one is requested by the appellant or deemed necessary by the Appeals Officer.

Following examination and consideration of all of the facts of the case, the Appeals Officer makes a determination and issues a letter to the appellant, outlining the outcome of the appeal and listing the reasons for the determination.

One of the features of the office is the right of an appellant to an oral hearing. The key features of an oral hearing are:

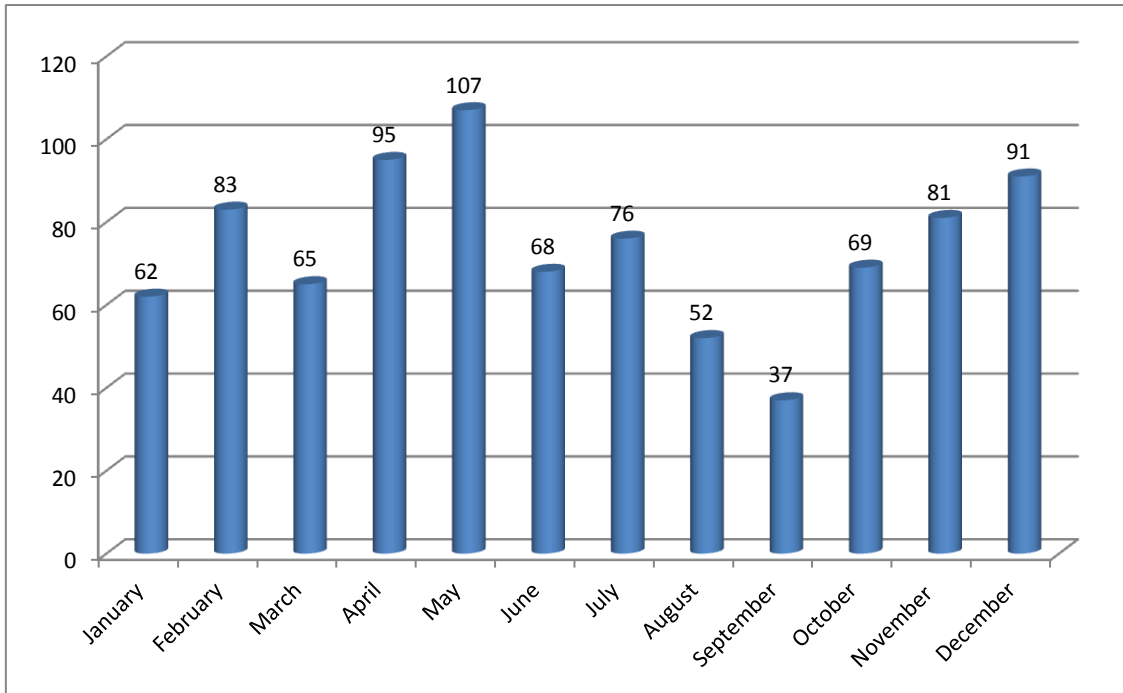
- It is held in private.
- It is informal.
- The appellant may bring representatives but must attend the hearing in person.

Oral hearings were held in every county in 2013. In light of the need for efficiency, the Agriculture Appeals Office aims to hold oral hearings in a convenient location for the appellant, where possible, and to group oral hearings so that an Appeals Officer will hold a number of hearings on the same day in a particular region. Appeals Officers are allocated regions of the country and these regions are rotated on a regular basis.

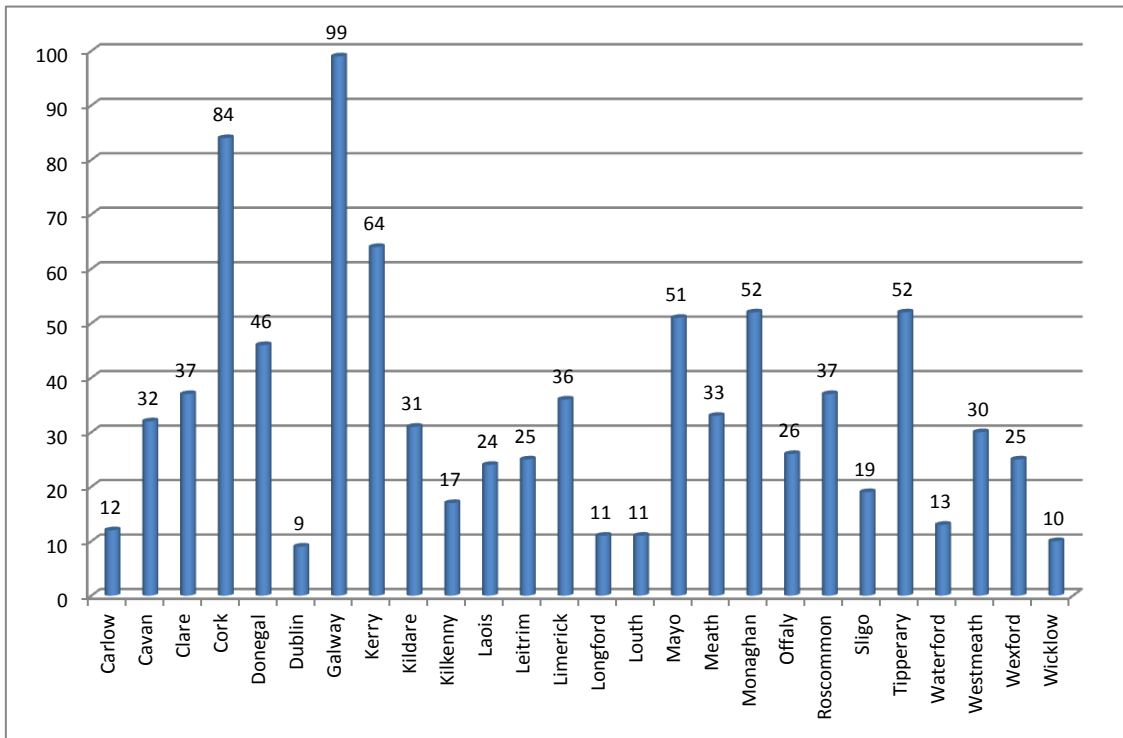
## 4. Statistics – 2013

886 cases were received in 2013 compared with 1036 in 2012, a decrease of 14%.

### 4(a) Appeals received by month

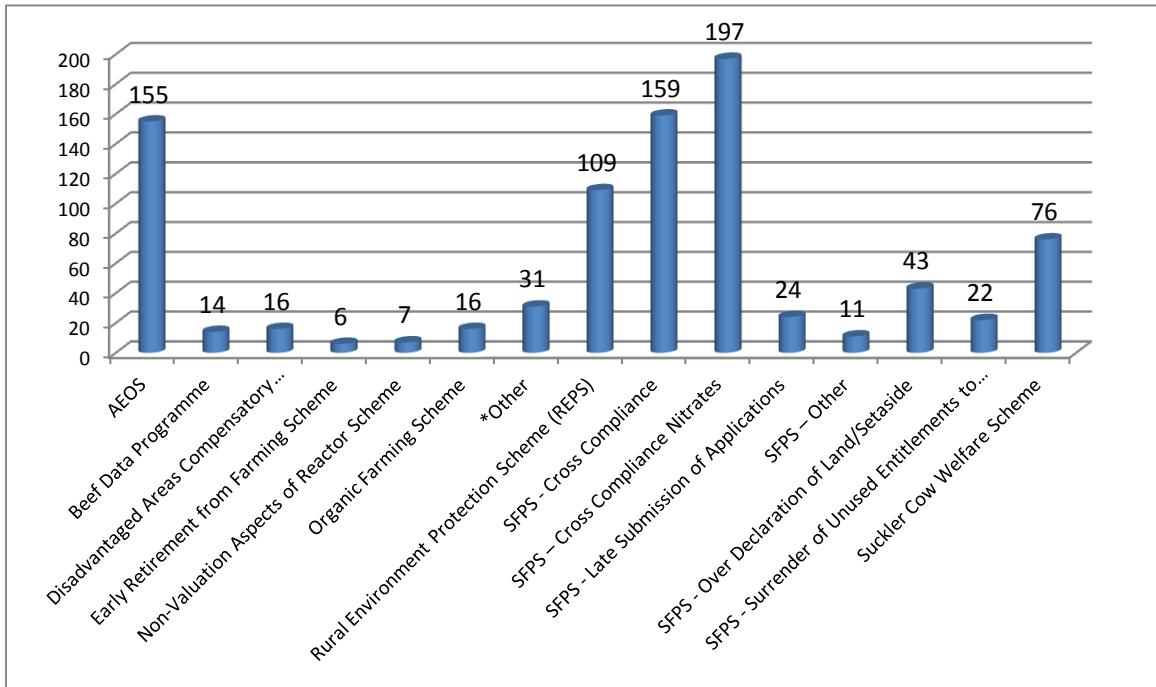


### 4(b) Appeals received by County



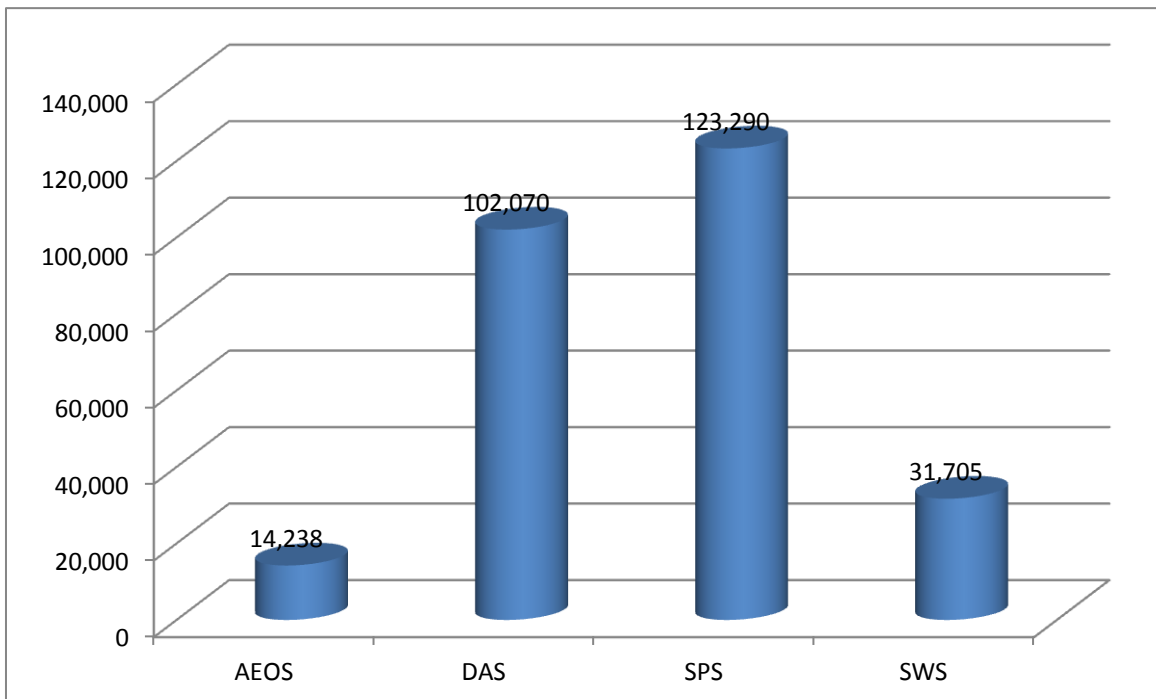


4(c) Appeals received by scheme 2013



4(d) Department of Agriculture, Food and the Marine main Scheme applications 2012

For illustrative purposes the numbers of applications received by the Department in 2012 in the larger schemes operated are set out below.



4(e) Outcome of appeals received and decided in 2013 (468 cases in total).

Outcome	Number	Percentage
Appeals Allowed and Partially Allowed	59	13%
Revised by the Department on receipt of appeal	111	24%
Revised by the Department after Appeals Officer input	34	7%
Subtotal of Appeals allowed, partially allowed and revised	204	44%
Appeals Withdrawn, Invalid and Out of Time	103	22%
Disallowed	161	34%

**Terminology**

**Appeal Allowed**

Where the Appeals Officer, having considered the case put forward, decides that the Department's decision to impose a penalty should be overturned.

**Partially Allowed**

This category includes cases where an Appeals Officer decides that a lesser or revised penalty should apply.

**Revised by the Department on receipt of appeal**

This category includes cases where the Department has revised its original decision based on information submitted by the appellant to the Agriculture Appeals Office.

**Revised by the Department after Appeals Officer input**

This category includes cases where the Department has revised its original decision following Appeals Officer input which may be based on information provided at oral hearing.

**Invalid**

This category includes appeals on matters not appropriate to the office, (i.e. schemes not listed in the Schedule to the Agriculture Appeals Act), pre-13 May 2002 cases, duplicate appeals and cases where no actual decision has yet been made by the Department of Agriculture, Food and the Marine.

**Out of time**

Applicants have three months from the date of decision of the Department to appeal and appeals received after that time, are not accepted. However, where extenuating circumstances exist, a case may be made to the Director who may allow a case to be considered where it is lodged after three months.

**Appeal Disallowed**

Where the Appeals Officer, following consideration of the case, decides that the grounds of appeal do not warrant overturning the decision and that the penalty imposed by the Department of Agriculture, Food and the Marine was the correct one.



4(f) Outcome by scheme received at 31 December 2013

SCHEME	Received	Allowed	%	Partially Allowed	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
AEOS	155	2	1.29%	3	1.94%	2	1.09%	6	3.87%	2	1.29%	11	7.10%	24	15.48%	105	67.74%
Beef Data Programme	14	0	0	0	0	0	0	1	7.14%	0	0	0	0	1	7.14%	12	85.72%
Disadvantaged Areas Scheme	16	0	0	0	0	1	6.25%	0	0	1	6.25%	0	0	3	18.75%	11	68.75%
Early Retirement from Farming Scheme	6	0	0	1	16.67%	1	16.67%	0	0	0	0	0	0	0	0	4	66.66%
Non-Valuation Aspects of Reactor Scheme	7	2	28.6%	0	0	0	0	0	0	0	0	0	0	2	28.60%	3	42.80%
Organic Farming Scheme	16	0	0	1	6.25%	2	12.50%	0	0	0	0	3	18.75%	5	31.25%	5	31.25%
*Other	31	0	0	0	0	6	19.35%	0	0	1	3.22%	2	6.45%	7	22.58%	15	48.38%
Rural Environment Protection Scheme (REPS)	109	2	1.84%	6	5.51%	11	10.09%	3	2.75%	2	1.84%	6	5.51%	14	12.84%	65	59.63%
SFPS - Cross Compliance	159	9	5.66%	11	6.92%	12	7.55%	3	1.89%	5	3.14%	11	6.92%	25	15.72%	83	52.20%
SFPS – Cross Compliance Nitrates	197	2	1.02%	4	2.03%	71	36.04%	9	4.57%	4	2.03%	11	5.58%	36	18.27%	60	30.46%
SFPS - Late Submission of Applications	24	3	12.5%	0	0	3	12.50%	0	0	0	0	2	8.33%	7	29.17%	9	37.50%
SFPS – Other	11	0	0	1	9.09%	1	9.09%	0	0	1	9.09%	0	0	0	0	8	72.73%
SFPS - Over Declaration of Land/Setaside	43	0	0	1	2.33%	6	13.95%	2	4.65%	3	6.98%	1	2.33%	8	18.60%	22	51.16%
SFPS - Surrender of Unused Entitlements to National Reserve	22	1	4.55%	0	0	3	13.64%	1	4.55%	0	0	4	18.18%	7	31.82%	6	27.27%
Suckler Cow Welfare Scheme	76	7	9.21%	3	3.95%	26	34.21%	5	6.58%	0	0	3	3.95%	22	28.95%	10	13.15%

\*Includes Schemes where less than 5 appeals were received e.g. Dairy Equipment Scheme (4), Development of the Organic Sector (4), Farm Waste Management Scheme (4), Installation Aid (3), SFPS Consolidation of Entitlements (3), all others Schemes 2 or fewer appeals.

**4(g) Time from Department of Agriculture, Food and the Marine**

A breakdown of the average number of days taken from when the request is sent to the Department for the file to when it is received back in the Agriculture Appeals Office is set out below. This table refers to Schemes where more than 10 appeals were received only.

SCHEME	Average number of days to return file
Agri-Environment Options Scheme	43
Beef Data Programme	10
Disadvantaged Areas Scheme	49
Organic Farming Scheme	66
Rural Environment Protection Scheme (REPS)	31
Single Farm Payment Scheme (SFPS)	28
Suckler Cow Welfare Scheme	14

When an appeal is lodged with the Agriculture Appeals Office, as provided for in the Agriculture Appeals Regulations 2002, this office:

- Requests the relevant file and any relevant information from the Department of Agriculture, Food and the Marine.
- Asks that the relevant Division of the Department provide a statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed.

The office asks the Department to return files within two weeks of the initial request. This is to ensure that appeals can be allocated to an Appeals Officer without delay and considered as soon as possible. Reminders are issued where the Department does not respond promptly – 365 reminders were issued in 2013, followed by repeat reminders where required.

**4(h) Time taken to determine cases by the Agriculture Appeals Office.**

For 2013 cases, the average time taken to deal with a case was 93 days. The Appeals Office has set itself a target of three months from time of receipt of the Department of Agriculture, Food and the Marine file to the issue of decision letter. Some cases, due to circumstances outside the control of the Agriculture Appeals Office, may not be completed within the set time frame.

**4(i) Position at year end**

The position at 31 December 2013 in relation to cases received in 2013 is set out below, together with the position at 31 December 2012 in respect of 2012 for comparison purposes.

In total 793 cases were closed in 2013 – 468 cases received in 2013, 305 cases received in 2012 and 20 cases received in 2011.

	Position at 31 December 2013 2013 Cases	Position at 31 December 2012 2012 Cases
<b>Cases closed</b>	<b>468</b>	<b>704</b>
<b>Work in progress – Agriculture Appeals Office</b>	<b>277</b>	<b>221</b>
<b>Awaiting Department response</b>	<b>141</b>	<b>111</b>
<b>Sub-total of those on hand</b>	<b>418</b>	<b>332</b>
<b>OVERALL TOTAL</b>	<b>886</b>	<b>1036</b>

## 5. Disadvantaged Areas and Single Payment Scheme Appeals Committees

### Disadvantaged Areas Scheme (DAS) Appeals Committee

The DAS Appeals Committee was established in October 2012 to deal with appeals from applicants whose stocking density under the 2011 Disadvantaged Areas Scheme, for reasons outside their control, was less than 0.3 livestock units per hectare. The DAS Appeals Committee is chaired by Mr Pdraig Gibbons and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 340 cases in 2013. Of the 340 cases, it was recommended 135 cases be allowed, 170 be disallowed, additional information was requested in 34 cases and one case was deemed invalid.

#### 5(a) DAS Committee cases dealt with in 2013

DAS Committee Appeals Status at 31 <sup>st</sup> December 2013	Number of Cases
Cases considered in 2013	340
Allowed	135
Disallowed	170
Additional information requested	34
Other	1

### Single Payment Appeals Committee (S.P.A.C.)

The SPAC was established in February 2004 to deal with appeals made by farmers who are dissatisfied with the decisions of the Department of Agriculture, Food and the Marine in relation to the implementation of the various facets of the Single Payment Scheme. These include Force Majeure, New Entrant/Inheritance arrangements, Private Contract Clause with the majority of the work making decisions on cases relating to the allocation of entitlements from the National Reserve. The Appeals Committee is chaired by Mr John Duggan and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 39 cases in 2013 and made recommendations to the Department as set out in the table below.

#### 5(b) S.P.A.C. cases dealt with in 2013

SPAC	2010 National Reserve	2011 National Reserve	2012 National Reserve	Overall Totals
Allowed	0	0	0	0
Disallowed	1	0	38	39
Total	1	0	38	39



## 6. Selected Appeal Cases

### **Case 1: Single Payment Scheme and the Organic Farming Scheme, 2012.**

An application was lodged under the 2012 Single Payment Scheme. Following an on farm inspection the Department deemed that there had been an over declaration of eligible forage area and a double the difference penalty was applied as specified in the Terms and Conditions of the Scheme.

The decision was appealed to the Agriculture Appeals Office. The appellant explained that he was in REPS and the Organic Farming Schemes and had been advised that in relation to a specific SPA parcel that it was 'an area of natural vegetation and will remain fenced off from livestock'. It was explained that there is an embankment which divides this area from the other land farmed, that it is fenced off, that cattle do not graze this parcel, in fact it is a habitat area, part of which is rocky with some scrub. The appellant stated that he had complied with professional advice in relation to this parcel.

The Appeals Officer found that the Single Payment Scheme specifies that 'eligible area excludes .... areas fenced off from grazing use, ...'. Therefore as this land was fenced off from cattle it did not qualify as eligible forage area for the purposes of this Scheme. In addition, the Terms and Conditions of the Organic Farming Scheme state that forage area is defined as 'the net area entered as grassland or permanent pasture on your most recent EU Single Payment Scheme application'.

As the parcel concerned was deemed ineligible under the Single Payment Scheme, it was also ineligible for payment under the Organic Farming Scheme. The appeal was disallowed.

### **Case 2: Agri-Environment Options Scheme (AEOS) 2010.**

The appellant applied to join AEOS in May 2010. Their contract commenced in November 2010. AEOS Division of the Department was informed that they wished to withdraw from the Tree Planting Standard action due to health reasons. Medical evidence was provided. AEOS Division received a further letter informing them that the applicant wished to withdraw from AEOS as due to poor health they were unable to continue farming, additional medical information was provided.

The appellant was informed by letter from AEOS Division that their application to withdraw from AEOS under section 18 of the Terms and Conditions – Force Majeure had been refused. The reason given for the decision was that there was insufficient medical evidence to warrant termination under the provisions of force majeure. A return of the payments made was also requested.

The appeal, on medical grounds, was received by this office and an oral hearing was requested. At the oral hearing it was outlined that although it was accepted that some of the health problems pre-dated the AEOS application, if the applicant's health had remained as it was at the time of application they would have continued farming and fulfilled their obligations under the Scheme. The Department identified the relevant category of force majeure in this case as '*long term professional incapacity of the participant.*'

Having examined the medical documentation, it was accepted that the appellant's medical condition had deteriorated resulting in their ceasing to farm. The Appeals Officer accepted that the appellant would have continued farming and fulfilled their obligations under AEOS if their health had remained the same as it was when they applied and were accepted into AEOS. The Appeals Officer's decision was that the AEOS contract should be terminated, under paragraph 18 of AEOS Terms and Conditions, on the grounds that the appellant was unable to continue for reasons beyond their control, due to long term professional incapacity. The amount paid to the appellant under AEOS was not to be recouped. The appeal was allowed.

### **Case 3: Organic Farming Scheme, 2011.**

The Department approved the appellant's application to join the Organic Farming Scheme (OFS), with the contract commencing in June 2011 and running for a period of 5 years and 7 months. The Department wrote to the appellant in October 2012 stating that the Organic Certification Body had confirmed that the organic operator's licence had lapsed with effect from 31 December 2011 and recoupment of all payments made under the OFS was required. The appellant sought a review of this decision; however, it was upheld by the Department.

The decision was appealed to the Agriculture Appeals Office on the basis that it was necessary to exit the OFS due to an injury; the appellant was still farming but not organically; the farming system was changed to reduce the manual labour requirement. Medical evidence was provided.

On examination of the Terms and Conditions of the scheme and taking account of all submissions made, the Appeals Officer found no basis for overturning the original decision. Section 5.6 of the OFS terms and conditions states: *'Participants who wish to avail of the Scheme must register with and be approved as an organic operator by one of the OCBs and hold a licence for the full duration of their Scheme contract...'*. Section 10.4 states: *'Non-renewal of an organic licence by the participant within the five-year commitment period shall mean termination from the Scheme and full recoupment of all aid paid, including interest payable under SI No. 13 of 2006, except where a participant has ceased farming and has already completed three years in the Scheme...'*

Section 15 deals with force majeure or exceptional circumstances: *'Where a participant is unable to continue complying with the commitments given for reasons beyond his/her control, a case may be made under force majeure to terminate his/her participation in the Scheme. In such cases the participant or his or her representative should inform the Organic Unit in writing with relevant evidence, within ten working days of being able to do so.'*

The Appeals Officer found that the appellant continued to farm after 31 December 2011, though not organically. Therefore force majeure provisions of long term professional incapacity could not be applied. The appeal was disallowed.

#### **Case 4: Agri- Environment Options Scheme, 2010.**

The appellant applied to join the Agri-Environment Options Scheme (AEOS 1) listing Traditional Hay Meadow as their Mandatory Action, and Tree Planting – Whips, and Coppicing Hedgerows, as their Complementary Actions. The application was successful and they were given a contract start date in September 2010. In a letter dated 30 January 2013, the Department informed the appellant that as they had dropped Traditional Hay Meadow, and Coppicing Hedgerows actions, the Department were seeking a full refund for the actions paid under the Scheme.

The appellant subsequently appealed to the Agriculture Appeals Office. The appeal stated that due to financial constraints the appellant had been forced to sell the majority of their land to pay outstanding debts. Paragraph 5.6 of the AEOS Terms and Conditions states: *All contracts shall run for at least 5 years.*

Paragraph 10 of the AEOS Terms and Conditions titled Reduction of undertaking states: *Where all or part of an undertaking is not continued for a minimum period of 5 years, all or part of the aid paid in respect of that undertaking shall be repaid.* The Appeals officer found that the appellant had failed to complete their AEOS undertakings in accordance with the Scheme Terms and Conditions. The provisions of force majeure do not extend to cover financial constraints. The appeal was disallowed.

#### **Case 5: Single Payment Scheme and Nitrates Regulations, 2010.**

The Department undertook a Statutory Management Requirement 4 Cross Compliance inspection and applied a 1% sanction for exceeding the 2009 phosphates limits. The Department determined that a maximum chemical phosphorous limit of 115 kg applied to the holding and 150 kg of chemical phosphorous was applied.

The amount of chemical fertiliser used was not contested, the grounds of appeal included the fact that 100m<sup>3</sup> of slurry was exported in 2009 and was shown on the Appellant's fertiliser accounts for 2009.

Under Section 3 of the Nitrates Regulations, at that time, farmers must have kept records, finalised by 31 March of the following year and must record livestock manure moved on to or off the holding.

The Appeals Officer noted a phosphorous limit of 19 kg / ha is required for phosphorous index 3 soils but the Appellant's fertiliser records stated a limit of 24kg / ha. The Appeals Officer found 19 kg per ha was correct.

The amount of chemical phosphorous applied during 2009 exceeded the farm limit in the absence of exports. The Appellant sought allowance for 80 kg of organic phosphorous in slurry exported. At the time of the inspection the inspecting officer noted 80 kg of organic phosphorous was exported but as this information was not submitted to Nitrates Section it was not credited in the calculation. This evidence showed that the Record 3 form was provided at the time of the inspection. The Appeals Officer noted that in 2009 a farmer was only required to submit the Record 3 export form if seeking nitrates credit.

The Appeals Officer received confirmation from Nitrates Section that an initial 1% sanction imposed for a 2009 Nitrates breach was waived as a result of the Appellant's submission of a 2009 Record 3 export form. On the basis that Nitrates Section had accepted the export of slurry for 2009 Nitrates - the Appeals Officer found credit must also be given for the phosphorous element of that export. The appeal was allowed.

#### **Case 6: Single Payment Scheme and Nitrates Regulations, 2011.**

The Department wrote to the appellant to inform him that the total amount of nitrogen from livestock manure applied on his farm in 2011 exceeded the permitted level of 170 kg N/ ha, resulting in a 3% penalty. The appellant sought an appeal. The appellant stated that he understood that it was a requirement that all Nitrates records must be completed and up to date by 31 March of the following year. An oral hearing was held at which the appellant stated that the problem occurred as he was not aware of the change in Department rules. He stated that he had been over the 170Kg limit since 2007 and each year had the opportunity to submit a record of movement of slurry form. The appellant outlined that he exported cattle slurry to a neighbouring farm and stated that he kept a record of the movement of slurry on his holding.

The basis for the penalty is set out in the European Communities (Good Agricultural Practise for Protection of Waters) Regulations, 2006 as amended. Under the Regulations it is clear that herd owners are obliged to ensure that the total amount of nitrogen from grazing stock does not exceed 170kg of N per ha or 250kg of nitrogen per ha for derogation holders. In this case the amount of nitrogen produced on the holding in 2011 was in excess of 170kg and below 250kg.

In 2011 the Department introduced a deadline of 31 December 2011 for receipt of Record 3 forms. This deadline was notified to all Advisors/Planners/Farm Bodies on 25 May 2011, and advertised in the farming press in November 2011. This deadline was subsequently extended to 31 January 2012. The extension of the deadline was notified to farmers in the farming newspapers. The appellant did not submit a Record 3 form prior to the deadline. The Appeals Officer found that the change in rules was well publicised. The Appeals Officer upheld the Department's decision and the appeal was disallowed.

#### **Case 7: Non-Valuation Aspects of Reactor Scheme.**

The appellant was notified in September 2012 of the requirement to complete a herd test by November 2012. The test was completed in mid- December 2012 and 5 reactors were disclosed. These reactors were valued in mid- December 2012. In late December 2012 the appellant informed the Department that these animals had been administered a treatment in early December 2012 and this medicine had a withdrawal period of 56 days which would expire at end January 2013.

The Department informed the appellant that compensation would not be paid in respect of the 5 TB reactor animals because they were treated after they were informed a test was due.

The appellant's Veterinary Surgeon wrote to the Appeals Office, confirming that the herd had a serious problem in November 2012, which was having a serious impact on animal welfare and could have led to animal fatalities. He stated that he strongly advised that the animals be treated.

Annex A of ER5R document which was sent to the appellant prior to his herd test, ER/20/10 which outlines the criteria for making decisions on eligibility for payment were noted, as was the appellant's Veterinary Surgeon's letter to the Appeals Office.

The question the Appeals Officer had to decide in this case was whether the dosing of the cattle, after being informed of a herd test, could be regarded as routine treatment or as urgent medical treatment given on veterinary advice which has been certified.

The Appeals Officer took into account that both the Department's Veterinary Inspector and Superintending Veterinary Inspector dealing with this case recommended that valuation should be paid and the certified veterinary advice given to the appellant that urgent treatment was required to avoid animal welfare problems and fatalities. Also taken into account were the particularly adverse weather conditions in 2012 which led to the spread of liverfluke, and caused animal welfare problems. The Appeals Officer decided that, on the basis of the veterinary evidence provided by three Veterinary Surgeons, in these particular circumstances, the dosing of the herd could be considered as urgent medical treatment.

The Department's decision to refuse compensatory payments on the TB reactors was overturned and the appeal was allowed.

#### **Case 8: Nitrates and Cross Compliance (2010).**

The appeal concerned the Nitrates Regulations and 2010 Cross Compliance. The Appellant's 2010 on-farm nitrogen production exceeded the limit per hectare in the absence of slurry export. The Department had received a 2010 Record 3 form for the movement of cattle slurry to a farm in Northern Ireland which would have left a balance below the 170 kg per ha statutory limit.

The Department's Nitrates Section notified the Appellant that a 20% Cross-Compliance sanction applied with no credit for exports - on the basis certification procedures that exist for the export of organic manures to Northern Ireland were not followed.

In the appeal the Appellant stated the Northern Ireland documentation required the importer to obtain a veterinary certificate and the exporter is not mentioned and he could not locate information on the Department's web-site on the export of slurry outside of the State and had never received any information on the subject. At the hearing the Appellant's Teagasc Advisor stated Record 3 export forms had been accepted by the Department for exports from this farm to the same Northern Ireland farm.

The Department stated there was a procedure in place in 2010 for the export of organic manure to Northern Ireland, dealt with by the Department's By-Products Section where the exporter must get permission for each consignment. By-Products Section notifies DARD in Northern Ireland, and the cattle manure must be accompanied by a health certificate from the District Veterinary Office, and the Animal By-Products Regulation – EU Council Regulation 1774/2002 applied.

The Appeals Officer noted the Nitrates Regulation - Statutory Instrument No. 101 of 2009 (The Nitrates Regulation) states at Part 3 regulation 15(5)(a); *In the case of a holding on which grazing livestock are held, the amount of available nitrogen and available phosphorus supplied to the holding by manure from such livestock shall (save insofar as such manure is exported from the holding) be deemed to be the relevant proportion of the amount of available nitrogen and available phosphorus contained in the total manure produced by such livestock.* The Appeals Officer was satisfied from the Department's response to the appeal that there were procedures in place for slurry exports in 2010 from the State that involved the obtaining of health certification and licensing and these procedures were not followed in the case at appeal. However, the Department could not show these procedures were published within Nitrates information or within SMR4 information. The Appeals Officer noted that the Record 3 form is the only export form referred to in the Nitrates publications.

The Department had accepted the Record 3 movement forms for 2008 and 2009 for the exports of slurry to the same Northern Ireland holding, maps and address were provided to the Department at those times. The Appeals Officer found the 2008 Record 3 notice was provided to the Department in 2009 prior to the reported slurry movement in 2010 and the Appellant was not made aware of any issue in the intervening period.

In the matter of notification of the requirements the Department directed the Appeals Officer to a newspaper advert from 2008 in respect of Statutory Instrument No. 252 of 2008. The Appeals Officer noted that the advert was to notify the public of the introduction of S.I. No. 252 of 2008 which referred to and listed the EU animal by-product regulations introduced from 3 October 2002 to 11 June 2008.

The Department identified EU Council Regulation No. 1774/2002 as relevant legislation, The Appeals Officer noted 1774/2002 was repealed by EU Council Regulation No. 1069/2009 from 21 Oct 2009 and the export at appeal was a 2010 export. In response to this the Department replied that S.I. No. 150 of 2011 provided the legal basis for animal by-product licensing. The Appeals Officer noted S.I. No. 150 of 2011 was not in place during 2010. The Appeals Officer considered the Department had not shown the legislation giving effect to EU Council Regulation No. 1069/2009 during 2010.

The Appeals Officer was of the view that the movement of cattle slurry to Northern Ireland should have raised a query to the authorities by the Appellant but found it relevant that the 2008 slurry export when notified to the Nitrates Section of the Department was accepted as valid and did not give rise to any notice that certain procedures existed for such exports.

The regulatory basis for the Cross Compliance penalty is through Articles 71 and 72 of Commission Regulation (EC) No. 1122/2009, and the only basis for a 20% penalty was the application of reductions and exclusions in cases of intentional non-compliance. The Appeals Officer found it was not established from the evidence provided that there was an intentional breach by the Appellant, having relied on the Record 3 form to notify the 2010 slurry export and the Record 3 form was the only export form referred to in the Nitrates publications. The appeal was allowed.

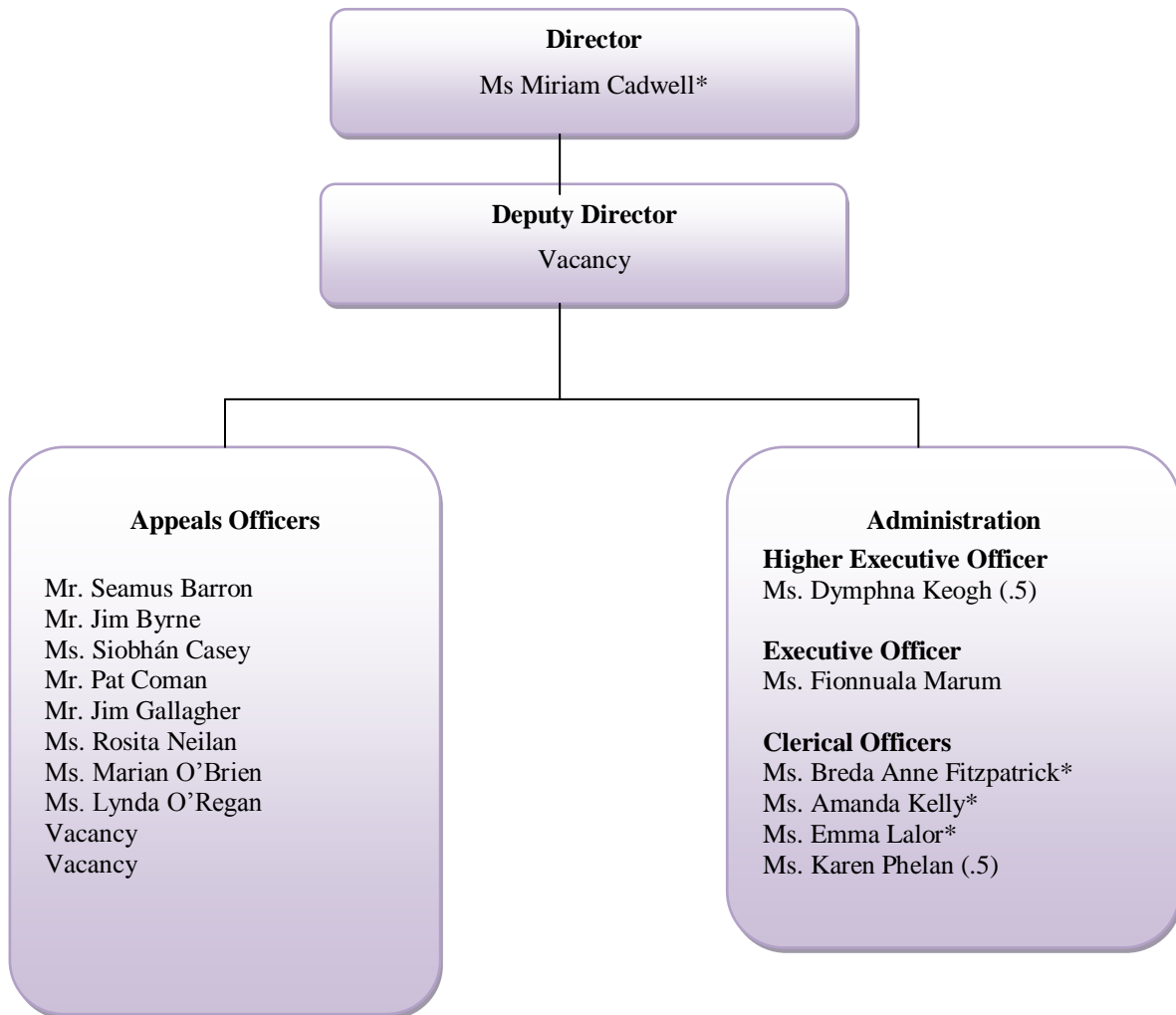
## **7. Key Findings of the Agriculture Appeals Office relevant to the Department of Agriculture, Food and the Marine**

- The expansion of the use of electronic and or text message alerts in respect of all scheme applications and scheme notices could be considered.
- In relation to penalties, all scheme applicants should be made aware of potential penalties including the scale and potential financial implications of such penalties. Applicants should also be advised of any changes to potential penalties applicable.
- Where a penalty is being applied, the level of penalty including the amount of financial penalty should be clearly outlined to scheme applicant.
- Any changes or revisions to Scheme Terms and Conditions should be notified to all ongoing participants.
- Consideration could be given to the possibility of issuing of Nitrates statements on a more frequent basis.

## **8. Common errors by Scheme Applicants that lead to penalties**

- Based on the experience of the Agriculture Appeals Office, the use of online application facilities either directly or through an approved agent is encouraged.
- Applicants are advised to familiarise themselves with the submission requirements and deadlines for all schemes, including the requirements for postal submissions.
- Applicants should use registered post services when sending applications and important scheme documents.
- Applicants should familiarise themselves with the Terms and Conditions relevant to their application, particularly the timeframe of contractual requirements. They should be aware of any revisions to schemes and new versions.
- In relation to the Single Farm Payment Scheme, in order to avoid cross compliance penalties,
  - Applicants should notify any land changes to the Department, the amendment form is available for this purpose.
  - Applicants should ensure all lands claimed are the subject of an agricultural activity by them.
- Applicants should ensure they are aware of Nitrates requirements and their farm stocking limits.
- Applicants who have incurred a cross-compliance sanction should be aware of the higher sanctions applying where repeat breaches are detected within a 3 year period
- In relation to AEOS, applicants should take note of the scheme Terms and Conditions in relation to the specific actions required.

## 9. Organisation Chart at 31<sup>st</sup> December 2013



\*Indicates officer joined the Office during 2013  
.5 indicates the officer attends on a half-time basis.

# APPENDICES





**Number 29 of 2001**  
**AGRICULTURE APPEALS ACT, 2001**  
**ARRANGEMENT OF SECTIONS**

**Section**

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

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

SCHEDULE

Schemes

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Acts Referred to

Diseases of Animals Acts, 1966 to 2001

National Beef Assurance Scheme Act, 2000 2000, No. 2

Ombudsman Act, 1980 1980, No. 26



**Number 29 of 2001  
AGRICULTURE APPEALS ACT, 2001**

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

1.—(1) In this Act—

- “appeals officer” means an appeals officer appointed under section 2;
- “Civil Service” means the Civil Service of the Government and the Civil Service of the State;
- “Director” means Director of Agriculture Appeals;
- “functions” includes powers, duties and obligations;
- “Minister” means Minister for Agriculture, Food and Rural Development;
- “prescribed” means prescribed by regulations made by the Minister.

(2) In this Act—

- (a) a reference to a section or Schedule is a reference to a section of or Schedule to this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,
- (c) a reference to an enactment includes a reference to that enactment as amended or extended by or under any subsequent enactment including this Act, and
- (d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.

**Appointment of appeals officers.**

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

**Director of Agriculture Appeals**

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

**Deputy Director of Agriculture Appeals.**

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

**Functions of appeals officers.**

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

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

**Independence of appeals officers.**

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

**Right of appeal.**

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

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

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

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

**Oral hearings.**

- 8.—(1) An appeals officer shall, if so requested by the Appellant, hold an oral hearing for the purpose of an appeal referred to him or her under this Act.
- (2) An oral hearing under this section shall be held in private.
- (3) An Appellant may represent himself or herself or be represented by another person at the oral hearing of his or her appeal.
- (4) Where an Appellant is represented by another person at the oral hearing of his or her appeal, the appeals officer hearing the appeal may examine the Appellant, if the appeals officer considers it necessary.
- (5) An appeals officer, on the hearing of any matter referred to him or her under this Act, shall have the power to take evidence on oath or affirmation and for that purpose may administer oaths or affirmations to persons attending as witnesses at such hearing.

**Decisions.**

- 9.—(1) The decision of an appeals officer and the reasons for making that decision shall be notified in writing to the Appellant.
- (2) A document purporting to be a decision made under this Act by an appeals officer and to be signed by him or her shall be prima facie evidence of the making of the decision without proof of the signature of such officer or his or her official capacity.
- (3) The decision of an appeals officer on any question referred to him or her under section 7(1) shall, subject to sections 10 and 11, be final and conclusive.

**Revised Decisions by Director and appeals officers.**

- 10.—(1) An appeals officer may, at any time revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which it was given, or if it appears to him or her that there has been any relevant change of circumstances since the decision was given.
- (2) The Director may, at any time, revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.
- (3) A revised decision given under this section shall take effect from such date as the appeals officer concerned determines or considers appropriate having regard to the circumstances of the case.

**Appeals to High Court.**

- 11.—Any person dissatisfied with—
- (a) the decision of an appeals officer, or
- (b) the revised decision of the Director,
- may appeal that decision or revised decision, as the case may be, to the High Court on any question of law.

**Representations under National Beef Assurance Scheme Act, 2000.**

- 12.—(1) Where representations are made to the Minister under section 15(2) or 16(2) of the National Beef Assurance Scheme Act, 2000, the Minister shall upon receipt of such representations refer them, as soon as may be, to the Director for advice.
- (2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.
- (3) The Minister shall have regard to any advice given to him or her under this section before refusing an application for the grant of, or revoking, a certificate of approval under the aforesaid Act.

**Representations by certain animal and poultry dealers.**

- 13.—(1) Where representations are made to the Minister under Article 8(1) of the Diseases of Animals Acts, 1966 to 2001 (Approval and Registration of Dealers and Dealers' Premises) Order, 2001 (S.I. No. 79 of 2001), the Minister shall, upon receipt of such representations refer them, as soon as may be, to the Director for advice.
- (2) The Director shall, within 28 days of receipt of such representations, consider them and advise the Minister.
- (3) The Minister shall have regard to any advice given to him or her under this section before revoking or suspending a registration or refusing to register a person or premises under the aforesaid Article 8.

**Annual reports.**

- 14.—(1) As soon as may be after the end of each year, but not later than 6 months thereafter, the Director shall make a report to the Minister of his or her activities and the activities of the appeals officers under this Act during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.
- (2) A report under subsection (1) shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.
- (3) The Director shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as he or she may specify concerning his or her activities or the activities of appeals officers under this Act.

**Regulations.**

- 15.—(1) The Minister may make regulations for the purpose of enabling this Act to have full effect.
- (2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

**Laying of regulations before Houses of Oireachtas.**

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

**Expenses of Minister.**

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

**Amendment of First Schedule to Ombudsman Act, 1980.**

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

‘‘Department of Agriculture, Food and Rural Development Appeals Officers under the Agriculture Appeals Act, 2001’’.

**Short title.**

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

**SCHEDULE**  
**Schemes**

Beef Cow Scheme in Less Severely Handicapped Areas and Coastal Areas with Specific Handicaps  
Cattle Headage Scheme in More Severely Handicapped Areas  
Equine Headage Scheme in all Disadvantaged Areas  
EU Area Aid Scheme (including the Arable Aid Scheme)  
EU De-seasonalisation Slaughter Premium Scheme  
EU Ewe Premium Scheme  
EU Extensification Premium Scheme  
EU Slaughter Premium Scheme  
EU Special Beef Premium Scheme  
EU Suckler Cow Premium Scheme  
Farm Improvement Programme (FIP)  
Farm Improvement Programme (FIP) Horticulture  
Goat Headage Scheme in all Disadvantaged Areas  
Installation Aid Scheme (IAS)  
National Scheme of Installation Aid (SIA) (introduced December 1998)  
National Scheme of Investment Aid for the Control of Farm Pollution (introduced June 1999)  
National Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (introduced May 1999)  
Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors  
Rural Environment Protection Scheme (REPS)  
Scheme of Early Retirement from farming  
Scheme of Grant-Aid for Investment in Alternative Enterprises  
Scheme of Grant-Aid for Investments in Agri-Tourism  
Scheme of Installation Aid (SIA)  
Scheme of Investment Aid for Farm Waste Management (FWM)  
Scheme of Investment Aid for the Control of Farm Pollution (CFP)  
Scheme of Investment Aid for the Improvement of Dairy Hygiene Standards (DHS)  
Scheme of Investment Aid for upgrading of On-Farm Dairying facilities  
Scheme of Investment Aid in Alternative Enterprises (Housing and Handling Facilities) (AES)  
Sheep Headage Scheme in all Disadvantaged Areas



**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) a statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed, and
- (b) 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 –

- (a) 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,
- (b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and
- (c) 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 been given under Regulation 10 of these Regulations, any of the parties fail to appear at the hearing, the appeals officer hearing the appeal may, at his or her discretion, decide to proceed with the hearing or defer it to a later date and place fixed by him or her.

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

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

**Procedure at hearing.**

13. (1) The procedure at a hearing under the Act shall be such as the appeals officer hearing the appeal may determine.
- (2) An appeals officer hearing an appeal may postpone or adjourn the hearing as he or she may think fit.
- (3) An appeals officer may, at the hearing of an appeal, admit any duly authenticated written statement or other material as prima facie evidence of any fact in any case in which he or she thinks it appropriate.

**Decision of Appeals Officer.**

14. (1) The decision of an appeals officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question.
- (2) The decision of an appeals officer shall be in writing and shall include the reasons for the decision which shall be notified as soon as may be to the Appellant, the Minister and any other person concerned.

GIVEN under my Official Seal,  
8 May 2002

JOE WALSH TD

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Minister for Agriculture, Food and Rural Development

See also:

- 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 2013

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



Agriculture  
Appeals Office



### *Appeal Procedure & Notice of Appeal Form*

#### **The Agriculture Appeals Office**

The Agriculture Appeals Office is an independent agency established to provide an appeals service to farmers who are unhappy with decisions of the Department of Agriculture, Food and the Marine regarding their entitlements under certain schemes. The Agriculture Appeals Act 2001, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals. Under Section 14(1) of the Agriculture Appeals Regulations 2002, 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. Please see attached schedule regarding the current list of schemes that are covered.

#### **How To Make an Appeal**

Every appeal must be made in writing and addressed to: The Director, Agriculture Appeals Office, Kilminchy Court, Portlaoise, County Laois. A standard 'Notice of Appeal' form is attached. Please note:

- The notice must be lodged **within 3 months** of notification of the decision under appeal. An appeal received after three months will only be accepted if the Director considers that there are exceptional circumstances.
- Before submission of an appeal to the Appeals Office, all internal review procedures within the Department of Agriculture, Food and the Marine must be exhausted.
- The notice of appeal should contain a statement of all the facts and contentions upon which it is intended to rely in the appeal. Documentary evidence submitted in support of the appeal should be enclosed along with the notice of appeal.
- A copy of the Department's final decision letter should be enclosed.
- Proof of postage must be obtained. Claims of appeals being lost in the post cannot be accepted.
- There is no charge for lodging an appeal.
- Each appeal is given a reference number and this number should be quoted when contacting the Agriculture Appeals Office.
- All appeals are acknowledged within 10 days of receipt.
- If you do not receive an acknowledgement letter within that time you should contact the office.

#### **Appeals Process**

When a final decision issues from the Department of Agriculture, Food and the Marine (i.e. after internal Department review), you will be notified of your option to appeal.

- The scheme applicant (appellant), dissatisfied with the decision, must complete a 'Notice of Appeal' form and submit it to the Agriculture Appeals Office.
- The Appeals Office requests from the Department of Agriculture, Food and the Marine, the relevant file and a statement regarding the appellant's grounds of appeal. **Your grounds of appeal will be forwarded to the Department of Agriculture, Food and the Marine for their comments and observation.**
- On receipt of the file and statement, the Director assigns the case to an Appeals Officer.
- Appellants are entitled to an oral hearing as part of their appeal.
- The Agriculture Appeals Office contacts the appellant to arrange an oral hearing if required, or if deemed necessary by the Appeals Officer.
- It is the policy of the office to discuss the appeal with the appellant. If no oral hearing takes place, the Appeals Officer will contact the appellant to discuss the appeal.
- The Appeals Officer considers all the evidence in full (including any evidence presented at an oral hearing if there was one). 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.

### Oral Hearings

Appellants are entitled to an oral hearing as part of their appeal.

- Oral hearings are held at a number of locations at a place and time convenient for appellants.
- Each case is assigned to an Appeals Officer, who will conduct the hearing.
- The office will contact the appellant about the arrangements for the oral hearing.
- Hearings are held in private and will be as **informal** as possible. The purpose of the hearing is to allow the appellants to put forward their case and to hear the case being put forward by the Department.
- An appellant may be represented by another person at the oral hearing, however **the appellant must attend the oral hearing in person.**
- A Department official(s) familiar with the case will also attend the hearing.
- The appellant must notify the Appeals Office at least **5 working days** in advance of anyone accompanying them at the oral hearing.
- The Appeals Officer will decide the format of the oral hearing on the day.
- The Appeals Officer may postpone or adjourn the hearing if deemed necessary.
- The Appeals Officer may admit any duly authenticated written statement or other material or document as prima facie evidence of any fact in any case in which he or she thinks appropriate.
- An Appeals Officer has the power to take evidence on oath or affirmation if deemed necessary.

### Right of Review

Please note that a decision of an Appeals Officer is final and conclusive, except in the following four circumstances,

- An Appeals Officer may change a decision where there is new evidence, new facts or a relevant change in circumstances.
- On request, from either party, The Director of Agriculture Appeals may revise a decision where there has been a mistake made in relation to the law or the facts of the case.
- An appellant may wish to appeal the decision to the Office of the Ombudsman, 18 Lower Leeson Street, Dublin 2 (01 6395600).
- The High Court may revise a decision on a point of law.

### Contact Details

**Address:** Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois  
**Lo- Call:** 076 106 4418      **Tel:** (057) 86 31900      **Fax:** (057) 8667177  
**E-mail:** [appeals.office@agriculture.gov.ie](mailto:appeals.office@agriculture.gov.ie)  
**Web:** [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie)

### Checklist before submission

- |  |        |
|--|--------|
| 1. Scheme is covered by the Agriculture Appeals Office<br><i>(Please check list of schemes overleaf)</i>                   | Yes/No |
| 2. Decision is within the last three months  | Yes/No |
| 3. Internal review by the Department of Agriculture, Food and the Marine completed, informing you of your right to appeal  | Yes/No |
| 4. All information requested has been provided (including a copy of the decision letter you received from the Department). | Yes/No |

**You should have answered yes to all of the above**

**Schedule of Schemes Covered**

**The Office deals with appeals under the following schemes:**

- Afforestation Grant and Premium Scheme
- Agri-Environment Options Scheme (AEOS)
- Animal Welfare, Recording and Breeding Scheme for Suckler Herds
- Beef Data Programme
- Bio Energy Scheme
- Burren Farming for Conservation Programme
- Dairy Efficiency Programme
- Disadvantaged Areas Scheme
- EU Area Aid Scheme (including the Arable Aid Scheme)
- EU De-seasonalisation Slaughter Premium Scheme
- EU Ewe Premium Scheme
- EU Extensification Premium Scheme
- EU Slaughter Premium Scheme
- EU Special Beef Premium Scheme
- EU Suckler Cow Premium Scheme
- Farm Improvement Scheme
- Forest Environment Protection Scheme (FEPS)
- Forest Road Scheme
- Grassland Sheep Scheme
- Installation Aid Scheme (IAS)
- Native Woodland Scheme
- Neighbourhood Scheme
- Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
- Organic Farming Scheme
- Reconstitution of Woodland Scheme
- Rural Environment Protection Scheme (REPS)
- Scheme of Early Retirement from Farming
- Scheme of Grant-Aid for the Development of the Organic Sector
- Scheme of Grant-Aid for Improvements in Animal Welfare Standards (Sow Housing)
- Scheme of Investment Aid for Farm Waste Management (FWM)
- Scheme of Investment Aid for the 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
- Single Payment Scheme, excluding Article 37(2), 40 and 42 of Chapter 2 of Council Regulation (EC) No. 1782/2003
- Sow Housing (Animal Welfare) Scheme
- Targeted Agricultural Modernisation Scheme (TAMS), including –
  - (a) the Dairy Equipment Scheme
  - (b) the Poultry Welfare Scheme
  - (c) the Sheep Fencing/Mobile Handling Equipment Scheme
  - (d) the Sow Housing Scheme, and
  - (e) the Water Harvesting/Conservation Scheme
- Upland Sheep Payment Scheme
- Woodland Improvement Scheme
- Young Farmer's Installation Scheme



## Notice of Appeal Form

**The Director  
Agriculture Appeals Office  
Kilminchy Court**

**Portlaoise**

**Co. Laois**

Tel: (057) 86 31900

Lo-Call: 076 106 4418

Fax: (057) 8667177

### Official use only

Eligible Scheme: Yes/No

In time: Yes/No

Dept Review carried out: Yes/No

Appeal No: \_\_\_\_\_

Checked by: \_\_\_\_\_

**Please complete parts 1 and 2 (overleaf) in full**

### Part 1 – Application Details (Please use block capitals)

1. Name: \_\_\_\_\_
2. Herd / REPS / Application Number: \_\_\_\_\_
3. Address: \_\_\_\_\_  
\_\_\_\_\_
4. Telephone Number: \_\_\_\_\_
5. Scheme under appeal: \_\_\_\_\_  
(e.g. REPS, Early Retirement Scheme, Single Payment Scheme, On-Farm Investment Schemes, etc.)
6. Department Office that issued the decision: \_\_\_\_\_
7. Date of Department decision: \_\_\_\_\_
8. Do you wish to have an oral hearing in relation to your appeal: Yes  No   
*If you require an oral hearing, you must provide the name/s and profession/s of representative/s who will be attending, in advance of the hearing.*
9. **Please list and enclose any relevant documents that you wish to have considered. A copy of the Department's final decision should be enclosed. (If you are unable to make a copy please send the original, which we will copy and return.)**
  - A. \_\_\_\_\_
  - B. \_\_\_\_\_
  - C. \_\_\_\_\_

**Please outline the facts and contentions in support of the appeal in part 2 overleaf.**

Name:  Herd / REPS / Application No:

**Part 2 – Grounds of Appeal**

Please set out all the facts that you wish to have considered; attach additional sheets if necessary. Please write your name and Herd / REPS / Application Number on each additional sheet.

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Signed: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Checklist before submission</b>		
1.	Scheme is covered by the Agriculture Appeals Office	Yes/No
2.	Decision is within the last three months	Yes/No
3.	Internal review completed by the Department of Agriculture Food and the Marine	Yes/No
4.	All information requested has been provided (including a copy of the decision letter)	Yes/No
<b>You should have answered yes to all of the above</b>		