



AGRICULTURE APPEALS OFFICE

ANNUAL REPORT

2014

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

Cuirim tuairisc maidir le gníomhartha na hOifige Achomhairc Talmhaíochta i 2014 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 2014 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.

Contact Details

Agriculture Appeals Office
Kilminchy Court
Dublin Road
Portlaoise
Co Laois

Telephone: 057 8631900 or LoCall 076 106 4418

Fax: 057 8667177

E-mail: appeals.office@agriappeals.gov.ie

Website: www.agriappeals.gov.ie

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1. Introduction

I am very pleased to introduce the Agriculture Appeals Office Annual Report for 2014. The mission of the office is *“to provide an independent, accessible, fair and timely appeals service for Scheme applicants under designated Department of Agriculture, Food and the Marine Schemes, and to deliver that service in an efficient and courteous manner.”*

The function of the Agriculture Appeals Office is to provide an appeals service to applicants 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. The office provides a free, impartial appeals service to such applicants. In 2014 610 appeals were received across the various Schemes and 727 appeals were finalised.

This report sets out the major developments during the year and provides a statistical breakdown of the office’s work up to 31 December 2014. 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 2014, the Office also oversaw the work of the 2013 Land Parcel Identification System (LPIS) Eligibility Review Appeals Committee which examined appeals from applicants whose land parcels had been reduced as part of the 2013 LPIS Review. The Land Parcel Identification System Appeals Committee comprised of Appeals Officers and an independent Chairperson, Mr Pdraig Gibbons.

I would also like to take this opportunity to put on record my thanks to the current team in the office for their continued commitment to the work of the office. 2014 saw a number of staff leave the office – I thank them for their work and wish them well. 2014 also saw a number of new staff join the office, they are most welcome to the team and I look forward to working together in the future.

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

Miriam Cadwell
Director

23 June 2015

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 appeals. The establishment of the Agriculture Appeals Office put the appeals process for Department of Agriculture, Food and the Marine Schemes on a statutory footing. 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 together 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 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 2014 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 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@agriappeals.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 2014.

Meetings of Appeals Officers

Eight meetings of Appeals Officers were held in 2014. The main 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 three 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. Eight appeals received during 2014 were referred to the Ombudsman in 2014. There were no occurrences in 2014 where the Ombudsman requested this office to amend its decision.

3. Appeals Procedure and Oral Hearings

329 oral hearings were held in 2014. 179 of these dealt with appeals submitted in 2014, 143 with appeals submitted in 2013, 5 were in relation to appeals submitted in 2012 and 2 were in relation to 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
- Requests 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. Arrangements are made by the office for an oral hearing, if 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 outlining the reasons for the decision.

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 that:

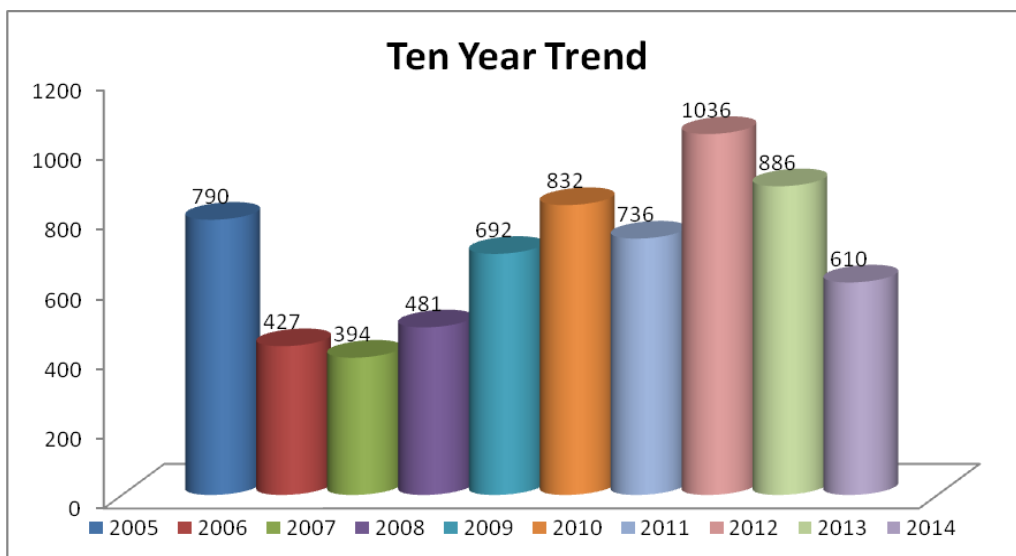
- It is held in private.
- It is informal.
- The Appellant may bring representatives but must attend the hearing in person.

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.

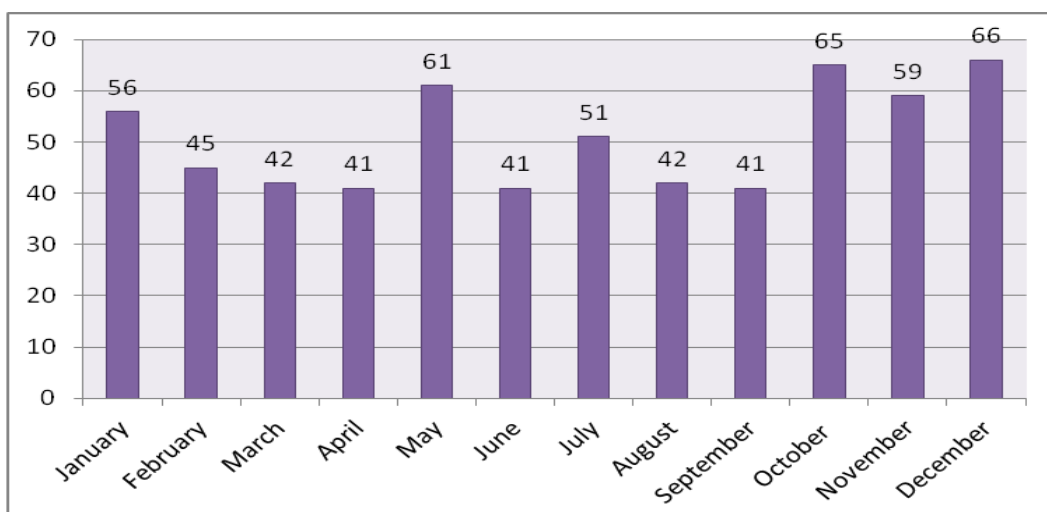
4. Statistics – 2014

610 cases were received in 2014 compared with 886 in 2013, a decrease of 32%. This is also lower than the 10 year average of 688 appeals per annum, as illustrated below;

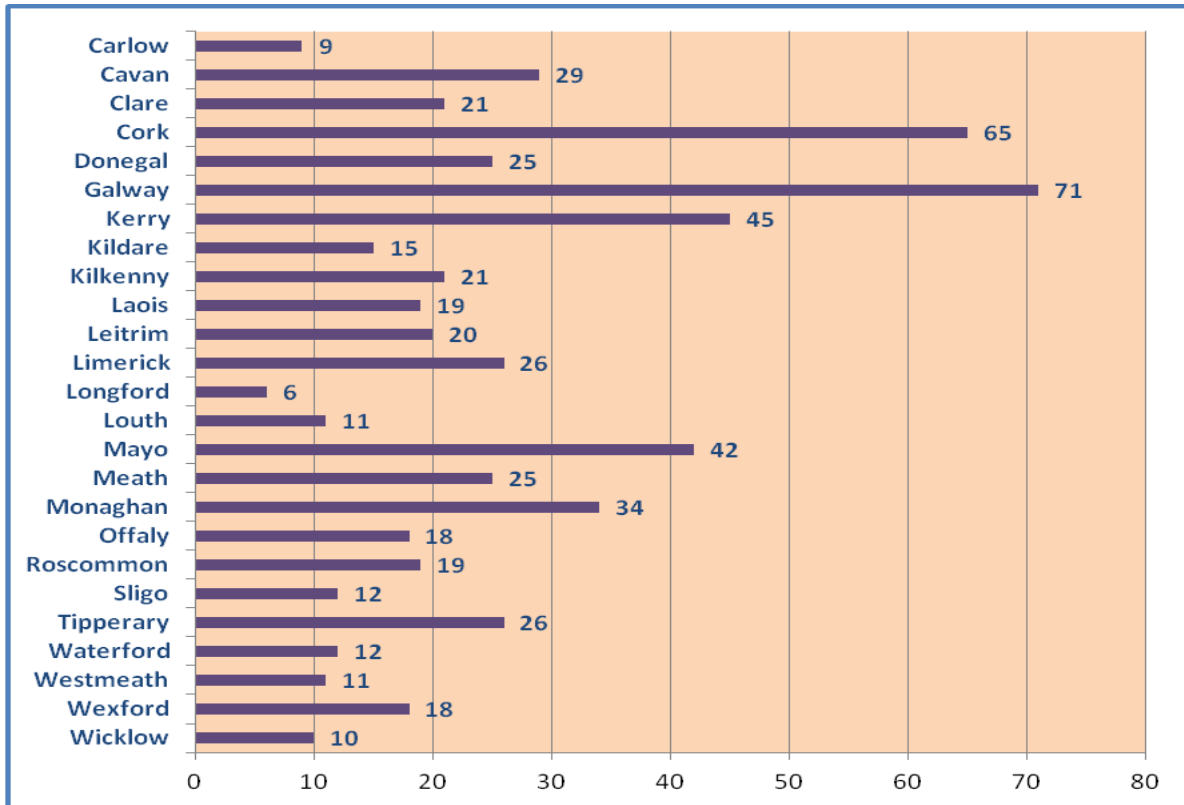
4(a) Appeals received per annum 2005 - 2014.



4(b) Appeals received per month during 2014.

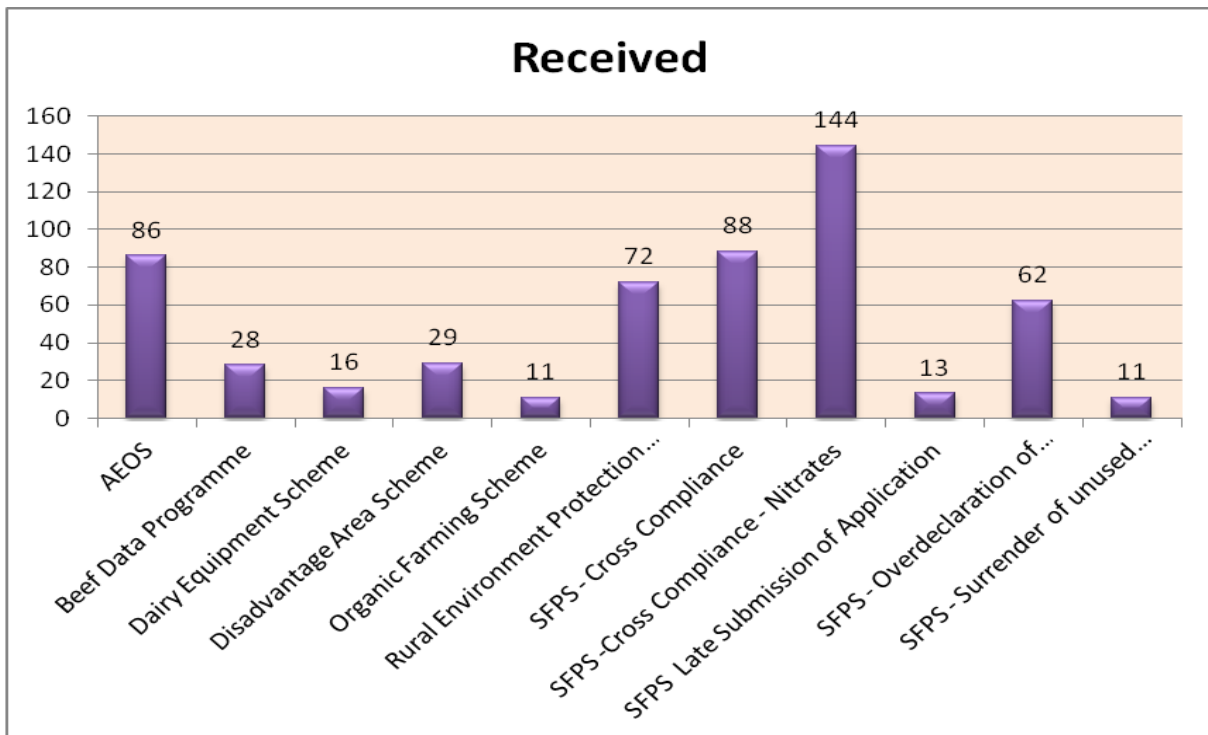


4(c) Appeals received by County in 2014.



4(d) Appeals received by Scheme 2014

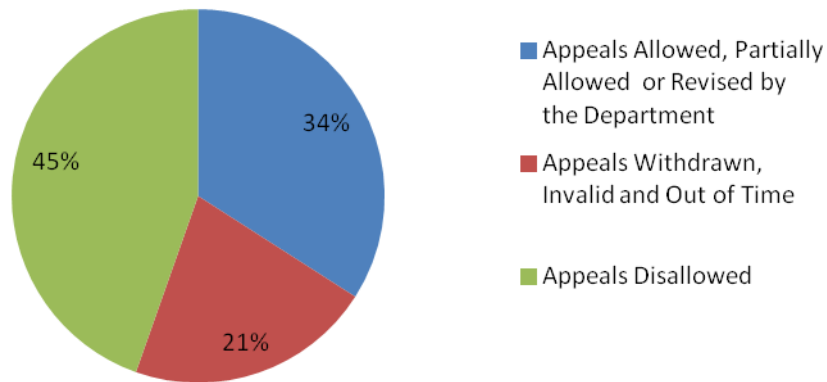
This table refers to Schemes where more than 10 appeals were received only



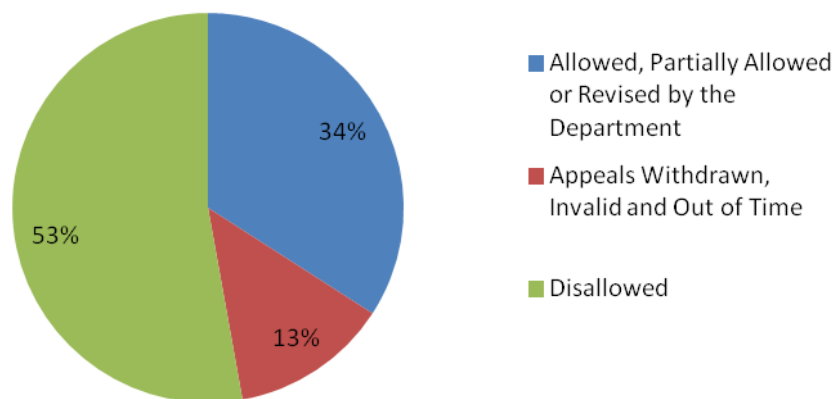
4(e) Outcome of appeals closed in 2014 (727 cases in total, of which 323 related to 2014)

Decision Results	Number	Percentage
Allowed, Partially Allowed or Revised by the Department	110	34%
Appeals Withdrawn, Invalid and Out of Time	69	21%
Disallowed	144	45%

Outcome - Appeals received in 2014



Outcome - All cases closed in 2014



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 This category includes cases where the Department has revised its original decision based on information submitted by the Appellant to the Agriculture Appeals Office or based on information provided at oral hearing. This can be following substantial input by the Appeals Office.

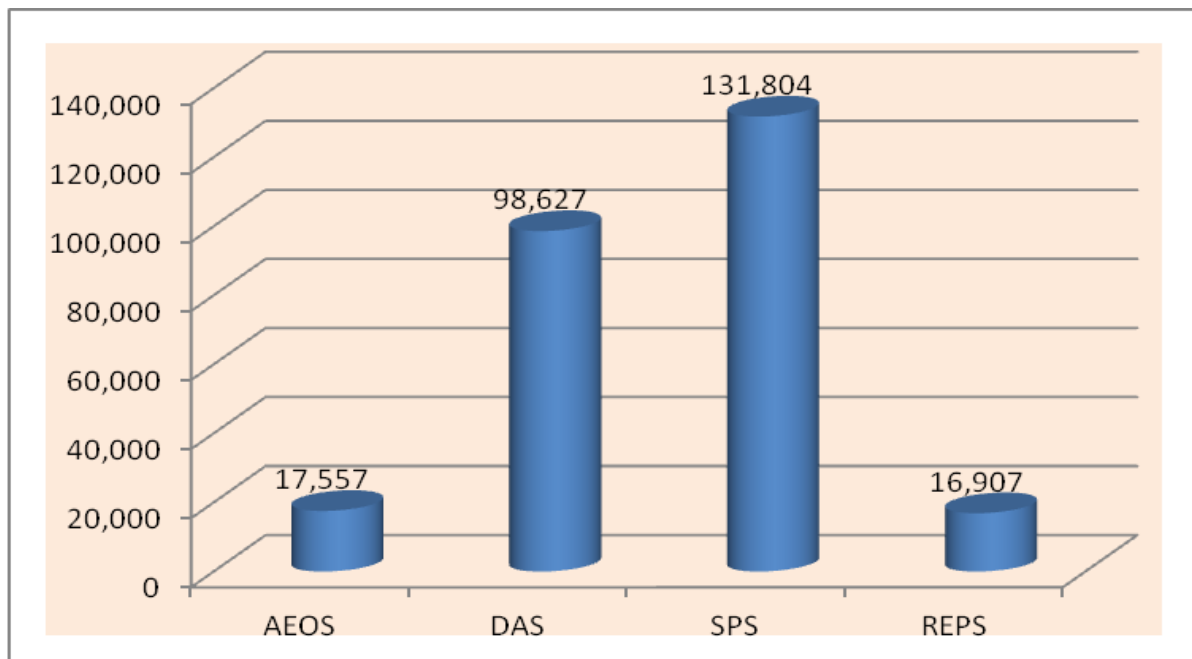
Invalid This category includes appeals on matters not appropriate to the office, (i.e. Schemes not listed in the Schedule to the Agriculture Appeals Act), pre-13 May 2002 cases, duplicate appeals and cases where no actual decision has yet been made by the Department of Agriculture, Food and the Marine.

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 exceptional 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/ decision made by the Department of Agriculture, Food and the Marine was the correct one.

4(f) Department of Agriculture, Food and the Marine main Scheme applications 2014

For illustrative purposes the overall numbers of applications received by the Department of Agriculture, Food and the Marine in 2014 in the larger Schemes operated are set out below.



4(g) Outcome by Scheme received at 31 December 2014

SCHEME	Received	Closed	Allowed	%	Partially Allowed	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
AEOS	86	43	1	2.32%	0		4	9.31%	1	2.32%	1	2.32%	6	13.96%	30	69.77	43	50%
Beef Data Programme	28	22	1	4.55%	0		8	36.36%	0		1	4.55%	0		12	54.54%	6	21.43%
Dairy Equipment Scheme	16	10	1	10.00%	0		0		0		0		1	10.00%	8	80.00%	6	37.50%
Disadvantaged Areas Scheme	29	14	0		0		3	21.43%	1	7.14%	2	14.29%	2	14.29%	6	42.85%	15	51.72%
Early Retirement from Farming Scheme	6	1	0		1	100%	0		0		0		0		0		5	83.33%
Non-Valuation Aspects of Reactor Scheme	5	3	0		0		0		0		0		1	33.00%	2	67.00%	2	40.00%
Organic Farming Scheme	11	4	1	25.00%	0		0		0		0		3	75.00%	0		7	63.64%
*Other	23	14	0		0		2	14.29%	0		5	35.71%	2	14.29%	5	35.71%	9	39.13%
Rural Environment Protection Scheme (REPS)	72	28	0		7	25.00%	7	25.00%	0		2	7.14%	0		12	42.86%	44	61.11%
SFPS - Cross Compliance	88	52	1	1.92%	6	11.54%	7	13.46%	2	3.85%	1	1.92%	8	15.39%	27	51.92%	36	40.91%
SFPS – Cross Compliance Nitrates	144	74	1	1.35%	2	2.70%	37	50.00%	6	8.11%	3	4.05%	6	8.11%	19	25.68%	70	48.61%
SFPS - Late Submission of Applications	13	10	1	10.00%	0		3	30.00%	0		1	10.00%	0		5	50.00%	3	23.08%
SFPS – Other	9	7	0		1	14.29%	1	14.29%	0		4	57.13%	0		1	14.29%	2	22.22%
SFPS - Over Declaration of Land/Setaside	62	29	1	3.45%	4	13.79%	4	13.79%	0		4	13.79%	4	13.79%	12	41.39%	33	53.23%
SFPS - Surrender of Unused Entitlements to National Reserve	11	8	2	25.00%	0		2	25.00%	0		1	12.50%	0		3	37.50%	3	27.27%
SheepFencing/Mobile Handling Equipment	7	4	0		0		1	25.00%	0		0		1	25.00%	2	50.00%	3	42.86%

*Includes Schemes where less than 5 appeals were received e.g Suckler Welfare Scheme (3,) SFPS – Underdeclaration of Land (4,) SFPS – Transfer of Entitlements (3), all other Schemes 2 or fewer appeals

% calculated based on outcome of 2014 cases closed at 31 December 2014 (323 cases).

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

A breakdown of the average number of days taken from when a request is sent to the relevant Division of the Department for a statement and any relevant documentation to date of receipt 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	54
Beef Data Programme	19
Disadvantaged Areas Scheme	69
Dairy Equipment Scheme	26
Organic Farming Scheme	40
Rural Environment Protection Scheme (REPS)	39
Single Farm Payment Scheme (SFPS)	28
Overall Average	34

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

- Requests the relevant documentation/ file and any relevant information from the Department of Agriculture, Food and the Marine.
- The relevant Division of the Department must also provide a statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed. This statement is subsequently copied to the Appellant by the Appeals Officer.

The office asks the Department to respond 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 330 reminders were issued in 2014, followed by repeat reminders where required.

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

For 2014 cases, the average time taken to deal with a case was 90 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(j) Position at year end

The position at 31 December 2014 in relation to cases received in 2014 is set out below, together with the position at 31 December 2013 in respect of 2013 for comparison purposes.

In total 727 cases were closed in 2014 – 323 cases received in 2014, 382 cases received in 2013, 18 cases received in 2012 and 4 cases received in 2011.

	Position at 31 December 2014 2014 Cases	Position at 31 December 2013 2013 Cases
Cases closed	323	468
Work in progress – Agriculture Appeals Office	168	277
Awaiting Department response	119	141
Sub-total of those on hand	287	418
OVERALL TOTAL	610	886

5. Land Parcel Identification System (LPIS) Eligibility Review Appeals Committee

The LPIS Eligibility Review Appeals Committee was established in October 2013 to consider appeals from farmers regarding the 2013 LPIS Eligibility Review. The LPIS Appeals Committee is chaired by Mr Padraig Gibbons and is comprised of Appeals Officers from the Agriculture Appeals Office. The committee considered 434 cases in 2014. Of the 434 cases, it was recommended 42 cases be allowed, 56 cases partially allowed, 301 be disallowed, in 28 cases a Land Verification Check was recommended and 7 cases were deemed invalid or additional information was sought.

5(a) LPIS Committee cases dealt with in 2014

LPIS Committee Appeals Status at 31st December 2014	Number of Cases
Cases considered in 2014	434
Allowed	42
Partially Allowed	56
Disallowed	301
Land Verification Check recommended	28
Other (Invalid / incomplete)	7

6. Selected Appeal Cases

Case 1: Rural Environment Protection Scheme (REPS 4).

The Appellant successfully applied to join REPS 4 and was given a start date of 1 July 2009. In a letter issued by the Department of Agriculture, Food and the Marine (the Department) in 2013 the Appellant was informed that following an inspection of his holding a penalty of 50% for permanent field boundaries on map not retained, and a 1% penalty for non compliance with specific requirements under Biodiversity Undertaking, Measure 2 had been applied, a total penalty of 51%.

The Appellant subsequently appealed to the Agriculture Appeals Office. The appeal was on the basis that the removed hedgerow consisted of trees which were of danger to people and as a consequence that they had been removed for safety reasons.

At the oral hearing it was argued by the Appellant that in a portion of the plot in question hedgerow had not been removed, rather it was a case of earth having been levelled.

Section 18 of the REPS 4 Terms and Conditions is titled Penalties. Paragraph 18.1 states; *Failure to comply with the Scheme Terms and Conditions, the agri-environmental plan and/or REPS Farmer's Handbook will result in an appropriate penalty/sanction.* Annex 1 of the Scheme terms and conditions lists REPS penalties. Under Measure 5 the penalty for *Permanent field boundaries on map not retained* is listed as 5% - 50%.

The Appeals Officer found that the REPS 4 terms and conditions had been breached and that a penalty was warranted. However it was concluded that the extenuating circumstances warranted a reduction of the 50% penalty for the removal of hedgerow to 20%. The 1% penalty remained unaltered. The appeal was partially allowed in that the total penalty was reduced to 21%.

Case 2: Agri- Environment Options Scheme.

The Appellant applied to join the Agri-Environment Options Scheme (AEOS) listing Species Rich Grassland, and Traditional Hay Meadow as Mandatory Actions, and Conservation of Animal Genetic Resources, and Tree Planting – Standard as Complementary Actions. The application was successful and the Appellant was given a contract start date of 1 September 2010. In a letter issued in 2014, the Department informed the Appellant that administrative checks had revealed that the Appellant was not a member of the Connemara Pony Breeders Society from the commencement date of their AEOS contract, and that as the action was therefore ineligible for payment, all monies paid in respect of the action were to be recouped. The Appellant subsequently appealed to the Agriculture Appeals Office.

In the Specifications for the Agri-Environment Options Scheme and Natura 2000 Scheme under the heading Conservation of Animal Genetic Resources (Rare Breeds) at page 12 states; *You must be a member of an approved breed society and you must remain a member of the breed society for the period of the contract.*

The Appeals officer found that the Appellant had not been a member of the approved breed society from the commencement of their AEOS contract and, therefore, the Scheme conditions had not been met. The appeal was disallowed.

Case 3: Agri- Environment Options Scheme

The Appellant's Agri-Environment Options Scheme (AEOS) contract commenced on 1 September 2010. The Department wrote to the Appellant in 2014 noting that some land parcels with associated AEOS actions had not been claimed on the 2013 Single Payment Scheme (SPS) as required, and requested a reason. The Appellant replied stating that the land had been leased out due to his health deteriorating. The Department subsequently issued a letter stating there was insufficient evidence to terminate Scheme participation under force majeure; the plan was terminated and reimbursement of payments was required.

In the appeal the Appellant stated that s/he had gone abroad for an extended period, on medical advice, in the hope that the change of climate would improve their health. S/he submitted a letter from his GP which confirmed that they had been advised a year previously to avoid any contact with farming.

At the oral hearing further medical evidence was submitted including doctors' and consultants' letters and details of hospitalisations. The Appellant stated that an SPS application had not been completed in 2014 as they had ceased farming in the autumn 2013; the land was leased out in two separate leases in the spring and autumn of 2013. They said that they were not aware that there was a problem when the land was leased out; their health had deteriorated unexpectedly. Subsequent to the oral hearing the Appellant submitted to the Appeals Officer copies of the 2013 land leases; both leases had terms of five years.

In the decision letter, the Appeals Officer noted the AEOS (2010) terms and conditions.

Section 6.1 - *To be eligible to participate a farmer shall:...have all lands farmed declared on the Integrated Administration and Control System (IACS).*

Section 10.1 - *Where all or part of an undertaking is not continued for a minimum period of five years, all or part of the aid paid in respect of the undertaking shall be repaid.*

Section 18 - *Where a beneficiary 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 the plan...the following categories of force majeure may be recognised...long term professional incapacity of the participant...*

The Appeals Officer accepted that it was necessary for the Appellant to cease farming in 2013 due to ill health, and found that the leases submitted were proof he had ceased farming. The Appeals Officer found that sufficient evidence had been provided to accept that force majeure applied under long term professional incapacity; that the Appellant was unable to continue to comply with the AEOS commitments for reasons beyond their control. The appeal was allowed, the AEOS contract was terminated with no clawback of AEOS payments made.

Case 4: Organic Farming Scheme.

A 2009 applicant for the Organic Farming Scheme (OFS) declared 2 horses on their annual declaration of farming activity in 2013. The Department established that the horses were not certified as organic animals and could not be included in the calculation for payment. The Department wrote to the Appellant and outlined that the level of entitlement for the OFS in 2013 was based on an area of 20ha (rather than the 30ha claimed area). At oral hearing the Appellant outlined the difficulties in organic farming, stating that the farm was farmed in an organic manner and that the horses were fed organic meal when on the farm.

Participation in the OFS imposes a responsibility on applicants to be aware of the requirements of the Scheme. At the outset applicants sign a declaration wherein they state that they *...agree to observe and be bound by all conditions of the Scheme...1 understand and accept that it is the applicants responsibility to acquaint him/herself with the conditions of the Scheme.* It states *The objective of this Scheme is to deliver enhanced environmental and animal welfare benefits and to encourage producers to respond to the market demand for organically produced food.*

Section 4.2 states *Livestock and crop products must be produced in accordance with Council Regulation (EC) No 834/07 as amended. Statutory Instrument No. 30 of 2009 imposes additional conditions that must also be met*¹ Annex 2 deals with the Calculation of payments and it states *Under the Scheme, organic livestock producers will receive payment computed on the basis of a minimum stocking level of 0.5 livestock units per hectare of eligible forage area declared. This arrangement allows for farmers to receive payment on a pro rata basis to their level of production. The eligible area for payment must be computed from the participant's Annual Declaration of Farming Activity (Form OFS2).* There is a footnote to the text on the calculation of livestock unit which states *Female or male horses of 2 years or older, with passport, in the organic operator's name indicating eligibility for human consumption and certified as organic by OCB. All other horses are ineligible and therefore cannot be included in calculating a participant's number of livestock units.* The Appeals Officer concluded that only horses which were certified as organic were deemed eligible for stocking density calculations. The certifying body in this case had stated that the horses were not certified as organic. The appeal was disallowed.

Case 5: Disadvantaged Areas Scheme

An application under the 2013 Single Payment Scheme was received in the Department of Agriculture Food and the Marine, this also serves as an application under the Disadvantaged Areas Scheme (DAS). The Appellant was advised that s/he did not qualify for the DAS Scheme as s/he had not complied with the terms and conditions of that Scheme in that s/he did not maintain the seven month retention period during which a farmer must retain a stocking density of 0.15 livestock units per hectare. The Appellant was a newly registered herdowner and had rented land, and it took some time to source animals for the herd. Animals were moved into the herd at the end of July 2013, many of which were sourced from a family member. It was also submitted that the Appellant was unaware of the change in the Scheme whereby the period in which animals had to be maintained was increased from 3 months prior to 2012 to 7 months since 2012. Animals would have been moved in sooner had the Appellant been aware of this requirement.

In particular to this Scheme are the requirements set out in paragraph 22 of the terms and conditions:-

'To be eligible for payment under the 2013 DAS, you must in your own right

- (2) Hold a valid Herd Number issued by the Department of Agriculture, Food and the Marine,*
- (5) Undertake to farm and manage the land applied on in 2013, for the full calendar year,*
- (8) Have a holding that meets the minimum stocking levels,*

2. Minimum Stocking Density of 0.15 livestock units per forage hectare in 2013 - The retention period is increased to seven consecutive months where the stocking density on the holding has to be equal or greater than 0.15 livestock units per forage hectare. In addition to maintaining 0.15 livestock units for a minimum retention period of seven consecutive months, applicants must also maintain an annual average of 0.15 livestock units calculated over the 12 months of the Scheme year.

It was acknowledged that the Appellant was a newly registered herdowner and that the herdnumber was issued in June 2013 and that s/he was unable to purchase animals until the issue of this number. Notwithstanding this, the Appellant had confirmed by signing the 2013 SPS application form that s/he was aware of the terms and conditions of the Scheme. This document clearly stated that s/he was required to maintain a minimum stocking density of 0.15 livestock units per hectare for a consecutive 7 month period. Therefore it was incumbent on the Appellant to stock the land as soon as the herdnumber was issued in order to comply with this requirement. The appeal was disallowed.

Case 6: Single Payment Scheme (SPS) Cross Compliance under Good Agricultural and Environmental Conditions (GAEC) & Statutory Management Requirement (SMR) 4.

An on farm inspection on behalf of the Local Authority detected non-compliance with SMR4 Nitrates requirements and of GAEC requirements.

The inspection found evidence of;

- Clean water allowed mix with slurry, eave gutters missing from a number of farm buildings causing rainwater to fall to dirty yards increasing the soiled water produced
- No collection of silage effluent - no channels on two silage bases.
- Inadequate containment of organic manure, cattle fed on an open yard with no collection facilities for runoff.
- Structural defects in dung-stead, a number of openings with effluent discharging directly to ground water.
- Farmyard manure stored in a parcel throughout the prohibited period.

A 20% 'Intent' sanction was applied under SMR4 for poor management of the collection of organic materials leading to the direct discharge to ground water. The inspection also found a parcel fence broken in 2 places and found poaching within a forage parcel and a 5% sanction was applied under GAEC.

The Appellant stated unfavourable wet weather affected ground stability and with increased run off had resulted in a delay in undertaking a farmyard development plan for which finance was also an issue. The Appellant stated rainwater was diverted to a slatted shed to assist slurry agitation and was harvested to water troughs in the farmyard and did not meet with any soiled yard. The Appellant stated the dung-stead was constructed to grant specification in the 1970s and the openings were there to allow seepage go to an underground tank. The Appellant stated one silage base had an effluent channel piped to a slatted tank and the other base sloped to the dung-stead and not to land. The Appellant stated ground water was tested within 40m of the farm yard and there was no issue found, the farm has its own well and quality of water is very important.

The Appellant stated the poaching resulted from a number of weanlings left out on higher land in very wet weather but were stocked within REPS limits. The Appellant stated the land stored manure was so since late 2012 and wet weather had prevented spreading. The Appellant stated regards stock-proofing that the parcel had previously been fenced with posts and wire, an electric fence is used there and the boundaries were never breached.

The Appeals Officer found no mention of a stock-proofing finding on the inspection reports or on the initial notice that issued to the Appellant, and in the absence of such reference on the official reports overturned this element of the GAEC sanction. The inspection reports showed an area in excess of 2 hectares heavily poached from out-wintering. Farm stocking density levels were not accepted as mitigating grounds for this breach and this element of the GAEC sanction was upheld.

At inspection gutters were missing from farm buildings with rainwater falling onto soiled yards and mixing with slurry, the report included a farmyard sketch showing flow directions. The Appeals Officer noted plans were in place to develop the farmyard but found the diversion of clean water from soiled yards has been a

statutory requirement since 2006. The Appeals Officer found the open gaps on the dung-stead walls indicated the original facility was not being maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water, and such prevention was also a statutory requirement since 2006. The Appeals Officer found explanations that run off was to an underground tank were not supported by the inspection findings of large scale direct discharge to groundwater. The inspection finding of cattle wintered in an open yard with no collection facility for run-off slurry was found to be a breach of the requirement to collect and store run off. The inspection found no effluent collection in place at two silage pits. The Appellant's agricultural consultant stated channels are now in place and effluent is piped to the slatted tank. The Nitrates Regulation requires silage effluent be collected and held in a manner that prevents the run-off or seepage, and the inspection evidence shows this requirement was not being complied with.

The field storage of organic manure was found at inspection, which was during the period when land storage is permitted. However, the evidence showed this material was field stored from the previous year and therefore throughout the 18 week prohibited period. The deferral of spreading in the event of heavy rain is within what is required by the Nitrates Regulation but the land storage of the material during the prohibited period is contrary to the Regulation.

The 2013 SPS Terms and Conditions specified applicants must comply with a number of SMRs and maintain land in GAEC. The January 2008 Explanatory Handbook for Good Agricultural Practice Regulations is referenced to in the 2013 SPS Terms and Conditions and states that in order to keep soiled water to a minimum a farmer must divert all clean water to a clean water outfall, prevent clean water from becoming soiled, keep the amount of soiled water that is produced on a holding to a minimum. The publication also states all organic fertilisers, effluents and soiled waters must be collected in a way that will prevent runoff or seepage, directly or indirectly, into ground waters or surface water. A farmer must also make sure there is enough spare storage to allow for bad weather and storage facilities must be kept leak-proof and structurally sound. The Appeals Officer found the farmer had not complied with fundamental elements of the Nitrates Regulations in place since 2006 and upheld the 'intent' level sanction.

The Appeals Officer's decision was to reduce the GAEC sanction to 3% and to uphold the 20% sanction applied under SMR 4. The appeal was partially allowed.

Case 7: Single Payment Scheme (SPS) and other area related Schemes.

The appeal concerned area eligibility of two claimed parcels under the 2013 Single Payment Scheme (SPS), Disadvantaged Areas Scheme (DAS) and other area based Schemes. A ground eligibility inspection found two claimed parcels were not farmed by the Appellant. Following the inspection the Appellant wrote to the Department seeking to withdraw the parcels. The Appellant was subsequently advised the parcels were also the subject of a claim by another farmer. The Appellant was refused permission to amend the 2013 application and the parcels were deemed rejected.

The Department inspector recorded at the inspection of being informed by the Appellant prior to visiting the parcels of the new situation. The inspector stated two days prior notice was given for the inspection.

The Appellant stated the parcels were rented for over 12 years through a verbal arrangement and paid for retrospectively at the end of each year. The Appellant stated this arrangement was altered by the landowner in 2013, without notice, even though the Appellant had fertilised the land in May 2013. In support of the appeal the Appellant provided fertiliser invoices, the appeals officer found some contained dates at variance with the statements in the appeal. The Appellant stated the first indication of another farmer on the land was when silage was cut there at the end of July 2013, on the same day the Department notified that an inspection was to take place, and had no opportunity to give prior notice to the Department of the new situation.

The Terms and Conditions required a written rental agreement in place for any rented land declared:- no rental agreement was provided or shown to exist. The Appeals Officer found the other 2013 claimant had provided a valid written rental agreement.

The Appellant's notification to the Single Payment Unit to remove the parcels for 2013 was on a date after the inspection date and the Appeals Officer found the Terms and Conditions only allow the withdrawal of land after 31 May 2013 where a farmer has not been notified of an on-the-spot inspection. The Terms and Conditions further state that if a farmer has been notified of an on-the-spot inspection and should that inspection subsequently reveal an irregularity, an amendment cannot be accepted to that part of the application that is affected by the irregularity found. The force majeure provisions were found not to be applicable in these circumstances.

On the basis of the Appellant not meeting the requirements of the 2013 SPS Terms and Conditions for a written rental agreement to be in place and prohibiting the withdrawal of land parcels once an inspection or an irregularity is notified, the appeal was disallowed.

Case 8: Agri- Environment Options Scheme

The Appellant's AEOS2 contract included two mandatory actions, one of which was an area of Wild Bird Cover. In September 2013 an inspection found the Wild Bird Cover area was found to be over-claimed, a penalty was applied in accordance with the IACS rules leading to no Wild Bird Cover payment for the year of the finding and the found area was deemed the eligible area for the action.

In the appeal the Appellant stated the kale planted was a 2 year crop and was not required to be cultivated in 2013 per the AEOS contract. The Appellant stated the sown area was marginal in nature and had to be left undisturbed for the kale's second year and some rushes had developed. A receipt was provided as evidence kale was sown in 2012. The Appellant stated linseed and kale were sown in the parcel but were not mixed

and it was part of the kale area that was at issue but all of the area was hand sown. The Appellant provided photographs taken in 2014 showing evidence of kale stalks toward the area of the parcel appealed.

The Department inspection found a defined strip of ground along one side of the Wild Bird Cover parcel with no crop. Failed patches could indicate a fertility issue but in this case it was a defined strip of ground. It was a requirement that the crop must only be sown on suitable ground.

The Appellant was contracted to sow the Wild Bird Cover crop before the 31 May 2012. The crop was into its second year when inspected. The photographic evidence was considered not definitive in that a collection of kale stalks were visible in a reasonably narrow area but showed very little evidence of kale stalks elsewhere in the area shown. At inspection the Department inspector found no issue with any of the parcel other than the area under appeal.

The AEOS2 specifications are set out for crop management but are silent on crop failure. The specification sowing rate for a kale seed is approx 2 kg per hectare when broadcast and adequate kale seed was purchased for the area. However, on the basis of the evidence provided an inadequate quantity of linseed seed was purchased and would have implied an overall shortfall of seed. It was found that neither kale nor linseed were growing on a defined area of land while the remainder of the parcel was in order. The appeal was disallowed.

Case 9: Single Payment Scheme-Nitrates.

The total amount of Nitrogen from livestock manure applied on the Appellants holding was 500kgs per hectare, it had exceeded the permitted level of 170kg per hectare and a penalty of 20% was applied to the Appellants payments under the Single Payment Scheme (SPS) and/or Disadvantaged Areas Scheme (DAS) and REPS/AEOS where applicable.

An appeal was submitted to the appeals office on the grounds that additional land had been rented in 2013. Taking into account the rented land the nitrate limit was not breached.

At the oral hearing the Regulations which set the limit of 170kg/ha for organic nitrates and the calculation of the figures on a graduated scale from the Department stock database were outlined. As was the requirement to have records of rented land notified to the Department by 31December 2013.

It was acknowledged that the Rental Agreement was not received for the rented land until early December of the following year, when the requirement was that it should have been submitted to the Department by 31 December of the previous year. The appeal was disallowed.

Case 10: Targeted Agricultural Modernisation Scheme (TAMS) – Dairy Equipment Scheme closing date.

An application under the Dairy Equipment Scheme was received in the Department of Agriculture Food and the Marine on 2 January 2014. The Appellant was notified that the application was deemed to be ineligible as it was received after the closing date for the Scheme of 31 December 2013. A review of this decision was sought on the basis that the application was posted on the evening of 30 December 2013, and was sent by Express post as specified in the Department terms and conditions of the Scheme. An Post initially confirmed that the post would be delivered the next day but subsequently advised that due to the time of year (New Year) and the large amount of post being processed, that the letter was not delivered until 2 January 2014. It was also submitted that the Appellant was not aware that applications could have been submitted by hand to the local Department office and only became aware of this later. The Appellant also indicated that they had learned that applications were accepted via scanning and email with the originals being submitted in the first week of January 2014. In a similar transaction, an item posted by Express Post on 6 February 2014 was delivered to the Department's Offices in Wexford on 7 February 2014. The Appellant stated that next day delivery is the normal course of events.

Section 1(v) of the Targeted Agricultural Modernisation Scheme (TAMS) terms and conditions dated 1 October 2012 states - *The Scheme will come into operation as and from 20 December 2011 and will be closed for valid applications on 31 December 2013....*

Section (x) - *Applications for grant-aid should be sent to the Department of Agriculture, Food and the Marine, Dairy Equipment Scheme Section, On-Farm Investment Schemes Division, Johnstown Castle Estate, Co. Wexford... The Department strongly recommends that applications for grant-aid be sent to the Department by registered post or other form of tracked mailing system....*

Paragraph 32- Procedure for Application for Aid, *The closing date for receipt of valid applications shall be 31 December 2013.*

The date of receipt of the application is not disputed. The Department have stated that they did not accept applications for this Scheme by scanning or email. Only original documentation was accepted. In relation to the issue of applications being accepted by the Local Office of the Department, they referred to Paragraph 1 (x) of the terms and conditions '*Where application forms are delivered by hand to the Department, a Departmental receipt must be obtained for the application concerned at the time of delivery*'. It was open to the Appellant and/or his consultant to check with the Department if there were concerns relating to the timely delivery of the application. It is acknowledged that the application form was posted on the 30 December 2013, however, the onus was on the Appellant to ensure that sufficient time was allowed to ensure that the application was received before the closing date. Any incorrect information given by An Post at the time of postage is a matter between the Appellant and that organisation. The appeal was disallowed.

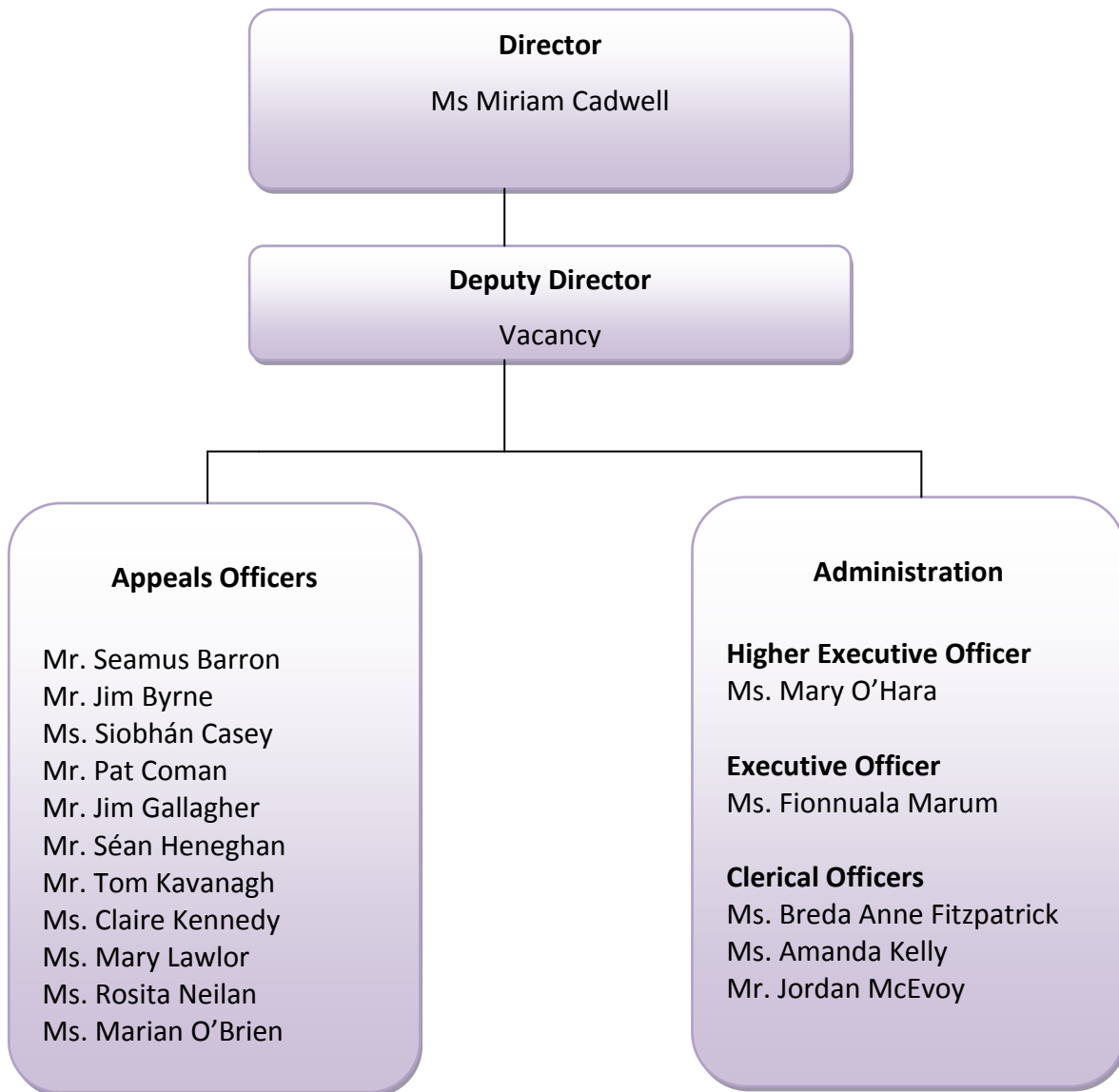
7. Key Findings of the Agriculture Appeals Office relevant to the Department of Agriculture, Food and the Marine

- The increased use of online applications in respect of Scheme applications with online verifications, where possible, should be considered.
- The use of electronic and/ or text messaging should be increased.
- A text alert mechanism could be considered for Nitrates and used to alert farmers of the danger of exceeding the 170 kg limit or the 250 kg derogation limit, possibly automatically triggered when a selected tolerance level is reached.
- 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 the Scheme applicant.
- Any changes or revisions to Scheme Terms and Conditions should be notified to all ongoing participants.
- Where cross compliance breaches occur, notifications of consequential penalties should be in a timely manner in order to alert the farmer and avert a repeat breach within the following year(s).

8. Common errors by Scheme Applicants that lead to penalties

- 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 and online submissions. Submission receipts in relation to all applications and documentation submitted should be carefully retained.
- Applicants should use registered post services when sending applications and important Scheme documents.
- Registered post must be used when sending any Nitrates slurry export and land rental forms.
- In the interests of avoiding potentially substantial penalties, all 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.
- Applicants should make themselves aware of the reductions required for ineligible areas under the areas based Schemes
- In relation to AEOS, applicants should take careful note of the Scheme Terms and Conditions in relation to the specific actions required.
- In general, Applicants should familiarise themselves with the Terms and Conditions relevant to their application, particularly the timeframe of contractual requirements.

10. Organisation Chart at 31 December 2014



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

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

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 Compensatory Payments Scheme (DAS) excluding Land Parcel Identification System Review 2013 (LPIS Review 2013)

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

Neighbourwood 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. 1782/2003¹ and Land Parcel Identification System Review 2013 (LPIS Review 2013)

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 Welfare Scheme, and
- (e) the Rainwater Harvesting Scheme

Upland Sheep Payment Scheme

Woodland Improvement Scheme

Young Farmers' Installation Scheme

¹ OJ L 270, 21.10.2003, p. 1



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

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.



Appeal Procedure

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.

How To Make An Appeal

Every appeal must be made in writing and addressed to The Director, Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co Laois.

- The notice must be lodged within 3 months of notification of the decision under appeal. An appeal received after 3 months will only be accepted if the Director considers that there are exceptional circumstances.
- Before submission of an appeal to the Agriculture 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 (ie 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 Agriculture 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 observations.

- 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 (include 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.

Contact Us

Address: Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co Laois.

LoCall: 076 106 4418

Tel: 057 863 1900

Fax: 057 866 7177

Email: appeals.office@agriappeals.gov.ie

Web: www.agriappeals.gov.ie

Oral Hearings

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

- Oral hearings are held 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.**
- Department official(s) familiar with the case will also attend the hearing.
- The appellant must notify the Agriculture Appeals Office **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 circumstances;

- An Appeals Officer may change a decision where there is new evidence/facts or relevant change in circumstances.
- On request, from either party, the Director of the Agriculture Appeals Office 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 Lr Leeson St, Dublin 2, (01) 6395600.
- The High Court may revise a decision on a point of law.

Checklist Before Submission

- | | |
|-------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Scheme is covered by the Agriculture Appeals Office (please check list below) | Yes/No |
| 2. Decision is within the last 3 months | Yes/No |
| 3. Internal review completed by the Department of Agriculture, Food and the Marine,
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 |

Schedule of Schemes Covered

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 Compensatory Payments Scheme (DAS) excluding Land Parcel Identification System Review 2013 (LPIS Review 2013)
 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. 1782/2003² and Land Parcel Identification System Review 2013 (LPIS Review 2013)
 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 Welfare Scheme, and
 (e) the Rainwater Harvesting Scheme
 Upland Sheep Payment Scheme
 Woodland Improvement Scheme
 Young Farmers' Installation Scheme

² OJ L 270, 21.10.2003, p. 1



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 Officer 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

Please note that if you request an oral hearing you must attend in person. You may also bring representative(s). The name(s) and profession(s) of any such representative(s) must be provided to the Appeals Office, in advance.

9. **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, on request)
 - 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.

Signed: _____ Date: _____

Checklist before submission	
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
You should have answered yes to all of the above	

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 Bio Energy Scheme
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 Non-valuation aspects of the On-Farm Valuation Scheme for TB and Brucellosis Reactors
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 Upland Sheep Payment Scheme
 Woodland Improvement Scheme
 Young Farmers' Installation Scheme

³ OJ L 270, 21.10.2003, p. 1