

An Oifig **Achomharc**
Talmaíochta

Agriculture
Appeals office



AGRICULTURE APPEALS OFFICE



ANNUAL REPORT 2015

To the Minister for Agriculture, Food and the Marine, Mr. Michael Creed 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 2015 is hereby submitted.

Angela Robinson

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

I am pleased to introduce the Agriculture Appeals Office Annual Report for 2015.

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 independent 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.

Having recently been appointed as Director of Agriculture Appeals, I would like to take this opportunity to wish my predecessor, Ms. Miriam Cadwell, every success in her new role. This report reflects activity undertaken by the Agriculture Appeals Office under Miriam’s leadership and on behalf of the Office I would like to thank her for her work and commitment to ensuring the delivery of an independent appeals function during her term as Director.

This annual report provides a statistical breakdown of the Office’s work up to 31 December 2015. In 2015, 619 appeals were received across the various Schemes. A total of 672 appeals, including appeals received in previous years, were closed in 2015. In addition to those appeals, the Office oversaw and participated in 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 Committee comprised of Appeals Officers and an independent Chairperson, Mr Padraig Gibbons. On behalf of the Appeals Office I would like to take this opportunity to thank Mr. Gibbons for his work and engagement with the Committee.

To illustrate the type of issues that gave rise to appeals and the consideration given to these issues by Appeals Officers, the report contains a cross-section of cases determined by Appeals Officers during the year. The report also includes suggestions for consideration by the Department of Agriculture, Food and the Marine and by scheme participants.

I would like to acknowledge the current team's continued commitment to the work of the Office and thank former team members who left the Office in 2015. I look forward to working with the team, to build on the work and commitment of my predecessors and to identify any possibilities for the Office to improve the service for clients while ensuring the integrity of the independent appeals process provided by this Office.

As well as fulfilling its primary function as a report to the Minister for Agriculture, Food and the Marine, it is hoped 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

Angela Robinson

Director of Agriculture Appeals

21 June 2016

2. Agriculture Appeals Office

2.1 Appeals service

The Agriculture Appeals Office was established in 2002 to provide an independent 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 appeals process provided by the Agriculture Appeals Office has a statutory basis: the Agriculture Appeals Act 2001, as amended, along with the Agriculture Appeals Regulations 2002, sets down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of appeals. Appeals Officers are independent under the Act.

In line with its mission statement, the Office aims to be client friendly and to deliver the service in a courteous and efficient manner. One of the main features of the appeals service 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 by the Appeals Officer to both the Appellant and the Department.

On request, from either party, the Director of Agriculture Appeals may review a decision by an Appeals Officer where there has been a mistake made in relation to the law or the facts of the case.

2.2 Procedures Manual

Under the Freedom of Information Act 2014, the Agriculture Appeals 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, names and 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.

2.3 Business Plan

The 2015 Business Plan forms the basis for the work of the Office and is subject to regular review.

2.4 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@agriappeals.gov.ie

2.5 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 2015.

2.6 Meetings of Appeals Officers

Seven meetings of Appeals Officers were held in 2015. The main purpose of these meetings is to ensure consistency of approach and to discuss matters relevant to the work of the Office.

2.7 Freedom of Information

The Agriculture Appeals Office received five formal requests under the provisions of the Freedom of Information Act.

2.8 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. Fifty two appeal cases were referred to the Ombudsman in 2015. There were no occurrences in 2015 where the Ombudsman requested this Office to amend its decision.

3. Appeals Procedure and Oral Hearings

Applicants have three months from the date of decision of the Department to appeal and appeals received after that time, are not accepted. 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.

An Appellant has the right 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.

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. Arrangements are made by the Office for an oral hearing, if requested by the Appellant or deemed necessary by the Appeals Officer. 307 oral hearings were held in 2015 of which 187 concerned appeals submitted in 2015, 109 concerned appeals submitted in 2014, 9 were in relation to appeals submitted in 2013 and 2 were in relation to 2011.

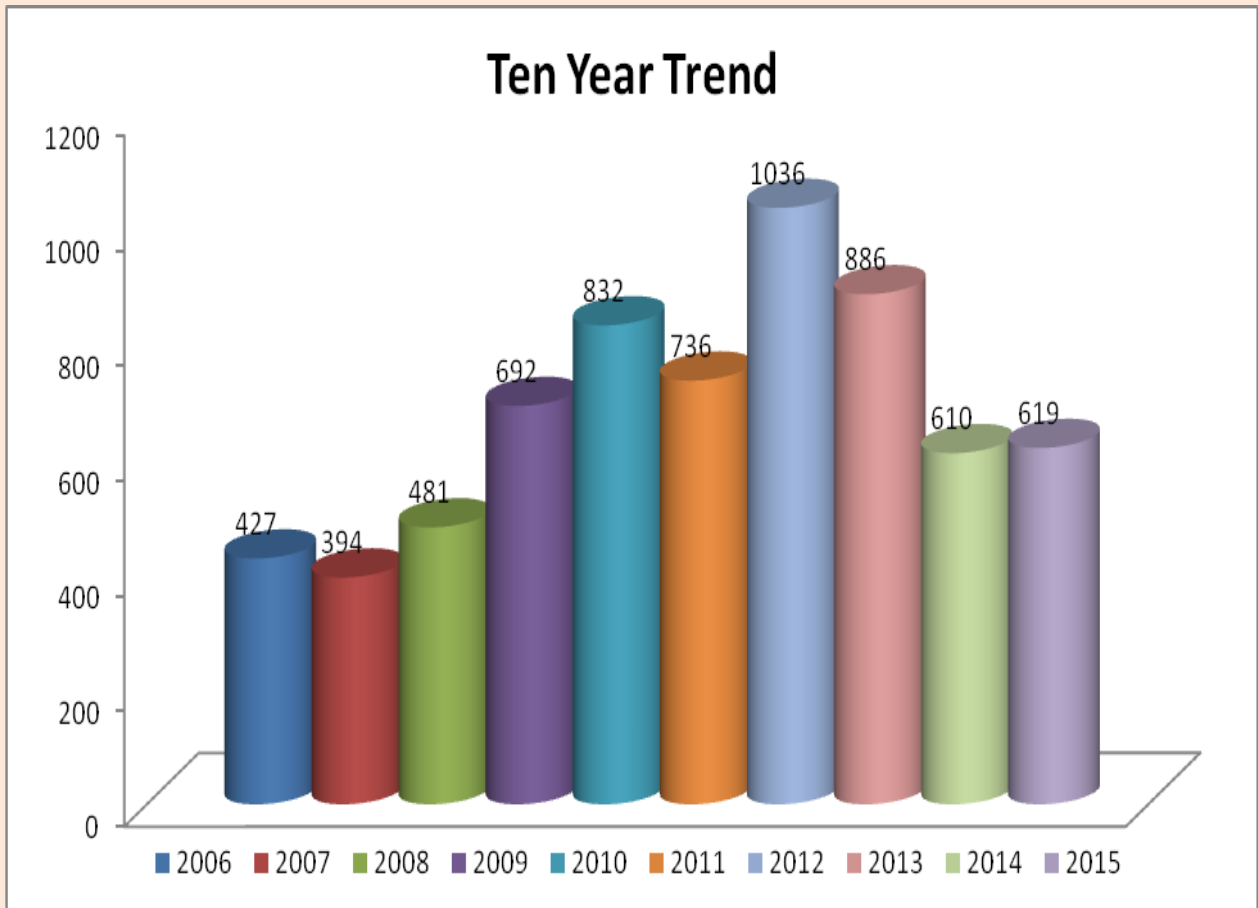
Following examination and consideration of all of the facts of the case and after any oral hearing of the case, the Appeals Officer makes a determination and issues a letter to the Appellant, outlining the outcome of the appeal and the reasons for the decision.

An appeal to the Office does not preclude an appellant from raising an issue with either the Office of the Ombudsman or with the High Court on a point of law.

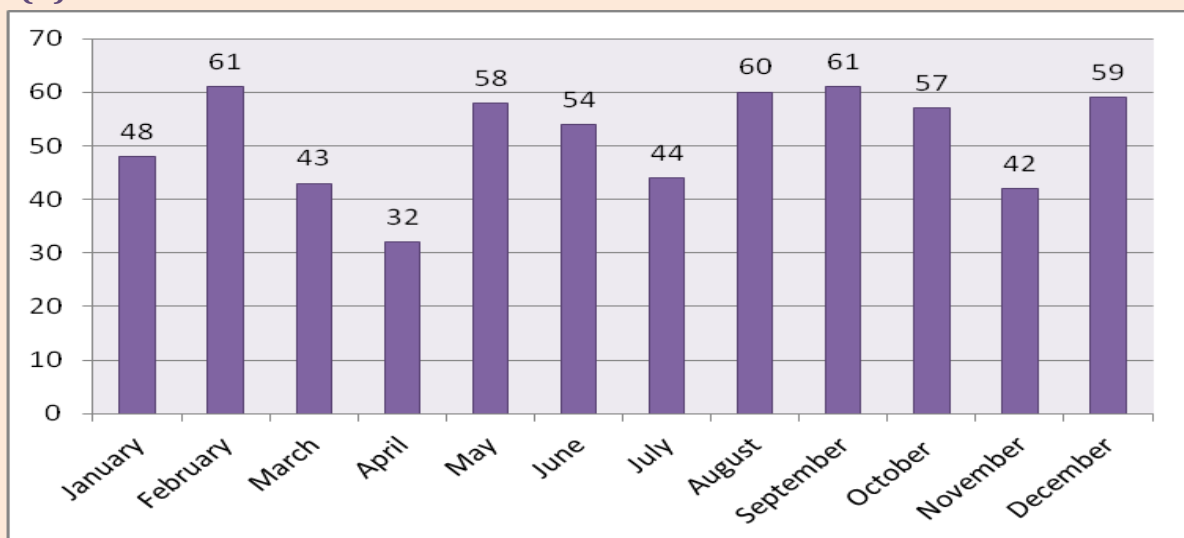
4. Statistics – 2015

619 cases were received in 2015 compared with 610 in 2014, an increase of 1%. This is also lower than the 10 year average of 671 appeals per annum, as illustrated below:

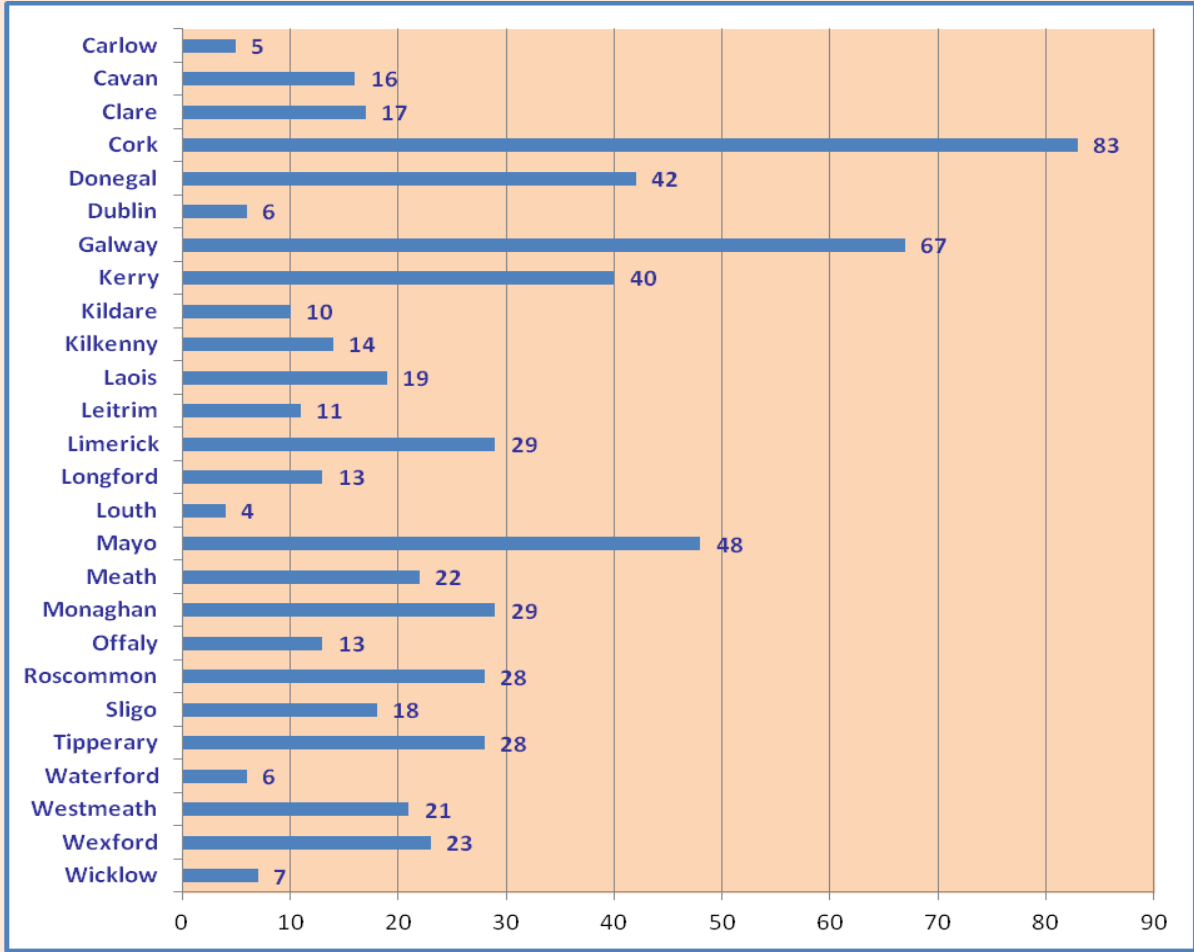
4(a) APPEALS RECEIVED PER ANNUM 2006 - 2015.



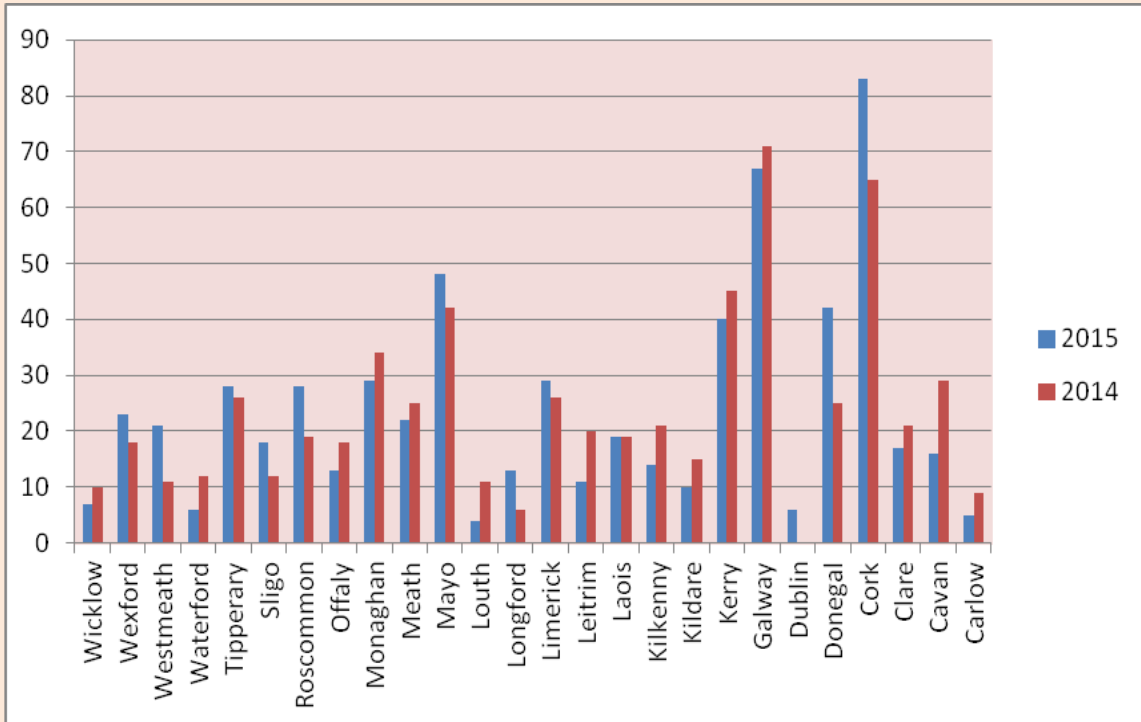
4(b) APPEALS RECEIVED PER MONTH DURING 2015.



4(c) APPEALS RECEIVED BY COUNTY IN 2015.

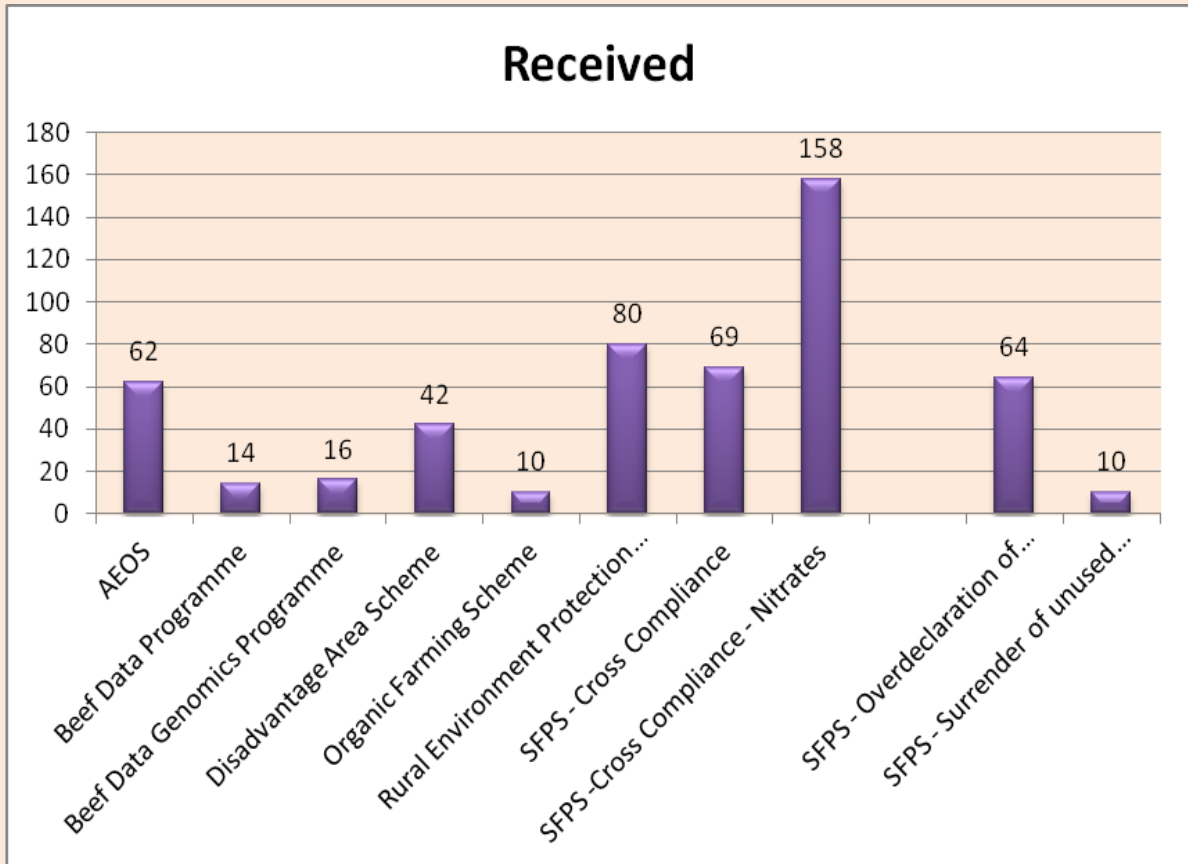


4(d) COMPARISON OF NO. OF APPEALS RECEIVED PER COUNTY FOR 2014 AND 2015



4(e) APPEALS RECEIVED BY SCHEME IN 2015

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

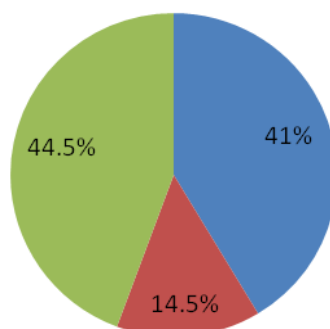


4(f) OUTCOME OF APPEALS CLOSED IN 2015 (not including LPIS committee)

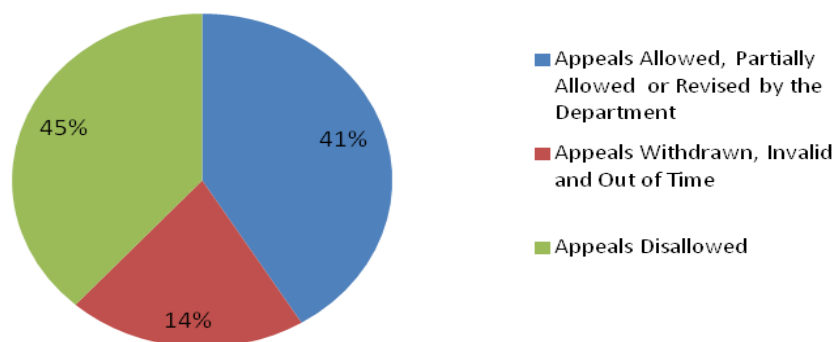
There were 672 cases closed in total, of which 383 related to appeals received in 2015. The statistics for outcome of appeals received and closed in 2015 do not differ significantly from those for all appeals dealt with in 2015 as illustrated below.

Decision Results	Number of all appeals closed in 2015 (672)	Percentage
Allowed, Partially Allowed or Revised by the Department (all Appeals closed in 2015)	278	41%
Appeals Withdrawn, Invalid and Out of Time (all Appeals closed in 2015)	96	14.5%
Disallowed (all Appeals closed in 2015)	298	44.5%

Outcome of all cases closed in 2015 (672)



Outcome of Appeals received in 2015



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 Agriculture Appeals 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.

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4(g) Outcome by Scheme at 31 December 2015 for appeals received in 2015 which were closed in 2015

SCHEME	Received	Closed	Allowed	%	Partially Allowed	%	Revised by Dept.	%	Withdrawn	%	Invalid	%	Out of Time	%	Disallowed	%	Open	%
Afforestation Grant & Premium Scheme	5	3	1	33.33%					1						2	66.67%	2	40.00%
AEOS	62	41	9	21.95%	4	9.76%	13	31.71%	0	2.44%	1	2.44%	1	2.44%	12	29.27%	21	33.87%
Basic Payment Scheme	7	0							0								7	100.00%
Beef Data Genomics Programme	37	23					17	73.91%	1		2	8.70%			4	17.39%	14	37.84%
Beef Data Programme	14	9					1	11.11%	0		4	44.44%	1	11.11%	3	33.33%	5	35.71%
Beef Genomics Scheme	5	4					2	50.00%	0		2	50.00%					1	20.00%
Disadvantage Area Scheme	42	32	3	9.38%			8	25.00%	0	3.13%	4	12.50%	1	3.13%	15	46.88%	10	23.81%
Farm Safety Scheme	5	5							0		1	20.00%			4	80.00%	0	0.00%
Organic Farming Scheme	10	5			1	20.00%	1	20.00%	0		1	20.00%	2	40.00%			5	50.00%
*Other	39	22	1	4.54%	3	13.64%	3	13.64%	2		6	27.27%			9	40.90%	17	43.59%
Rural Environment Protection Scheme	80	34	5	14.71%	5	14.71%	6	17.65%	6	8.82%			3	8.82%	12	35.29%	46	57.50%
SFPS - Cross Compliance	69	41	3	7.32%	4	9.76%	4	9.76%	0	4.88%	8	19.51%	8	19.51%	12	29.27%	28	40.58%
SFPS -Cross Compliance – Nitrates	158	115	4	3.48%	7	6.09%	36	31.30%	0	3.48%	2	1.74%	8	6.96%	54	46.96%	43	27.22%
SFPS Late Submission of Application	7	5	1	20.00%			2	40.00%	0						2	40.00%	2	28.57%
SFPS - Over declaration of Land/Set-aside	64	35	2	5.71%	8	22.86%	2	5.71%	0		5	14.29%	1	2.86%	17	48.57%	29	45.31%
SFPS - Transfer of Entitlements	10	6							0		5	83.33%	1	16.67%			4	40.00%
Sheep Fencing/Mobile Handling Equipment	5	3					1	33.33%							2	66.67%	2	40.00%

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

% calculated based on outcome of 2015 cases closed at 31 December 2015 (383 cases).

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

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.

This Office requests 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. A number of reminders and repeat reminders were issued by this Office to the Department in 2015. 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 by this Office of that documentation 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	31
Beef Data Programme	17
Disadvantaged Areas Scheme	58
Beef Data Genomics Programme	13
Single Farm Payment Scheme (Nitrates)	20
Rural Environment Protection Scheme (REPS)	71
Single Farm Payment Scheme (SFPS)	24

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

For 2015 cases, the average time taken to deal with a case was 85 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

In total 672 cases were closed in 2015 including 383 cases received in 2015, 261 cases received in 2014, 19 cases received in 2013, 8 cases received in 2012 and 1 case received in 2011.

The position at 31 December 2015 in relation to cases received in 2015 is set out below, together with, for comparison purposes, the position at 31 December 2014 in respect of appeals received in 2014. The cases listed in the table do not include cases dealt with by the LPIS committee. (see Paragraph 5)

	Position at 31 December 2015 <i>Appeals received in 2015</i>	Position at 31 December 2014 <i>Appeals received in 2014</i>
Cases closed (appeals received in 2015)	383	323
Work in progress – Agriculture Appeals Office	149	168
Awaiting Department response	87	119
Total Appeals received in 2015	619	610
Remaining appeals received in to be processed	236	287

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 232 cases in 2015. Of the 232 cases, it was recommended that 20 cases be allowed, 14 cases partially allowed, 106 be disallowed, in 61 cases a Land Verification Check was recommended and 31 cases were deemed invalid or additional information was sought.

5(a) LPIS Committee cases dealt with in 2015

LPIS Committee Appeals Status at 31 st December 2015	Number of Cases
Cases considered in 2015	232
Allowed	20
Partially Allowed	14
Disallowed	106
Land Verification Check recommended	61
Other (Invalid / incomplete)	31

6. Cross section of Appeal Cases

Case 1: Agri-Environment Options 3 Scheme (AEOS) – Appeal Allowed by the Agriculture Appeals Office

An application to the Agri-Environment Options Scheme (AEOS) scheme was made in 2011 and included the Species Rich Grassland (SRG) action. The appellant was informed in March 2015 that three parcels selected for SRG were found at validation in 2014 to have a crop category of forage with a parcel use of 'grass year 5', meaning 2014 was only the 5th successive year the parcels had been in grass. The letter stated that records showed that from 2007 – 2009 the parcels were declared with a crop category of arable and a parcel use of fallow whereas SRG parcels must be grassland parcels that have not been cultivated in the last 8 years. The penalty indicated that the parcels were not eligible for payment under the AEOS Terms and Conditions, would not be paid in 2014 and a clawback would be applied for payments made on the parcels to date.

At the Oral hearing, the Department highlighted that a key criteria pertaining to SRG parcels is that they had not been cultivated in the past 8 years. The Department records showed that between 2007 and 2009, three of the SRG parcels were designated as arable and fallow meaning that they had been ploughed and were lying idle. As a consequence the Department's case was that the three parcels were not eligible for SRG and monies paid were to be recouped. The appellant explained that he had inherited the property from a late uncle who had been in REPS and who, prior to his demise, had been unwell and not engaged in any tillage for years. The appellant was not able to re-engage the planner that his uncle had used and was given no records. A new planner was engaged who walked the lands before the AEOS application, and he was of the view that the land was mature pasture. The appellant stated he had not had sight of past Single Payment Scheme applications, and the planner was of the view that the land should have been entered as grass, not fallow, in past years. It was stated that there had been a land eligibility inspection in 2009 and the inspector had said that the land was grass.

The Appeals Officer reviewed all information provided, had regard to the Terms and Conditions of the Scheme and the relevant EU legislation. They considered the Specifications for the AEOS and Natura 2000 Scheme on Species-rich Grassland which states '*These must be full LPIS grassland parcels that have not been cultivated in the last 8 year.*' Following the oral hearing the Department confirmed that the 'crop found' on all the parcels during the 2009 inspection was grass / permanent pasture. The Appeals Officer considered the definition of permanent pasture in the SPS 2009 Terms and Conditions: '*Permanent pasture shall mean land used to grow grasses or other herbaceous forage.....that is not included in the crop rotation of the holding for five years or longer.*' In considering all available information, including the evidence in respect of the previous landowner, and in particular the information supplied by the Department after the oral hearing, the Appeals Officer was satisfied that the three parcels were in grass in 2009 and was of the view, taking into consideration the definition of permanent pasture, that on balance it was likely that the parcels were in grass in 2007 and 2008 and prior to that. The appeal was allowed.

Case 2: Agri-Environment Options 3 Scheme (AEOS) – Appeal Disallowed by the Agriculture Appeals Office

The Department approved a contract for an AEOS 1 Scheme application in 2010 for one mandatory action of Wild Bird Cover (WBC) and a number of complementary actions. A cross check found that the plot assigned for WBC was declared as forage on the 2012 Single Payment Scheme (SPS) application. A rapid field visit in 2013 found that the WBC action had not been carried out on this plot. As the single mandatory action had not been complied with, it was deemed that the application did not meet the Terms and Conditions of the Scheme, the contract was terminated and recoupment of all monies paid was sought. The appellant sought a review of the decision on the basis of the historical significance of the surrounding area which included an old graveyard, holy well, park and various amenity services open to the public. The appellant also claimed to be unaware when applying for AEOS that they were not allowed plough the parcel selected for WBC.

At the oral hearing the appellant outlined the historical significance of the area around which they had selected the plot for WBC, and explained that they had fenced off an area selected for WBC. The appellant explained it was only at a meeting in 2011 that they found out this parcel they could not be ploughed. The appellant confirmed the WBC was not sown since the AEOS plan commenced. The appellant stated they had not thought to inform the Department that the WBC was not sown, even following a phone query on the size of the parcel. The appellant explained their involvement with local groups in restoring and improving this historical area through the LEADER programme and their commitment to improving the environment. The appellant also outlined medical issues and a hospital stay in 2013.

The Appeals Officer considered the case, having regard to the EU Regulations, Terms and Conditions governing the scheme and the principles of natural justice. The Appeals Officer noted that AEOS required the following: either 2 Mandatory actions or 1 Mandatory and 1 Complementary action, before an application can be considered valid. In relation to the mandatory action selected, WBC, the scheme specification state *'Each year of your contract, sow a seed crop mix that provides winter cover and a food source for farmland birds and other fauna. Alternatively, you can sow a two year mix plus a one year mix in the third year. The choice of site is critical. The crop must be grown on suitable lands capable of producing and sustaining the crop i.e. soil and aspect that are capable of producing a cereal crop. Do not sow this crop on unsuitable lands, because it will fail to establish...'* The Appeals Officer considered the inspection report which outlined that the parcel was in permanent pasture, was wet in nature, contained a lot of rushes and had not been tilled in years. The Appeals Officer found that the appellant did not attempt to plant any seed crop at any time during the duration of the plan. The Appeals Officer found the appellant became aware in 2011 that the parcel could not be ploughed but did not bring this issue to the attention of the Department at any time prior to penalty notification. It was acknowledged the appellant was environmentally conscious. The Appeals Officer found that the appellant did not comply with the scheme conditions for WBC, and, in not complying with this mandatory action, the entry requirements of the scheme were not met. The medical evidence was considered however it was found that the non compliance began in 2011 and 2012, prior to the health issues outlined. The appeal was disallowed.

Case 3: Agri-Environment Options 3 Scheme (AEOS) – Appeal Allowed by the Agriculture Appeals Office

The Department approved a contract for an AEOS 3 Scheme in 2013 for a number of actions, including Water Trough Installation. The appellant submitted a claim for a Water Trough with an invoice dated March 2014. The Department informed the applicant that the invoice was not eligible for re-imbusement as it was in the name of another person other than the participant. The appellant submitted another invoice to the Department in their own name, dated May 2014. The Department stated that the water trough installation action was ineligible under the Scheme, as per Paragraph 8.3 of the Terms and Conditions *'the receipt must be made out by the Vendor in the name of the applicant'* but as date of the second invoice was after the deadline for completion of works of 31st March 2014, the Department informed the appellant that the action was ineligible for reimbursement. The Department also outlined that the penalty would apply to the next AEOS payment, in accordance with the penalty schedule (Annex 4) of the Terms and Conditions of the Scheme.

The appellant explained that a water trough was purchased and installed in March 2014 in advance of the deadline under AEOS 3 and explained that the water trough was purchased using the appellant's late father-in-law's account with the local Co-op, for convenience, and this account has been used since the appellant had started farming. The appellant explained that the local Co-op had kindly provided a second receipt, but it was dated with the day that the docket details had been changed into the appellants name by the Co-op, due to limitations with the Co-op computer system, not the date of purchase and installation of the water trough.

An oral hearing was held and the appellant presented the report of the Department inspector who had carried out an on-farm inspection of investments in April 2014, whose report stated that all was in order. The Department explained that an action includes both a physical inspection and a paperwork check. They explained that each invoice submitted did not meet the Checklist requirements for the Department's requirements for the scheme and the action was considered incomplete. Subsequent to the oral hearing the appellant submitted a Credit Sales Invoice from the local Co-op, dated March 2014 and a letter from them of September 2014 confirming that the appellant was solely using the late father-in-law's account.

The Appeals Officer took into consideration all the evidence submitted, field inspection carried out and the date that the appellant's new herd number was assigned. The Appeals Officer accepted that although the name supplied by the vendor was that of the appellant's father-in-law, it was not possible for the Co-op to change the name on the system at that time. However the Appeals Officer found that it was the appellant and not their deceased father-in-law that purchased the water trough. They found that the evidence presented showed that the appellant made the purchase within the given deadline. The Appeals Officer decided that the water trough purchase should be reimbursed and no penalty for non-completion of the action should be imposed. The appeal was allowed.

Case 4: Afforestation Grant and Premium Scheme - Appeal Allowed by the Agriculture Appeals Office

A forestry application was initially made in 2008 under the Forestry Environmental Protection Scheme (FEPS) with a proposed planting area situated in a West of Ireland Peninsula. It was outlined as not being situated in a prime scenic area but the Department viewed it as being in *other high amenity landscape* and it was indicated that afforestation would impact on an area commonly used by the public for recreation. The certification report and aerial photography on the Department's online Forestry System (IFORIS) confirmed the proposed area as agricultural land. The application was referred to third parties for review, namely the National Parks and Wildlife, local County Council and local Fisheries Board. The application was refused in 2008 without a field inspection because the site was deemed to be peat-land and therefore ineligible under the rules and conditions of the FEPS Scheme. The decision was appealed and the Department agreed that the presence of the peat on site was overstated but the appeal was disallowed on the grounds of landscape considerations, elevation, exposure, aspect, a small plot of peat-land and proximity to a national scenic route.

The site was applied for again under the Afforestation Premium and Grant Scheme in 2010 with the peat-land plot excluded in the application and minor species changes. The site was deemed moderately sensitive with a requirement for a landscape plan by the Forest Service. In the interim the site had been partially designated as visually sensitive (*Prime Special*) under the County Development Plan 2009-2015. The application was refused by the Department in 2010 for landscape reasons. This decision was supported by the Department's Landscape Architect by way of a desk inspection.

The site was applied for a third time under the Afforestation Premium and Grant Scheme in 2012. The Department's Landscape Architect carried out a field inspection, and this report supported allowing the application subject to minor species changes. However, the application was again disallowed by the Department in 2013 by virtue of having been previously disallowed on appeal. An oral hearing was held and the Appeals Officer considered all evidence presented and examined the Forest Service's Indicative Forest Strategy, *County Development Plan (CDP) 2009-2015*, Tourist Maps, aerial photography on the Department's Forestry System (IFORIS), an extensive number of good quality photographs of the site and its surrounds. The Appeals Officer accepted the landscape was visually sensitive with a part of the site designated as *Prime Special* in the CDP 2009 – 2015 and marked as a tourist route, but the landscape was not presented as being unique and also noted that there were other plantations along this route and their landscape effect is minimal. The Appeals Officer found no evidence to suggest that the *Department's Landscape Guidelines* would be breached with the proposed afforestation of the site and also accepted the Expert Report of the Department's Landscape Architect supporting afforestation approval on the site. The Appeals Officer accepted the appellant's Forestry Consultant's view that exposure, stability and as a consequence windthrow risk are not significantly different to other locations in the West of Ireland and risk reduction measures were within the control of the owner. The Appeals Officer also found that the visual effect of the forest operations are unlikely to be significant due to the relatively small size of the proposed plantation and are likely to be short term in duration. The appeal was allowed.

Case 5: Beef Data Programme – Appeal Disallowed by the Agriculture Appeals Office

Appellant was informed in June 2014 that the net amount payable under the Beef Data Program (BDP) 2013 was nil. The Terms and Conditions of the BDP required that the prescribed data under Commitments 1 and 2 must be completed on all suckler cows and their calves born in the herd. The appropriate survey forms relating to both Commitments were issued from ICBF to the applicant in October 2013 and March 2014 for completion, and the 31st May 2014 was the closing date for acceptance of the forms. The appellant's Commitment forms were received by ICBF at the end of August 2014, which was outside of the required timeframe.

The appellant sent a letter to ICBF in August 2014 enclosing completed data for 2013. The appellant stated that the Beef Data Programme Input Sheets were not received due to mistaken postal delivery by An Post. The appellant only became aware of this in July 2014 when the letter from DAFM confirming non payment was received. A letter from An Post was submitted stating that *'While we are unable to say for definite what became of this letter, we cannot rule out the possibility that it was mis-delivered to an address with a similar sounding name in this area'*. The Department found that other correspondence sent out from the Department for SPS 2013 and 2014 was received by the applicant and that the payslip for BDP was sent to the appellant's address in June 2014 with no issues. The Department concluded that it was feasible to suggest the said forms were delivered as appropriate and the decision regarding non payment should stand. At the oral hearing it was explained that a number of animals had been registered to the appellant under the Beef Data Programme 2013 but the scheme payment requirement that Commitment 2 be completed for at least 75% of the cows and calves in the was not met. The Department's view was that the letter from An Post was insufficient evidence, and that all other forms that had been sent to this address had been received and returned. The appellant outlined their case including referring to local postage issues. The Department explained that the ICBF sends out forms, and if the first form is not returned, or is only partially filled in, a second form is sent out. The Department said that forms were sent out in October 2013 and March 2014. The appellant claimed that these were the only letters that were lost for 5 or 6 years.

The Appeals Officer considered the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to this scheme. They found under Section 13 'Responsibility of the Applicant' that *'It is the responsibility of the applicant to familiarise him/herself with the Terms and Conditions of the Scheme, return all completed forms within the required timeframe, and be aware of the consequences for breaches of the Scheme'*. The Appeals Officer took into consideration the fact that pre-printed Single Payment Scheme (SPS) maps and application form were sent to the appellant during March 2014 and both were received, as evidenced by signed SPS form received by the Department on 14th May 2015. It was the BDP forms sent in March 2014 and in October 2013 that were claimed not to have been received. The Appeals Officer considered all the evidence submitted but found that the appellant had a responsibility to be aware of the timeframes within which data should have been returned. The appeal was disallowed.

Case 6: Statutory Management Requirement (SMR) 4 Cross Compliance – Appeal Disallowed by the Agriculture Appeals Office

An inspection was carried out in March 2015 by Department of Agriculture, Food and the Marine officials, on behalf of the Department of the Environment to determine compliance with the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2014 (Nitrates Regulations SI 31 of 2014) which is Statutory Management Requirement (SMR) 4 relating to Cross Compliance.

An inspection had been carried out in 2012 with a 3% penalty on the Nitrates SMR 4 imposed at that time. At the 2012 inspection, the storage of farmyard manure in the field had been highlighted. Subsequent to the inspection, a farmyard manure pit was constructed to avoid further penalty. Another inspection was carried out in March 2015 which found 'Evidence of inadequate collection of livestock manure, other organic fertilisers and soiled water'. Specifically the inspectors found inadequate collection of soiled water from the manure pit, milking parlour and assembly area, leading to indirect discharge to groundwater. The 2015 inspection found that the manure pit was inadequate and it also highlighted an issue with the milk tank washings in the dairy. This resulted in a repetition sanction of 9% being applied, as there had been a 3% penalty applied within the previous three year calendar period.

At the Oral hearing, the appellant's advisor said that the appellant has a new slatted shed and has set up a new dung stead. The appellant highlighted that they were committed to abandoning the new manure pit and all manure would in future be spread direct to the field within the period permitted. The appellant said that he had undertaken to correct all issues, and completed a number of actions in May 2015 including clearing out the dung stead and putting it out of use, fitting pumps to slatted house tanks and ensuring that dairy waste water is going into the slatted house unit.

The appellant's Teagasc consultant outlined that a farm development plan and farmyard restructuring plan had been agreed for the farm a few years back, but due to inclement weather and low returns/ high costs from farming the implementation of these plans was delayed until 2013/2014. However since the 2012 inspection, the farmer had carried out significant work on the farmyard at great cost, with the addition of roofed housing, slurry storage facilities and restructuring of waste conveyance facilities.

The Appeals Officer noted that the appellant had carried out work to rectify the problems found on the day of inspection, however noted that breaches of the Nitrates regulations were found at the inspection. The Appeals Officer was sympathetic to the difficulties, the current facilities provided and the efforts that the appellant was taking to rectify the situation. However the Appeals Officer found that the level of reduction/ penalty applied was correct, in line with the Terms and Conditions of the Scheme and in compliance with the EU Regulations. The appeal was disallowed.

Case 7: Statutory Management Requirement (SMR) 5 Cross Compliance – Appeal partially Allowed by the Agriculture Appeals Office

The National Parks and Wildlife Service (NPWS) carried out an inspection on the appellant's farm and the Department notified the appellant in April 2014 of a penalty of 20% being applied on 2013 payments under the Single Farm Payment (SPS) and/ or Disadvantaged Areas Scheme (DA), REPS and AEOS where applicable. The 20% intent sanction was imposed in relation to non-compliances found in respect of Statutory Management Requirement (SMR) 5 Conservation of Natural Habitats and of Wild Flora and Fauna. The inspection found woodland and scrub was removed in a Special Area of Conservation (SAC) and some drainage had also been carried out at the site.

At the Oral hearing, the Department explained that the NPWS inspection reported that works were undertaken without consent, there was reclamation of land and deepening of drains, which was deemed destruction of the SAC. The Department established that the appellant was partaking in REPS 4 and checked the REPS maps for reference to the SAC site and permitted areas. The Department had the view that the appellant was fully aware it was an SAC area and it was identified as a designated site on their REPS plans, the site was re-designated in 2005 and the appellant was notified of this December 2005 by the NPWS. The Department stated that the appellant carried out the works on the land without any consent from NPWS. The appellant stated that the area of land where work took place was considerably less than the NPWS had stated and questioned the definition of intent in the regulations. The appellant also explained there were mitigating circumstances due to the poor weather conditions at the time, 2012/2013 was a very wet year and there were concerns regards poaching. The appellant explained they had no intent of reclaiming the land but there was water running everywhere and it had to be taken off the field to prevent the land being damaged. The appellant's representative said that scrub was not removed during the bird nesting season between 1st March and 31st August. The appellant also stated that they were unaware that this land was designated as SAC.

In considering the case, the Appeals Officer had regard to the Terms and Conditions, the relevant EU legislation and the circumstances particular to this case. The Appeals Officer noted that it was accepted by both parties that some work was carried out in the SAC. The Appeals Officer considered Commission Regulation (EC) No 1122/2009, Article 72 which deals with the 'Application of reductions and exclusions in the case of intentional non-compliance' which states: *'...where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the total amount referred to...shall, as a general rule, be 20% of that total amount. However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report...decide to reduce that percentage to no less than 15% or, where appropriate, to increase that percentage to up to 100% of that total amount'*. They also considered Article 71 which deals with 'Applications of Reductions in the case of negligence'. The Appeals Officer accepted the Department's argument that the appellant should have been aware that this was an SAC site, as it was identified as such on their REPS plan, and accepted that the appellant should not have carried out work on this site without prior NPWS approval. The Appeals Officer found that the Department was correct in imposing an intent penalty on the application. However, in view of the mitigating circumstances outlined at the oral hearing, of unprecedented heavy rainfall that lead to flooding, it was the finding of the Appeals Officer to reduce the penalty imposed from 20% to 15%. The Appeal was partially allowed.

Case 8: Single Payment Scheme (SPS) - Late Application – Appeal Allowed by the Agriculture Appeals Office

The appellant forwarded a copy of his 2014 Single Payment Scheme (SPS) application and Swift-Post receipt to the Department in October 2014 after being made aware when querying payment that the Department contended the original was not received. The Department decision stated the closing date for receipt of valid SPS applications was 15th May 2014 and the onus remains firmly with the applicant to ensure the application is submitted on or before the closing date. The Department confirmed it had received an empty application envelope by tracked postage.

The appeals grounds included that the appellant had completed the application with the help of Teagasc and posted it on the way home and could not understand how the envelope could arrive empty going directly from the Teagasc Office to the Post Office.

The Department side stated there were no documents in the envelope received; their procedure is that all envelopes are opened for data capture and empty envelopes are recorded on a database with the actual envelope retained. The Department stated the circumstances were outside any application of force majeure.

The Teagasc Advisor confirmed it would be normal to meet clients, complete the forms as required and get them signed, then place them in an envelope, seal and address it and give it to the client to post on the way home. The Teagasc advisor said that file notes indicate the 2014 SPS application at appeal was signed in his presence.

The evidence showed an SPS amendment form was received by the Department from the appellant on 9th June 2014 to include additional land.

The closing date for Single Payment applications was 15th May 2014. The 2014 Terms and Conditions state at Section 2 that in the event that the Department does not receive your completed 2014 SPS application, which you sent by post, you will be required to produce proof of postage. The only acceptable proof of postage is (a) Express Post Receipt and (b) Registered Post receipt.

The Appeals Officer found that this case was governed by Section 2 of the Terms and Conditions and the appellant held a valid swift post receipt as required. The Appeals Officer also found that the amendment form was received by the Department on 9th June 2014, which fell within the 25 calendar day period after the 15th May closing date for the acceptance of late SPS applications. The Appeals Officer found that if the appellant was contacted on the day the Department received the SPS amendment it would have been possible to have an SPS application copy lodged before the final closing date for the acceptance of late applications. The appeal was allowed.

Case 9: Good Agricultural Practice for Protection of Waters Regulations - Nitrates Derogation – Appeal Allowed by the Agriculture Appeals Office

Farmers, in the absence of a Nitrates Derogation, are obliged to ensure that the total amount of organic nitrogen (N) from livestock manure applied to their land (including that deposited by the animals themselves) does not exceed 170 kg N per hectare in a calendar year. The Department records indicated 192 kg N per hectare for this farm in 2013. The appellant had also breached the 170 kg limit in 2011 and 2012 and a further ‘repetition’ sanction was applied for 2013 amounting to 45% of the area based EU payments.

The appellant’s grounds of appeal included that 40 ha of land was rented in each of the years 2011, 2012 and 2013, but the land was not included on their SPS application as the owner would not give the LPIS numbers or maps. The appellant stated livestock had been transferred to the rented land. The Appeals Officer was confined to examining the case for 2013.

At the hearing the appellant confirmed that he went to the Department office to explain the situation and was given a Record 4 form which was completed and posted. It transpired the appellant did not get credit for the movement of the stock stated on the Record 4. Proof was offered of the movement dates. The Department Inspector confirmed the cattle on the Record 4 form were not credited for Nitrates purposes, but other cattle notified through movement monitoring system were credited. The appellant stated that the owner of the farm onto which the cattle were moved had no cattle of their own.

It is the responsibility of applicants to be aware of the Nitrates requirements. Statutory Instrument No. 610 of 2010 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010, Section 20 (1) states: “... *the amount of livestock manure applied in any year to land on a holding, together with that deposited to land by livestock, shall not exceed an amount containing 170 kg of nitrogen per hectare*”.

The Appeals Officer found that the Record 4 form (*Notification of Temporary Movement of Cattle or Sheep – other than cattle moved under AIM*) was received by the Department in August 2013 notifying the movement of 29 cattle. However, the Appeals Officer found that the Department had deemed that the receiving farm had cattle and as a consequence the Record 4 form was not accepted. The Appeals Officer through further examination found the owner of the lands onto which the 29 cattle were moved had no cattle of their own, and as a consequence the Record 4 form was acceptable.

The Appeals Officer determined that the appellant should receive credit for the cattle contained on the Record 4 form and allowed the appeal. The outcome was a reduction in organic nitrogen from livestock manure applied to 148 kg N per hectare which meant that no breach had occurred in 2013.

Case 10: Good Agricultural Practice for Protection of Waters Regulations – Nitrates - Appeal Partially Allowed by the Agriculture Appeals Office

Organic nitrogen levels were 210 kg per hectare for 2013 and the 170 kg per hectare Nitrates limit was exceeded, and as a result of 2013 being a 2nd repeat breach within three consecutive years the appellant was subject to a “further repetition sanction” giving rise to an 81% penalty on 2013 payments.

The grounds of appeal included that the appellant’s late husband had managed all cross compliance issues up to 2009 and the appellant had engaged the services of an agricultural advisor since 2014. The appellant had reduced the area farmed by over 50%, not realising a reduction in stock numbers was required to comply with Nitrates.

The Nitrates Regulations – Statutory Instrument 610 of 2010 and the 2013 Single Payment Scheme Terms and Conditions applied. In the absence of a derogation the Nitrates limit of 170 kg per ha applied to the holding in 2013. In respect of the area farmed the Appeals Officer found that it was unchanged since before 2006. The Appeals Officer found the 2012 breach was a further repeat breach of Nitrates, over 2011 and 2010, and gave rise to a 15% penalty based on a trebling of a background 9% from 2011 with the outcome (27%) being reduced back to 15% as required by Regulation for the maximum sanction under negligence. The 81% sanction for 2013 was arrived at by the Department trebling the background 27% from 2012 on the basis of being a further repeat breach.

The Appeals Officer found Article 71(5) of Commission Regulation (EC) 1122/2009 states for cases of negligence that; *...the maximum reduction shall, however, not exceed 15 % of the total amount referred to in Article 70(8). Once the maximum percentage of 15 % has been reached, the paying agency shall inform the farmer concerned that if the same non-compliance is determined again, it shall be considered that he has acted intentionally within the meaning of Article 72. Where a further non-compliance is determined thereafter, the percentage reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15% as provided for in the last sentence of the second subparagraph has been applied, by a factor of three.* Section 92 of the preamble to Commission Regulation (EC) 1122/2009 states *with regard to cross-compliance obligations, ..., it should be provided that as of a certain moment, repeated infringements of the same cross-compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance.*

The 81% sanction was thus an ‘intent’ level sanction applied through repetition and the Appeals Officer found that Article 71(5) required the Department to inform the appellant at the time of imposing the maximum 15% negligence sanction for 2012, that if the same non-compliance is determined again, it shall be considered that the appellant acted ‘intentionally’. The Department records provided showed no evidence the appellant was notified that a further repeat breach would be deemed intentional. The Appeals Officer decided in the absence of the required notice regarding ‘intent’ to reduce the 81% sanction to the 15% ceiling applicable to ‘negligence’ breaches, the appeal was partially allowed.

7. Key Findings and Suggestions by the Agriculture Appeals Office for consideration by the Department of Agriculture, Food and the Marine

7.1 General

Finding

- When the Agriculture Appeals Office receives an appeal, the accompanying Department letter does not always refer to the official title of the scheme – this can make it difficult for the Appeals Office to determine which section of the Department is responsible for providing the relevant information to this Office

Suggestion:

- The Official Name of the Scheme as per the Schedule of Appeals to be printed as a heading on the penalty/review letter issued by the Department that gives the option to appeal to this office within three months of the date of the letter.

Finding

- The Department decision letters on penalties issuing to scheme participants do not always provide details of the consequence of the breach/penalty on other scheme payments applied for by the scheme participant.

Suggestion:

- Penalty letters should include a comprehensive explanation of the penalty being applied and the consequences for other scheme payments in simple English
- At the time of advising the scheme participant of any irregularities/breaches arising following the outcome of the inspection every effort should be made to ensure the scheme participant is aware of the full consequences of the breach.

7.2 Findings and Suggestions for certain schemes

Nitrates

Finding

- Given the need to adhere to stocking unit requirements in the context of potential penalties imposed, it is important that applicants are appropriately informed of the consequences of repeat offences.

Suggestion:

- A text alert mechanism could be considered for Nitrates and used to alert farmers of the risk of exceeding the 170 kg limit or the 250 kg derogation limit.
- 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.

AEOS

Finding

- Applicants/scheme participants may not always be aware of changes to schemes
- Where penalties are imposed, the decision letter does not always include the specific financial details of the penalty.

Suggestion:

- Any changes or revisions to Scheme Terms and Conditions should be notified to all ongoing participants.
- Where a penalty is being applied, the level of penalty including the amount of financial penalty should be clearly outlined to the Scheme applicant.

SPS

Finding

- Applicants/scheme participants may not always be aware of consequential penalties arising from breaches identified under cross compliance checks.

Suggestion:

- Where cross compliance breaches occur, notifications of consequential penalties should be issued in a timely manner in order to alert the farmer and avert a repeat breach within the following year(s).

ANC

Finding

- Applicants/scheme participants may not always be aware of their non eligibility for payment under this scheme due to stocking density levels.

Suggestion:

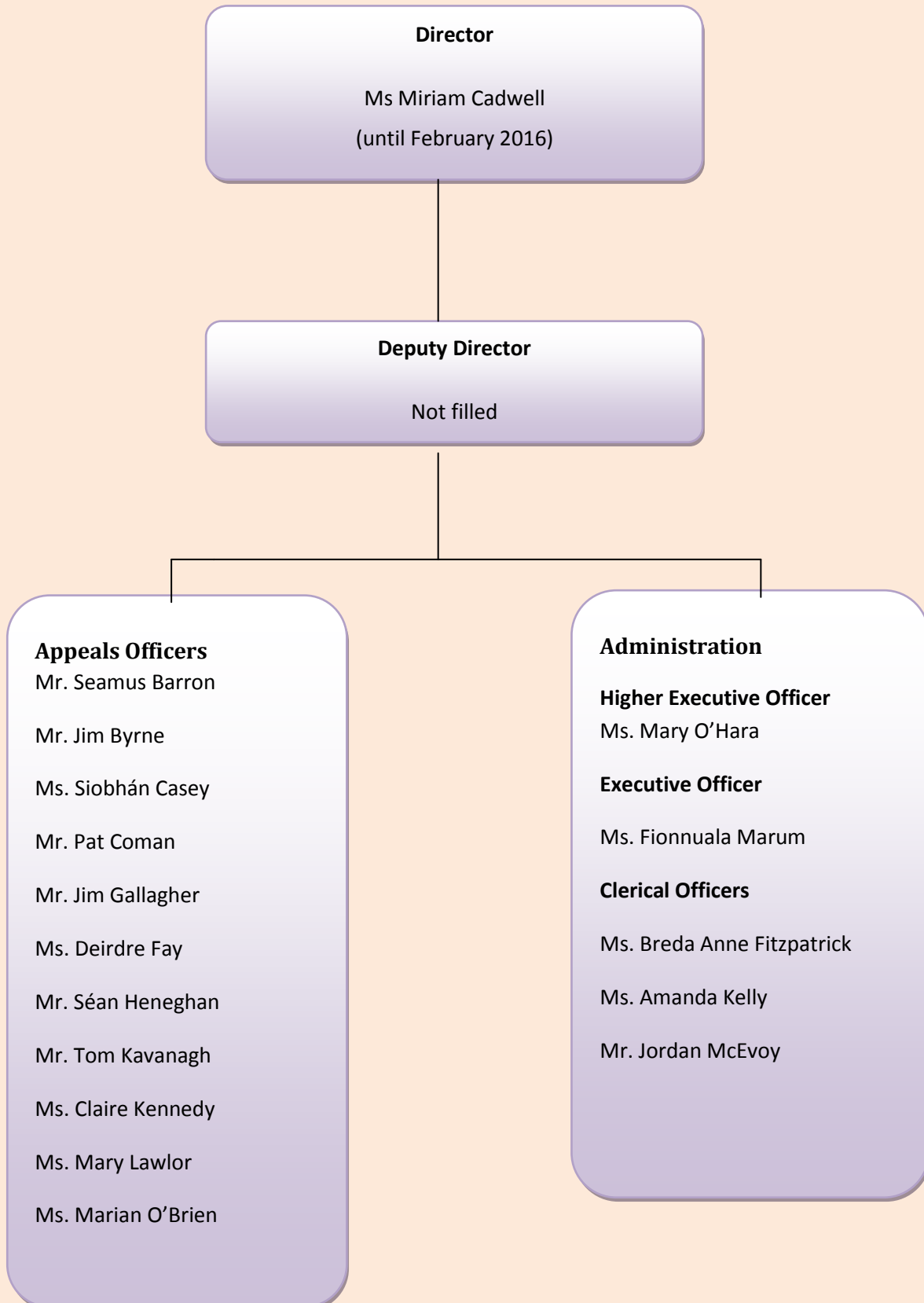
- At the end of the scheme year, letters should issue to applicants notifying them on non-qualification for payment due to stocking density with the option to appeal to DAFM.

8. Suggestions for scheme applicants arising from common errors by Scheme participants

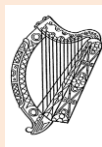
- Appeals must be submitted to the Agriculture Appeals Office, Kilminchy Court, Dublin Road, Portlaoise, Co Laois, R32 DTW5, within 3 months of the date of the Department's decision letter. The Appeals Office is not located in any Department office that deals with scheme operations. Appellants should check the address before posting. Proof of postage is recommended. Alternatively appeals may be lodged online to the e-mail address: appeals@agriappeals.gov.ie

- The use of online scheme application facilities by scheme participants either directly or through an approved agent is encouraged to minimise errors or penalties arising from late applications.
- Applicants are advised to familiarise themselves with the terms requirements for deadlines for applying for schemes, including the requirements for postal and online submissions to the Department of Agriculture, Food and the Marine. Proof of postage/receipts in relation to all applications and documentation submitted should be carefully retained. Where possible, applicants should use registered/swift post services when sending applications and important Scheme documents including registered/swift post 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 and the rules on submitting amendments once advised of a proposed inspection.
- In general, Applicants should familiarise themselves with the Terms and Conditions relevant to their application for every scheme, particularly the timeframe of contractual requirements.

Organisation Chart at 31 December 2015



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 (as amended by SI 276 of 2015)

Schemes

Afforestation Grant and Premium Scheme

Agri-Environment Options Scheme (AEOS)

Animal Welfare, Recording and Breeding Scheme for Suckler Herds (AWRBS)

Areas of Natural Constraint

Basic Payment Scheme (BPS) (excluding Articles 24 and Articles 30 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council)¹

Beef Data Programme (BDP)

Beef Genomics Scheme (BGS)

Beef Data Genomics Programme (BDGP)

Bio Energy Scheme

Burren Farming for Conservation Programme

Dairy Efficiency Programme

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

Farm Improvement Scheme

Forest Environment Protections Scheme (FEPS)

Forest Road Scheme

Green, Low-Carbon, Agri-Environment Scheme (GLAS) Traditional Farm Buildings

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

Greening Payment

¹ [OJ L 347/608, 20.12.2013](#)

Grassland Sheep Scheme (GSS)

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

Protein Aid 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 (FMW)

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 and Land Parcel Identification System Review 2013 (LPIS Review 2013)

Sow Housing (Animal Welfare) Scheme

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

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

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

- a) The Animal Welfare, Safety and Nutrient Storage Scheme
- b) The Dairy Equipment Scheme
- c) The Low-Emission Slurry Spreading (LESS) Equipment Scheme
- d) Organic Capital Investment Scheme
- e) The Pig and Poultry Investment Scheme
- f) The Young Farmers Capital Investment Scheme

Upland Sheep Payment Scheme

Woodland Improvement Scheme

Young Farmers' Installation Scheme

Young Farmers Scheme



S.I. No. 193 of 2002

AGRICULTURE APPEALS REGULATIONS 2002

I, Joe Walsh, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by sections 7 and 15 of the Agriculture Appeals Act 2001, hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Agriculture Appeals Regulations 2002.
- (2) These Regulations come into operation on 13 May 2002.

Definitions

2. In these Regulations-

“Act” means the Agriculture Appeals Act 2001;

“appeal” means an appeal under the Act;

“Headage and Premia Appeals Unit” means the Headage and Premia Appeals Unit of the Department of Agriculture, Food and Rural Development pursuant to the Charter of Rights for Farmers 1995;

“notice of appeal” means notice of appeal to the Director under section 7(1) of the Act;

“REPS Appeals Committee” means the Rural Environment Protection Scheme Appeals Committee of the Department of Agriculture, Food and Rural Development.

Distribution of references to appeals officers.

3. The Director shall be responsible for the distribution amongst the appeals officers of the references to them under section 7 of the Act and for the prompt consideration of such references.

Decisions which may be appealed and transitional arrangements.

4. (1) The right of appeal specified under section 7 of the Act shall apply to any decision given by an officer of the Minister in respect of a person's entitlement under any of the Schemes set out in the Schedule to the Act which is notified to that person on or after the commencement of these Regulations other than appeal decisions of the Headage and Premia Appeals Unit and the REPS Appeals Committee given in respect of decisions of officers of the Minister taken prior to such commencement.

(2) Persons who before the commencement of these Regulations had a right of formal appeal by administrative arrangement to the Headage and Premia Appeals Unit or the REPS Appeals Committee shall for the period of 3 months from such commencement continue to have that right to appeal to that Unit or that Committee, as the case may be, against decisions taken by officers of the Minister relating to the Schemes concerned which were notified to those persons prior to that commencement.

Submission of appeal and information to be supplied by Appellant

5. (1) Any notice of appeal shall be in writing.

(2) Subject to paragraph (3) of this Regulation, the time within which an appeal may be made shall be any time up to the expiration of 3 months from the date of the notification of the decision of an officer of the Minister to the Appellant.

(3) An appeal, where the Director considers there are exceptional circumstances, may be made after the period referred to in paragraph (2) of this Regulation.

(4) A notice of appeal shall contain a statement of the facts and contentions upon which the Appellant intends to rely.

(5) An Appellant shall send to the Director, along with the notice of appeal, such documentary evidence as the Appellant wishes to submit in support of his or her appeal, and the notice shall contain a list of any such documents.

(6) A person wishing to withdraw an appeal may do so by sending a written notice to that effect to the Director.

Notification of appeal and information to be supplied.

6.(1) The Director shall notify the Minister of each notice of appeal.

(2) The Minister shall, in relation to each notice of appeal, give to the Director –
a statement showing the extent to which the facts and contentions advanced by the Appellant are admitted or disputed, and
any information, document or item in the power or control of the deciding officer that is relevant to the appeal.

(3) The Director may fix the period within which any statement, information, document or item referred to at paragraph (2) of this Regulation should be given.

Notice of appeal.

7. Where the Director has been given notice of an appeal he shall notify any other person he or she considers to be concerned with the appeal.

Further information to be supplied and amendment of pleadings.

8. The appeals officer to whom an appeal is referred may at any time –
require the Appellant, the deciding officer, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,
allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and

fix the period for the furnishing of any such statement or particulars upon such terms as he or she may think fit.

Summary appeals.

9. Where an appeals officer is of the opinion that any appeal referred to him or her is of such a nature that it can properly be determined without an oral hearing, and such a hearing has not been requested under section 8 of the Act, he or she may decide the appeal without such hearing.

Hearings.

10. Where, in the opinion of the appeals officer to whom an appeal has been referred or at the request of the Appellant under section 8 of the Act, a hearing is required, the appeals officer shall, as soon as may be, fix a date and place for the hearing, and give reasonable notice of the hearing to the Appellant, the deciding officer, and any other person appearing to the appeals officer to be concerned in the appeal.

Failure to attend hearing.

11. Where, after notice of a hearing has being given under Regulation 10 of these Regulations, any of the parties fail to appear at the hearing, the appeals officer hearing the appeal may, at his or her discretion, decide to proceed with the hearing or defer it to a later date and place fixed by him or her.

Appeal may be decided despite failure to comply with Regulations.

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

Procedure at hearing.

13. (1) The procedure at a hearing under the Act shall be such as the appeals officer hearing the appeal may determine.

(2) An appeals officer hearing an appeal may postpone or adjourn the hearing as he or she may think fit.

(3) An appeals officer may, at the hearing of an appeal, admit any duly authenticated written statement or other material as prima facie evidence of any fact in any case in which he or she thinks it appropriate.

Decision of Appeals Officer.

14. (1) The decision of an appeals officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the Scheme in question.

(2) The decision of an appeals officer shall be in writing and shall include the reasons for the decision which shall be notified as soon as may be to the Appellant, the Minister and any other person concerned.

GIVEN under my Official Seal,

8 May 2002

JOE WALSH TD

Minister for Agriculture, Food and Rural Development

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

S.I. No. 276 of 2015 AGRICULTURE APPEALS ACT 2001 (AMENDMENT OF SCHEDULE) REGULATIONS 2013

Copies of all legislation are available on the website www.agriappeals.gov.ie.