



2023

Annual Report

of the

Agriculture Appeals Office



To the Minister for Agriculture, Food and the Marine

I hereby submit the 2023 Annual Report of the Agriculture Appeals Office pursuant to the provisions of Section 14(1) of the Agriculture Appeals Act, 2001 (as amended). This is the 22nd Annual Report submitted in relation to the work of the Agriculture Appeals Office since its establishment in 2002.

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Tá an Tuarascáil seo art fáil freisin i nGaeilge, ach é a iarraidh.

This report is also available in Irish, on request.

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Introduction

We are pleased to present the 2023 Annual Report of the Agriculture Appeals Office. In addition to fulfilling its primary function of reporting to the Minister for Agriculture, Food and the Marine on the activities of the Office, we hope this report will provide useful information to all involved in the appeals process and to the wider farming community.

One of the main objectives of this Office is to provide a fair and efficient appeals service to applicants of Schemes administered by the Department of Agriculture, Food and the Marine. The Office also provides administrative and secretariat support to the Forestry Appeals Committee (FAC) and two Agriculture Appeals Officers are also appointed as members of the FAC. The Office also provides support for the Aquaculture Licences Appeals Board in its independent decision-making function through the staffing of the ALAB Secretariat.

The year 2023 was characterised by both challenge and innovation. In October 2023, the Appeals Office launched an online facility for submitting Notices of Appeal through the Appeals Office website at www.agriappeals.gov.ie. A total of 45 appeals were submitted using the online facility by the end of the year. We encourage all participants in the appeals process to consider using this new facility.

The implementation of the new Common Agricultural Policy Strategic Plan for the period 2023-2027 represented a significant challenge both for the Department, farmers, and their advisors. This Office had to become familiar with the requirements and complexities of a variety of new Schemes such as the Basic Income Support for Sustainability (BISS), ACRES, the Eco-Scheme and the Suckler Carbon Efficiency Scheme (SCEP).

Despite these challenges, the number of appeals received and brought to a conclusion by the Agriculture Appeals Office remained remarkably consistent when viewed against averages over the previous ten years. At 624 the number of appeals received was slightly below the ten-year average of 642. The number of appeals closed during the year at 652 was slightly above the ten-year average of 636.

Work also continued on the commitment, laid out in the Programme for Government (2020), to establish an independent Agriculture Appeals Review Panel. In that regard, during 2023, the Draft Heads of the Agriculture Appeals (Amendment) Bill 2024 were formed and late in 2023 approval was received to bring the Draft Heads of the Bill to Cabinet in January 2024.

While the return to normality after Covid restrictions was very welcome, many of the innovations introduced by necessity during that period were retained due to their benefit to the work of the Office and the work/life balance of the staff. These include the introduction of blended working for staff, the launch of an online facility for the submission of appeals by way of our website (www.agriappeals.gov.ie) and the establishment of the option to hold hearings using an online format.

The developments that have taken place throughout the year would not have been possible without the dedication and commitment of all staff of the Appeals Office, including those who left the Office on retirement and promotion in 2023, to whom we extend our sincere thanks.

This year we have introduced a shorter and more user-friendly format to the 2023 Annual Report which we believe continues to provide a full account of the work of the Office in providing an Independent Appeals Service to the farming community.

Lynda O'Regan

Director

Pat Coman

Deputy Director

Overview of the Agriculture Appeals Office

Appeal services provided by the Agriculture Appeals Office

The Agriculture Appeals Office was established in 2002 pursuant to the Agriculture Appeals Act 2001, as amended. The Agriculture Appeals Regulations 2002 sets down the independent functions of the Director and the Appeals Officers and the scheme decisions that may be appealed to the Director. Schedule 1 to the Act includes a list of schemes administered by the Department of Agriculture, Food and the Marine (the Department). Farmers who are dissatisfied with decisions of the Department concerning their entitlement under the schemes listed in Schedule 1 to the Act may submit an appeal to the Director.

In 2017, the Agriculture Appeals Act, 2001, was amended to include appeals against decisions of the Department on forestry licence applications. In 2018, the Minister established the Forestry Appeals Committee (FAC) to consider and determine such appeals. The FAC is chaired by an independent Chairperson and consists of a number of external members, some of whom are appointed as Deputy Chairpersons, and during 2023 two Appeals Officers also worked as members of the FAC. The Appeals Office provides administrative and secretariat support to the FAC and to the Aquaculture Licences Appeals Board (ALAB).

Mission Statement of the Agriculture Appeals Office

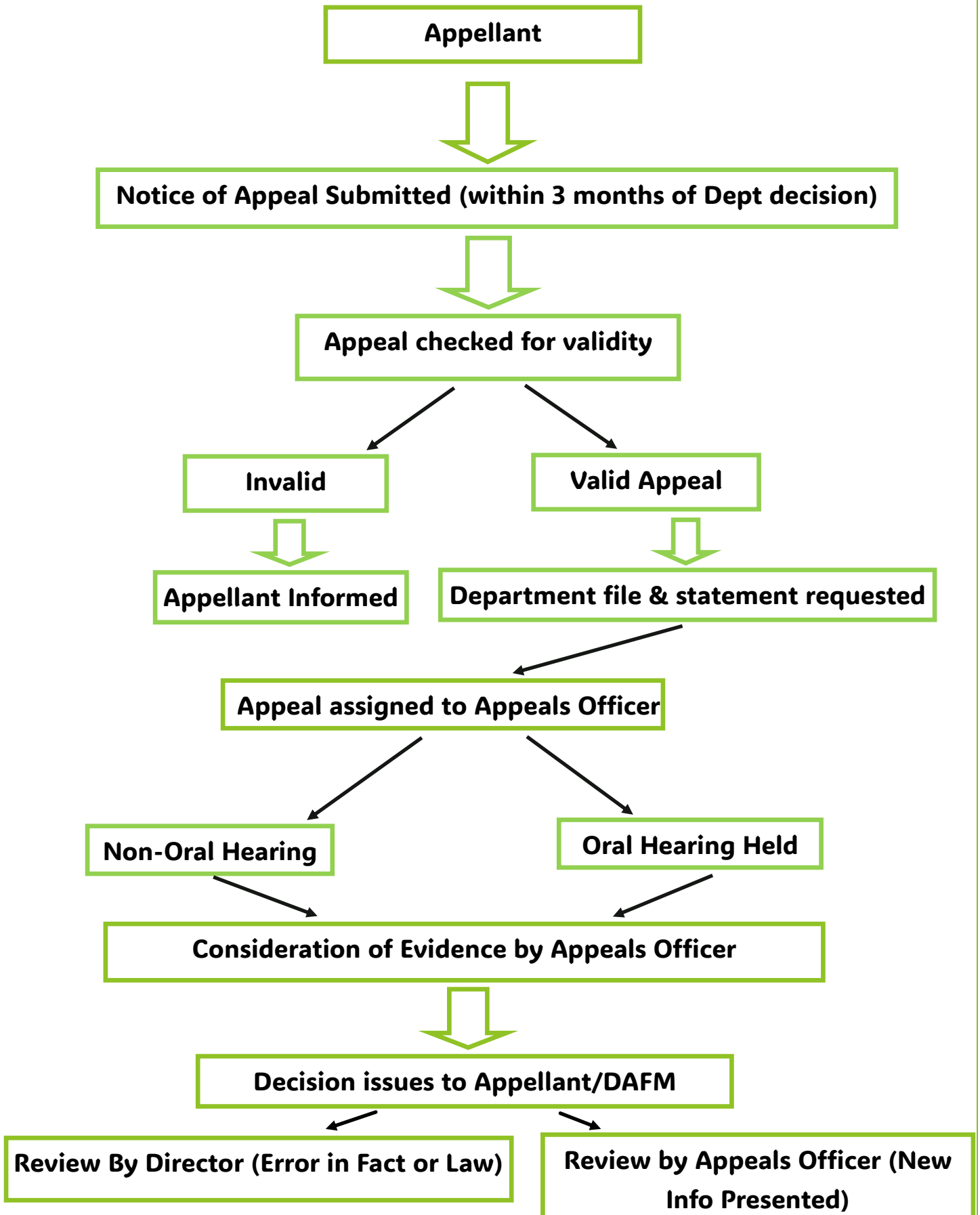
The mission of the Office is as follows:

“To provide an independent, accessible, fair, efficient and timely agriculture appeals service for scheme applicants appealing against decisions issued under designated Department of Agriculture, Food and the Marine schemes, and to support the delivery, through membership and administrative support, to the Forestry Appeals Committee and the Aquaculture Licences Appeals Office, of an appeals service for decisions issued by the Department of Agriculture, Food and the Marine on forestry licences and aquaculture licences, and to deliver those services in a courteous manner.”

Procedures Manual

Under the Freedom of Information Act 2014, the Agriculture Appeals Office is legally obliged to prepare a Procedures Manual setting out procedures to be followed by the Office. The Procedures Manuals for Agriculture Appeals and Forestry Licence appeals can be accessed on the website, www.agriappeals.gov.ie

The Appeals Process



Stages of an Appeal

i. Submitting an Appeal

There are three options for submitting a Notice of Appeal.

- i. Submit the Notice of Appeal, copy of the Department decision and any related documents using the online facility at www.agriappeals.gov.ie
- ii. Download the Notice of Appeal Form from www.agriappeals.gov.ie and forward completed and signed Form, copy of the Department decision and any related documents by way of email to appeals@agriappeals.gov.ie
- iii. Download the Notice of Appeal Form from www.agriappeals.gov.ie and forward completed and signed Form, copy of the Department decision and any related documents by way of post to:

Agriculture Appeals Office
Kilminchy Court
Dublin Road
Portlaoise
Co Laois
R32 DTW5

Scheme applicants must complete a Notice of Appeal Form which must be submitted to the Agriculture Appeals Office together with a copy of the Department decision under appeal. The Department decision under appeal must concern a scheme listed in Schedule 1 of the Agriculture Appeals Act, 2001, as amended.

Applicants have **three months** from the date of the Department's decision to lodge an appeal to the Office. An appeal received after three months may only be accepted by the Director if there are exceptional circumstances which led to the delay in submitting the appeal.

ii. Processing of an Appeal

Appeals are checked on receipt to establish their validity.

On receipt of an appeal, the Appeals Office forwards the appellant's grounds of appeal to the Department along with a request for any relevant documents and a statement responding to the appellant's grounds. The Department's statement on the appellant's grounds of appeal is subsequently forwarded to the appellant.

On receipt of the Department file and statement, the Director assigns the case to an Appeals Officer for consideration and determination.

iii. Oral Hearing

Appellants may opt to have an oral hearing as part of their appeal, and this is notified to the Office on the Notice of Appeal Form. An Appeals Officer may hold a number of hearings on the same day in a particular region. The key features of an oral hearing are that:

- they are private and informal,
- the appellant is present and may bring representatives,
- the Department is represented.

iv. The Decision

The Appeals Officer considers all the evidence from both the Department and the appellant, including any evidence presented at an oral hearing, where one is held. 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 is also notified of the decision.

An Appeals Officer may subsequently revise a decision if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which the decision was given.

The Director of Agriculture Appeals may revise a decision of an Appeals Officer where it has been established that there has been a mistake in relation to the law or the facts of the case. An appeal to this Office does not preclude an appellant from raising their case with the Office of the Ombudsman.

An appellant dissatisfied with the decision of an appeals officer, or a revised decision of the Director may appeal that decision to the High Court on any question of law.

Possible Outcomes of Appeals

There are several possible outcomes to an appeal which are described below.

Appeal Allowed

This category includes cases where the Appeals Officer, having considered the case put forward, decides that the Department's decision should be overturned.

Appeal Disallowed

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

Partially Allowed

This category includes cases where an Appeals Officer decides that a lesser or revised penalty/sanction than that imposed by the Department should apply.

Revised by the Department

This category includes cases where the Department has revised its original decision in favour of the appellant prior to completion of the appeals process. Reasons for revising a decision may include additional information provided by the appellant to the Agriculture Appeals Office, information provided at oral hearings and/or as a result of specific queries raised by the Appeals Officer.

Invalid

This category includes appeals on matters not appropriate to the Agriculture Appeals Office, for example where a scheme is not listed in Schedule 1 of the Agriculture Appeals Act or cases where there was no Department decision relevant to the appeal.

Out of time

This category includes appeals that were received after the three-month deadline since the date of the Department decision, and there were no exceptional circumstances warranting the Director's acceptance of the late appeal.

Appeal Withdrawn

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

2023 In Numbers

469 Appeals carried over from 2022.



624 Appeals received in 2023.

652 Appeals Closed in 2023



362 Oral Hearings held in 2023, 10 of which were held remotely

112 days average time to close appeal from the receipt of files and assignments to AO for appeals received & closed in 2023

166 appeals were closed in under 3 months. This is an increase of 21% from the previous year.

441 Appeals Outstanding 31/12/2023.



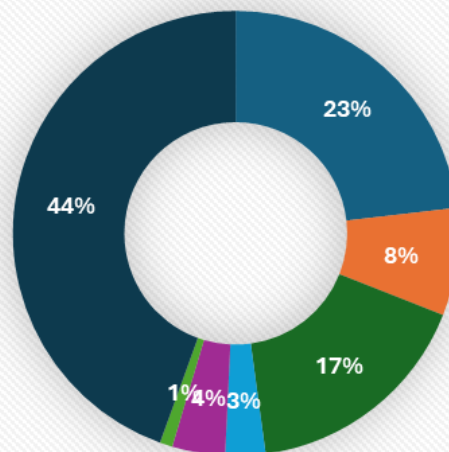
Statistics in Detail

Ten-Year Trend

Year	Appeals Received	Appeals Closed	Appeals Allowed, Partially Allowed, Revised by DAFM	Appeals Withdrawn, Invalid, Out of Time	Appeals Disallowed
2023	624	652	48%	8%	44%
2022	638	930	44%	16%	40%
2021	809	757	37%	25%	38%
2020	760	358	39%	11%	52%
2019	570	491	44%	14%	43%
2018	556	506	40%	14%	47%
2017	638	689	38%	9%	53%
2016	598	600	42%	13%	46%
2015	619	657	42%	14%	45%
2014	610	707	34%	13%	53%
Total	6422	6347	40%	14%	46%

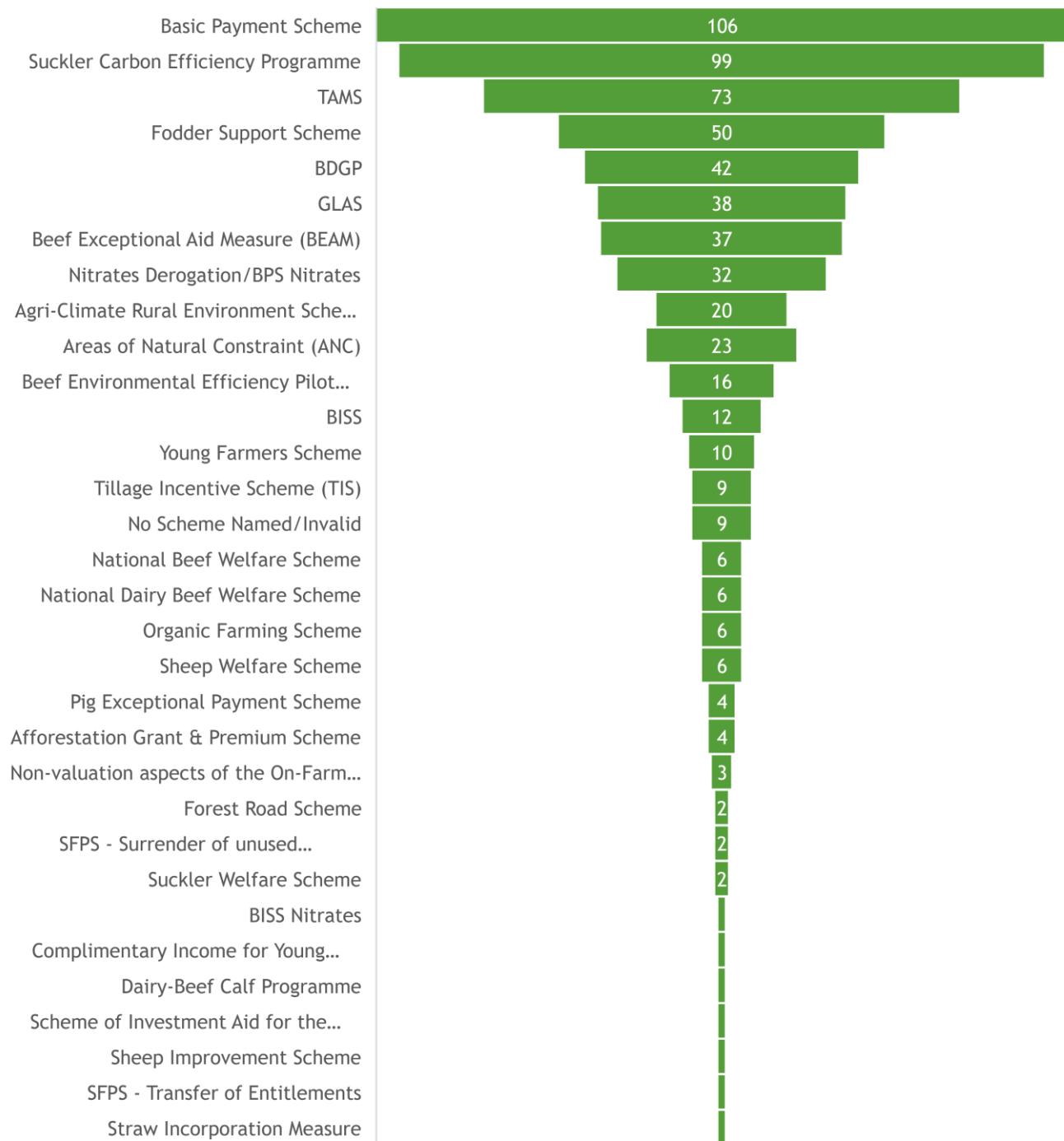
Appeals closed in 2023

Outcome Of All Appeals - 652 Closed in 2023

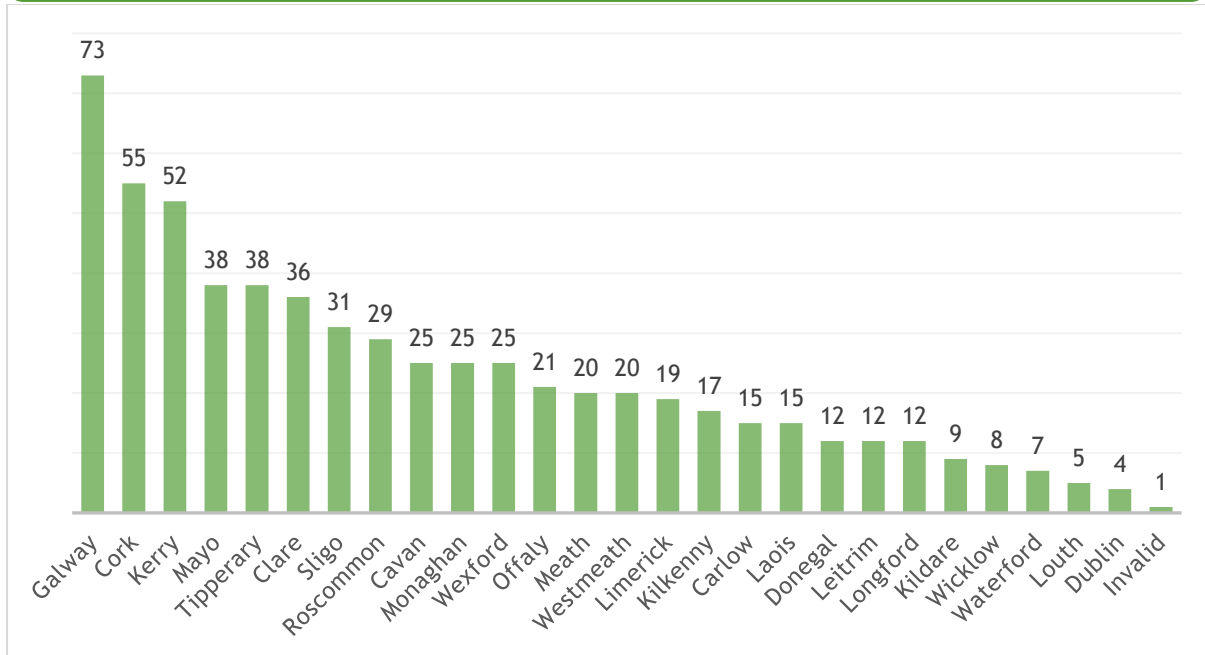


- 151 Appeals Allowed. (23%)
- 51 Appeals Partially Allowed. (8%)
- 110 Appeals Revised by Dept. (17%)
- 19 Appeals Withdrawn. (3%)
- 25 Appeals Invalid. (4%)
- 6 Appeals Out of Time. (1%)
- 290 Appeals Disallowed. (44%)

Appeals Received by Scheme

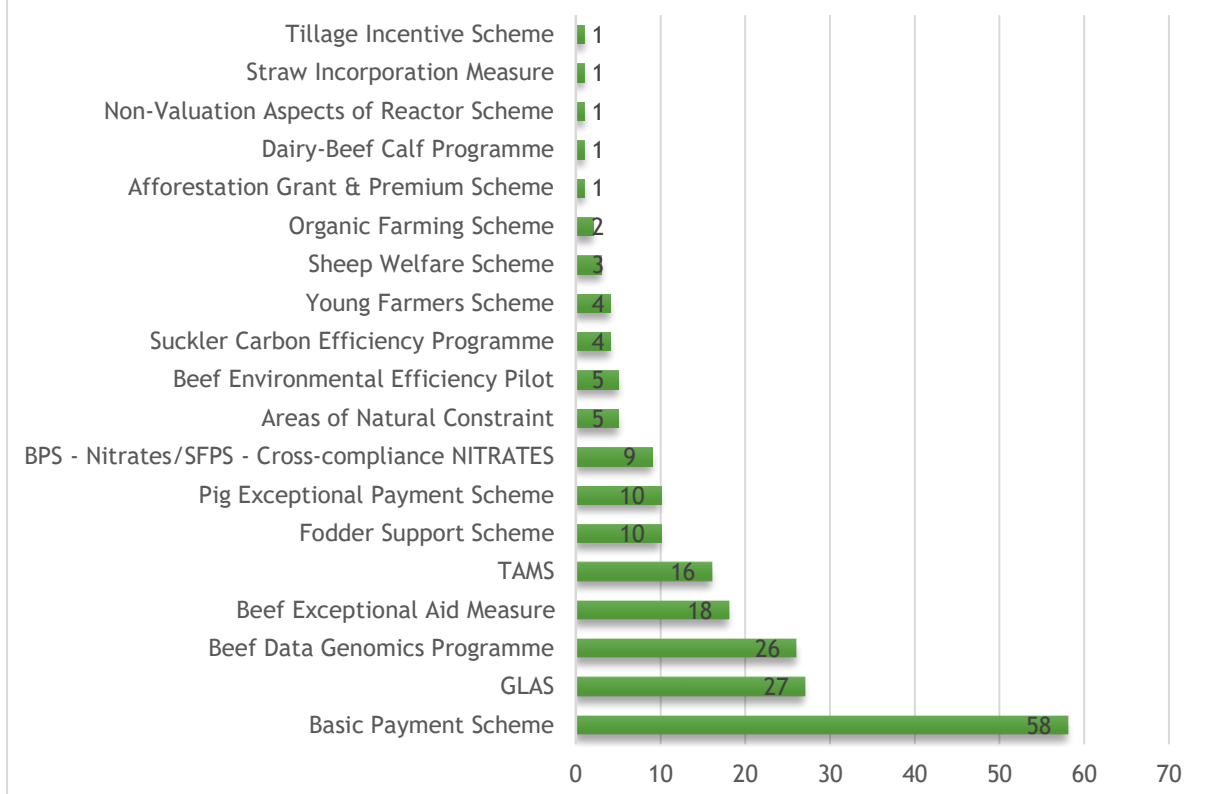


Appeals Received by County

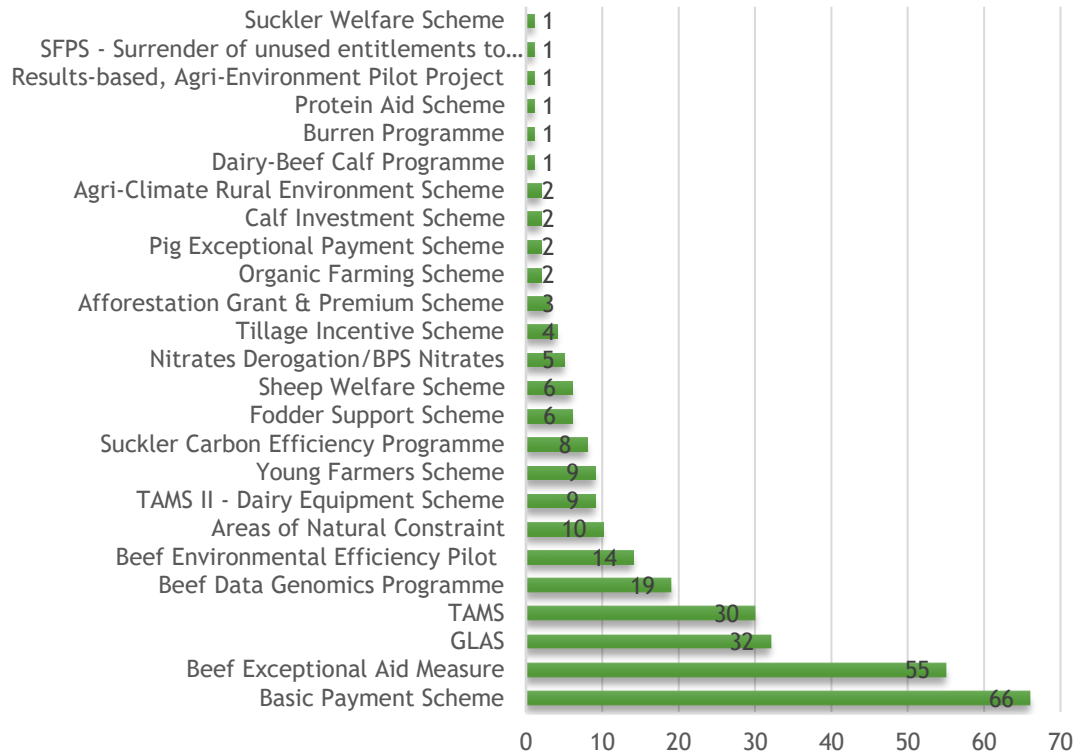


Breakdown Of All Closed Appeals in 2023

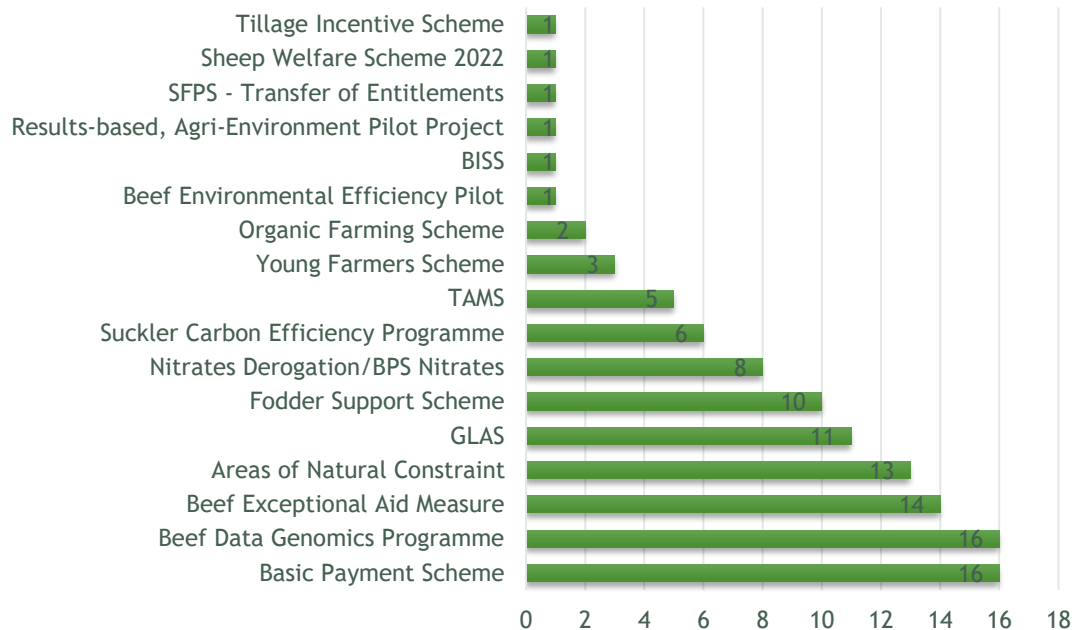
Allowed & Partially Allowed



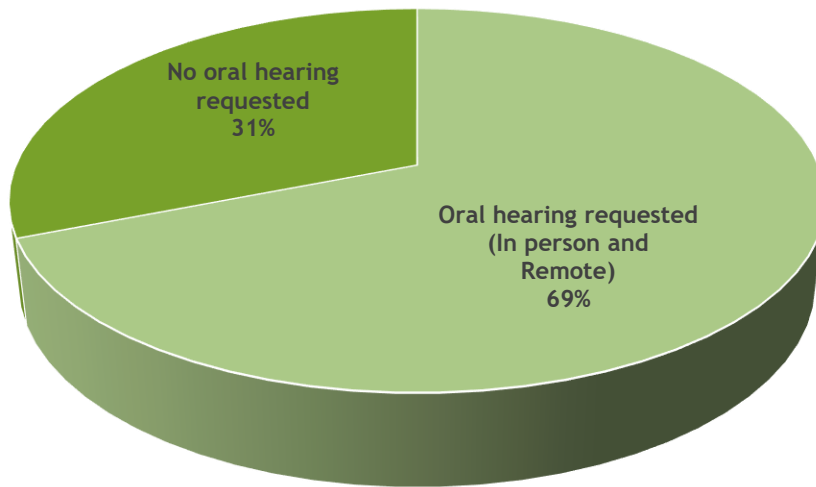
Disallowed



Revised by Department



2023 Appeals - Oral Hearing Status



Of the 624 appeals received in 2023, 431 requested an oral hearing, either in person or online.

A total of 362 oral hearings were held throughout the year. 74 hearings scheduled to take place in 2023 were cancelled/postponed either due to revised decisions by the Department or by way of requests from appellants where the Appeals Officer was satisfied that there was sufficient reason to cancel.

Time taken to Determine Appeals

The Agriculture Appeals Office has set itself a target of three months for closure of an appeal from the time of receipt of the Department file documents and assignment of the appeal to an Appeals Officer until the issue of an appeal decision letter. Due to circumstances outside of the control of the Agriculture Appeals Office, appeals might not be completed within that target time frame. The reasons for appeals being closed outside the three-month period varies and can include delays in scheduling oral hearings, complexity of cases, legal issues, time taken by appellants and/or the Department to revert with additional information requested, and resource capacity. For appeals received and closed in 2023, the average time taken to close an appeal was 112 days from date of receipt of the Department statement and documents and the assignment of the appeal to an Appeals Officer. A total of 116 appeals were closed within the target three months' timeframe, an increase of 21% on the previous year.

Requests for Reviews of Decisions

The legislation provides that the Director may revise any decision of an Appeals Officer if it appears to her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts. A request for such a review of a decision may be submitted by an appellant and/or by the Department. The legislation further provides that an Appeals Officer may, at any time, revise a decision of an Appeals Officer, if it appears to him or her that the decision was erroneous in the light of new evidence or of new facts or where there has been any relevant change in circumstances since the decision was given.

The Agriculture Appeals Office received 22 requests for review of decisions of Appeals Officers in 2023, of which 17 were requested by appellants and 5 by the Department. 44 reviews were closed in 2023. These were related to reviews received in 2023 and previous years. Of the 44 reviews closed 38 were requested by appellants, and 6 were requested by the Department.

Reviews Closed in 2023					
Review Requested By	Changed	Partially Changed	Unchanged	Closed No Decision	Total
Appellant	4	2	30	2	38
Department	3	1	2	0	6

Litigation

The Agriculture Appeals Act provides that appellants may appeal their case to the High Court on a point of law. Appellants may also apply to the High Court to take Judicial Review proceedings. No Judicial Review legal proceedings were initiated in 2023 and as of the end of the year there were no outstanding Judicial Reviews.

Open Appeals at 2023 Year End

The number of appeals remaining open as of 31 December 2023 was 441.

Open Appeals as of 31 December 2023	
Carried over from previous years	469
Received 2023	624
Closed in 2023	652
Appeals on Hand 31 December 2023	441

Information Requests

Parliamentary Questions

The Agriculture Appeals Office received 7 Parliamentary Questions for written response in 2023.

Freedom of Information

The Agriculture Appeals Office received no requests under the provisions of the Freedom of Information Act in 2023.

Access to Information on the Environment

The Agriculture Appeals Office received no requests for Access to Information on the Environment (AIE) in 2023.

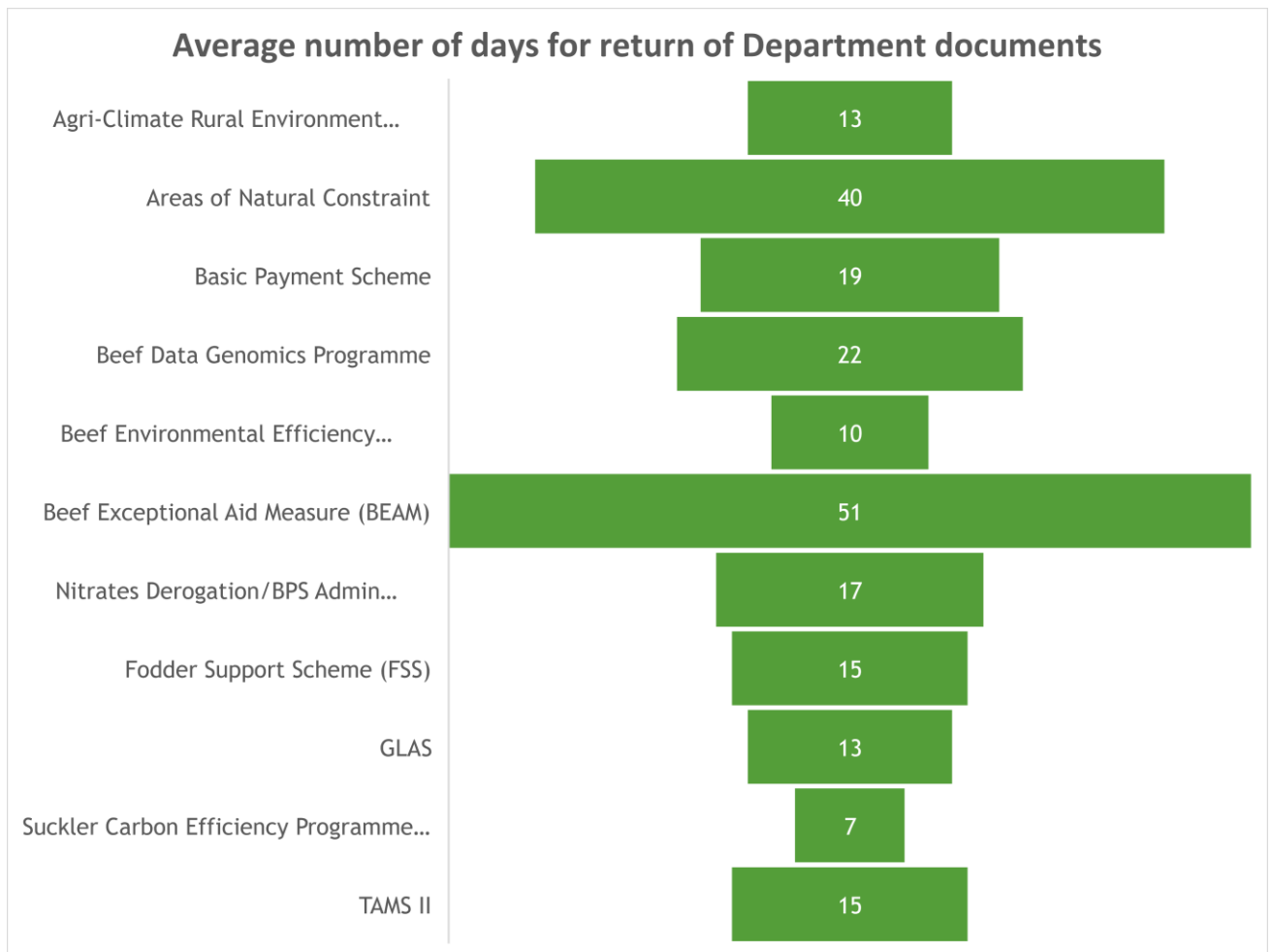
The Office of the Ombudsman

The Ombudsman Act 1980 (as amended) provides that appellants may make a complaint to the Office of the Ombudsman if they are not satisfied with actions taken by this Office or with how they have been treated with regard to their appeal. The Office of the Ombudsman cannot revise a decision of the Agriculture Appeals Office but may help to resolve any concerns appellants may have with the Appeals Office administrative practices or the service you have received. The Office of the Ombudsman may be contacted at 6 Earlsfort Terrace, Saint Kevin's, Dublin 2. D02 W773 or www.ombudsman.ie.

The appeal file and documents in respect of 7 appeal cases were requested by the Office of the Ombudsman in 2023. Of the 7 appeal files requested by the Ombudsman in 2023, we have been informed to date that 1 of these cases has been closed by the Ombudsman, with no further action by the Appeals Office required.

Time Period for Receipt of Department Documents

On receipt of an appeal, the Agriculture Appeals Office requests the Department to provide a statement and the relevant documentation/file to the Office within two weeks of the request. This is to ensure that appeals can be allocated to an Appeals Officer without delay. Reminders are issued where required. The average number of days for the return of the statement and documents from the Department was 20 days for appeals received in 2023. This compares with an average of 28 days in 2022. A breakdown of the average number of days for receipt of the Department file documents from the date of request by the Appeals Office is set out below for a selection of schemes (*Statistics in the examples below refer only to a selection of schemes where more than 10 appeals were received, and documents returned in 2023*).



Other Appeal Related Activities

Schedule of Schemes

The Schedule of Schemes appended to the Agriculture Appeals Act, 2001, was amended in 2023 to include additional schemes to allow appeals for those schemes to be submitted to the Appeals Office (S.I. No. 521 of 2023 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2023).

Review of the Agriculture Appeals Office and the Agriculture Appeals Act, 2001

The Programme for Government; Our Shared Future (2020) includes a commitment to establish an independent Agriculture Appeals Review Panel. In addition, the Report on the Review of the Agriculture Appeals Act, 2001 and Operations of the Agriculture Appeals Office, published in February 2018, includes this recommendation and several others, many of which are now in place. Some recommendations in the report require amendments be made to the Agriculture Appeals Act 2001, especially in establishing the Agriculture Appeals Review Panel. Once established, the Independent Review Panel will comprise of a chairperson and ordinary members and will also include one of the Director or Deputy Director of Agriculture Appeals. The Panel will assume the role of reviewing decisions of Appeals Officers for error of fact or law, which is currently a function solely of the Director. In addition, the Bill will introduce time periods within which to seek a review of a decision or revised decision of an Appeals Officer. During 2023 the draft heads of the Agriculture Appeals (Amendment) Bill 2024 were formed. It is hoped the legislation will be in place in quarter three of 2024 and will enable the appointment of the Panel later in 2024.

IT Systems

October 2023 witnessed the launch of an online facility for submitting Notices of Appeal by way of the Appeals Office website at www.agriappeals.gov.ie. A total of 45 appeals were submitted using the online facility by the end of the year.

In addition, the Office continues to develop its own internal IT systems to enhance the recording and tracking of appeals.

Business Plan

The 2023 Business Plan formed the basis for the work of the Office and is subject to regular review. Targets included in the business plan were monitored on a regular basis.

Examples of Appeals Decided during 2023

Case 1:

Scheme	Beef Exceptional Aid Measure (BEAM)	
Year	2021	Heard by Oral Hearing
Primary Issue	Addition of associated herds to calculation of Organic Nitrogen level	
Department Position	The farmer participated in the BEAM and exited the Scheme in 2021. When reconciling the Organic Nitrogen figures for the holding, the Department identified an additional associated herd which had organic nitrogen production and considered this as part of the farmer's holding and therefore liable for inclusion in the calculation of the BEAM nitrates figures. This addition resulted in a non-compliance by the farmer and associated penalty. The Department position was that the information made available on the BEAM system is provided as a guide and farmers should keep their own records.	
Grounds of Appeal submitted by Appellant	The farmer believed he had fully complied with the Terms and Conditions as he had met the 5% reduction on the application herdnumber. The BEAM system only made available the data for the application herdnumber and no reference was made to the other herdnumber which was identified as a dealer herdnumber. All information supplied by the Department including the BEAM Application Summary, the Reference Nitrates Figures, Current Nitrates Figures and BEAM Nitrates Calculation, related solely to the application herdnumber.	
Consideration	The Appeals Officer found that the farmer had reduced production of bovine manure nitrogen by 5% on the holding for the application herdnumber. BEAM updates issued by the Department indicated that the farmer was on course to meet the BEAM commitments. If the information regarding the associated herds had been available to the farmer at the time of application, he would have had the necessary information and the opportunity to make a fully informed decision as to whether to participate in the Scheme.	
Decision	Appeal Allowed	

Case 2:

Scheme	Beef Exceptional Aid Measure (BEAM)	
Year	2021	No Oral Hearing requested
Primary Issue	Reduction of livestock manure nitrogen by 5%	
Department Position	Under the Scheme, the farmer was required to reduce the production of livestock manure nitrogen by 5% as compared with the period from 1 July 2018 to 30 August 2019. Records showed that there was an increase in manure nitrogen for the period and a 100% penalty was imposed.	
Grounds of Appeal submitted by Appellant	The herd was restricted for part of the timeframe due to TB and the planned sale of livestock was prevented.	
Consideration	The Appeals Officer identified evidence of significant sales and purchases of animals within the relevant timeframe which contributed to the farmer not meeting the required 5% reduction.	
Decision	Appeal Disallowed	

Case 3:

Scheme	Young Farmers' Scheme	
Year	2021	Heard by Oral Hearing
Primary Issue	Young Farmer - managerial and financial control of the holding	
Department Position	The Terms and Conditions of the Scheme require the young farmer to be in managerial and financial control of the holding. Further to an eligibility inspection, the farmer was deemed not to be in financial control of the holding. The Department stated that purchases relating to the operation of the farm did not transact through a bank account in the young farmer's name, that proceeds of the sale of animals, crops or other produce were not lodged to a bank account in their name and appropriate financial documentation was not provided.	
Grounds of Appeal submitted by Appellant	The farmer stated that they were responsible for all farming transactions and carry out all farm work. Cash was used for day-to-day transactions. At oral hearing, it was stated that livestock is sold on farm and purchased from a parent's herd. Purchases are made through an online website. Farm related transactions in relation to Department payments, sheep purchases, veterinary medicines and fees go through the farmer's account.	
Consideration	Having examined the evidence presented for each financial transaction the Appeals Officer was satisfied that while some farming transactions went through the farmer's bank account, the absence of any financial transactions relating to bovines outweighed these in respect of the key requirements of the scheme. There was insufficient evidence to demonstrate that the farmer had managerial and financial control of the holding.	
Decision	Appeal Disallowed	

Case 4:

Scheme	Beef Data Genomics Programme (BDGP)	
Year	2020 - 2021	Heard by Oral hearing
Primary Issue	Absence of stock bull in June 2019	
Department Position	As part of the Department's validations, a review of the stock bull/A.I. replacement requirement was undertaken. The farmer was deemed to not have an eligible 4/5 star rated stock bull on their holding in June 2019 and a penalty was imposed. In addition, the farmer was excluded from the extension of the Programme into 2021 as only BDGP participants who had met the minimum requirements for the six-year period from 2015 to 2020 were eligible to participate.	
Grounds of Appeal submitted by Appellant	The farmer believed that they had met all requirements and submitted A.I. records and ICBF eligibility report. In 2019 only A.I. was used on the farm as the stock bull had been culled due to health and safety issues. A stock bull was in place in June 2020. Calves born to natural cover had been born from bought in dams, in-calf at the time of purchase.	
Consideration	The Appeals Officer considered the health and safety issues which required the culling of the stock bull in 2019. Only 4/5-star A.I. bulls had been used in 2019. In addition, the farmer had a stock bull in 2020 that met the genotyping requirements.	
Decision	Appeal allowed	

Case 5:

Scheme	Suckler Carbon Efficiency Programme	
Year	2023	No oral hearing requested
Primary Issue	Request to increase Programme Reference due to negative impact of TB	
Department Position	<p>The farmer requested an increase in his Programme Reference from 42 to 50. As per the Terms and Conditions, the Programme Reference was based on the number of eligible suckler cows producing an eligible calf in the years 2016-2021, the best three years being selected, averaged, and rounded up. The Terms and Conditions state that an increase in the Programme Reference is not allowed.</p> <p>While the herd was impacted by TB in 2020, this was not deemed to have affected the Programme Reference as that was not one of the three years used for the calculation.</p>	
Grounds of Appeal submitted by Appellant	The farmer stated that they had built up cow numbers to 'near' 50 but TB reactors during 2020 had negatively impacted the Programme Reference.	
Consideration	The Appeals Officer found that the Department had calculated the Programme Reference in accordance with the Terms and Conditions. While there was a reduction in cow numbers from 2019 to 2020, similar reductions had taken place in earlier years in the absence of TB. The figures did not show a pattern of consistent increases throughout the six years that was ended by the TB restriction. No grounds on which the Programme Reference could be increased, were found.	
Decision	Appeal Disallowed	

Case 6:

Scheme	Pig Exceptional Payment Scheme (PEPS)	
Year	2022	No oral hearing requested
Primary Issue	Insufficient pig production to meet eligibility requirements.	
Department Position	The farmer applied to participate in the Scheme in 2022. Terms and Conditions of the scheme specify that to be eligible a farmer must have produced 200 or more pigs in the period from 1 January 2021 to 31 December 2021. As this was not the case the application was rejected.	
Grounds of Appeal submitted by Appellant	The farmer appealed the decision on the grounds that their holding is relatively small and that they had reached the required number in 2019 and 2022. They produced 174 pigs in 2021 and wished to be considered for the minimum payment on a pro-rata basis.	
Consideration	The Appeals Officer reviewed the Terms and Conditions and found that the eligibility criteria is very specific in setting a minimum requirement of 200 pigs for 2021 to be eligible for the Scheme. The Appeals Officer is bound by the Terms and Conditions and could not set aside the eligibility criteria that applies to all participants.	
Decision	Appeal Disallowed	

Case 7:

Scheme	Fodder Support Scheme	
Year	2023	Heard by Oral Hearing
Primary Issue	Late submission of application	
Department Position	The farmer applied to participate in the Scheme for 2023 after the closing date of 5 December 2022. The Department rejected the application as being late and subsequently found medical evidence presented by the farmer as insufficient to meet the requirements of force majeure as it did not cover the earlier period from 2 November 2022 when the Scheme opened for applications.	
Grounds of Appeal submitted by Appellant	The farmer presented evidence of extreme illness which impacted on their ability to function and to submit application on time.	
Consideration	The Appeals Officer noted that many farmers do not submit their applications until the last week of the application timeframe. The medical evidence showed that there was an element of professional incapacity during that week and that therefore force majeure should apply.	
Decision	Appeal Allowed	

Case 8:

Scheme	TAMS II – Low Emissions Slurry Spreading	
Year	2023	Heard by Oral Hearing
Primary Issue	Proof of ownership by way of payment from farmer’s bank account	
Department Position	The farmer applied for the Scheme under their own name. While there were no findings on the holding regarding the implementation of the project, it transpired that the investment was paid for from the account of a Limited company. The farmer had not applied to transfer the herdnumber to the Limited company. As the company is a separate legal entity, the farmer had not proved ownership of the project as payment was issued from a separate legal entity.	
Grounds of Appeal submitted by Appellant	The farmer indicated that they were the sole director of the company and that it related to the same land and entitlements as previously held by the farmer as a natural person. Application for the transfer of the herdnumber had been made but this was a slow process, and it was necessary to submit the 2023 BISS application in the farmer’s name as a natural person. Payment for the investment was made from the company account.	
Consideration	The Appeals Officer examined the Terms and Conditions which has very clear criteria regarding payment from the applicant’s bank account and in relation to any change in identity in the TAMS applicant. The farmer failed to notify the Department of such change of identity even though the company had been established prior to the submission of the payment claim. As the farmer applied for the scheme as a natural person but payment was issued by the company, the farmer failed to provide proof of ownership of the project.	
Decision	Appeal Disallowed	

Case 9:

Scheme	Cross Compliance Nitrates SMR 1	
Year	2021-2022	Heard by Oral hearing
Primary Issue	Exceeding nitrogen limit due to BVD restriction	
Department Position	Farmer exceeded the 170kg per hectare limit for nitrogen from livestock manure in 2021. As this was a repeat breach, a sanction of 3% was multiplied by a factor of 3 to give a sanction of 9%. Restrictions arising from BVD are not allowable for what is known as 'nitrates credit'. Such credit only arises in the case of TB.	
Grounds of Appeal submitted by Appellant	Holding restricted from June 2021 to January 2022 due to a BVD positive animal. Farmer was unable to sell stock due to the BVD restrictions and no animals were factory fit at that time. Consequently, the farmer was unable to reduce the herd for the purposes of complying with the Nitrates limit.	
Consideration	The Appeals Officer noted that the farmer was not in any way responsible for the restriction on the holding and that the circumstances were beyond the control of the farmer. In the context of the principles of force majeure/exceptional circumstances, the Appeals Officer found that this was a case of exceptional unforeseen circumstances which were beyond the control of the farmer and had a material impact on their ability to trade as usual. The Appeals Officer found that a 'nitrates credit' should apply, commensurate with the credit applied had the restriction arisen due to TB.	
Decision	Appeal Allowed	

Case 10:

Scheme	Cross Compliance SMR 2 & GAEC 7	
Year	2022	Heard by Oral hearing
Primary Issue	Tree felling within a Special Area of Conservation (SAC)	
Department Position	The Department was notified by the National Parks and Wildlife Service (NPWS) of tree felling within a SAC without prior permission and during the bird nesting season. It was the farmer's responsibility to be aware of the Terms and Conditions for BPS. A significant area of riverbank was impacted by the tree felling and an 'intent' sanction was applied.	
Grounds of Appeal submitted by Appellant	Farmer stated that he was not made aware that parts of the farm were within an SAC. Only communication received related to a proposed SAC redesignation, but this was not confirmed. BPS maps did not record an area of SAC on the land.	
Consideration	The Appeals Officer noted that there was no conclusive evidence that the tree felling had taken place during the bird nesting season. However, the notice of proposed redesignation should have alerted the farmer to that possibility. The BPS Terms and Conditions are quite clear that it is the responsibility of the applicant to know whether any part of the farm is within a designated SAC area. Based on the extent of the works carried out, the Appeals Officer found that the Department was correct in applying a sanction. However, the Appeals Officer found that there were some mitigating circumstances, including genuine health and safety concerns. Based on the extent, severity and permanence of the damage, a lesser sanction was applied.	
Decision	Appeal Partially Allowed	

Recommendations

Suggestions for Consideration by the Department

General

Scheme Terms and Conditions should be unambiguous and have clear definitions and eligibility requirements.

In multiannual schemes, the Department should consider issuing bulletins to scheme participants as to what must be achieved in the scheme year ahead.

In all schemes with online applications, there should be an automatic receipt issued to the applicants and agents confirming that an application has been made.

Targeted Agricultural Modernisation Schemes

The way in which applicants pay for an asset for which payment is claimed can vary. It would be helpful if the Department considered enhancing applicants' awareness that the asset must have been paid for in full, from their own bank account, and that full ownership and possession of the asset must have passed to the applicant before the payment claim for grant aid is submitted. This can be addressed, for example, by asking direct questions at payment claim stage and highlighting on the letter of grant approval.

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

Sanctions should be definitive when set out in the Terms and Conditions, avoiding terminology such as 'may' when specifying the rate or level of sanction.

The Department should always specify, having regard to the Terms and Conditions breached and/or the scheme Penalty Schedule, the basis for the sanction applied. For example, where full ownership of an item has not been transferred to the applicant

prior to the payment claim and there will be no grant aid paid, the sanction should be specified at the Penalty Schedule.

Regarding the imposition of penalties for TAMS, the Department should consider highlighting in decision letters that the investment ceiling is reduced by the amount of the claim.

Inspections

Inspection reports on land eligibility should include the details of the evidence found on land in respect of “no agricultural activity” findings, for example, descriptions of vegetation, access to parcels, evidence of animals present or not present, use of geo-tagged photographs and maps where applicable clearly referenced to the inspection findings.

Department Decision Letters

It is important the Department decision and review letters clearly identify the specific scheme name, the relevant year, refer to the Terms and Conditions, including the date of those Terms and Conditions, and set out the reason for the decision and the penalty applied.

Control reports should specify all instances of non-compliance found and leave no possibility of misunderstanding, for example clearly indicate the location and any relevant area or lengths.

Department decision letters commonly refer to the internal Department review process as an appeal, this raises unnecessary confusion amongst farmers with some believing they have made a statutory appeal.

Areas of Natural Constraints Scheme

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

advising them that they have excluded themselves from the Areas of Natural Constraints Scheme and what they need to do if this is an error and they wish to participate in the Scheme.

Farm Partnerships / Limited Companies

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

A limited company is a legal entity. Farmers transforming from sole traders to limited companies should be made aware of the requirements to transfer entitlements and any multiannual scheme contracts to the new legal entity / legal person.

Penalties and Sanctions

Penalty notifications and decision letters applying sanctions should in all cases clearly identify the Scheme name, the Terms and Conditions and/or the Specifications under which the penalty/sanction is applied and bear in mind the requirement for decision makers to give reasons for decisions.

During the Period of Appeal and Multiannual Schemes

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

Cross Compliance Cross-Reporting from other Authorities

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

Force Majeure / Exceptional Circumstances

The Department should clearly set out the provisions for force majeure and/or exceptional circumstances in the conditions applicable to each scheme, where relevant.

Retrospective Livestock Reference periods

The Department should clearly set out the manner in which herd restrictions are accommodated within the Terms and Conditions so as to leave the applicant informed at the time of application. Also, in the event of a change of head of a holding or the transfer of a holding what arises for the current farmer.

Suggestions for Consideration by Scheme Applicants

Scheme Rules

It is important that applicants familiarise themselves fully with the Terms and Conditions and Guidelines of Schemes before submitting their claims. There are many changes regarding schemes for 2023/2024 and information meetings should be availed of.

An Appeals Officer is required to adhere with the terms and conditions of a scheme and any relevant legislation in making a decision on an appeal.

Where farmers are uncertain, they should consider engaging a professional advisor or other competent person to assist them in understanding the scheme rules and requirements.

Conditionality

Conditionality sets the baseline requirements for farmers in receipt of CAP payments and replaces the 'cross compliance' requirements in the previous CAP.

Applicants should familiarise themselves with the requirements of Conditionality, which consists of Statutory Management Requirements (SMRs) and Good Agricultural and Environmental Condition (GAEC) in respect of the water, soil and biodiversity of ecosystems.

All farmers must be compliant with the legal requirements of the Nitrates Regulations. Farmers should always be aware of storage requirements for their herd size and ensure that they meet the requirements in full. This is especially important where herd size is increasing. Nitrates Derogation farmers should be always aware of the specific requirements on them in lieu of the higher organic nitrogen limit afforded them. From 2022, Nitrates Derogation farmers who do not meet all requirements in one year are also excluded from applying for the Nitrate Derogation in the following year.

Farmers should be aware of the changes in Organic Nitrogen values applicable to livestock, including the banding of dairy cows, and ensure they are farming within the applicable limits subject to these revised rates.

All Schemes

Sole trader, Registered Farm Partnership, Limited Company, or other entity: Change of entity can have significant implications for multiannual contracts and for BISS entitlements and should always be clarified with the relevant sections of the Department prior to any changes being undertaken.

Where a farmer uses an agent to lodge an application, a printed database version of the submitted application should be sought prior to the closing date to receipt the submission of the application. Agents/farmers should retain screen shots of their application submission, especially where an auto confirmation email does not issue.

Areas of Natural Constraints

Applicants should familiarise themselves with the stocking density requirements, even in the event of herd restrictions.

All applicants should be aware of new livestock unit values in place from the start of 2023, livestock unit value have reduced for certain categories of animals.

Sheep and goat farmers should be vigilant in returning their Sheep/Goat Census and ensure their flock registers are up to date.

BISS Payment Entitlements

Farmers should take appropriate measures to ensure that any entitlements leased out by them are fully used in accordance with the scheme requirements. Farmers should always be aware of the entitlement related requirements and if unsure should seek advice and/or information.

Appeal submission – Department decision letter – hard copy and online

When submitting an appeal, farmers must always use the Notice of Appeal Form which is published at www.agriappeals.gov.ie and include a copy of the Department decision which is the subject of their appeal. The grounds of appeal must also be provided. This will assist in expediting the appeal and in determining if the appeal is valid.

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

An online portal is now available for the submission of an on-line appeal at www.agriappeals.gov.ie and requires the uploading of the decision being appealed against, refer to Section 5.1, above.

Examples of Reoccurring Compliance Issues for Farmers

General Issues

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

Suckler Herds

- Not maintaining or achieving sufficient animals which are genotyped 4 or 5 stars on the replacement index in each year of their programme contract.

Areas of Natural Constraints (ANC)

- Application not made.
- Minimum stocking density not maintained and/or 28 consecutive weeks of minimum stocking period not met (note there are changes in ANC stocking requirements for 2023)

Organic Farming Scheme (OFS)

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

Targeted Agricultural Modernisation Schemes (TAMS) II

- An applicant should only submit a payment claim after the actual payment is made, applicants should always be aware that claim inspections/validations may in addition to invoices request bank statements, cheque/electronic payments etc to ensure that the TAMS II payment claim was only submitted after the item was owned possessed and was fully paid for. Applicants should also be aware post-dated cheques, after the date of a payment claim, are not considered eligible payment.

Appendix A: Appeals Office Organisation Chart

Director

Ms Lynda O'Regan

Deputy Director

Pat Coman

Agriculture Appeals Officers

Siobhan Casey	Claire Kennedy	Guy Mahon	Bernadette Murphy
Francis Dowling	Liam Kinsella	Michelle McNamara	Luke Sweetman
Jim Gallagher	Paula Lynch*	Dan Molloy	Vincent Upton
Jim Byrne*			

Aquaculture Appeals Administration

Treasa Langford (AP)**
Ciar O'Toole (HEO)
Maragret Carton (HEO)
Fergus Donegan (EO)
Ciara Murphy (CO) *
Brona Leonard (CO)
Majella Murphy (CO)

Agriculture Appeals Administration

Noel Moynihan (HEO) *
Michael Ryan (HEO)
Marie Dobbyn (EO)
Aedin Doran (EO)
Jacyntia Carroll (CO)
Brian Kealy (CO)
Rachael Conlon (CO)**
Heather Dunphy (CO)**

Forestry Appeals Administration

Ruth Kinehan (HEO)
Carmel McSweeney (EO)*
Vanessa Healy (EO)
Roisin Moore (CO)

* Left the Agriculture Appeals Office in 2023

** Joined the Agriculture Appeals Office in 2023

Appendix B – Governing Legislation

Primary Legislation

The work of the Agriculture Appeals Office is governed primarily by the following the Agriculture Appeals Act 2001 and by the Agriculture Appeals Regulations, Statutory Instrument No. 193 of 2002, as amended.

Other Relevant Legislation

Amendments to the Agriculture Appeals Act 2001:

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

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

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

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

Statutory Instruments made under the Agriculture Appeals act 2001:

S.I. No. 558 of 2002 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2002

S.I. No. 507 of 2004 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2004

S.I. No. 65 of 2006 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2006

S.I. No. 584 of 2006 Agriculture Appeals Act 2001 (Amendment of Schedule) (No. 2) Regulations 2006

S.I. No. 169 of 2008 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2008

S.I. No. 106 of 2012 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2012

S.I. No. 10 of 2014 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2014

S.I. No. 276 of 2015 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2015

S.I. No. 638 of 2016 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2016

S.I. No. 219 of 2017 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017

S.I. No. 164 of 2018 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2018

S.I. No. 68 of 2018 Forestry Appeals Committee Regulations, 2018

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

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

S.I. No. 368 of 2021 Agriculture Appeals Act (Amendment of Schedule) Regulations 2021

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

S.I. No. 383 of 2022 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2022

S.I. No. 743 of 2022 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2022

S.I. No. 521 of 2023 Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2023

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