



**Opening Statement by IFA President Francie Gorman
to the Joint Oireachtas Committee on Agriculture, Food and the Marine
on *Pre-Legislative Scrutiny of the General Scheme of the Agriculture Appeals (Amendment) Bill 2024*
Thursday 22nd February 2024**

Chairman and Committee Members, I would like to thank you for inviting IFA to address you today.

I am joined by John Curran, IFA Rural Development Chairman and Shane Whelan, IFA Rural Development Policy Executive.

Firstly, I'd just like to acknowledge (and welcome) this draft legislation toward the initiation of an Independent Agricultural Appeals Panel, something IFA has lobbied for strongly for some time now.

This day has been a long time coming.

The establishment of an Independent Agricultural Appeals Review Panel was one of the key recommendations included in the Review of the Agriculture Appeals Act, 2001 and operations of the Agriculture Appeals Office, completed and published in December 2017, well over six years ago now.

This Independent Review group was established by the then Minister for Agriculture Michael Creed in May 2017 in response to the genuine concerns of farmers about the appeals system, most particularly around its independence and efficiency. These concerns are as relevant today as they were back then.

The current structure, whereby the Director of Appeals, who is appointed directly by the Minister for Agriculture and reports to the Minister, can hardly be considered fully independent. This is a similar structure used in the Forestry Appeals Committee.

Similarly, most of the Appeals Officers came from the Department of Agriculture.

In the current appeals structure, they are asked to make important decisions on cases where farmers are appealing decisions made by former colleagues.

While we would acknowledge that the appeals officers in general do a good job the perception of farmers is that they are effectively Department staff.

The establishment of an Independent Agricultural Appeals Review Panel offered potential to ease some of these concerns.

However, the proposed construct of this legislation falls well short; it lacks clarity with regard to certain operational aspects, and overall, it is very similar to the existing model.

The recommendation of the Independent Review Group to appoint an Independent Chair has been overlooked and instead, as with the Director of Appeals, it is left to the discretion of the Minister to appoint the Chairperson of the Review Panel.

At a minimum, an independent board should be established with independent members, who in turn should select an Independent Chairperson.

Similarly, the IFA proposal for having at least one farmer representative on the Independent Review Panel (and any Division thereof) has not been specifically provided for in the draft legislation. This is a missed opportunity and should be revisited.

Farmers must have confidence in the system that their cases will be dealt with fairly, impartially and efficiently. The provision for an Independent Chair and greater farmer representation would certainly give more confidence to stakeholders.

The Independent Agricultural Appeals Review Panel needs to be established as soon as possible, its scope extended to all appeal cases, not solely those in relation to the law and/or new facts being presented.

During the last CAP programme (2015-2022), over five thousand (5,185) appeals were lodged to the Agricultural Appeals Office, with the 10-year average 668 appeals per annum.

The new Common Agricultural Policy, spanning 2023-2027, is fundamentally different to its predecessor.

There are numerous new schemes and concepts which bring considerably more complexity, administration and bureaucracy for all stakeholders involved.

Most particularly the transition from a compliance-based system to a results-based system. This will increase the potential volume of associated inspections, penalties and appeals relative to previous levels.

The same is true for many nationally funded programmes and Department¹ administered schemes and programmes that farmers participate in.

This new reality, combined with an increased reliance on third parties (farm planners/advisors etc.) and the emergence of a new monitoring infrastructure (AMS) – which across Europe has been shown to increase significantly the number of ground inspections required – will likely increase the volume of reviews / appeals.

We need a fully functioning, Independent and efficient appeals process.

¹ Department of Agriculture, Food and the Marine

The reality is that some of the penalties being imposed by the Department² are higher than would normally apply in a court of law. The consequences for individual farmers are huge. The whole process must be robust and be seen to be fair and transparent,

The importance of farm payments, particularly for small-scale farms and those within the vulnerable drystock sectors, to sustain farm operations is well known and documented.

Table 1: Average value of direct payments (DPs) and contribution to FFI 2022

	DPs	Contribution of DPs to FFI
	€	%
Dairy	21,103	14
Cattle Rearing	15,130	182
Cattle Other	17,129	92
Sheep	18,948	116
Tillage	30,143	40
All	18,948	42

(Source: Teagasc National Farm Survey)

In addition to the need for greater independence and farmer representation, as previously mentioned, there are a number of elements / proposals within this legislation that require some clarification.

Firstly, with regard the role/operations of the proposed Divisional units of the Review Panel:

1. Are they simply a condensed version of the Review Panel when a full quorum is not available; or are they dedicated or segmented units set up to engage specifically on appeals relating to individual schemes, or for urgent cases?
2. What weighting is assigned to the decisions of the Divisional groups - do they need to report back to the Review Panel their deliberations for approval, or does their decision carry equal weighting to the Review Panel?

² Department of Agriculture, Food and the Marine

3. Does the provisions provided in Section 15B(1) 'Prohibited Disclosures' extend also to persons involved in Divisional units of the Independent Review Panel? If yes, this needs to be specified.

Secondly, what is considered best practice in terms of the operations of the Independent Agricultural Appeals Review Panel (or Divisions) with regard to pre-notification of appeals (physical/oral); expected turnaround of appeal decisions etc. These are not clearly outlined.

While the inclusion of limitation periods for seeking reviews may support greater transparency and efficiency of operations, farmers must have the facility to seek an appeal in circumstances where the timeline for lodging an appeal has elapsed, especially where there are mitigating circumstances or new evidence or facts emerge regarding the case.

Clarification is also required with regard the sequential approach / requirements through which the appeals process must proceed, most particularly where cases are being brought forward in the event of new facts.

Do applicants need to have an appeal decision reviewed by another Appeal Officer (which has a 6-month window of opportunity from the date of the appeal officer decision) before progressing to the Independent Review Panel, or can they bypass and progress straight to the Independent Review Panel (which has a 3-month window of opportunity from date of appeal officer decision).

There is also clarification needed with regard condition (e) of section 15A(1), as currently no text is provided.

IFA suggest the proposed provision that

'An appeals officer may hold any oral hearing remotely by electronic means'

should only apply where agreed by the appellant.

Face-to-face meetings enable more meaningful engagement, and given our aging demographic; connectivity issues; and potential need to share supporting documentation during exchanges, electronic means may not be the most suitable mechanism for all appeal hearings.

That said, it may work and be the preferred option for some farmers, so it is best to give farmers a full range of options so they can decide the most favourable for their individual circumstances.

More broadly, every effort must be made to improve the efficiency of the appeals process.

There needs to be greater transparency with regard to individual payments (e.g. ACRES participants are only told their scoring after being paid) and under the current appeals process, the appeals officer is confined to making a decision having regard only to the terms and conditions of the scheme involved.

IFA considers this is too restrictive and more flexibility must be provided in relation to interpretation of schemes and to allow the appeals panel to take into account anomalies, inconsistencies and shortcomings in the drafting of schemes.

Elsewhere, farmers need to better utilise and be made aware of the Review process; the DAFM need to better honour information/file requests from the Agriculture Appeals Office (currently time of return is double the required standards – i.e. 28 days vs. 2 weeks target) and there should be a facility to award the appeal if the DAFM refuse to reply within a reasonable time limit.

Individual terms and conditions need to be more clearly defined with regard eligibility criterion; the provisions for force majeure and/or exceptional circumstances need to be clearly set out in the conditions applicable to each scheme; underlying screening technology needs to be more robustly tested; and serious consideration needs to be afforded by the DAFM to more proactively engage with farmers with regard individual scheme requirements – something which the Appeals Office have recommended previously.

With regard to the latter, and ACRES for example, which has been a mess this year because of its complexity, the DAFM need to either send out physical copies, or issue a bulletin outlining individual requirements for the scheme year ahead to provide greater awareness and minimise non-compliance, penalties and/or subsequent appeals).

With regard to the lack of key detail and questionable screening technology, the existing Shannon Callows Flood Scheme is a good example.

We have received multiple calls from impacted farmers who have either not received an Expression of Interest from the DAFM or compensation payment (either full / partial) despite operating on the Shannon Callows and having fodder lost because of exceptional flood damage.

Many have suggested that the AMS technology failed to identify flooded parcels, particularly those with heavy covers (e.g meadows). Many were excluded from the scheme, and would have made appeals/reviews to the DAFM as a result.

IFA has raised this matter with the Minister and the DAFM multiple times to address, and minimise the volume of appeals received, and will continue to lobby strongly so all impacted farmers are fully compensated for the financial loss incurred.

Sufficient funding and resources must be allocated to facilitate implementation of the National Strategic Plan for Sustainable Aquaculture Development and all recommendations of the Aquaculture licensing review - this includes resources for Aquaculture Licence Appeals Board (ALAB).

This body must have sufficient technical and administrative resources to deal with appeals in a speedy and efficient manner.

The Department of Agriculture, Food and Marine (DAFM) and the ALAB should agree a Service Level Agreement and make available the adequate funding to ensure ALAB is sufficiently resourced to process any appeal it receives.

To conclude, the following are a few core principles from an IFA perspective with regard the agricultural appeals system which need to be considered:

1. Farmers must be treated fairly, with respect, dignity, professionalism and efficiency;
2. All application forms for farm schemes, associated terms & conditions (and subsequent appeals where necessary), should be made simple and straightforward;
3. The DAFM should more proactively engage with farmers with regard individual scheme requirements, particularly for multi-annual schemes, on an ongoing basis;
4. A system must be in place with dedicated staff in the Department of Agriculture to deal with problem issues which farmers may have;
5. Farmers must not unduly disadvantaged, penalised or prone to increased on-farm inspections following direct/indirect advances in available technologies; data collection or monitoring mechanisms, with the privacy and data protection rights of the farmer secure and protected at all times.
6. The level of ongoing monitoring of on-farm activities must be proportionate and similar to that afforded to other employment cohorts.
7. The inspection regime should move to one that helps people to become more compliant. Department inspections create an unnecessary level of anxiety and fear among farmers and this has to change. The dignity and rights of farmers must be fully respected at all times, with reasonable and fair procedures, as per Department Code of Conduct, executed at all times and proper procedures where complaints arise.
8. No inspector should arrive on a farm without reasonable prior notice, suitable qualification/training and adequate personal liability cover. Unannounced inspections should be eliminated entirely and the farmer/agent must be provided with the same information the Department have when doing inspections.
9. The Department should provide a written summary of the findings and a final notice of the breaches found before they leave the farm.
10. Every farmer has a right to appeal all decisions made by the Department of Agriculture without fear of intimidation or subsequent disadvantage.

The integrity of the appeals system needs to be bolstered by the establishment of the Independent Agriculture Appeals Review Panel, comprising of an Independent Chair and at least one farming representative (including within its Divisional construct).

Operating within ever complex, bureaucratic and regulatory environs, farmers must have confidence in the system that their cases will be dealt with fairly, impartially and efficiently where required.

Anything otherwise would simply be unacceptable; contravene farmers rights, and risk on-farm economic viability, in the majority of cases, given the reliance of farm families on farm payments. Every effort must be made to avoid this occurrence.

Thank you.

Background

The IFA is Ireland's largest farming organisation, with over 72,000 farmer members covering all production systems. The Association is structured with 947 branches and 29 County Executives across the country. The IFA President and various Committee Chairmen, along with branch and county representatives are democratically elected by the farmer membership. IFA represents all farming sectors at National, European and International level. Through our office in Brussels, the IFA represents Irish farmers on the European 8 umbrella body of farm organisations COPA/COGECA. In addition, the IFA is the representative for Irish farmers on the World Farmers' Organisation.