Opening Statement,
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ICSA Observations on the Draft General Scheme of the Agricultural Appeals (Amendment) Bill 2024

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Thank you chairman for the opportunity to address the Committee today on the issue of the Draft General Scheme of the Agricultural Appeals (Amendment) Bill 2024, on behalf of ICSA.

Overview

As a general comment, ICSA welcomes the intent to set up an independent review panel to provide a further option for farmers affected by decisions of the Department of Agriculture to impose penalties under the various CAP schemes. Penalties and inspections cause immense stress to farmers and it is our view that in many cases, the severity of sanctions is way out of line with the offence.

To be fair, the Department has introduced a new regime under the new CAP Strategic Plan, where cross compliance is being replaced by conditionality. The changed approach involves a restriction of movement from a herd until the farmer exercises the option to remedy basic failings or errors. This is potentially a significant improvement and should reduce the amount of cases for appeal.

However, on the other hand, conditionality in some cases is imposing a higher standard on farmers. We have also seen that there has been pushback at European level against standards such as GAEC 8, which requires a minimum of 4% of land devoted to non-productive areas or features. Nonetheless, it demonstrates that standards are rising and changing all the time and it is hard for farmers to adapt to all of this change.

Therefore, we in ICSA believe that there are many different circumstances, where farmers who are doing their best, and working very hard to produce high quality food, can fall foul of the regulations and find themselves in trouble with the Department and this is imposing serious levels of stress on farmers.

It is also our view that the requirements on farmers to have everything 100% is not realistic. Most farmers do not have the luxury of farming model farms like Teagasc research centres which are located in one block on the highest quality land, where hedges or areas of scrub were removed long ago or never existed in the first place.

These model farms cannot be compared to what many farmers are up against, farming fragmented holdings, with all sorts of challenges, in mountainy areas, disadvantaged lands, boglands, areas covered in scrub. Today, that kind of land is seen as being of huge benefit to biodiversity, but it is not so easy to farm it to the same standard as a model dairy farm, which is one green open space, divided by wire.

If a Department official makes a mistake, it is just that, a mistake. Where farmers make mistakes, they often feel like they are criminals.

Against this backdrop, it is urgent and vital that farmers get fair play and the opportunity to explain their case. They must have the opportunity to be heard, and to ensure that they are given the same rights as anybody accused of any misdemeanour or offence by the Gardai, for instance.

That's why we in ICSA want this legislation to be capable of delivering fair play for farmers through a review panel process that is fit for purpose.

In relation to the draft bill we see a number of key issues:

First, the Review Panel must be seen to be neutral and be seen to assess cases on a completely fresh and open-minded way. For that reason, we think it is not appropriate to have the Director or deputy director of the Ag Appeals office on the panel as a voting member.

Second, we believe that the deadline for submitting appeals, at six months, and at three months in the case of the Review Panel, is too short to ensure justice for farmers.

Third we believe that while oral hearings by remote electronic means might be suitable in some circumstances, it must on the explicit grounds that an appellant can demand an in-person hearing if they so wish.

Fourth, we are concerned that the grounds for an appeal are far too tight and will inevitably deny access to fair play for a lot of farmers.

Amendments

On the first point, this would mean the amendment of Head 4, section 4C (1) (c) to exclude the Director or Deputy Director. Instead we propose that an addition paragraph be inserted which would state that the "***Director or Deputy Director would be available to assist and advice the Review Panel in their deliberations on any case but would not be entitled to vote or to canvass for an outcome***"

On the second point regarding deadlines, we believe that the provisions, under Head 7, section 10(1) (c) whereby ***the request for review has been made within 6 calendar months*** and under 10A (1) (d) whereby ***the request for review has been made within 3 calendar months*** is too short.

We can cite numerous incidents where we have encountered members who were too bewildered or traumatised by an adverse finding, coupled with a severe financial penalty to deal with their options. By the time they come to us with their story, it is too late to appeal. We accept that there has been some common sense applied to hard cases, but we submit that at a minimum appellants should have twelve months to appeal. We further submit that there should be scope to allow appeals beyond the twelve months where there are particular extenuating circumstances.

Therefore the following amendments would apply:

under Head 7, section 10(1) (c) whereby ***the request for review has been made within 12 calendar months*** and under 10A (1) (d) whereby ***the request for review has been made within 12 calendar months***

and we would add a point 10A (1) (e) ***"In the case of extenuating circumstances, the review panel may permit appeals, after the twelve months have elapsed, for a period of up to three years.***

On the third point, under Head 5, ICSA accepts that an oral hearing by electronic means may be preferred by both parties. However, we want the language tightened up to ensure that appellants may insist on an in-person meeting with their advisor(s) or representative(s) if they so wish.

Hence section 8 (30 should be amended to: “An appeals officer may hold any oral hearing remotely by electronic means ***subject to the agreement of the appellant. The appellant shall be entitled to an in-person oral hearing if they so wish***.”

On the fourth point, under 10A (1) (c), an appeal to the review panel is allowed – ***by reason of some mistake having been made in relation to the law or the facts.*** In our view, this is an extremely limited grounds for appeal and it will deny access to justice for various appellants.

ICSA submits that in addition to the above grounds an additional point should be added which would be inserted under 10A (1) (c) as follows: ***or by reason of a failure to take adequate account of the special circumstances pertaining to the case.***

In our view, this is essential to ensure that those who feel that they have been treated unfairly get a fair chance for access to justice. There are numerous examples of farmers who over the years have been penalised for reasons relating to them not just being able to cope with ever-changing regulations, ever-increasing rafts of red tape and paperwork and the overall burden of work involved in looking after their farming operations in the context of being forced into increased scale or off-farm work.

We also believe that there have been numerous cases of failure to meet exacting standards and requirements that are linked to physical and mental health, and whereas there are force majeure conditions in the case of schemes, the force majeure clause is much more limited than people realise.

There are also cases related to animal condition or welfare which are mistakenly determined to be due to neglect or poor farming practices but in fact may be the consequence of unusual animal health conditions, difficult to cure conditions or diseases or the failure of veterinary treatment to work. Sometimes this is due to a fine line judgement call by a farmer or indeed by the vet.

In all of these cases, it is essential in our view that a farmer has access to a fair and readily available appeals process and we are extremely concerned that limiting access to appeal on the basis of error in fact or law is likely to lead to justice denied.