DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Máirt, 14 Aibreán 2015

Tuesday, 14 April 2015

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Pat Deering,	Senator Michael Comiskey,
Deputy Martin Ferris,	Senator Pat O'Neill.
Deputy Éamon Ó Cuív,	
Deputy Thomas Pringle,	

In attendance: Deputies Paul J. Connaughton, Michael Fitzmaurice, Noel Harrington and Seán Kyne and Senator Trevor Ó Clochartaigh..

DEPUTY ANDREW DOYLE IN THE CHAIR.

Business of Joint Committee

Chairman: I have received apologies from Deputy Michael NcNamara and Senators Denis Landy, Mary Ann O'Brien and Brian Ó Domhnaill. Is it agreed that we go into private session to deal with some housekeeping matters before returning to public session? Agreed.

The joint committee went into private session at 2.10 p.m. and resumed in public session at 2.25 p.m.

Basic Payment Scheme and GLAS: Discussion

Chairman: I remind members and delegates to turn off their mobile phones. As the meeting is being streamed live on television, it is important that there be no interference by phones, iPads or anything else.

We will have two sessions. In session A we will hear from representatives of the Irish Farmers Association and the Agricultural Consultants Association. In session B we will hear from representatives of the Irish Natura and Hill Farmers Association and the Irish Cattle and Sheep Farmers Association who, I understand, are present in the Visitors Gallery. I welcome all delegates.

From the IFA we have Mr. Eddie Downey, president; Mr. Pat Dunne, IFA hill chairman; Mr. Flor McCarthy, IFA rural development chairman; Mr. Pat Smith, general secretary; and Mr. Tom Turley, Connacht regional chairman. I believe Mr. Gerry Gunning is also present. From the Agricultural Consultants Association we have Mr. Tom Dawson, president; Mr. Breian Carroll, ACA member; and Mr. Brian Dolan, ACA member. I thank them for appearing before the joint committee to address farmers' concerns about eligible land under the new basic payment scheme and issues concerning the green low-carbon agri-environment scheme, commonly known as GLAS.

Witnesses are protected by absolute privilege in respect of the evidence they are to give to the committee. If they are directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Mr. Downey to make his opening statement.

Mr. Eddie Downey: I thank the Chairman and members of the joint committee for the invitation to address the major concerns of farmers about eligible land under the new basic payment

scheme. We have for some time expressed serious concern about the lack of clarity on eligible land under the scheme. Farmers expected that this issue would have been addressed and clarified at the recent Department of Agriculture, Food and Marine CAP meetings held throughout the country. We believe this was the forum in which the issue should have been addressed.

At a recent charter meeting it was agreed that the Department of Agriculture, Food and Marine would send a booklet on eligible land to every farmer in advance of the application process. This has not happened. The quicker it is done the better, as there is considerable confusion. Farmers are entitled to practical guidance on this vital issue and it is the job of the Department to provide it. I understand discussions are continuing between the Department and the European Commission on this important issue. Without guidance, farmers are being left in a very precarious position as they are uncertain whether they should include or exclude certain lands. There is a serious concern that they could take out areas which would and should be eligible for payment.

It is important that a fair degree of tolerance be shown to farmers, as it is quite clear that determining whether land is eligible or ineligible is an inexact science and open to interpretation. This is particularly the case in large parts of the country where there is mountainous and other marginal land. Much of this land is designated as Natura as well as commonage. However, this is a significant issue across the country in all counties where there is marginal land. In fact, most farms have some marginal land and have adjusted for this. Some 4.7 million hectares of eligible land are declared by applicants for direct payment every year. Of this, 330,000 hectares of commonage are declared, representing about 7% of the total area. However, approximately 100,000 hectares of commonage land is not declared as the ownership is held by dormant shareholders and others who do not make a claim.

In the recent CAP negotiations, there was a lot of emphasis on focusing payments towards active farmers. I can recall debates at this forum and I believe everybody was of the same opinion, namely, that payments should go to active farmers. The recent CAP negotiations and the resulting reform have led to a reallocation of support through a convergence model which was discussed and agreed at the EU Council of Ministers. It is a compromise outcome. It is worth pointing out that one of the options put forward by Commissioner Cioloş is that member states could opt for regionalisation. If this had been applied in Ireland, it would have divided the country geographically based on the productivity of the land. This would have been discriminatory against hill farmers and farmers on marginal land, as it would have left their average payment per hectare significantly lower compared to the final outcome. The IFA at all times strongly opposed the regionalisation approach. While the outcome of CAP is not perfect, the protection of active farmers had to be central to the debate.

The priority now must be to ensure that the full Rural Development Programme allocation of €580 million per annum is fully spent over the coming six years. In the case of GLAS, some recognition is given to the reference area. For example, in commonages, the GLAS payment of €120 per hectare applies to a wider area than that which is eligible for the basic payment scheme.

In regard to the hen harrier areas, the decision to extend GLAS Plus to farmers who have greater than 13.5 hectares is welcome. However, more needs to be done, as this concession is only given in areas where farmers have substantial land areas designated for endangered bird species. In addition, the issue of splitting parcels in the current round of GLAS must be addressed, as farmers are in a better position to maximise their payments through a combination of land-based and linear measures.

In regard to areas of natural constraint, a stocking rate criterion of 0.15 has applied for a consecutive seven-month period. This ensures that payments go to active farmers, albeit at a very low stocking density, as the stocking rate does not differentiate between the types of land. There will be a review of the areas of natural constraint over the next number of years which will classify land based on the natural handicap of soil moisture deficit. There will be an opportunity to re-examine the support structures of the areas formerly known as disadvantaged areas, but the priority for the IFA will be to protect those farmers whose lands are marginal and to ensure that the payment levels clearly reflect this.

On inspection specifically, I want to clearly state that the IFA is particularly concerned about the over-zealous approach of some inspectors on the issue of land eligibility and cross-compliance. Recent information on the level of penalties obtained on a county-by-county basis through parliamentary questions in this House shows this to be the case, with higher penalties in some counties. This is why the Minister must proceed immediately to introduce a new charter of rights involving the following: proper and fair notice of inspections; a reduction in overall inspections; increased tolerances; a yellow card system with reduced penalties; and an improved payment deadline. These discussions have been ongoing for some time and need to be satisfactorily concluded now by the Minister, Deputy Simon Coveney.

In conclusion, the IFA wants a satisfactory outcome to the issue of eligible land. There must be no retrospective penalties applied on farmers, as they have tried to do their best to determine whether their land is eligible. Information must be provided so that farmers can be assured their payments will not be affected under the various schemes applying, whether it is the basic payment scheme, GLAS or the areas of natural constraint scheme. This issue is too important, as direct payments make up such a significant part of farm income.

Chairman: I propose to invite Mr. Dawson to make an opening statement, and we will then have questions to both witnesses. There are quite a few Members present who are not members of the committee. Copies of the presentations are being printed and will be circulated as quickly as we can do so. I apologise for this; I should have known that there would be plenty of interest in the topic.

Mr. Tom Dawson: I thank the joint committee for giving me this opportunity to address it.

The Agricultural Consultants Association, ACA, wishes to raise a number of points about the eligibility of marginal and commonage land for the basic payment scheme, GLAS and other area-based schemes. There is anecdotal evidence that departmental inspections of commonages and marginal lands lead to significant reductions in the amount of these lands eligible for the basic payment scheme and other area-based schemes. In the opinion of the ACA, the problem is more widespread due to a number of circumstances. The number of active farmers in commonage areas has reduced significantly in the past ten to 15 years. Since the completion of commonage framework plans more than ten years ago, the number of sheep grazing these lands has reduced substantially, mainly due to enforced destocking prescribed by the commonage framework plans. This, combined with the ageing profile of hill farmers, has led to a decline in the active management of commonage and upland lands.

There is a lack of clarity on the part of the Department on agricultural activity that maintains commonage and marginal lands as eligible lands under the various schemes. The terms and conditions to the basic payment scheme and other area-based schemes stipulate, "In the case of commonage, the activity must be carried out by at least one of the applicants", and that areas ungrazed owing to low stocking rates, areas of ungrazed mature heather, areas of intense rush or

ferns and inaccessible areas are not eligible for payments. Greater clarity is required for ACA advisers in order that we can properly advise our clients on the level of activity required on these hills and define what is and is not eligible. Advisers need to be made aware of the exact criteria used to assess commonage and marginal lands. When advising clients, our members must be aware of the criteria the Department uses to assess eligibility in order that we can then advise our clients on how to manage the activity on commonage to ensure eligibility.

ACA and other advisers should be trained, in conjunction with departmental inspection staff, to ensure consistency of approach throughout the sector. We submit that a standardised inspection process should be drafted in conjunction with all relevant stakeholders. In our experience, farmers in commonage areas are well aware of the problems and accept that land eligibility is an issue. However, it cannot be rectified overnight and needs time to be resolved. We contend that where a commonage is under a commonage management plan such as in a GLAS or another management plan and being managed to maintain or increase the eligible area, these lands should be considered as eligible for the duration of the plan in question.

Under the new basic payment scheme, GLAS and in areas of natural constraint there shall be a substantial transfer of payments to marginal land areas. The ACA accepts that to receive these payments, farmers need to be farming the lands and protecting the habitats. However, we submit that the Department needs to permit time for farmers, for example, three to five years, once it can be proved they have a commitment to address or resolve the issues to ensure eligibility.

Historically, the introduction of ewe premia in the 1980s led to large increases in sheep numbers on hill farms and the subsequent problems with overgrazing that evolved from this. The severe destocking prescribed by the commonage framework plans of the late 1990s and early 2000s has led to undergrazing in many of these hill and commonage areas. The ACA is of the opinion that to break this cycle, active co-ordination is required between all stakeholders, including hill farmers and their advisers and the Department of Agriculture, Food and the Marine, with the long-term objective of finding the required balance between the needs of the EU birds and habitats directives and the good agricultural and environmental condition requirements of the Department.

Deputy Martin Ferris: I thank the witnesses. This meeting is long overdue. All of us who represent rural communities, particularly where there is a great deal of marginal land, have not quite been inundated but have received a large amount of representations concerning the land eligibility problem. Everyone agrees that many people have found themselves having penalties imposed as a result of doing what they were told to do by the Department. They were compliant with its criteria and directions at the time, but now they are facing severe penalties and losing many of their entitlements as a consequence. This is due to a lack of criteria and direction from the Department to the farming organisations and farmers and their advisers. There is no coherence in the criteria. It is disgraceful that farmers across the country find themselves being penalised and losing many of their entitlements retrospectively as a consequence of the Department's inactivity in helping people to deal with the situation.

If we are to find a mechanism to progress this and get justice for the people at the coalface - namely, farmers on commonages, hills and marginal land - the criteria and terms of reference need to be specific and understood unambiguously by the farmers and their representatives and advisers. Do the witnesses accept that one way of doing this is to set up a working group involving farming organisations, advisers and the Department?

Mr. Downey mentioned retrospective payments, a penalty that is being imposed on people who, as the Department led them to believe, were compliant. They were compliant, yet a penalty is being applied because of the failure of the Department and successive Governments to address this matter. Some people will receive no payments as a consequence.

A person who attended my office in Tralee yesterday told me that he rented land on which a penalty had been imposed in 2013. He asked for a manual inspection, which took place on all of the land except one part that could not be inspected because of the weather. However, the penalty remained the same. He owns a small bit of land and has entitlements in that respect, but the penalties applied to his rented land could spill over onto his own holdings.

Something needs to be done about this situation as soon as possible. I am disappointed that the witnesses were told it would be sorted out with the Department but nothing has happened. Have they contacted the Minister and emphasised the fact that this commitment has not been fulfilled? How do they propose to take on the matter? What advice would they give to the committee? I would have no problem proposing that we contact the Minister immediately and get this matter addressed. It needs to be done. The sufferers are hill farmers and people on marginal land who are desperate to have their entitlements sorted.

Deputy Thomas Pringle: I thank the two bodies for their presentations. As Deputy Ferris said, there seem to be many problems arising regarding land eligibility and the ability of farmers to enter schemes and maximise their incomes from them. It seems crazy that farmers are being penalised for managing a commonage destocking plan and cannot qualify for the new scheme because of their compliance with the previous scheme. It seems to make no sense. Farmers in west Donegal have problems getting land included in GLAS and maximising their payments under the scheme because they do not have enough variety of grass species.

This issue must urgently be addressed, given that it will have a major impact on very large areas. Is this the experience along the whole of the west coast? Perhaps the agricultural consultants could expand on this. The solution seems to be for the farmers' organisations, consultants and Department to get together and come up with a working arrangement for how it can be resolved. What are the witnesses' views on this and how do they see it working? Do they believe the Department would be willing to engage with them? What can the committee do to move it along and make it a reality?

Senator Michael Comiskey: I welcome the IFA and the agricultural consultants. I agree with them and it is very important that the problem be resolved. It is a matter of weeks before applications must be submitted and we are all receiving many queries about it. Today's newspaper highlighted it further and we will receive more correspondence. We all must try to resolve it once and for all. The problem began when farmers were destocked in 1997 and 1998 and overgrazing had been allowed on many of the commonages. Now, farmers may be penalised if they have overgrown heather. In many cases, some overgrazing is happening. The balance must be got right. While I welcome many of the moves that have been made over recent months, particularly regarding GLAS, we still have to sort the problem out. It is important we hear everybody's story today and ensure we talk to the Minister and the Commission and get the problem sorted.

Senator Pat O'Neill: I welcome both groups. While there may not be much marginal land in Kilkenny, I will speak in a general context about the matter. When a farmer receives a notice of inspection, it is like a Revenue audit. People worry about it because they do not know what they face at the end of it and whether they will suffer penalties. This all has to be dealt with

and Mr. Downey dealt with it regarding the charter. The charter of rights must be examined such that farmers feel they have not been wronged after an inspection. I know people who felt they were doing everything right, but were suddenly faced with a penalty. These penalties have many serious implications regarding cash flow and the plans people made for their farms over the next five to six years. I agree with the IFA presentation regarding a yellow card system. The current system is like a hang man. Suddenly one is executed, gone and must face penalties. In any fair game, there is a yellow card, unless in the case of a misdemeanour or where people are acting against the ideas of the scheme.

While new schemes can have many teething problems, the IFA, the agricultural consultants and all farm organisations must sit down with the Department and iron this out. We are only seven weeks from the deadline. If this is not clarified very soon, people such as Mr. Dolan and their groups will be burning the midnight oil and working 24-hour days trying to get people's applications in, as will Teagasc members. It has to be sorted out promptly and the yellow card system has to be brought into use. Everybody should be allowed one foul before being put off the pitch. It is important that the Department and the Commission take heed of the representations being made by the farming organisations and agricultural consultants.

Deputy Seán Kyne: I welcome the delegations from the IFA and the ACA. I have filled out many single payment forms in my time. Previously it was much simpler in that one left out any site that might have been built on, as well as farmyards, high bank bogs, lakes, small ponds and scrub areas. The current form is very subjective and it is difficult to say "Yes" or "No" to any farmer. Particularly in respect of commonage areas, I am reluctant to assist a farmer or give advice because I do not know whether I am doing the right thing given the subjectiveness involved. There is no right or wrong. I could say something and Mr. Carroll could say something else. The inspector could then come along to declare that we are both wrong, while an EU auditor could have a different view on the entire area. It is very unsatisfactory.

I agree with Mr. Downey in regard to regionalisation. The majority of members of the IFA were opposed to regionalisation and, in fairness to the Minister, he was also opposed to it. We are now facing the risk of regionalisation by the back door because the changes made to the entitlement regime are being undermined in forage areas across the country. I agree that the situation is unsatisfactory but unfortunately some inspectors are taking an overly zealous approach. This is also related to the issue of subjectivity.

I agree with Mr. Dawson regarding the decrease in active farmers and the lack of clarity. There are different issues on commonages. Compulsory destocking is easier to explain because there is a reason for it. The commonage framework plan for other commonages may have included restrictions such as prohibitions on grazing in winter months. Such restrictions have to be taken into account. I accept that the Department is trying to get the message through to the EU auditors. Farmers on the majority of commonages were not able to put out cattle and horses between 1 November and the end of April. That has a knock-on effect due to the animals' inability to graze the heather. As farmers have got older and their numbers have decreased, there have been changes in farm practices. Other farmers have taken sheep off the hills. A wide range of issues arise and I agree that the National Parks and Wildlife Service should also be involved in drawing up a solution.

I understand that ACA members had training days with the Department in regard to GLAS. Was there any clarity on its views, and is the Department still sure about what areas are eligible? In a recent meeting with a departmental representative, we were told that the EU auditors were coming over. He indicated that a lady who came over from the Commission and identified cer-

tain areas as ineligible is now head of the audit section of the Commission. I am not defending the Department but it would argue that it is being plagued by EU auditors identifying certain lands as ineligible and, thus, no activity is taking place. What is the solution to this problem? Departmental officials appear unsure about what solution could be found with the Commission. The Commission is saying that there is no evidence of activity on some of these areas, whether commonage or marginal land. What solutions can the ACA and the IFA suggest?

In respect of the Natura areas, I have made the case to the Department that if it reduces the forage area on a commonage, it is pretty well telling farmers that they should put less stock on it. Most of those commonages are Natura areas and if a farmer puts less stock on them, the knock-on effect will be more under-grazing, less utilisation and knock-on effects for the habitat in terms of habitat potential and the value for the birds because some of these are SPAs for birds. One could be in breach of the habitats and birds directives.

Deputy Éamon Ó Cuív: I apologise for my late arrival. I was travelling by a mode of transport whose schedule I could not change. Today is a very important day. Deputy Kyne and I share the same constituents and face the same problems. What Deputy Kyne said is correct. Having given with one hand, the Department takes with the other. From the outset, there was very strong resistance to any equalisation of the payments upwards despite the fact that we know that lower paid farmers would on average have got more and those on very high payments would have got less if the payments were based on stocking density. We have those figures from the Department.

I welcome the fact that all the farming organisations now seem to want clarity on this issue. I must say that the issue of regionalisation is a red herring. There is regionalisation in the UK for obvious reasons because it is more than one country. It is a member of the EU but it consists of England, Wales, Scotland and a part of this country, which is Northern Ireland. Obviously, regionalisation in that context is very different because they would want different regimes with different elements. As one country, I do not think regionalisation was ever supported by anybody and I think we can knock that off the agenda.

Two years ago, the Department carried out a detailed analysis of everybody's maps and eliminated all ineligible features. Witnesses may remember the roads, rocks and everything the Department thought was ineligible such as bits of heather. Would the ACA and the IFA support the principle that if a farmer puts down the reference area he has been told by the Department is the reference area - including commonages - having examined the maps, they should not be subject to any penalty if on a subsequent ground inspection, the Department decides some of the land was ineligible? One of the big dangers of this is not only the unfairness of suddenly taking all sorts of land out of hill areas but also the fact that one never knows when the axe will fall. It could be four or five years before the Department gets around to walking any particular commonage or anyone's particular piece of land. It could then impose retrospective penalties, as it did previously, on somebody who had acted in good faith. Do the ACA and the IFA believe that if a person puts down the reference area for their land, as determined by the Department, if the Department subsequently finds out they have less land it deems eligible having walked it, they should not be subject to any penalty? Otherwise, the farmer is in a guessing game. I wonder whether that is what this is all about - getting into a guessing game as to whether this bit of heather is in or out or too high or too low. Are there too many rushes on this piece of land or do these ferns die back enough in the winter months to allow the land to be grazed? Like one of the issues raised at Maam Cross, is there full cover in such a way that it cannot be grazed? Farmers should not be penalised in a guessing game with the Department. Certainty is the first

thing a farmer needs. The simplest way to ensure this is to request the farmer to include the reference area determined by the Department. Accordingly, he or she would not be subject to any penalty if the Department subsequently found it had made a mistake.

A clear definition is needed from the Department of what it considers to be minimum farming activity. All of the farmers involved in the cases in question are receiving the disadvantaged areas payment and would, therefore, have to comply with minimum stocking density rules. It is time the Department put its cards on the table and stated what the definition was. Should it sit down with all interested parties, including the committee and farming organisations, to spell out exactly what is going on?

The issue of the designation of land for the protection of the hen harrier is causing significant grief across the country. Many farmers with designated lands will say GLAS, the green, low-carbon, agri-environment scheme, is small compensation for this. Do the delegations believe an alternative scheme should be provided for by the National Parks and Wildlife Service? As the hen harrier will not come back in five or seven years, a long-term project is required to get its population levels thriving again. Should such an alternative scheme run for up to 20 years such as a forestry grants scheme?

I note what is eligible for GLAS and the basic payment scheme, BPS, is different this year. Do the delegations believe there should be one common definition in that what is eligible for GLAS should automatically eligible be for the BPS and *vice versa*? Otherwise, I see queries about and delays in payments because of different hectareages in the two applications.

Deputy Paul J. Connaughton: I welcome the delegations.

It is simply not acceptable that seven weeks out we still do not know what the criteria will be for the scheme in question. For those with concerns hanging over their heads, as Deputy Seán Kyne said, it would be a brave man who would say what was in and what was out. Unfortunately, in south Galway there are plenty of examples of commonages that have not been treated fairly for several years. It is unacceptable that in certain commonages forage areas were rated at 90% in the first inspection, at 10% in the next inspection and at 40% after an appeal. It is simply ridiculous that there can be such a disparity in different inspections. It is no wonder that farmers who are affected are going around the bend. Once we hear about farmers taking legal action, the battle has already been lost and we have forced them into that corner in the first place. That is the reality in certain areas.

On the designation of lands to protect the hen harrier, during the economic good times when we were awash with money, it was good to pay compensation on derogated lands. Now that the money has run out, the land is still designated and we are not paying farmers who now find their farming practices completely hampered by what they are asked to do. A very simple measure needs to be taken, either pay out the compensation deserved or lift the designation. It is a case of doing one or the other as the current position is simply no longer acceptable.

I refer to commonage and the problem with forage. Anyone farming in a commonage area or an area under designation knows there is a huge difference between those who can farm 24-7 for 52 weeks of the year on their land. One inspection will never be enough. I find that some of the farmers in commonage areas must be damn good photographers to go out and get pictures of when there were animals on their farms to prove they were being grazed at the right time. What is going on currently is crazy. The penalty and inspection regime is over the top and over-zealous. There is a complete lack of clarity on it. What we will find, unfortunately,

is more farmers spending less time on the land and more time in the courts and no one will win from that situation; neither the Department nor the farming community. Not only do we need clarity in the next seven weeks as to where we are on this situation but commonages and other areas which are currently facing or approaching legal action must be sorted out by the Department sooner rather than later. It has been said before that the NPWS has a role to play in this regard. We cannot continue to have a situation where the Department throws it to the NPWS which then throws it back. The person caught in the middle is the farmer who does not get the grants. While we need clarity in the next seven weeks, both Departments must come back and set out a very clear plan for what has gone on in the last number of years because things are not acceptable at the moment.

Deputy Noel Harrington: Not being a member of the committee, I welcome the opportunity to contribute. I welcome those who have made presentations to the committee today. I come from west Cork which is one of the hardest hit areas under the LPIS and land eligibility debacle. It first came to my attention 14 or 15 months ago that this would be an issue, particularly in the western part of County Cork where there is a great deal of marginal land. I have seen every kind of scenario where farmers have been hit with 100% penalties and the potential for retrospective payments to be made which, essentially, would put them out of business and off the land. The farmers who have been hit with slight penalties are completely confused as to why they have been penalised and farmers who have been very responsible in excluding what they believed to be eligible land suddenly find that they had not excluded enough or misinterpreted what they should have been including in their farm plans. There are also farmers who were not penalised, who excluded lands in very marginal and difficult areas and continued to receive the payments to which they are entitled. I know of farmers who have accepted that some of the lands they included for whatever reason were ineligible and they are making payments, whether reduced or otherwise. A tiny minority accept that but a huge majority of those who have been penalised are furious at the perceived inconsistency in interpreting how their lands should be assessed. As someone mentioned previously, it is a very subjective exercise in those areas. Deputy Connaughton referred to circumstances in which there could be a doubling or tripling of the percentage assessed as eligible or not.

I realise through the individual cases that have come to my office what the problems are. Some of the potential solutions have been outlined but I am not sure that they will go far enough. I presume the Minister and departmental representatives are being invited to the committee and we will welcome that presentation and testimony to get the Department's side. In reality, however, under the eligibility for basic payments, we are 14 or 15 months too late. We have lost a lot of time in trying to deal with this issue. The sooner we get everyone to deal with what farmers have had to deal with on their own, and through their consultants, the better. It has been very difficult.

Are all the consultants affiliated to the Agricultural Consultants Association, or are there any who are not affiliated and thus working as lone rangers for want of a better term? Is that an issue in terms of possible inconsistencies in plans?

The farming organisations, consultants and the Department will have to come together to find a solution to what is a major problem, particularly for those areas that have marginal lands. There are farmers who simply do not know if they will have a future in 2016 or 2017. Will they have a cashflow or will the banks foreclose if their payments are suspended? There is a lot of fear and we should be trying to assuage it as soon as possible.

Deputy Michael Fitzmaurice: Last Friday night, I was at a meeting in Athlone about land

eligibility. The fact is that if this continues the way it is going, we will see the abandonment of land, or else people will forget about the payments system and will stock mountains or land again the way they always did. The Department cannot have it both ways. I think the farming organisations would agree there are no clear guidelines for any departmental officials. There appears to be a hit squad out at the moment. I have spoken to one person who was brought out to adjudicate on something. They were told to look up and down a mountain and whatever was not grazed was cut out. Obviously, if 20% of that is gone, one's payment is gone.

The facts are there to back it up. A person in County Galway who is inspected is one third more likely to get a penalty than a person in County Roscommon who in turn is one third more likely to get a penalty than someone in County Westmeath.

We have to go back to where this began. Designations are taking place, especially in west Cork, Kerry and right up along the west coast as far as Donegal. Destocking has taken place as well. I was at a meeting yesterday with the National Parks and Wildlife Service. A farmer from Nephin said he had complied with everything that was required to have a good ecological status. Now they are paying the price, however, when someone else from another Department comes out. Someone has to make a call on this. Will the National Parks and Wildlife Service walk away and leave farmers abandoned in different parts of the country because someone else from a different Department is coming in?

Where does the IFA's charter of rights stand? Has it a legal standing or is it just an agreement? From what I can see, Departments are trying to sign up to a charter of rights. It is great and everyone is happily taking photographs, but a few years down the road it stands for nothing. Any time I have seen this challenged, it has not stood up.

As regards GLAS, it is acknowledged that the Agricultural Consultants Association is advising 45,000 farmers throughout the country. What is the feedback from its members on GLAS and its delivery to farmers, especially those who came out of REPS? I would like an answer to that question.

We have often decided to solve a problem in Ireland and not tell them in Europe or *vice versa*. It is clear from the meeting that rules concerning land eligibility introduced in Ireland by the environmental and agriculture Departments in Europe need to be submitted to the two corresponding Departments in Ireland in order that the way forward can be decided. The Welsh have come up with a solution, although it is not ideal in all scenarios. In Spain, Cyprus and other countries there are problems also.

I heard references to the leaving out of land. If land was deemed good enough ten or 12 years ago - farmers have had inspections carried out during the years - why is it not deemed good enough now? The answer in many cases is that farmers had to transfer from farming in one way to farming in another because of rules and regulations. The rules and regulations were brought forward not by the farmers but by the European Union. We have to establish what the authorities want. They cannot have butter on both sides of their bread. Clear guidelines must be issued in order that farmers will know where they are going and then they can make a decision. Are they to go down the road in question or must they, on being abandoned after going down a road for eight or ten years, return to the way they were farming in the past and forget about some of the payments?

Chairman: There were many observations and comments. There are a number of questions addressed to the IFA. I invite the delegates to answer them.

Mr. Eddie Downey: There were many very solid comments made. I do not propose to address all of them as it would take too long to do so; suffice it to say big issues arise. These issues, many of which we have highlighted, include the lack of joined-up thinking, the question of which Department is responsible and the conflict between the NPWS, the Department of Agriculture, Food and the Marine and the Department of the Environment, Community and Local Government. There is no one taking responsibility. We simply cannot have circumstances in which farmers are penalised because of inadequacies in other areas, as is happening here. That is the problem. We have been given information by the Department of Agriculture, Food and the Marine *vis-à-vis* maps in recent years. That is how farmers made their applications and now they are being fined based on this; that is simply wrong. We all know this, but it is critical to determine how we can move forward.

We need clarity on what is eligible and ineligible and await the Department's booklet. Deputy Martin Ferris asked whether we should sit down with departmental representatives and go through these areas to determine what we should do from here. The problem is that it is too late; it is the eleventh hour. The Minister and the Department need to do their job and publish the documents. The Department held a series of meetings around the country, at which it had an opportunity to put the information in front of farmers. This should have been done at the time. It is a failure on the part of the Department which must make up for it. It must get it right and give the information to farmers immediately. Producing it in booklet form for farmers and planners and submitting the applications is simply not enough. The next step is to introduce proper tolerances. As was said by a number of members, the matter is subjective. The instructions given in the booklet issued by the Department will be open to interpretation by the planner, the farmer or the inspector, European or Irish. Therefore, we need tolerances to ensure farmers will not be penalised and caught out for doing what they believe is right and acting responsibly.

Let us consider the question of land abandonment and the risk associated with it. It is evident that if we keep imposing these types of rule, we will force people away and they will decide to walk away. That is wrong. It is not the objective of the European Union; it is not why European taxpayers invested money in recent years in rural areas across Europe; they invested in order to keep them in their current condition. Ireland is not in a bad position, but the arrangement needs to be worked on. As stated by many, within GLAS plans, including plans being drawn up, there needs to be an opportunity to make land eligible during or by the end of the planning period. That is essential, but mistakes have been made in recent times. Issues such as destocking, restocking, overgrazing and undergrazing can be resolved only by taking one commonage at a time, with a plan for each in order that the land can be made eligible during the relevant period. That is the only route where we can see a solution to those problems.

We were asked about yellow cards and a specific question on what the charter of rights stands for as part of the tolerance system. The old charter of rights currently stands but the new one is almost there if the Minister would do his job and sign off on it. It needs to be signed off immediately. The basic position with the charter of rights is that once it is drawn up and agreed, the Minister is responsible and the Department must adhere to it. Legal status or no legal status, that is the position on that.

The last point I will make before I let in the others beside me relates to advice. The 2015 application is a critical application for farmers. It will set the scene for the payments that farmers will get for the next number of years. It will also set the scene for the amount of funding that we will draw down and bring into this country on an annual basis over the next number of years. Therefore, it is critical that we have clarity on the information that farmers and planners

have as regards making these applications. It is critical that we get these applications right so that we do not face fines further down the road and the only way we can be sure of that is to have proper information out there.

Mr. Flor McCarthy: The farmers in the marginal areas I represent and me, as a farmer, are severely affected by this eligibility of ground issue. We must be allowed tolerances. It is as all the members have stated here today that no two departmental officials will arrive at the same decision and we need major tolerances. It is unacceptable that if one has 3% of a claim deemed ineligible ground involving two to three hectares, the penalty is trebled to nine hectares. If one is deemed to go over 20%, one is given a 100% penalty. What is in place cannot remain in future. We must be allowed major tolerances because we are dealing with land. We fully accept this as farmers.

I was at a meeting last night in the Cahirciveen region where there is a lot of marginal land. With the best will in the world, there could be a 10% variation on any three different planners or departmental officials. What we need here is major tolerances. As the president stated, we are filling up our area aid forms for submission by the end of May. We are the only country in Europe that has not made a decision on this eligible ground. It has to be made now. I cannot stress more strongly that we must have major tolerances. Otherwise, it will affect the farmers on the more peripheral areas, such as where Deputy Harrington comes from, and on the peninsulas, where there is marginal land. The strongest issue the committee should be pushing for with the Minister, Deputy Coveney, is major tolerances or major room for error. In any system, it will not be ideal. No matter how long we discuss this here today, we cannot come up with a clear definition of what is eligible or ineligible. What we need here - Europe will accept this - is a major margin.

Deputy Connaughton talked about lifting the designations, and the IFA fully supports him. It would be worth a significant amount of funding in the region I visited last night where farmers could plant land. The designations are denying us access to other schemes. The IFA supports this, but I do not know the likelihood of this happening with the European regulations. We fully support the lifting of designations where there is no compensation. All the farming organisations would be strongly of that view but we must also talk about something that we can achieve.

It is tolerances that we need. It is not an exact science as regards either the land that we are farming or the work of the inspectors. I have spoken to chief inspectors who have four or five men working under them. The assessment is run by little Hitlers. They cannot even control their own inspectors who work on their behalf on the ground. Their inspectors are pulling out rules and regulations.

As a farmer, I am filling up my area aid form this year when I have not got clear guidance at this stage. As our president stated, that can affect me because we will not have stacking, as we had previously. If the Department decides I have five or ten hectares of ineligible ground next year, I cannot stack my entitlements back, as I could previously. That is why this 2015 area aid form is a significant decision for every farmer. It is not acceptable to think we are within a month of the closing date and the final decisions have still not been made. The way to deal with this is to have major room for error because no person sets out to draw funding fraudulently. We have no problem with a penalty being imposed where a person does something fraudulently. However, we are talking about farmers who are doing their best in filling up forms and maybe not getting advice from professionals. Some of them are doing it on their own. One has to make allowances in all walks of life. Some of them are older farmers and one must make al-

lowances for that.

Chairman: I invite Mr. Dunne to respond.

Mr. Pat Dunne: The hill farmers I represent certainly are in a bind at present and do not know where they are going with regard to eligible land. The people from the ACA also do not appear to know what are the rules, any more than the IFA or anybody else does. This year, 2015, will be the year in which people must decide. As for inspectors on the ground, one hears all sorts of anecdotal evidence that what some fellows will pass others will not, and farmers do not know where they are going in this regard. It must be realised that the payments coming to farmers represent 100% of their income, and in most cases they cannot even hold on to those payments, or a large percentage of them, which will be gone simply on maintaining the stock on the hills. For this reason, farmers do not know where they are going or what they will do. They are approaching me all the time to ask me what they should be putting in or what they should be taking out. However, as neither I nor the advisers can tell them what to do, we are in a hell of a position in this regard. We should be trying to come up with a system that encourages farmers to be using and stocking the hills, rather than running the farmers away from them and causing land abandonment. It is very difficult to expect younger farmers to buy into regimes such as the one in place at present because they will look at it and will ask why they should get into that. In the case of my own young lads, they ask me why am I doing it. Younger farmers will ask why should they not get a job somewhere at which they would get a week's wages at the end of the week without any of this hassle. This is the sort of thing we are up against.

We must home in on the issue of land eligibility. Proper, clear guidelines should be handed down to ensure that one inspector cannot declare the heather is too tall or there are too many rushes or ferns while another lad states it is all right by him, as one then is in a position where one lad does not know what the other is doing. Inspections have been carried out in the recent past - the Chairman is aware of some of them - and people have had a penalty of 100% imposed on them. That means the total loss of their income, as simple as that. On what are such people to survive and where are they to go? That is the simple reality. The matter must be clarified. It is at the 11th hour now and it must be clarified and finalised. People must know exactly where they are going and what precisely they should put down on their application forms.

Chairman: I thank Mr. Dunne and invite Mr. Dolan to respond.

Mr. Brian Dolan: Even though it is the 11th hour, I think we have a solution to the problem. A process is under way at present in respect of commonage management plans, which are to be drawn up for these commonages. We contend that were farmers on the hills and on the commonages to sign up to a commonage management plan, we could take the reference area we have at present and then, when the adviser draws up the commonage management plan, he or she may amend the reference area. There should be no penalties on the farmer if the reference area is amended after that. While everyone, including farmers, the Department and ourselves as advisers, acknowledges there is a problem, the solution is quite simple. If farmers sign up to a commonage management plan, no penalties should be imposed on any farmers who are participating in a plan to bring the lands back into eligibility. The issue of eligibility on the hills cannot be solved overnight. It is not as though there are a few whin bushes in the corner of the field that one can take out once the bird-nesting season is over. The only thing that can solve the eligibility problem on the hills is grazing, and that is a long-term process. As long as they do what they are supposed to do in the plan, farmers who sign up to the commonage management plan should be protected and should be exempt from penalties for the period of the plan. If the adviser who goes out onto the ground subsequently comes up with a lower reference area

than the Department has available to it at present, the new reference area should be taken and no retrospective penalties should be placed on the farmer in this regard. The Department has laid down the procedure for these commonage management plans to be implemented but those of us on this side have one major issue in that the Department wants these commonage management plans completed by 3 July. That will not and cannot happen. We have the wherewithal to solve this problem. With some flexibility we can get more time to do these plans. The farmers can sign up to the plan and they know that as long as they do what the plan states they will not be penalised. The fear among farmers is that they will join a plan, do what the plan states but then a Department inspector comes out and states the land is not eligible, even though they are in a process of making it eligible. If we got clarity on that it would solve many of the problems and farmers could rest easy knowing they could join a plan and they will be protected.

Mr. Breian Carroll: I listened to the contributions of the representatives. We agree that the working group is a great idea but, unfortunately, there is a time constraint of seven weeks. I will not repeat what I said earlier but we need clarity on many of these issues. In terms of a working group, we do not even have the capacity to become involved in such a group in seven weeks. Some of our members have already submitted applications, and that process has its own problems in that if the rules change it will mean amendments to applications.

We would warmly welcome training. We have sought that on several occasions but it should be training that engages all parties - initially advisers, our members as consultants and Department officials - in assessing eligible and ineligible areas, walking mountain areas and deciding what we can or cannot put in for our client farmers. Eventually, that will be in the interests of all stakeholders. We have our clients' interests at heart. We have to ensure that the land on which they apply will be eligible for the coming years to ensure they get their payments.

As Mr. Dolan stated, we would like to be given adequate time. As public representatives the members can help us to try to implement these ideas on the ground. We will do the work but not under the current severe time constraints in which we have to try to perform. I request that the members, along with the Minister and the Department officials, come together on this issue. We will do the work if we are given flexibility in terms of a few extra months. It is possible to do this. We are all private entrepreneurs. We will do the work on behalf of farmers and for the Department, but we need more time.

I appeal to the members to do whatever they can to allow us get our work done professionally, on behalf of farmers, and to ensure that the State and the farmers get the payments to which they are entitled, without the possibility of further large penalties being applied in the State.

Mr. Tom Dawson: I agree with what our president, Mr. Downey, said that 2015 is a critical year in terms of farmers, and also our members on behalf of farmers, making applications under the various schemes. My colleagues outlined some of the possible solutions we believe are reasonable and workable but we are at the eleventh hour on some of the issues and there is a huge time constraint in terms of getting these issues worked out.

I agree with Deputy Ó Cuív whereby, as Mr. Dolan said also, the reference area could be utilised in the interim until these commonage framework plans and plans for marginal areas can be adopted. The biggest issue, however, and Deputy Kyne mentioned it earlier, is that assessing eligibility of land is subjective. Mr. McCarthy, Mr. Carroll and myself could go out and assess land differently and the only way of addressing that is through this working group whereby Department inspectors, our members and advisers, and the former organisations also can be involved. In that way everybody will know we are all singing off the same hymn sheet, which

is critical. Our members go out and do a professional job for our clients and give them the best advice possible, but we cannot do that with one hand tied behind our backs. That is the way we are operating at the moment because we do not have the full information from the Department.

Deputy Harrington asked a question about advisers outside our association. There are a number of advisers outside our association. We represent approximately one third of advisers on the ground. Teagasc has another third and a little less than a third operate outside our membership. In my view, those advisers outside our association are probably at a little disadvantage in that they may not have access to the full range of knowledge, in addition to the fact that they are stand-alone operatives and they cannot pick up a phone to a colleague at an early stage. However, they are professional people at the same time.

In response to Deputy Fitzmaurice's question on GLAS, the feedback we are getting from our members is that while they welcome GLAS it does not suit the majority of what would have been regarded as traditional REPS farmers. Farmers are interested in the scheme but have difficulty with it because of the way the scheme is structured. That is predominantly because of what the online system can cater for, in that it would seem to me that the scheme is built around the system rather than the other way around in terms of the splitting of parcels and not being able to combine a number of actions. As a result, GLAS, by and large, does not suit the traditional REPS farmer. It suits any farmers who have environmental assets such as commonage or hen harrier schemes but it does not suit many farmers.

In summary, we are there on the ground to help farmers and to advise them on how to submit applications for the various schemes. We act professionally and wish to continue to do so, but we need to do it with the full knowledge and co-operation of the Department on the implementation of the schemes and to give the farmers the best possible advice.

Mr. Eddie Downey: I support the position taken by the Agricultural Consultants Association, ACA, on commonages, in terms of having sufficient time to draw up plans. I agree that GLAS plans must be submitted before the deadline but advisers must be given the opportunity to go back to the individual commonages to draw up plans for them. It is the only workable solution. That is the correct approach to take. We need time in order to ensure the plans are correct so as to give farmers the opportunity to get the land into being good, eligible land by the end of the period in question.

Deputy Pringle raised the issue of private Natura land in Donegal. A specific measure is needed for that type of land, of which there is quite a bit around the country. At the moment, GLAS does not suit that particular area.

Deputy Martin Ferris: The solution is to be found in the room. It is coming across loud and clear. The problem is that there has been an abdication of responsibility. The expectation is that the Minister and the Department will draw up the criteria. However, the witnesses know bloody well that if they do so it would not be in the interests of farmers. A working group must find a cohesive and co-ordinated approach with input from the farming organisations, the ACA and farmers themselves in conjunction with the Department. That is how to resolve the problem. The problem is the time factor. I fully concur that a number of years is probably needed for a lead-in, along with a management plan.

Deputy Éamon Ó Cuív: It was said that everybody would be part of a commonage framework plan. The vast majority of commonage farmers will not necessarily be in GLAS, which will put a big cost on them that has not been the case up to now. They knew the reference area

of the hill and they took the Department's reference area which they had examined and passed. Would Mr. Dawson agree that the only fair and equitable way to make that work is to place the cost of these commonage framework plans where they should have been placed from the beginning, and where they were placed on the last occasion - that is, on the Department - and that it should pay the cost of drawing them up and advising on eligibility in terms of hectares? It could cost €600 or €700 for a farmer to get it done by a professional planner and for the planner to tell the farmer how much land he has, which he already knows because the Department has told him. In some cases, that cost would be equivalent to one year's single farm payment or basic payment.

I agree with Deputy Ferris's point that this can only be done by a working group. Leaving it to the Department has not worked and it will not work. If the Department cannot get it done by 2015 there is always 2016, 2017 or whatever year it gets it done by. That is its problem. I do not see why it should become the farmers' problem. The Department knows what it signed up to in the regulations, and has known for the past two years. The idea that it is coming forward with this problem at this stage in 2015 is bizarre. The Department officials knew there was a problem with minimum effluent because they told me that way back. If they have not got it done by now they should accept their own reference areas until they are ready, and they and nobody else should pay for the cost involved. Would Mr. Dawson agree with the thesis that the Department should commission this and get it done, that it should have a working group and that it should take whatever time the work takes, and that in the meantime, the reference area as defined on the map sent to the farmer, provided there is no change in his landholding, should be accepted as being the relevant area?

Chairman: On a point of clarification, these commonage management or commonage framework plans are historical.

Deputy Michael Fitzmaurice: It was stated that this system was built around the computer. Is that workable? Is it true that under this computer system organic farmers are being put into category three? Could Mr. Dawson elaborate on whether problems have arisen with regard to the computer system?

Chairman: Those are few brief questions for Mr. Dawson.

Mr. Tom Dawson: On Deputy Ó Cuív's point regarding the commonage management plan, the land eligibility issue is a wider problem than GLAS alone. Many commonage farmers, for one reason or another, will not participate in GLAS. We submit - as was the case when the framework plans were done back in the late 1980s or early 1990s and early 2000s - that this is something that should be undertaken by the State. It is a State-wide problem. We would support the Deputy's submission on that.

Regarding the GLAS system, it is continually being updated by the Department of Agriculture, Food and Marine, but unfortunately, the rate at which the system is being updated and fixes are being put into it is too slow. We were told yesterday evening that another new fix would be applied to the GLAS online system this weekend coming, but that is another week in which we cannot properly complete GLAS applications. We are not happy with the rate of progress on the GLAS online system. If the GLAS scheme was closing at the end of August or the end of September we might not be too worried, but only a few weeks or a little over a month remains in respect of the GLAS online system. It is a system that is not fit for purpose. I recognise from the Department's point of view that it has done a good deal of work on it. It has improved from the level it was at but it is not just there yet.

Chairman: I thank the delegates from the IFA and the ACA - which is sometimes referred to as the ASA, and its delegates are probably members of the ASA - for attending.

I want to make an observation, as somebody who has had to complete a basic area aid payment form. I have registered to see if I qualify for GLAS, but I am not sure how that will work out, as the land is not in a commonage. There are two issues. One is eligibility, which was an issue long before there was a commonage or GLAS, because of the review of land parcel identification system, LPIS. That needs to be addressed.

Mr. Dolan made a very relevant point which we also made during our visit to the Commission. I made the point specifically to the lady in the Court of Auditors that the objective of a commonage management plan is to bring land that may not be in good agricultural or environmental condition back into such a state. One has to set out a plan for the overall area.

I disagree with Deputy Ó Cuív in so far as the basic payment scheme is for eligible land for grazing and that may be a lower figure. There is a gross figure and a net figure for grazing. Other things excluded from the net area for grazing, such as orchards or tree groves, should qualify as ecological focus areas or for GLAS. There should be three areas, a gross area, a net area and an area that is an ecological focus area or eligible for a GLAS payment which could form part of it, other than roads, buildings and the usual rock outcrop, although rock outcrop could form part of it.

One of the key points is the time constraint and the rush to get everybody qualified so some payment can be made this year which, in retrospect, is probably ill-advised. Another key issue is tolerance. There has been no mention of appeals but an appeals system should be allowed for any new scheme to which €250 million will be allocated. One thing that worries me about the Court of Auditors' determinations is that it carries out so few inspections in this country, having carried out only six each in Pillar 1 and Pillar 2 throughout the whole country. Furthermore, it based a lot of its findings on commonages on one inspection in the mid-west. Mr. McCabe was with me on our visit to the Court of Auditors and we tried to emphasise to the lady in question that it is very difficult to base a whole determination on one inspection of one farm. That is something to which we need to return.

We must be mindful of the fact an effort is being made to get the scheme open and to get payments out but, parallel to that, a working group needs to be set up. The purpose of holding the hearings in this format is that they are on the public record and they present an opportunity for everybody to put their thoughts, opinions and concerns on the public record. It is hoped that this will then help to kick-start the development of a forum outside this committee to bring all stakeholders together to work towards a common goal.

As has been said, the objective of the €250 million is to create an environmental scheme, although there is no point if it only leads to people walking away from that objective and giving up on the idea of their son or daughter farming the hills in the future, which is something Mr. Dunne, like myself, has seen over the years. Alternatively, they may decide just to neglect the land and farm it the way they always farmed it. They may just do their own thing but that will not achieve the objective of bringing either uplands or ordinary land into good agricultural and environmental condition. We need to be mindful that the bottom line is €250 million of European taxpayers' money and that should be our primary objective at all times.

I thank the witnesses. We went a little over time as the session took an hour and a half, although we started early. We are only 20 minutes behind. We will suspend to allow the wit-

nesses to withdraw and others to take their place.

Sitting suspended at 3.50 p.m. and resumed at 3.55 p.m.

Chairman: I welcome our guests, Mr. Patrick Kent, president, and Mr. Eddie Punch, general secretary, from the Irish Cattle and Sheep Farmers Association and Mr. Brendan Joyce, director of policy, Mr. Colm O'Donnell, director of policy, and Mr. Joe Condon, assistant chairman, from the Irish Natura and Hill Farmers Association, and thank them for coming before us. I am aware that they were present in the Visitors' Gallery during the previous session but I am afraid I must repeat the rules relating to privilege. In that context, I must inform the witnesses that they are protected by absolute privilege in respect of the evidence they are to give to the committee. If they are directed by it to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members have already been reminded of their responsibilities in this regard.

I invite Mr. Joyce to make his opening statement.

Mr. Brendan Joyce: I thank the Chairman and members for the opportunity to present our case to the committee. The main issue in respect of land eligibility involves understanding traditional farming practices correctly and recognising how this manifests itself in practice. Farmers on commonages, particularly Natura commonages, faced a 30% reduction in stock numbers across the board in the late 1990s as a result of a knee-jerk reaction to potential fines from Europe and without commonage framework plans, CFPs, having been completed. When those plans were completed, it emerged that many farmers should not have been obliged to destock in the first instance. Those individuals were then tied in to the stocking figures prescribed in the CFPs and were not allowed to deviate from them. The commonage framework plans stocking rates were subsequently used to inform both the rural environment protection and agri-environment options scheme programmes. Despite farmers looking to have their CFP reviewed, this never happened. The CFP also removed cattle from the commonages from November to May, which was another fundamental flaw.

Inspections have been carried out on many farms where farmers received a notification stating:

> Where commonage may seem to be eligible, but not the subject of a farming activity, it will be deemed ineligible for payment. This means that [the] area eligible for payment (known as the reference area) of any such commonage will be reduced to take account of the level of inactivity, for the purpose of drawing down payment.

The only criterion for "agricultural activity" available to farmers is the stocking rate laid down in their CFP, REP or AEOS plans. In many such cases, even though farmers have been complying with their agri-environment options scheme plans and have not breached their contracts, they have received a 100% penalty on all payments.

We have invited experts to examine a number of these farms to determine the conditions that exist on the ground. They have concluded that there clearly is an agricultural activity taking place as the vegetation was clearly visible in all stages of its life cycle, which would not be the case without adequate grazing taking place. As well as having good agricultural conditions

present, the experts acknowledged the pristine environmental condition of the farms visited. It is clear there is a difficulty and lack of knowledge among inspectors regarding the traditional farming practices that take place on marginal land. In the absence of any criteria as to what constitutes agricultural activity for both inspectors and farmers alike, this is likely to continue.

There are many issues arising as a result of the current inspections process. The Department of Agriculture, Food and the Marine has been inspecting these sites at the wrong times of the year, ignoring, for example, that blanket bog molinia, also known as purple moor grass, turns white and dies away during the winter before rejuvenating when the growing season returns. Departmental staff have demonstrated a lack of understanding of the vegetation and habitat types on these sites and how the sites change in appearance seasonally. The Department has incorrectly stated in some cases that certain habitat types, such as raised bogs, were present on these commonages. Departmental staff have overlooked concrete evidence of agricultural activity on some sites and had no regard to the appropriate assessment process in making significant decisions on the sites. The Department did not take into account that livestock are not permitted on commonages from November to April as per the CPF. No consideration was given to the fact that different types of livestock affect sites differently or to the published scientific evidence suggesting that grazing livestock do not range evenly over an upland grazing unit.

Another issue is that although these sites are perfect for Pillar 1 eligibility, the Department seems to want to see management akin to what Pillar 2 should achieve and, to incentivise this, is reducing the reference areas substantially. There is uncertainty as to what some of the criteria actually involve, with references to "areas ungrazed due to low stocking rates", "areas of ungrazed mature heather" and "areas of intense rush or ferns". Why not provide more clarity such as is available to farmers in Northern Ireland, where there is a particular measurement on heather? Is grazed mature heather eligible in Ireland? Why not use a scoring or menu system to grade the presence of ineligible features? We cannot tell what is meant by "land which no longer complies with the definition of eligible as a result of the implementation of the Birds/Habitats Directives". What are the criteria for "sufficient agricultural activity being conducted throughout the parcel"? Is the National Parks and Wildlife Service endorsing the Department's methodology in inspecting for eligible lands in environmentally sensitive areas and the high risk of land abandonment as a direct result of a flawed inspection process?

As to potential solutions, one we would highly recommend is the establishment of a working group to deal with land eligibility. The Department of Agriculture, Food and the Marine inspectors work from a guidance manual. At the very least this document needs to contain more and better guidance for Department inspectors carrying out inspections and for farmers farming on marginal land. I refer to the possible indicators that a working group could consider. I refer to the physical presence of livestock grazing on parcels; a recommended base-line stocking level that complements the positive management of these sensitive grazing areas in lieu of above activity present on the date of inspection, as well as any two of the following: participating in a commonage management plan; visual evidence of grazing activity looking at the ecology present; qualifying for greening on environmentally valuable permanent grassland; heather in all stages of its life cycle; or GPS and dated photographs of suitable livestock present in the parcel. These are many of the options which such a committee would need to investigate. Where farmers are part of a GLAS commonage management plan which is a measure above and beyond requirements under Pillar 1, this should ensure fulfilment of all criteria under land eligibility under Pillar 1.

We invite members of the committee to visit an example of these commonages in Slieve

Aughty in south Galway to see at first hand an example of some of the problematic commonages that unfortunately have fallen foul of a flawed inspection process.

Mr. Patrick Kent: I thank the committee for the invitation to appear here today on the very important topic of land eligibility and the challenges faced by farmers on marginal land. When we talk about marginal land we include upland areas, but also all kinds of lowland disadvantaged areas, including limestone crags, heavy soils, including bog, corcas, other lands close to rivers and lakes, and areas which are designated under Natura 2000.

Land eligibility is a key concern for all farmers looking at their applications for the new basic payment scheme. However, it had already emerged as a key problem under the single payment scheme, particularly with the LPIS review instigated in 2013. The farmers in marginal areas such as we have outlined are bearing the brunt of the assault on the land eligibility question.

The LPIS review of 2013 saw some 33,000 parcels becoming the subject of over-claim letters from the Department. Some of these farmers were able to offset the over-claim by having some excess land; some farmers accepted the penalty but some 10,000 appeals were lodged against the decision. When 10,000 people appeal the outcome of any regulatory or legislative process, it is clear that something is badly wrong. It is likely that many more would have appealed only for fear of what a ground inspection might entail.

Over-claim penalties have been applied for a variety of reasons. Unless the eye in the sky shows blanket coverage of rye grass or wall-to-wall cereals, the parcel will be subject to close scrutiny. Trees, farm roads, bushes, scrub, rock and marginal land with a variety of herbaceous material all attract examination. The satellite images were examined on a computer screen and the assessment of the computer operator formed the basis for penalties. In some cases the assessment was that land was 85% ineligible or some other percentage. In many more cases it was deemed 100% ineligible. This is a subjective process at best. Even when ground inspectors come out to walk the land, there can be a discrepancy in views. We have seen cases where experienced Teagasc advisers have given one assessment which is completely at odds with the eye in the sky and then an inspector comes out and gives a view which differs from both.

Stranger still, we have heard of cases where EU auditors have given a different assessment of the percentage eligibility of land compared with the Department's view, and this is not always to the disadvantage of the farmer. Of course, this is not that surprising. When one looks at rough grazing, marginal land or land with trees or bushes, it is a very subjective process to say how much is grazed or not. Can anyone really claim any level of precision by saying an area is 85% eligible? For example, the ground under a clump of trees may show up as brown if cattle are lying there. Should this be ineligible? This must also be examined in light of the rules regarding level of penalties for over-claims. The level of over-claim is determined by whether the over-claim represents more than 3%, 20%, or 50% of the found area. In our view, this rule was originally accepted for deliberate fraudulent declaration and it should not be used for this subjective assessment of the quality of a farm. It is all too common for a farmer to get over 3% and, in fact, it is not all that unlikely to be over 20%. A 20% over-claim leads to an automatic 100% penalty. For many farmers, whose only crime is that they have a significant amount of marginal land, which is often hill ground, 20% is not unlikely.

The ICSA does not have any brief for farmers who have no stock and who are not actively farming. However, we do not accept that every hectare in the country is the same and can be farmed to the same level of productivity. Farmers who produce stock and who maintain the

landscape that they have inherited should not be scapegoats. In practice, the entitlements to single payment reflect the productivity of the land in most cases. We now have a process which disproportionately hits those on marginal ground, even though their payments are likely to be lower anyway because they would have had lower stock numbers in the reference years. This is a double penalty.

The only way to avoid penalties is to aggressively reduce the declared eligible area, but that is like asking an employee to volunteer to do without pay for several weeks or months. The whole process is totally unjust in our view. Why should farmers on marginal land be subject to a mechanism that penalises them while, evidently, farmers on the best ground have much less chance of being penalised? It is also absurd that area covered by farm roads is being made ineligible. Farm roads are an integral part of an agricultural activity and should not be excluded.

A number of key points need to be made regarding this process. Is it fair that the Department should use different aerial images to penalise farmers in the autumn than the images with which it supplied the farmers at application time? Is it fair that penalties were imposed when it is clear that many of these applications were made by Teagasc and other professionals who seemed to underestimate the threat of penalties? Were farmers or professionals properly briefed as to what was coming down the tracks? Is it fair that the whole appeals process has been dragged out?

Justice delayed is justice denied. Many of the farmers who appealed penalties applied to their 2013 single payment have only had ground inspections carried out in the first three months of 2015 and, even yet, there are outstanding cases. In addition, farmers who have been fully or partially successful in appealing over claims are still waiting to receive the money wrongly withheld. Threats of retrospection only add to the sense of grievance on this issue and there is a real sense that the Government has washed its hands of the issue. We have repeatedly heard of a potential fine of €180 million, but this should have been sorted out by now.

An important issue in this debate is the contradiction between agricultural and environmental objectives. One arm of the EU is insisting that CAP policy favours biodiversity and is being shaped to contribute to climate change targets. Another arm insists that trees, bushes, scrub and less productive herbaceous material is unlikely to be eligible for CAP support under Pillar 1. Many farmers were sent in one direction under environmental schemes such as REPS by being contracted to keep habitats in as biodiverse a state as possible. These habitats are now routinely the subject of penalties under LPIS reviews.

There is a complete contradiction where, under the new CAP greening requirement, cereal farmers are being forced to devote at least 5% of their land to ecological focus area yet cattle and sheep farmers are being penalised severely for having more than 3% ecological focus areas. It gets worse when one factors in land designations such as SAC, SPA, etc., which are a response to EU directives. For example, farmers with a hen harrier designation are faced with severe restrictions on mowing, topping and spraying, yet are at risk of penalties when, inevitably, scrub starts to win the battle with grass. Some of the penalties imposed relate to ground which was designated as habitat under REPS. It cannot be acceptable that a farmer is given two conflicting objectives by two instruments of the CAP.

The logical response to the increasing risks of Pillar 1 penalties is to bulldoze or burn, but this is not the appropriate response to environmental objectives. In fact, it is the case that reputable ecological advocates, such as BirdWatch Ireland, share our dismay at the penalties imposed on farmers on marginal ground. We need to get certainty on what is and is not eligible.

It is not acceptable that a farmer cannot get a definite handle on where he or she stands before he or she submits an application for Pillar 1 supports.

There may be a case for a minimum stocking rate appropriate to land type, but we cannot proceed where farmers are losing substantial tracts of ground even though they continue to farm and look after the environment. It is our view that the new CAP provides considerable flexibility to member states to ensure that we do not have a repeat of the debacle caused by the land parcel identification system, LPIS, review. However, if we are to ensure that this happens we need clear guidelines for planners and farmers regarding eligibility. Significantly, we refer to the delegated Regulation No. 637/2014 which supplements Regulation No. 1307/2013, in particular articles 4(l) and (h). The new regulations provide that grasses and other herbaceous material shall be deemed to remain predominant when they cover more than 50% of the eligible area at the level of the agricultural parcel. Moreover, there is an additional flexibility for member states to allow for established local practices, traditional in character, which involve grazing livestock or which are important for the conservation of habitats. Given the experience of farmers in the last few years, it is essential that we have clear, readily understood definitions at the national level so that farmers cannot be penalised due to lack of clarity at application time.

Regarding GLAS, the ICSFA fully shares the concerns about how the scheme has been set out for commonages. There is also a very unsatisfactory problem in GLAS for farmers wishing to opt for traditional hay meadows or low-input pasture. This concerns the requirement to re-digitise a separate land parcel for the area concerned. In practice, it means that many farmers who do not have a separate land parcel that can be devoted to these measures are effectively barred from GLAS entry in 2015. This seems rather unsatisfactory and we do not see why it could not be facilitated after the closing date. I thank the members for their attention and look forward to answering any questions.

Deputy Éamon Ó Cuív: I thank the ICSFA and the Irish Natura and Hill Farmers Association. Sílim gurb í seo í an chéad uair a bhí siad os comhair an choiste seo. Tá cur i láthair iontach déanta acu. Is ceist thar a bheith teicniúil í agus ní dóigh liom go bhfuil mórán tuisceana acusan nach bhfuil taithí acu ar na cnoic uirthi.

I welcome these two submissions which, in certain ways, are complementary. At the end of the ICSFA submission there was a reference to delegated regulation and there is flexibility there if the Government chose to use it.

The submission by the Irish Natura and Hill Farmers Association has gone in great detail into the practical problems we face as to what is grazing of a hill. Looking at the way hills of, say, 500 ha are farmed in Ireland, we do not shepherd sheep in the way they would in continental countries. There is not somebody out there all day moving them up and down the hill. We tend to allow the sheep use the higher parts of the hill in a totally natural way and let them find the food. They spread out over the hill and in different weathers and conditions, they go up and come down, as they do at different times of the day and night. Despite the fact that this is the way it is done and, therefore, the animals themselves are grazing in an uneven way, large areas of some mountains are being declared ineligible even though there is full accessibility to the stock. It is being said that there is not enough activity on that part of the mountain, even though the stock themselves decided for some reason that they will not graze that particular part of the hill as intensively as the rest. Animals do these things. That seems to be a major challenge.

This was an issue I raised right at the very beginning of the commonage framework plans, namely, taking stock off in the wintertime. One of the problems was that it changed the grazing

pattern of the animals. We had what I refer to as the "cat at the back door" syndrome. Cats do not roam in the way they used to because they know that if they come to the back door they will be fed. Sheep that should be feeding on the lowland think they know where to go for food and do not range around the hills in the same way as they did before. Taking cattle off the hills has to affect their behaviour. While I accept that this is a problem in other areas also, it is a massive hill area problem. The farmers in these hill areas are being affected by behaviour forced on them by Departments.

Mr. Joyce referred to blanket bog grass known as Molinia, or purple moor grass, and the fact that it dies away in the wintertime. The late Michael O'Toole said that one of the greatest controls for overstocking of mountains was to leave stock out all year round, because the grass dies back in the winter and if farmers left too many stock out they would die. There would be very high mortality rates. Taking them off when the Molinia had died back and putting them on only in summer could lead to overgrazing of hills. I know that some of the witnesses have direct experience of hill farming. How correct was he? He was quite an expert on this. To what extent have these changes led to overgrazed and undergrazed parts on the same mountain with sheep free ranging on the mountain?

I fully support the suggestion that we need a working group to work on this. Until all of this is clarified, do the witnesses believe that the reference areas given by the Department should stand until agreed otherwise and not be subject to any penalty? Do they believe that where sheep have free range over a hill, the whole hill, as long as there is not clear undergrazing of the whole hill, should be deemed eligible? How long do they think it would take for a working group to come to conclusions about how it might be tackled and to apply this to all the hills? Would it take six months, a year or several years? Should we allow farmers, if it is deemed that there is not enough activity on parts of the hill, sufficient time to bring that hill back to whatever state the Department wants it to be in? Should the stocking level laid down for the areas of the natural constraint scheme and the disadvantaged areas scheme be considered sufficient farming activity? No other type of farmer has to account for how much livestock he or she puts into any one field at any time of the year, and it would seem unfair that hill farmers have to do that.

Senator Trevor Ó Clochartaigh: Cuirim céad fáilte roimh na finnéithe agus gabhaim mo bhuíochas leo. Cuirim fáilte ach go háirithe roimh an eagraíocht nua, the Irish Natura and Hill Farmers' Association. I listened intently to all the presentations. There are many common threads in them and in what has been said here. The IFA said it was too late for a working group to do the job and that it was time for the Minister to get the finger out – I am paraphrasing – and issue the guidelines. Do the witnesses agree with that reading of the situation? If there is to be a working group, who would they propose should be on it? Who should organise it? Should it come under the remit of the Department? Does it need some form of independent oversight and who would be best placed to provide that? Seven weeks is a very short time to try to resolve the problems. What level of engagement is there with the Department on these issues? Have the Department or the Minister met the Irish Natura and Hill Farmers' Association, as a new organisation, to discuss this? What level of negotiation is going on with the ICSA, or is the Department stonewalling on these issues? What is likely to happen if the Department does not engage? What is the future if there is no engagement or if, as the Irish Farmers' Association has suggested, the Minister comes out with some tweaked guidelines that are not radically different from what is proposed at the moment? If the Department tries to force through what is happening at the moment, what is the likely outcome?

The witnesses mentioned other countries that are implementing the same EU directives.

We have a good deal of discussion about the EU, how it is supposed to create a commonality among states and how it is supposed to give everyone a level playing field. In this scenario and in respect of the implementation of these environmental directives, how do we compare, for example, with Northern Ireland, Wales or Scotland? How do the witnesses see the level playing field? Is the Department being totally unfair to Irish farmers? Are there better models implemented elsewhere from which we could learn? Perhaps the working group could address that issue and take some of that expertise on board as well.

Deputy Michael Fitzmaurice: I thank the witnesses for their presentations. I noted with interest that they referred to Slieve Aughty. There are satellite images of where it has been grazed. What has gone on in Slieve Aughty is a disgrace. I have followed the story with interest and I have talked to those involved on a regular basis. Yesterday, I discussed the issue with officials from the National Parks and Wildlife Service in Athlone. They told me they are prepared to go to the Department of Agriculture, Food and the Marine. I believe they have a big part to play. As Deputy Ó Cuív said earlier with regard to destocking, I believe we may have gone too far one way. We may have destocked the mountains too much. However, it was not the farmers who did this; it was the people in suits telling them what to do. We cannot simply leave a site in a decimated state and walk away from it. They should come back behind the farmer and explain the situation to whomever needs to know. I believe this working group needs to look outside the box. I said to the previous witnesses that a coming together of all sides in Ireland is no good. My understanding is that a person came from Europe to look at this and decided he was going to go harder because he was not told the site was designated. We need to ensure everyone is singing from the same hymn sheet.

I said this earlier to the other farmer organisations. I am looking for straight answers. What do the witnesses think of the charter of rights for farmers? Is it worth the paper it is written on? I have dealt with some farmers in cases in which it appeared that it was not complied with. Basically, I was told that people did not really have to adhere to it. I am trying to get to the bottom of this. Has it standing? Will it stand or will it not? I am looking for a straight answer. I presume all the witnesses have proper clarification on whether it will stand or not.

Senator Michael Comiskey: I welcome the Irish Natura and Hill Farmers' Association and the Irish Cattle and Sheep Farmers' Association. My questions are mainly the same as those asked earlier. There are major problems; we all agree with that. I was closely involved with the commonage hill sheep farmers prior to joining the Seanad. I know there has been a major problem, going back as far as 1996 or 1997 when destocking was introduced and farmers were forced to take their sheep away. After that, many farmers did not put their sheep back on the land, and now we have a problem.

While a working group is important, and I would welcome its establishment, I do not believe we have the time at the moment. Perhaps in the long term we could put the working group in place, but we should allow farmers access to the various schemes, such as GLAS. They should be allowed to draw down from the basic payment scheme in the meantime while the working group is looking at what can be done.

I welcome the fact that under the green low-carbon agri-environment scheme there is one plan for each commonage. The consultants can examine that plan and draw up their commonage plan in that context. I believe there is movement such that farmers who may not want to share or put stock on the commonage can share that right with other farmers. It is important that farmers sit down and come to an agreement on that. Going back to the 1960s and our local commonage, when we were children and when there was no Department involvement at all - I

might have said this before - the farmers on the commonage sat down and agreed among themselves what the stocking rate should be. Everyone then had to agree to that. If a farmer was found to be out of line, he was penalised. The Department is involved now and it is up to the Department to enforce it. Some farmers will want to put hundreds of sheep on the commonage while, at the same time, other farmers would only put very small numbers of sheep on it.

Going back to Deputy Ó Cuív's point about sheep wandering the commonage and finding food wherever it is, research was carried out on the Teagasc farm in Mayo which showed that a sheep could walk up to 15 miles a day from morning until evening. Trackers were put on the sheep and it was shown that they have the ability to travel across a commonage and graze it in whatever way is best for the animals.

Deputy Noel Harrington: I thank the witnesses for their presentations. Various issues arise from these presentations and previous ones, including the subjective nature of land eligibility, the criteria to be applied and how they should be assessed, consistency in dealing with them, and a lack of clarity, particularly from the point of view of a farmer who is a sole operator looking to fill out his basic payment and area aid forms. At the moment there is a lack of clarity, and they are looking for some sensible proposals. There seems to be a trend or a theme coming through the presentations today, and previous presentations, on how this problem can be addressed, whether it be through a focus group, a working group, a round table group, a forum, or, as some people have suggested because of the timeframe, through the prompt issuing of guidelines by the Minister and the Department.

This issue came to my attention 15 months or so ago in west Cork. I accept that we are a long way down the road and that we may be at the last hour. It may be that it would be difficult to put a forum together. However, I also see a huge downside in the approach whereby the Department and the Minister decide in the next couple of weeks to issue guidelines and a set of criteria. Such an approach will not be universally accepted. Whatever is going to happen, be it a forum or a directive or guideline issued by the Minister, a line will be drawn in terms of the criteria for eligibility for this land. There will be a line and a timeframe, and a huge cohort of people will be on the wrong side of that line. Even though we are at very last hour of this process, we should work on achieving an approach based on consensus. I neglected to mention the ACA, Teagasc and other stakeholders. They should be involved in finding a binding consensus in terms of criteria and a timeframe in respect of land eligibility. Among the farmers I have dealt with, this would have a far greater chance of succeeding than an edict by the Minister about what is going to happen, where the line is and that a farmer is either inside or outside it, even if marginally so, as the case may be.

Given that context, and having regard to the presentations that have been made, it is clear that the organisations know exactly what the problems are. Their solutions, while broadly similar, will be different. There will be differences in how the different organisations and stakeholders will approach this problem. A guideline from on high will probably suit nobody. Perhaps I am like Don Quixote tilting at windmills, and it might never work. However, the best approach would be to have a forum that would achieve widespread stakeholder consensus, which would give certainty to farmers in respect of their payments over the next five or six years.

Deputy Seán Kyne: I welcome the witnesses here today. Some of the issues are reminiscent of those which arose in the Burren when designations first took place and the National Parks and Wildlife Service - or Dúchas, as it was at the time - established regulations on taking cattle down from the uplands, a consequence of which was that these areas became overgrown. Also, there would have been changes at the time in terms of more part-time farming and slatted

sheds being built. The result now is that BurrenLIFE has put in place a programme to try to rectify some of these issues. This is a situation where the people who thought they knew did not know and the people who knew were the farmers who were not asked initially about it.

I am aware that Mr. Brendan Joyce sent an open letter to the Minister some weeks ago in conjunction with a number of other groups with which people may have been surprised that the Irish Natura and Hill Farmers Association would have been associated, such as the bird watching groups, which are important because they have a vested interest in the uplands. I note that the ICSFA in its contribution mentioned that BirdWatch Ireland shares its views and concerns. Are the witnesses aware if those groups are putting pressure on their Department and Minister in terms of expressing their concerns about what is happening? As there appears to be a difference of opinion between the Department of Agriculture, Food and the Marine and the Department of Arts, Heritage and the Gaeltacht, what engagement have the witnesses had with those groups?

I have no issue with the working group. As this is the important year in terms of future payments, what is the timeline for same? In the event that a consensus cannot be reached, what are the implications for farmers if their eligibility is deemed to be less than in 2013 and if payments are further reduced following any future inspections? In response to a recent question the Department stated that the main difficulty in relation to land eligibility arising from recent inspection experience is the lack of any farming activity on some land, particularly on marginal land. I would appreciate a comment on that issue. I appreciate the witnesses have highlighted it in terms of the time of year of inspections. There are differences between commonages. There are those that were destocked and those that were not. In that reply, the Department officials said they were in direct contact with the EU Commission with a view to progressing the issue and looking at all possible options. I think they indicated that they are to meet this week with a view to thrashing out the issue. From the recent meeting which Mr. Brendan Joyce had with the Department, it is clear that the Department feels a certain level of pressure from EU auditors. Perhaps he would comment on what he took from that meeting.

Deputy Thomas Pringle: I thank both groups for their presentations and apologise for having to step out of the meeting to attend another one. Like other members, I support the proposal for the working group. That seems to be the way forward. It is clear from the presentation from the Irish Natura and Hill Farmers Association that there is a problem with inspections and how they are carried out and how they are interpreted. The working group with its proper guidance manual so that everybody is clear on what is involved appears to be a very sensible way to move forward. In west Donegal, because of the lack of species diversity and the grassland, farmers cannot achieve the maximum from GLAS. I understand that issue could possibly be dealt with by an amendment to the scheme at a later stage. Has Mr. Joyce any views on that issue?

In respect of the ICSFA, in his presentation, Mr. Patrick Kent mentioned the delegated regulation, does the Department have to decide to use that or can it be availed of by farmers? Perhaps he would expand on that?

Chairman: I invite Mr. Joyce or Mr. O'Donnell to respond.

Mr. Colm O'Donnell: I thank the Chairman. Quite a number of questions were raised. Deputy Ó Cúiv referred to a case of a commonage of 500 ha where sheep grazed all over it at different times of the year. Molinia or purple moor grass is a good source of protein and is palatable to cattle, sheep and horses from late May, through the summer period and into October. Sheep and cattle naturally migrate from Molinia areas towards the end of the year. This is a

form of what we describe as mountain pastoralism in that it is a traditional practice in hill areas. It was fundamentally wrong of the Department to inspect this purple moor grass at a time of year when it had died away and become white grass and no stock will be visible. Molinia is regarded as fuel at another time of the year.

The Deputy asked whether the reference areas should stand for the 2015 application. This land is currently eligible. I fundamentally disagree with the statement issued by the ICA and IFA in which both organisations indicated they would work to have this land considered eligible again through the process of a commonage management plan. This land is currently eligible for payment, as the Minister has stated. There is no difference in the terms and conditions of the basic payment application and the single payment application. As such, the land is eligible.

The problem, however, is how one defines what is sufficient agricultural activity on this land. To this end, we called for the establishment of a technical working group which could bring in those with responsibility in this area, namely, the National Parks and Wildlife Service, the Department and farmers. This is not a job for the commonage implementation committee because it requires input from farmers. The technical working group may be able to achieve some short-term and long-term goals.

This land is eligible for payment but a definition of agricultural activity is required. As a member state, Ireland must define agricultural activity. The Department has not yet done so, other than by way of satisfying the definition of an active farmer as someone who is producing cattle, sheep or spuds or engaged in tillage.

Deputy Seán Kyne referred to the habitats directive. Article 6.2 of the directive imposes a clear regulatory obligation to provide protection for these areas. It spells out a requirement to avoid deterioration or disturbance of any species, flora or fauna within designated sites. As our submission notes, the Department appears to be unaware of the requirement to carry out an assessment process. Articles 6.3 and 6.4 of the habitats directive provide that, in advance of making a decision that could have a significant effect on the ecology of these areas, an appropriate assessment should be undertaken or, at a minimum, a screening carried out to identify whether an assessment is necessary. Did the National Parks and Wildlife Service consult the Department to ascertain whether an assessment was required? At a meeting with representatives of the service last week, it was unable to confirm whether such an assessment had been undertaken. If such an assessment had been carried out, it should have been on public record.

The precautionary principle is spelled out in regulation 27 and enshrined in the birds and natural habitats directives of 2011. Public authorities, including the Department and the National Parks and Wildlife Service, are under a clear obligation to exercise functions in compliance with, and in a manner that will secure compliance with, the requirements under the birds and habitats directives. I do not need to remind members that previous judgments by the European Court of Justice on breaches of the birds and habitats directives, in particular, regarding inappropriate levels of stocking on commonages in the late 1990s - an issue to which Senator Comiskey alluded - should have provided a clear signal to have careful and informed decision making on commonage issues.

Deputy Fitzmaurice mentioned the National Parks and Wildlife Service, which has a role to play. It should state whether it was involved with the Department of Agriculture, Food and the Marine in the process of reducing these reference areas dramatically. In some cases, we have brought independent experts who are skilled in assessing the environmental status of these places out to walk such areas. I will explain what will happen in a case in which half the num-

ber of animals are going onto an area that has been reduced from 100 ha to 50 ha. These wet and dry heath areas and upland grasslands will eventually scrub up.

Deputy Kyne mentioned the threat of abandonment of these areas. This is what could happen. We highlighted this in our opening letter to the Minister. We said it is inevitable that this will happen. We are proposing that what constitutes an "agricultural activity" in these areas should be defined. It would seem logical to use indicators of agricultural activity to do this, perhaps on a Molinia meadow where there is white grass in the winter time. It should be assessed on ecology just as much as on agricultural activity. It can be an indicator of agricultural activity. As I said, mountain pastoralism is practised in hill areas. We move the stock around. They move on to the long heather in winter time. This is what they survive on.

Somebody asked earlier whether mature heather can be grazed and the answer is "Yes". I live on one of these hill farms. My cattle and sheep survive on mature grazed heather. Regardless of whether mature heather is ungrazed or grazed, there can be a difficulty in the absence of physically seeing the livestock there. In his submission, Mr. Joyce offered solutions to the problem of how to go about indicating agricultural activity in these areas. Perhaps Mr. Condon will comment on the greening when he speaks. These lands are environmentally sensitive permanent grasslands. These areas are eligible for greening. Surely they should be eligible for the basic payment.

Reference was made to a fair blonde-haired lady auditor who came back to a site in Ireland on a few occasions. I think Deputy Fitzmaurice asked whether it was established during one of these inspections whether it was a designated site. As the Chairman has pointed out, the site in question is in the mid-west of the country. When this senior auditor was brought to the site, had it been designated as a special area of conservation or as a special protection area? Was that taken into account when the auditor made her judgment?

We are within seven weeks of having to make an application. I know I will be including my entire reference area. In my opinion, all of it is eligible for payment. I reiterate that all of us have a duty of care to get rid of this uncertainty. There is uncertainty in every walk of life, particularly from the perspective of politicians and farm organisations. We have to clear up this uncertainty so that the farmer can make an informed decision when he makes his application in good faith before the end of May.

Mr. Eddie Punch: I will try to answer two questions in one go. Deputy Ó Cuív asked whether a farmer should have certainty about his application. The point that has been made here is that the Department is now in a position to say "this is your map at your application time - we deem X, Y and Z to be ineligible and the rest of it to be eligible". The problem is that in 2013, farmers applied in good faith but were given no indication by the Department of their land parcels that were eligible or ineligible. Subsequently, in the autumn of 2013, different maps appeared, with new aerial photography, showing red lines. Suddenly it was possible for the Department to point out the parcels of land that were not eligible.

In response to the point made by Deputy Fitzmaurice, at one of the first meetings of the farmers charter, I raised this very issue that given the Department has the Bing technology in place and has considered every parcel of land in Ireland, surely it is reasonable that whatever designation the farmer is given by the Department at the time of application must stand for the rest of that year. It gets more complicated, however. The officials were appalled by the vista that farmers could have certainty. They said that land designation could change and that they could not allow a situation to arise where farmers would have certainty. I do not know if they

fear an auditor from Brussels flying in during the month of September or October. I do not know what is at issue, but the proposal that Deputy Fitzmaurice put is the proposal we tried to have established in the farmers charter. The officials would not hear of it. It seems, therefore, that the farmers charter is not an adequate vehicle to solve this problem. Of course, the farmers charter will play second fiddle to the regulations.

I suppose that poses the question of whether we will have the same difficulty with a working group. If a working group is to be part of the solution, we need to have a Minister with teeth involved. That is an issue. It is stated clearly in the delegated Acts that the onus is on the member state to establish the fine detail. In the delegated Act it states where grass and other herbaceous material make up more than 50% of the area, they shall be deemed to be predominant. What does that mean? I hope it means that if over 50% of the land parcel is herbaceous material, the parcel is eligible. However, I heard officials suggest by way of a contrary view that if one does not meet the 50% criteria, the entire parcel of land is ineligible. This is a matter on which we must have clarity. Obviously as people will know, many of the LIPIS penalties are applied on a purely subjective assessment of what is eligible and one saw people receiving letters with maps with areas of ground marked with red lines that were deemed not to be wall to wall cereal saying that it was 100%, 85% or some other percentage ineligible. It was a guesstimate by the person driving the computer in Portlaoise. When the inspectors come out to look at the land parcel, they walk the ground and make an estimate. That is the extent of how scientific it is. An official from Teagasc might decide the eligible land is 40% of the parcel as there is some grass around the bushes and the trees. The official from the Department might take a different view and think it is only 20% eligible. The point is that it is all subjective. In any event, the real question is whether the system is fair when that level of subjectivity is being used to apply penalties on land that for many years was grand. If it was grand for many years, how come that it is suddenly not grand?

In defending the potential for retrospective penalties, I have heard officials say it did not get "un-grand" overnight, to use the vernacular. In other words, if the eye in the sky photos from 2013 showed scrub, rock, bushes and so forth, they must have been there for a long time; *ergo* we will go back and apply retrospective penalties. On the question of whether we can have certainty that a decision made in May as to whether land is eligible will stick for the year, they contradict themselves when the say that land can change all the time and people cannot be allowed to have any certainty. Suddenly, scrub might emerge from nowhere in a few months. That is a thoroughly unsatisfactory situation.

The whole LPIS review process has been thoroughly unjust and we must find a solution to that. That is an ongoing battle. Committee members asked if we have brought this issue up with the Minister. We had a meeting with him about this 12 months ago and we told him about all of these problems. The answer he gave at that time was that it could not be discussed until we knew the final outcome of the penalty process from Brussels, that is, the €180 million fine hanging over the country. We met Commissioner Hogan in December to discuss this and he said that a decision was imminent. We thought it would be announced before or just after Christmas but we are now in April and still there is no clarity on that matter. I do not want to be negative and while a working group is important and should be established, we need to see a commitment at the highest political level to resolving the situation. Until we see that commitment, everything else pales. Hiding behind the €180 million fine is not acceptable. Indeed, it is unacceptable that the €180 million fine is still lingering. Why can that not be decided on? At the end of the day, whether the €180 million fine is reduced to €30 million is only a detail because the substantive issue still has to be solved.

Can we define what is eligible or ineligible? In the so-called ineligible areas, a circle can be drawn around an area as small as 0.01 hectares. My reading of the delegated Act is that there is no reason at all why a clump of trees in the corner of a field should lead to any deduction. However, that is a philosophical question to which I do not have the answer. In our view, if we have a bio-diverse common agricultural policy, a clump of trees in the corner or middle of a field or a small bit of protruding rock should not cause farmers to be penalised. The solution for the farmer is to bull doze it but that is surely not the objective of the CAP. Why should small clumps of rock, whin or scrub lead to penalties, albeit small percentage penalties, when at the same time cereal farmers, in order to be eligible for greening now have to have an ecological focus area of 5%? It is clear that cattle and sheep farmers are being treated differently to cereal farmers. Cereal farmers get 100% of their payment because they have wall to wall cereals. They are now being told to find an ecological focus area of 5%, while a 5% ecological focus area results in a penalty for cattle or sheep farmers. That cannot be right. All of these issues must be dealt with.

I do not think, even with the best will in the world, that this will be solved by the end of May. This must be part of an ongoing process of review and where farmers can benefit from reviews, they must be given such benefits. We need political will to do that.

Mr. Joe Condon: One of the solutions suggested was qualifying for greening on environmentally valuable permanent grassland. I do not think that option has been examined closely enough as a possible solution to the activity question. Looking deeper into the regulation, Annexe I allows equivalent practices and Annexe IX(II) allows extensive grazing systems. A requirement exists and timing and maximum stocking levels may apply to the extensive grazing. It also allows for shepherding and mountain pastoralism, along with using local or traditional breeds for grazing. The working group, if it comes out of this, has areas where a lot of the activity problems may be associated with a lowland farmer with 30 ha. One days' topping will qualify him for maintaining his land as fully eligible for one year. Using the narrowest interpretation of a commonage farmer, and bearing in mind the average farmer in Ireland has 560 ha, he must have stock on every area of that commonage for 365 days a year. There is a reference to member states implementing regulations with objective criteria to ensure equal treatment of farmers in Article 2 of the regulation, but farmers will be uncertain about this. One day's work by one farmer down in the valley will maintain his land as eligible while another farmer is required to have 365 days of activity. Perhaps a menu of options is the most feasible.

Mr. Brendan Joyce: Deputy Ó Cuív questioned whether the existing area should remain in place. My answer is that it absolutely should as there is no alternative. Senator Ó Clochartaigh and a number of Senators questioned the amount of time available, but that is not the farmers' problem. We found ourselves in a position where we have no choice but to set up a working group. Deputy Kyne referred to it and it is the only forum where we can get this right. If there is a compromise, whereby the farmer puts in the existing eligible area in the short term, as proposed by Deputy Ó Cuív, that must be the route we go. The alternative is that the Department goes with the *status quo*, which is an absolute disaster and is putting us in grave danger of facing more penalties from Brussels by the threat of land abandonment, which is a massive threat in these areas.

Deputy Kyne questioned whether we have brought this up with the National Parks and Wildlife Service. The NPWS has a massive role to play in this. If I want to fence my commonage or do any activity, I must apply for planning permission. I must carry out an appropriate assessment, yet I have been on a commonage in recent weeks where the number of cattle, as a

result of the ineligible part being taken out, has reduced from 240 to just over 100 if the farmers implement what they are being told to do. That will have a massive impact on the commonage, and the NPWS has to question it. We have requested a meeting with the Minister, Deputy Heather Humphreys, and we hope it will happen soon. That cannot be allowed to happen without question. They say history repeats itself but we were the victims of the history in the 1990s when many of us faced destocking as a knee-jerk reaction to a penalty. There were areas that needed destocking, as mentioned by Senator Comiskey, but many faced 30% destocking without any study to justify it. Many of the areas found they had the correct level of stock or needed more, but that point was never amended.

Deputy Fitzmaurice asked about the charter of rights. Unfortunately, we do not sit on the committee at present but we are hopeful that will be rectified. With regard to where the charter of rights is at, many of the farms we visited faced substantial penalties. Some of these faced a 100% penalty on 2014 payments. This was subsequently reversed, yet they must submit over 60% of their land as being ineligible for 2015 purposes. All inspections should be subject to what is called a control report so that the farmer is aware an inspection is happening. If it is an on-the-spot inspection, the farmer must be informed before that inspector enters the farm. That never happened in the case of commonages inspected in the past.

The charter of rights is a significant issue. In my opinion, it should be implemented on a statutory basis. If it that is not the case, we might as well go back to Maam Cross and write it on the side of the bar counter because that is about as much value as it will have.

Turning to Deputy Pringle's question on the GLAS, as highlighted by the ACA, many farmers cannot access a reasonable level of payment from this scheme because low-input permanent pasture is rendered completely ineligible for payments if it has as much as one bit of heather in it. Compounding that, as the ACA said, many farmers cannot split their parcels to avail of measures that are on their farm. That is totally unacceptable and will mean that farmers who could legitimately make a case for coming closer to the maximum payment will realistically sit somewhere over €2,000 to €3,000. We have a massive problem with that.

The Chairman made the point that this has serious implications for the €250 million in GLAS. That is true, but the real issue here relates to eligibility for Pillar 1 payments on land that is currently eligible. We have no problem with an inspection process. It is required. Regarding Deputy Kyne's question, the Department of Agriculture, Food and the Marine is under pressure from European audits and has made this clear in the meetings we have had with its representatives. I have no difficulty with that. I believe, having spoken with some people in Brussels, that if the regulation is clear, Brussels will not have a problem with eligibility in many, although not all, of the cases with which we currently see issues. The eligibility of those areas, that is, what constitutes sufficient agricultural activity, is critical. That is the nub of the issue. The timeline in question is seven weeks. Right now, this is a significant issue for agriculture in areas like those in which we are farming. I believe that can happen quite quickly if the will is there and a result can be obtained if there is broad consensus on this.

Chairman: Deputy Ó Cuív should be brief, as we are running out of time.

Deputy Éamon Ó Cuív: We must recognise that when agreement was reached on the regulation in June 2013, we had the EU Presidency and the Department was party to agreeing this minimum activity clause. That was two years ago. The Department was aware of it and, presumably, since it was in the driving seat, it did not agree to something without thinking through its implications.

Have there been discussions about what happens in the Alps, which are covered by snow even at this time of the year? They are still skiing over there. They obviously have no activity for most of the year. This is also the case in northern Sweden or Finland, in the Arctic Circle, where the growing season would be very short as it would be very dark in the winter. What are their eligibility rules for grazing land and what is the minimum activity in those extreme climates?

If one has a hill, which is in a commonage of two or more people, one gets €120 a hectare. Is that not correct? However, if the hill happens to be owned by one person and is not in a SAC, NHA or SPA, that person does not get paid at all under GLAS for the exact same hill. Have the witnesses raised that issue with the Department? If so, how did it explain it? If a husband and wife are lucky enough to own the land, is that a commonage? There is no legal definition of commonage; we do not even know what a commonage is. Have the witnesses had any clarification from the Department of how it makes fish of one and fowl of the other? I have never had any such clarification. Land is land, and surely the ecological basis is exactly the same irrespective of how it is owned.

Chairman: Deputy Fitzmaurice wishes to make a point.

Deputy Michael Fitzmaurice: Mr. Joyce referred to the National Parks and Wildlife Service. Has he had meetings with that body and has it come out to say it will back the Irish Natura and Hill Farmers' Association in the problems arising? I hope Mr. Joyce has more luck than I had. Nine or ten months ago I brought a delegation of farmers from Sligo on an issue to do with fencing and planning permission. My understanding is that citizens are supposed to be treated in an equal fashion, but it was costing farmers €4,000 or €5,000 to do what they had to do. I have asked the National Parks and Wildlife Service if it has a fund for looking after a farmer if he or she is being shafted by the Department of Agriculture, Food and the Marine. Those involved shrugged their shoulders and said "No." It is good at bringing in the legislation that causes this problem, yet at the same time it will not help a farmer in any way. Has Mr. Joyce gone to anybody in the National Parks and Wildlife Service to ask them to get involved? The NPWS gave me assurances yesterday that it would go to the Department of Agriculture, Food and the Marine, but have those involved given the witness any assurance that they will go with the farmers and give them literature to back up what they have done, which was the cause of this problem, or have they run into the hills to try to hide?

Deputy Martin Ferris: Mr. Joyce referred to traditional farming practices and how destocking undermined that position. The beginning of the problem was the removal from eligibility of land that had been destocked. Traditional farming practices changed and the whole landscape changed in many areas. As part of a way of resolving this long-term, would restocking help to claw back part of land eligibility?

Mr. Colm O'Donnell: I will deal with Deputy Ferris's question and Mr. Joyce can take the final one. The Deputy mentioned destocking of the land in 1998. I was one of those farmers who had to comply with a 30% compulsory cull of my flock of sheep. I had to take 100 ewes from the flock and have them slaughtered above in Ballyhaunis, and I was badly paid for them at the time. When the commonage framework plans were published 18 months later, I was told that my hill did not require any destocking - that it required zero destocking. I have since farmed that area with my hands held tight behind my back. It was a flawed policy between the Department of Agriculture and Food and the Department of the Environment and Local Government at the time. They did not take into account the carrying capacity of the land and the sustainability levels. If one forgets the sins of the past, one is bound to repeat them. The

Deputy talks about restocking the hills, but if the commonage management plan goes ahead based on the minimum and maximum figures indicative of the number of sheep required, it will mean massive destocking of the stable flocks across those mountain areas. Farmers who have farmed those areas in the Deputy's county and across the country, who have the active flocks and who kept those hills in pristine condition, now face massive destocking as a result of what is proposed in the commonage management plan. That is the position and it really needs to be looked at. The land eligibility is one issue but we need an urgent meeting to solve this.

In the basic payments scheme terms and conditions, the Department of agriculture classes this land as environmentally sensitive grassland. The Department confirmed to us at a meeting last week that heather always was and always will be considered permanent grassland. If the land that we farm is environmentally sensitive grassland, and greening is 30% of the existing single farm payment - the taxpayer in Europe sees that as being very important - then the lands are eligible for greening. Surely to God we cannot say they are eligible for greening but they are not eligible for the basic payments scheme? There has to be some cohesion here. We must establish the definition of sufficient agricultural activity. The basic farm payment terms and conditions say there must be evidence of sufficient agricultural activity being conducted throughout the parcel, otherwise unused parts of the parcel may be found ineligible. This is where we are at.

Mr. Brendan Joyce: On Deputy Fitzmaurice's point about meeting with the NPWS, we have had informal discussions with the NPWS. There is no doubt there seems to be, within the NPWS, many questions about what is going on at the minute. We have requested a formal meeting with the Minister, Deputy Humphreys, on this issue, which we anticipate happening soon. It absolutely needs to happen immediately as far as we are concerned. The key point about the NPWS is that it was the body charged with the designations of our land. In my own case I have SAC, I have a pending SPA and I am in the NHA. I have all possible designations on my ground and I farm accordingly. The NPWS has no choice but to get involved in the process. I will reiterate, and hope that it will go forward from this committee as a proposal, that we have no choice but to put in place a working group. If that has to be expedited in the short term, then do it. There seems to be support here today from all farming organisations, from the planners' groups and, in fairness, cross-party support that this happens quickly. This is the one single request we need to deal with as it is going to be a massive issue going forward for farmers. I ask the Chairman to put that point forward. I thank the committee for allowing us to make the case. Gabhaim mo bhuíochas leis an gcoiste.

Chairman: I thank all members and witnesses. It has been a long session but there are many concrete and constructive proposals that have followed on from real, identifiable problems with this new concept. I wish to clarify a point for Mr. O'Donnell regarding land being made eligible over a period. There are portions of land currently deemed ineligible and I do not care what anybody says about heather being deemed eligible. We have parts of Wicklow uplands which are not grazable and which sheep will not go onto because of restrictive burning rules at the moment. It may be eligible but it is not in good agricultural or environmental condition.

If the objective of the plan is to bring it into good agricultural and environmental condition, all of the land should be declarable at the outset. If it is not achieved at the end of a five-year plan then one should pay the consequences for the portion that does not achieve. That is the objective and that is what I was talking about when I referred to it. There are mixed messages and I have put down parliamentary questions to the Department of Agriculture, Food and the Ma-

rine and the Department of Arts, Heritage and the Gaeltacht to make sure the two Departments were talking to each other at the earlier stage once GLAS was approved. Mr. Punch mentioned the delegated act with the 50%. I can see the logic behind having 50% of a parcel. I myself had a small portion of ground with a red circle around it that, because of wet summers, was not in a position to go in on top. It was deemed to be ineligible but I had land to compensate it. To be honest, one could not be bothered because it was too much grief to go through the process.

There are many anomalies in the system and there is an inconsistent approach. Subjectivity, inconsistency and a lack of clear guidelines are the problems affecting this area. I expect that the committee members will decide to invite the Department's officials to a meeting as soon as possible with a view to getting their opinions on it. The officials will have had the benefit of seeing the transcript of today's proceedings. There are many questions and many direct problems have been identified which must be addressed. That will probably be the basis of our engagement with them, which we hope will happen sooner rather than later.

Again, I thank everybody for attending. I believe Deputy Kyne mentioned the Burren earlier. If ever there was an example of how a rule that was made to be applied across the board cannot be applied in every scenario, the Burren is one. A derogation had to be made from the rules as they were applied at the time. Mr. O'Donnell mentioned his position on the commonage framework plans. That is another example in which a statutory instrument is introduced to be applied across the board without taking cognisance of individual cases. When we produced a report on commonage management plans, which we published in July 2013, the first thing we said was that the only definition of a commonage that applies to all commonages is land that is farmed in common by two or more landowners. After that there is own commonage, rented commonage and commonage by right or collop. There are a variety of types of commonage, so that must be defined. No two types were the same. I believe you said the average was 500 hectares, but an individual farmer would not necessarily be obliged to stock it all. He or she would be obliged to stock their share of it at 0.15, rather than the entire commonage. Is that correct?

Mr. Brendan Joyce: He or she is obliged to keep that full commonage in GAEC.

Chairman: That is the point. If nobody else participates, a farmer can only be responsible for his or her part of it. That needs to be clarified.

Mr. Brendan Joyce: Strictly speaking, if one farmer out of ten goes into the commonage management plan, which is feasible, he or she is obliged to have the minimum stocking for that commonage achieved by three years from the anniversary date. It is unfortunately there. However, your point is made.

Chairman: On the other side, there are cases in which people will have to de-stock radically. They are the efficient plots. We have made this point. If I want to be part of a commonage, I can delegate the responsibility for keeping the stock on the hill to one or two farmers who are doing it all the time anyway. It means that where there are people who are not already farming their commonage area with stock and there are others who are, they should be entitled to come to an arrangement whereby nobody is affected by that. A common-sense approach is needed here. To work through this on an ongoing basis, I can see the merit in having some type of working group or forum where everybody could come together.

As I said earlier, the purpose of these proceedings is to put this on the public record, so everybody has a chance to have their say and to collate a great deal of information, opinions and proposals, with a view to having a better GLAS, commonage and land eligibility process

in place at the end of it.

I thank the members and the witnesses for their contributions. It has taken three hours, but it has been worthwhile.

The joint committee adjourned at 5.20 p.m. until 2 p.m. on Tuesday, 21 April 2015.