

Changes to common land payment claims

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Following the successful legal challenge on the way Minchinhampton and Rodborough Commons claims payments were handled by the Rural Payments Agency (RPA), commons claimants can and have submitted claims to the RPA for an allocation of extra entitlements and retrospective top-up payments for these entitlements.

This affects all common land claimants in England, except (currently) for those in the New Forest.

Under the old rules an individual with commoner's rights would claim on a proportion of the total eligible area of a common, depending on the number of grazing rights they held. The number of rights held was the figure used by the RPA to calculate the notional eligible area (allocated rights / land) each commoner could claim and be paid on i.e. if 30 commoners held rights, the area / payment was split into 30 regardless of whether all 30 commoners actually exercised their rights and made a claim, and each claimant only received a payment based on that 30th share. Those shares that were not claimed (i.e. unallocated rights / land) were effectively retained by the RPA. Under the new 'Minchinhampton rules' a claimant is paid a share based on the number of declared (i.e. exercised and claimed) rights, rather than the total number of rights, to assign a notional eligible area to individuals claiming on a common. This therefore excludes from the calculation any rights that have been granted but are not in use. This new system ensures that the whole eligible area of the common is claimed on every year.

Following this case, people who claimed on their common rights in 2005, and who have



Common land claimants may have to wait longer to receive their subsidy payment from the Rural Payments Agency (RPA), says Hugh Townsend

claimed Single Payment Scheme (SPS) / Basic Payment Scheme (BPS) every year since, should receive additional BPS entitlements from the RPA, and back-payments for the period between 2009 and 2015 if they have submitted a successful claim, and it is now found there is additional common area to be allocated. Depending on the results from the RPA, who are now including commons in their re-mapping programme, it should be noted that the eligible area of the common can be reduced as well as increased.

The RPA have now completed their investigations into the majority of claims for payment on unallocated land under the SPS, and claimants should have received a letter informing them of the outcome. Allocation of top-up en-

titlements for people who had an eligible claim in 2005, but who were not allocated the correct number of entitlements, is ongoing. Payments and entitlements for the BPS will be back-dated to 2015 and the claimants should be notified if they are successful. The RPA advise that a top-up payment will be allocated to the eligible applicants in early 2018 as part of the Post Payment Amendment process.

The RPA have calculated the amount of additional eligible area available on each common based on the difference between the newly assessed total eligible area of a common and the area which was previously allocated under the SPS. As part of the process of re-mapping the commons they are also identifying the eligible and non-eligible

features, which will need to be checked carefully by claimants to ensure they do not exclude eligible features; for example any woodland areas that can be under grazed.

Those commons claimants that have not yet submitted a claim for owed entitlements and back payments are still able to, however claims can only be back-dated six years from the date of submission of the claim. The RPA received thirty new claims in 2017 which they are now beginning to process.

The New Forest is not included in the definition of common land for which a "Minchinhampton claim" can be submitted due to the grazing and agricultural activity being regulated on a separate basis from other commons in England. However the RPA are

suggesting that farmers who believe they might have a valid "Minchinhampton claim" for the New Forest should submit it now. These will be held with the RPA until a decision is made as to whether claims are to be accepted on the New Forest. At present Defra have not yet made a formal policy decision on this, but currently have no plans to include the New Forest in this process. It is unclear as to how the six-year limitation will be applied to the New Forest claims, if they are accepted later on.

We are currently working on a case where a commons claimant submitted a claim for lost entitlements and payments under the SPS. The RPA wrote to our client stating that according to their findings he did not qualify for any payment or allocation of extra en-

titlements, as they had remapped the common and had concluded that over 90% of the area was ineligible because it was not suitable for grazing. However commoners are only required to maintain and manage the common, and own grazing rights, in order to qualify for the payment, regardless of the graze-able area. Our client (one of only two actual claimants on this common) had maintained the common during his SPS claims and even tried to inform the RPA that there were ineligible areas. The situation therefore remains that, even though most of the area is now classed as "ineligible" for claiming BPS, our client has fulfilled all the requirements for maintenance on the common. A common can be managed with a Stewardship agreement that prevents grazing and the commoners can still claim on their grazing rights if they are managing the common appropriately. Although our client's common does not have a stewardship agreement, the common is managed and the management plan intends to limit grazing to certain areas in set months of the year. As there were only two claimants (but approximately 30 people with rights) we believe the claimant has therefore been underpaid by a significant amount when this is accrued over six years.

The above example highlights that claimant's should consider querying the response from the RPA if they are stating that they are not due any further payment or entitlements, as mistakes, misunderstandings and omissions can easily be made. As ever, however, common land claimants may have to be prepared to wait to receive their BPS payment as the RPA may try to process the 'easier' applications first.

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