

Opportunities in BPS 2016 for commoners

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only be backdated six years. A list is available online (<https://www.gov.uk/guidance/sps-common-land-commons-with-more-eligible-area-to-allocate>) which details all of the common land in England which has more eligible area to allocate. This list has not been finalised as some commons are yet to be mapped.

The eligible area of some of these commons has subsequently decreased as identified ineligible areas have been deducted. The responsibility of surveying (i.e. working out the eligible area) in subsequent years is as yet unknown although it is difficult to see how the burden of surveying England's commons will lie with those who exercise the rights to common land on the 7,054 commons in England without RPA assistance.

As for making a BPS claim in 2016 it is likely that issues will arise with commoners wanting to maximise the value of their claim. There are effectively three components required to successfully make a BPS claim on a common.

These are: the total eligible area, the number of commoner's rights used by commoners on that common for that particular year and the number of entitlements required to claim on the eligible area allocated to each commoner.

The number of rights used by commoners is likely to be an area of uncertainty. In 2015, this figure was based on 2014 declarations/receipts, although this would appear to be contrary to BPS payments rules where claims should not be based on the activities of the previous year. The new guidance makes clear, apart from the New Forest, it is now the declarations/receipts for 2016 that will be used for the 2016 claim.

Another concern with a 2016 BPS claim is that yet



again the necessary information for commons claims may not be available before the claim deadline of May 16 and the opportunity to buy or sell the entitlements needed to match the eligible area. This remains to be seen although the RPA have said that commoners will be the last group of claimants to receive their BPS 2015 payment and therefore they may not receive their Entitlement Statements and Claim Statements in time. Technically this could be as late as the end of June 2016, a whole month after the claim deadline.

Without knowing the total eligible area of the common and/or the numbers of commoners rights declared on the common it will be almost impossible to calculate the number of entitlements required to maximise a BPS claim. This issue may not apply however to those who are successful in making a claim as a Young Farmer or New Entrant as extra entitlements should technically be allocated to match the total eligible area claimed. Alternatively in 2016 if buying too many entitlements will not mean they are lost under the new usage rules (unlike 2015) if a claimant has successfully claimed on all their entitlements in 2015, which will be the majority.

For those who have a right to common land and have not made a BPS claim in the past there may be also an opportunity to claim on substantial areas of land which have not been claimed on in the past. Many commons are in Non-SDA areas and therefore will attract £178 per hectare (based on the 2015 payment). Some farmers have already made use of this opportunity last year and we have seen clients increasing their claims from less than 50 ha to 1,000 ha. Of course it requires the funding to purchase entitlements which this year will be more expensive than last, with last year's Non-SDA average price at £98 per hectare compared with current values at £200 per hectare. However we are seeing more and more smallholders who own these common rights starting to recognise these opportunities.

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Commons claims for BPS5 are yet again after last year's fiasco going to cause similar problems this year. However what is becoming apparent is that there are some interesting opportunities for anyone with commons rights whether they have claimed before or not to increase their BPS cheque.

After a legal challenge the method by which DEFRA calculate payments on common land changed last year. The system now calculates payments on the number of declared rights (i.e. when someone uses their rights which normally is putting stock out but can involve other uses including being part of a stewardship scheme) on a common rather than the number of the common rights held. This change to the way in which payments are calculated has now created an opportunity for commoners to make a claim against the RPA for lost payments and an additional entitlement allocation.

A claim against the RPA could be substantial and is one that should not be missed. The payment could be up to £1,200 per hectare for lowland commons for example, of unclaimed common and additional entitlements for this previously unclaimed area. To make a claim the claimant must establish if they are eligible to so. The first question to ask, if you claim on a common, is whether the total eligible area of the common was allocated to those actually using the common in 2005. If not, then those farmers who used their common rights in 2005, and have claimed SPS/BPS every year since, should receive additional entitlements from the RPA, and back-payments for the period between 2009 and 2015. There are also other circumstances in which a claim can be made for financial loss, which is more wide ranging, but professional advice is likely to be needed for this type of claim.

A claim can be made at any time and there is no deadline, although it is advised that claims are made as soon as possible as some losses can