



TOWNSEND & CLARK

UK BPS
ENTITLEMENTS
USER GUIDE

TOWNSEND
CHARTERED SURVEYORS

JANUARY 2017

BIOGRAPHICAL NOTES



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PREFACE

This is the first independently published guide for those involved with UK entitlements not only in respect to buying and selling, but also how they affect decisions taken by farm businesses and managers of land.

The Guide provides historical insight into agricultural subsidies in the UK which date back to 1932, and how they have evolved into the Entitlement-based system we know today. Following the 2016 UK Referendum it has never been so important to fully understand how the EU Basic Payment Scheme entitlement system works, why it is in place, and how it will influence any future UK subsidy system. One needs to know how previous schemes were developed and worked, and subsequently how these may influence the way the UK authorities interpret and manage not only the current scheme, but also design new ones.

The authors have made use of their experience running nationwide quota agencies for over thirty years and also being involved in the practical implications for farmers and land owners, resolving disputes with the RPA, court and arbitration test cases and the effect entitlements have on all aspects of rural farm and estate management. The Guide provides a synopsis of the current entitlement system in the UK, and what should be considered when buying, selling and managing entitlements.

This has been designed as an interactive e-book allowing readers to more easily find relevant subjects/sections. We are expecting users of the guide to “dip in and out” in order to find sections of interest to them. Whilst an effort has been made otherwise to order the information, a balance has been taken between comparing how different UK regions operate the same EU rules, with setting out everything relating to a specific UK region in one section. The authors also recognise that there is less coverage of the smaller regions and therefore are offering this ebook as a guide and not a text book.

Hugh Townsend

Julia Clark

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1 BACKGROUND

1.1 Farm subsidies in the developed world

The current EU farm subsidies paid under the Common Agricultural Policy may seem to many to be an anathema; paying farmers out of the tax payer's pocket to produce food that farmers then sell back to them? And some policies, such as paying farmers to "not farm", as the now defunct "set aside" was viewed by many, are even harder to explain. There are also criticisms that farm subsidies drive prices down and especially hurt smaller farmers in developing countries who have to compete in the global market and do not have the same assistance from their governments. However agriculture is now directly financially supported by national governments in most developed countries (notable exceptions being New Zealand who ceased agricultural subsidies in 1984, and Australia), although the level of assistance varies, and the UK Government has a long history of supporting agriculture going back to well before World War Two (WW2).

1.2 Free trade in the 17th century

1.2.1 Britain has regulated¹ agricultural prices since the 17th century, although it is worth noting that there was a long history prior to this of customs duties being imposed on imports (such as tobacco, silk, alcohol, tea etc.) & exports (mainly wool and woollen products²) by successive governments desperate to raise revenue to pay for costly wars. In the early 1670s farmers were complaining that the grain price was too low and that they were unable to maintain rent payments to the landowners. So in 1673 an act of Parliament protected the home market by excluding imported grain, and encouraged exports by paying a bounty³ on all grain exported overseas, explaining in its preamble that it would help landowners better support the burden of the new land tax⁴ [although the official Land Tax was not actually introduced until 1692]. The bounty was suspended after an experimental period and re-enacted on a permanent basis in 1688 (although it was suspended in poor harvest years to ensure the home supply), and as a result English grain producers were able to export large amounts of grain and pay their taxes. This had a dramatic effect on domestic prices as the policy of subsidised grain exports raised domestic price levels by 19 percent.⁵ It is speculated that grain prices in England during most of the years between 1690 and 1760 (excluding the 1740s) were the highest in Europe, so without the bounties, England would not have been successful at exporting.

¹ In the 17th century there was legislation controlling the "middlemen" who bought and sold goods from farmers, by requiring their registration. The legislation also addressed control of weights and measures, fixed prices, enforced rules about only keeping enough produce back to feed your family with the rest going to market, and the collection of tolls due to the government. Market regulations were eased in 1663 when people were allowed some self-regulation to keep back surpluses, but it was forbidden to withhold commodities from the market in an effort to increase prices. See "A History of English Corn Laws: From 1660-1846" by Donald Grove Barnes.

² See <https://sites.google.com/site/splendor319/main-body-english-trade-16th-17th-centuries>

³ From: A History of English Corn Laws From 1660-1846 by Donald Grove Barnes

⁴ Land Tax was initially calculated on the actual rental values of land, and later voted on annually in Parliament - <https://nationalarchives.gov.uk/documents/the-land-tax-1692-1963.pdf>

⁵ Page 90 - The Fountain of Privilege: Political Foundations of Markets in Old Regime France & England by Hilton L Root.

1.2.2 The expansion of the area of land farmed between 1689 and 1765 could therefore be put down to the bounty and improved security, as well as to the major advances and improvements in agricultural practices. Food production however has always been a political issue as governments feel they have a duty to ensure there are sufficient food supplies available. As the population grew throughout the 1700s and the industrial revolution took hold, people slowly moved from rural communities (where they could in times of need have grown their own food) to towns to provide the workforce for the expanding manufacturing industry, and food imports came from Europe and Asia to meet the shortfall in supply; trade back and forth was relatively free, and Britain was, at the time, the biggest international trading hub.

1.3 **First import controls**

There was a big change, however, brought about by the Napoleonic Wars (1803-1815). When Napoleon was defeated at the Battle of Trafalgar in 1805 he decided on a new tactic – to starve Britain. He set up the Continental Blockade in 1806⁶ because he believed that if he could isolate Britain (“the nation of shopkeepers”) economically, he would be able to invade the nation after its economic collapse. The British also blockaded the European continent in turn, hoping to isolate the Napoleonic Empire and bring economic hardship to the French. One result of the blockades was that goods within the British Isles were protected against competition from outside sources for the first time, so farming became more profitable and farm land increased in value.

1.4 **First farm price support – Corn Laws**

Once the blockades were over, Parliament was keen to preserve the abnormally high profits on corn to safeguard the farmers and landowners from the consequences of their wartime euphoria when farms had changed hands at high prices, and loans and mortgages, and also rent increases, had been accepted on terms that could not be sustained without the high returns continuing. Subsequently the “Corn Laws” were introduced, which were a series of statutes enacted between 1815 and 1846 which maintained grain prices at this continuing high level and prevented cheap imports undercutting the price.

1.5 **Effect of Industrial Revolution**

The beneficiaries of the Corn Laws were generally the nobility and other large landholders who owned the majority of profitable farmland. Since the right to vote at the time was not universal, but instead generally depended on land ownership, voting members of Parliament had no interest in repealing the Corn Laws. The working class had as a result to spend the bulk of their income on corn just to survive, and since they had no income left over for other purchases, they could not afford manufactured goods so manufacturers suffered, and had to lay off workers. These workers then had difficulty finding replacement employment, so the economic spiral worsened for everyone involved, leading to increasing demands for the Corn Act to be reformed. The first major reform of the Corn Laws took place during the ministry of the Duke of Wellington in 1828. The price of corn was no longer fixed, but tied to a sliding scale that allowed foreign grain to be imported freely when domestic grain sold

⁶ Napoleon’s “Continental Blockade” ordered all European nations and French allies to cease trade with Britain, and he threatened Russia with invasion if they did not comply as well.

at 73 shillings per quarter or above, and at increasing tariffs the further the domestic price dropped below 73 shillings. However the effect of this first reform was negligible.

1.6 Effect of Reform Act

The Reform Act of 1832 extended the right to vote to a large percentage of the merchant class, and also granted seats in the House of Commons to large cities that had sprung up during the Industrial Revolution and removed seats from the “rotten boroughs” (i.e. those with very small electorates usually dominated by a wealthy – usually landowning – patron). The Act also increased the electorate from about 500,000 to 813,000, with about one in five adult males allowed to vote from a total population (including women and children) of about 14 million. During the years preceding there were many voices who called for the Corn Laws to be repealed, the most vocal being the Anti-Corn Laws League (“the most impressive of 19th century pressure groups, which exercised a distinct influence on the repeal of the Corn Laws in 1846”⁷). The aim of the merchant classes and industrialists was to loosen the restrictions on trade generally, so that they could sell more goods both at home and around the world. In 1846 the government under Sir Robert Peel was persuaded to repeal the Corn Laws.

1.7 Food supplies during WW1

1.7.1 Soon after the outbreak of the First World War the German Navy attempted to halt the flow of imports to Britain by introducing submarine warfare. By the end of 1916 (with food shortages looming after poor harvests in 1916 due to severe weather - 10 hurricanes, four tropical storms and one extra-tropical storm), German U-boats were, on average, destroying about 300,000 tons of shipping a month and in February 1917, the German Navy sank 230 ships bringing food and other supplies to Britain. The following month a record 507,001 tons of shipping was lost as a result of the U-boat campaign. However, Britain was successful at increasing food production and the wheat harvest of 1917 was the best in its history.

1.7.2 Potatoes were often in short supply and sugar was often difficult to get and whereas the weekly consumption of sugar was 1.49lb in 1914, it fell to 0.93lb in 1918. The consumption of butchers' meat also dropped from an average of 2.36 to 1.53lb a week during this period. At the end of 1917 people began to fear that the country was running out of food. Panic buying led to shortages and so in January 1918, the Ministry of Food decided to introduce rationing. Sugar was the first to be rationed and this was later followed by butchers' meat. The idea of rationing food was to guarantee supplies, not to reduce consumption. This was successful and official figures show that the intake of calories almost kept up with pre-war levels. Thanks in part to another good wheat harvest in 1918 and the U-boat threat being contained through the convoy system, the food crisis was averted. Sugar and butter however remained on ration until 1920.

⁷ Anthony Howe, *The Cotton Masters, 1830-1860* (Oxford University Press 1984)

1.8 **Agricultural revolution, steamships and railways**

Major developments and innovations⁸ made during the British Agricultural Revolution (mid-17th century to the late 19th century) all resulted in Britain's agriculture becoming the most productive in Europe, with 19th century yields as much as 80% higher than the continental average. Even as late as 1900, British yields were only rivalled by Denmark, the Netherlands and Belgium. However Britain's lead withered away as European countries experienced their own agricultural revolutions, raising grain yields on average by 60%. British arable production was also affected by the development of steam ships and extensive railway networks in the USA and Britain, which allowed US farmers to export grain to Britain at prices that undercut British farmers. As a result the UK grain acreage fell by 45% by the 1930s as farmers shifted away from food crops to livestock production, and imports of food (and livestock feed) surpassed domestic production.

1.9 **First "Quota Payment"**

The Wheat Act of 1932 was passed as a reaction and is considered by some to be a forerunner⁹ of the subsidy schemes seen today. It was the first of a series of 20th century Acts designed by the British Government to improve the income of farmers and farm-workers, and support farmers, by encouraging arable production when a lot of arable land had reverted to pasture. It was also introduced at a time when many British wheat farmers were going bankrupt as the world price of wheat collapsed in 1931-2 during the Great Depression. The UK at that time imported well over 90% of its wheat for human consumption, and British wheat contributed only one sixth of the total used for human and animal consumption in the UK. As the wheat price fell to the floor, the Government decided to place duties on imported foreign wheat and a levy ("quota payment") on all sales of imported flour, so they could then use these monies to provide "deficiency payments" to top up the prices paid to British wheat growers on British mill-able wheat¹⁰. The Minister for Agriculture set the average price to be paid for wheat (so the deficiency payments would top-up the prices actually received by farmers to the average price) and the size of the quota payments/levies collected from the millers.

1.10 **The model for future agricultural subsidies**

This system worked well at the time, as Britain imported far more than it grew, so the income raised from the levies easily paid for the deficiency payments to the relatively few British wheat growers. Between 1932 and 1940, the Wheat Act accomplished its primary objective of bringing financial relief to wheat growers. It also led to a relatively large and sudden increase in wheat production by providing an attractive minimum price, and an

⁸ During the Agricultural Revolution notable developments that increased production were: crop rotation, improved Chinese plough, enclosure of land to establish exclusive ownership, development of a national market free of tariffs, tolls and customs barriers within Britain, improved transport infrastructures, land conversion/reclamation, increases in farm sizes and selective breeding.

⁹ The Wheat Act 1932 A Forerunner of Modern Farm Price Support Programmes by JA Mollett

¹⁰ The levies were collected from flour millers and importers by the Flour Miller's Corporation, and were paid weekly to the Wheat Commission. Wheat growers then had to register with the Wheat Commission in order to receive their deficiency payments.

assured market¹¹. It is clear that as a result of the Wheat Act, arable production was able to increase in Britain, and although bread cost a little more as a result of the levies, at the same time there was an improving level of employment generally, meaning more could afford the slight price rise, and so there was little or no public outcry over the rise. As the overall cost to the Government was slight, and the outcome considered very successful, this became an aspirational model for later agricultural subsidies.

1.11 **WW2 continued the Wheat Act**

Following the outbreak of the WW2 the Government felt there was a need, more than ever, to protect and encourage British wheat growers as our vulnerability to blockade became a real concern, and so the Wheat Act and amendments were continued. However, important changes were made including the regulation of market prices and the cereal year being divided into four periods, each with separate deficiency payments. Another change was that from 1940 flour levies were suspended, and the Ministry of Food took on the responsibility for paying the deficiency payments to wheat growers direct. From 1939 to 1953, Government purchasing and controlled prices replaced the market price system for practically all agricultural commodities, so no deficiency payments needed to be made over and above the price the Government paid for wheat.

1.12 **Post-WW2 – The Agriculture Act**

The Agriculture Act 1947 was a reaction to the ongoing shortages experienced following WW2, and was aimed purely at establishing food security, so as to reduce the risk of a hostile foreign power being able to starve the UK into submission. The Act¹² states: *“The following provisions of this Act shall have effect for the purpose of promoting and maintaining, by the provision of guaranteed prices and assured markets for the produce mentioned [...], a stable and efficient agricultural industry capable of producing such part of the nation’s food and other agricultural produce as in the national interest it is desirable to produce in the United Kingdom, and of producing it at minimum prices consistently with proper remuneration and living conditions for farmers and workers in agriculture and an adequate return on capital invested in the industry.”*¹³ There were further amendments to the Act in 1949, 1954, 1963 and 1968, along with new Acts to encourage the expansion of agricultural production to upland areas for livestock, thus releasing lowland pasture for arable production. In addition, the aspects of agriculture that were eligible to receive support payments kept on expanding as successive governments identified new areas of agriculture that needed support (i.e. calves in 1949; reinstating payments for wheat in 1954 and extending the scheme to include oats, barley, rye and mixed corn; giving grants in respect to field drainage improvements and liming; increasing grants for farm improvements under the Hill Farming Act 1946, instigating payments for hill sheep and cattle, offering winter keep and grassland renovation grants in 1963).

¹¹ There was a statutory limitation on the total deficiency payments from wheat-growing in 1934-35 and 1935-6 which kept production levels in check in those years. The improvement of wheat prices in the 1935-6 & 1936-7 years necessitated a steady reduction in the rate of the levy charged on imported flour, and the levy was suspended for a year in 1937. An amendment to the Act was passed in 1939 which gave some fine tuning such as reducing the levy on flour destined for livestock feed.

¹² Agriculture Act 1947, Chapter 48, Part 1

¹³ Agriculture Act 1947 Part 1(1) 6.8.1947

If one wants to look at pre-EEC UK-devised farm subsidies and support, this period may help illuminate how any agricultural support scheme is created and why (albeit in the economic and social circumstances prevailing at the time), and what may influence any post-Brexit support systems.

2 DEVELOPMENT OF MODERN DAY SUBSIDIES

2.1 **Joining the EEC**

No referendum was held when Britain (then led by Prime Minister Ted Heath) agreed to an accession treaty on the 22nd January 1972, together with the existing European Economic Community (EEC) states, Denmark, and Ireland, or when the European Communities Act 1972 went through the legislative process. Britain joined the European Economic Community on the 1st January 1973, along with Denmark and Ireland. A referendum was held in 1975 to gauge public support for continuing EEC membership, and there was a vote of 67% in favour from a 65% turnout. By joining the EEC, Britain automatically was included in the Common Agricultural Policy (CAP) which was created by the Treaty of Rome in 1957 to permit free trade within the common market, ensure the security of food supplies for Europe, and provide a fair income for European farmers. The CAP had come into force in 1962 with three guiding principles: market unity, community preference and financial solidarity. Since then, the CAP has been a central element in the European institutional system, and an early step on the road to European integration.

2.2 **Evolution of the CAP**

2.2.1 The priorities and objectives of the CAP have evolved as the common market expanded, and as targets have been achieved. In the early 1970s the focus of CAP legislation was to encourage the modernisation of farms and farming methods, the promotion of professional training and also renewing the workforce by offering incentives to older farmers to retire early (the Mansholt Plan¹⁴). In 1975 new initiatives were taken to assist farmers working in difficult conditions, such as hill farmers in less favoured areas.

2.2.2 By the 1980s the CAP had successfully met the objectives of moving the EEC towards self-sufficiency, but now had the opposite problem of almost permanent surpluses of the main farm commodities, some of which were exported (with the help of subsidies), while the rest had to be stored or disposed of. This became very expensive, and it was also a time when environmental issues were becoming increasingly important considerations for the policy-makers and politicians. In 1980 the Council decided to reform the CAP.

¹⁴ In the late 1960s when the Common Organisations of Markets (COMS) were being put in place, the Commission was determined to limit CAP expenditure. Prepared by the Commissioner Sicco Mansholt, the aim of the first reform plan was to encourage nearly five million farmers to give up farming: that would make it possible to redistribute their land and increase the size of the remaining family farms, in order to make them viable and guarantee for their owners an average annual income comparable to that of other workers in the region. The plan was rejected by the agricultural community, and only three directives of agricultural reform were approved in 1972 (modernisation of agricultural holdings, abandonment of farming and training of farmers). (From https://ec.europa.eu/agriculture/cap-history/crisis-years-1970s_en)

- 2.2.3 In 1984 Milk Quota was introduced along the lines of the production limiting elements of the already established Sugar Quota¹⁵, with the purpose of limiting the surpluses (milk lakes). There was an allocation to each EEC member state based on the national milk production in 1981, plus 1%. This was then distributed to the individual milk producers by the Milk Marketing Board (MMB) in England & Wales. There would be a levy due by each member state for every litre produced above the national reference amount, which was recovered from the individual milk producers by the Intervention Board (who monitored production via monthly production reports supplied by milk purchasers). Although not originally intended to have a value, UK commercial ingenuity developed a means within the EU law for the transfer and lease of milk quota, despite EC resistance. Milk Quota became a valuable asset that was traded between dairy farmers as a way of avoiding the levy. (Following the CAP Health check in 2008 it was agreed that Milk Quota would eventually be abolished, and it was abandoned in March 2015.)
- 2.2.4 In 1992 the “MacSharry reform” of the CAP started the shift from production support (through guaranteed prices) to producer support (through income support) which aimed to improve the competitiveness of EEC agriculture, and also to stabilise the CAP budget expenditure. The EEC adopted an Integrated Administration and Control System (IACS) in 1992 to improve the efficiency with which direct payments were made to farmers, and farmers had to submit annual IACS returns (see below). Direct payments were introduced to compensate for the decrease in the price support available (e.g. cereal guaranteed prices had dropped by 35% and beef prices by 15%).
- 2.2.5 The Maastricht Treaty¹⁶ was ratified by all European Union member states in 1993 and implemented by means of extensive amendment to the Treaty of Rome, including the change from the name EEC to European Union (EU).
- 2.2.6 In November 1997 the Agriculture Council of Ministers defined the European model of agriculture as having a multi-functional role including maintaining the countryside, conserving nature, contributing to the vitality of rural life, responding to consumer concerns and demands regarding food quality and safety, protecting the environment and safeguarding animal welfare. This model was endorsed by the European Council in December 1997. In 1998 “budget stabilisers” were introduced setting a maximum ceiling for the CAP budget.

¹⁵ Sugar Quota was introduced in 1968 following the Treaty of Rome in 1960, and can be summarised as: a) price guarantees; b) import/export regimes; c) production quota system; d) storage cost equalisation scheme; e) self-financing regime; and f) refining regime (Summarised from “Sugar Regime of the European Union” by Mr Bart Vrolijk, Agricultural Trade Policy Analyst, Commodities and Trade Divisions, FAO (<ftp://ftp.fao.org/docrep/fao/005/x4988e/x4988e06.pdf>))

¹⁶ The Maastricht Treaty includes sections on political union and on economic and monetary union, as well as a redefinition of the role of legislative and executive bodies. It establishes the principle of subsidiarity, by which any action by the Union shall not go beyond what is necessary to achieve the objectives of the treaty.

- 2.2.7 In 2000, a new policy “Agenda 2000” set new objectives for the CAP based on economic, social and environmental goals within the requirements of the Amsterdam Treaty (1997) which superseded the Maastricht Treaty.
- 2.2.8 In 2003, following the Mid Term Review of Agenda 2000, responding to the pressures from EU society and its ever-evolving economy, new reforms aimed at enhancing the competitiveness of the farm sector were initiated. This involved a radical re-building of the CAP such as the “de-coupling” of income support payments to farmers so they were no longer linked to production, and the introduction of cross compliance¹⁷ and modulation. The EU agreed to “de-couple” subsidies from production to simplify the system, and also to tie in with international agreements to reduce market-distorting subsidies and price controls. Thus the Single Payment was introduced in 2005, replacing most of the old subsidy schemes and instead subsidising farmers on a per-hectare-farmed basis.

2.3 Why do farmers and growers need support today?

Food, the authors would argue, is a strategic issue for all national governments, and food security is considered a key economic objective, as is, increasingly, the protection of the environment. Farmers and growers are therefore important parts of any economy, and also the guardians of our rural landscape, yet they suffer from three potential problems:

- 2.3.1 Farm incomes have fallen because of increasing global food production, better global transportation solutions, higher yields following the application of new technology in the developing world, and new entrants into the market.
- 2.3.2 Farm prices are always extremely unstable, largely because of unpredictable supply shocks such as poor weather and disease, with these shocks never affecting all member states, or indeed the rest of the world, equally.
- 2.3.3 Farmers and growers have lost power to the large supermarket chains, who exert their collective power as the main buyer of farm produce by forcing down prices paid to farmers.

Therefore in order for farmers to be able to meet environmental targets imposed upon them by government, to pay competitive wages to agricultural workers in line with government guidelines, to produce good quality food that meets all the legislated health & safety standards and animal welfare requirements, and to be a viable business in a competitive market, there is an argument that they need financial support in the form of subsidy payments of some kind from the Government.

¹⁷ Cross-compliance is a mechanism that links direct payments to compliance by farmers with basic standards concerning the environment, food safety, animal and plant health and animal welfare, as well as the requirement of maintaining land in good agricultural and environmental condition.

¹⁸ This was a mechanism introduced in the 2003 reform of the CAP which was modified in the health check of 2009. It allowed for the reduction of direct payments and the transfer of the money thus ‘saved’ from pillar 1 (European Agricultural Guarantee Fund) to pillar 2 (European Agricultural Fund for Rural Development).

2.4 CAP subsidies and how they are administered

The individual Member states within the EU make their own arrangements, within EU legislation, to distribute the subsidies they claim from the EU under the CAP. For the UK the CAP funds are currently strategically coordinated by DEFRA, and then administered in England by the Rural Payments Agency (RPA), in Scotland by the Scottish Government Rural Payments & Inspections Directorate (SGRPID), in Wales by the Welsh Assembly Government (WAG), and in Northern Ireland by the Department of Agriculture, Environment & Rural Affairs (DAERA). The administrative bodies also have a duty to the EU to take all necessary measures to assure that CAP monies provided to farmers and growers are claimed and paid correctly, that irregularities are prevented, and that any overpayments or errors are followed up and amounts paid incorrectly are recovered.

2.5 IACS

2.5.1 In order to carry out this role all EU national administering bodies are required to operate an Integrated Administration & Control System (IACS), which consists of a number of computerised and interconnected databases which receive and process aid applications, and provide:

- A unique identification system for farmers;
- An identification system covering all agricultural areas called Land Parcel Identification system (LPIS);
- An identification system for payment entitlements; and
- A system for the identification and registration of animals.

2.5.2 The IACS system (created following the 1992 CAP reform) is updated by the EU Member states' administering authorities via annual returns/claims received from claimants. It ensures the identification of each farmer or farming business as well as of all of the agricultural parcels of land, and, if needed, animals. The monies shared out across the Member states from the European Agricultural Guarantee Fund (EAGF) are calculated by reference to IACS and the percentage share of agricultural land farmed between them.

2.5.3 Initially EU subsidies were connected to production, i.e. specific crops and livestock (see 3.1 overleaf) and multiple returns were required to be submitted to the relevant payment agencies by farmers in order to qualify for these separate payments (some were administered by the UK Intervention Board, some by the MAFF/DEFRA Paying Agency, etc.). Milk Quota [1984-2015], although not a direct subsidy, acted as a production control, and there were also intervention supports paid to dairy farmers via the EEC/EU Intervention agencies who would buy unsold butter and Skimmed Milk Powder (SMP) at a guaranteed price during certain periods of the year.

3. SINGLE PAYMENT SCHEME

The Single Payment Scheme, originally set to run from 2005 to 2012 (and later extended to 2014), was introduced by EC Council Regulation 1782/2003 following the Mid Term Review of the CAP in 2003, and changed CAP support payments to farmers from a production-based system (with multiple application forms to be completed – see list below) to a much simpler area-farmed basis. The Member states' administering authorities then had to decide how this change would be implemented, and it was felt by the UK administering authorities that this had to be done gradually to enable farms to adjust for their changing income from the CAP, and to make sure the payments reflected to a degree the monies they had been receiving before from the various support schemes. Each regional administration centre had to decide how best to achieve this, and ultimately all the UK regions took slightly different approaches. (See 3.2.3 for a summary of each UK region's approach).

3.1 Direct subsidy schemes replaced by the Single Payment Scheme

- Arable Area Payment Scheme (AAPS)
- Beef Special Premium (BSP)
- Suckler Cow Premium (SCS)
- Sheep Annual Premium (SAPS)
- Extensification Payment Scheme (EPS)
- Slaughter Premium (SPS)
- Veal Calf Slaughter Scheme (EVEAL)
- Seed production Aid
- Hops income Aid
- Dairy Premium
- Dairy Additional Premium

3.2 How were SPS entitlements allocated within the UK regions?

3.2.1 Farmers/landowners had first to demonstrate they had the supporting land at their "disposal" during the qualifying period, which was at least ten months before the 30th April 2005. This established the number of entitlements (one per hectare farmed) a farmer/landowner would be allocated when they submitted their SPS claim on 15th May 2005. The value of the entitlements allocated to each farmer/landowner was then calculated by the different UK regions based on the subsidies and payments the farming business had claimed in the reference period (2000-2002). Mechanisms were made available for those farmers whose businesses were not established in the reference period, or who could claim Force Majeure during that period which affected the level of subsidy claims they made, so they could apply to a National Reserve for appropriately valued entitlements.

3.2.2 All farmers who submitted a valid claim for the SPS in 2005 were allocated entitlements, and the appropriate historic and/or flat rate elements were included in the assessment of the payment values of the entitlements given to each farmer/crofter. This meant that mixed livestock and arable farmers, and dairy farmers, often received high value entitlements. In England the historic element of the payment calculation gradually reduced over the life of the scheme to Flat Rate (see the Table in 3.7.1.1). English farmers who had little or no historic value attached to their entitlements received the basic Flat Rate which gradually rose in value over the life of the scheme. In Wales & Scotland the historic value of previous combined subsidy claims were bundled into the value of the entitlements issued to

farmers/crofters, and this historic payment rate then stayed static for the life of the SPS. The Northern Irish entitlement values were calculated based on 80% of historic claims, and 20% on an area basis, which then stayed static for the life of the SPS.

3.2.3 The table below¹⁹ sets out the different methods the four UK regional administrative centres put in place for the implementation of the 2013 CAP reforms within the UK.

Table 3.2.3	Regional implementation	Basis for Single Payment Scheme	National Envelopes (b)	Additional national modulation (a)
ENGLAND	i) Non-SDA ii) SDA iii) Moorland	Dynamic hybrid - moving from historic to flat rate (or area) payment by 2012		2005: 2% 2006: 6%
WALES	Single	Historic		2005: 1.5% 2006: 0.5%
SCOTLAND	Single	Historic	Scottish beef calf scheme	2005: 3.5% 2006: 4.5%
N. IRELAND	Single	Static hybrid – 20% on area basis, 80% on historic basis		2005: 0.0% 2006: 4.5%

(a) Compulsory EU modulation was set at 3% in 2005, 4% in 2006 and 5% from 2007 onwards.

(b) Article 69 of Council Regulation (EC) 1728/2003 allowed up to 10% of Single Payment ceilings to be effectively re-coupled and used to subsidise “specific types of farming which are important for the protection or the enhancement of the environment or for improving the quality and marketing of agricultural products.

3.3 UK Regional land classifications

3.3.1 In England land is classified as being in one of three regions: Upland SDA (Severely Disadvantaged Area), SDA-Moorland, and Non-SDA (i.e. lowland). There were different types of entitlement for each region, and each had a different payment rate, with moorland receiving the lowest payment per ha.

3.3.2 In Northern Ireland, Scotland and Wales all land was classified as being in a single region within the national boundary, as the bulk of the SPS payment in these regions would be based on the historic claims the farmers had made in the reference period of 2000-2002.

¹⁹ Page 4 of “Distribution of payments and payment rates for the 2005 Single Payment Scheme” produced by DEFRA Agricultural Change and Environment Observatory Research Report no. 07 (May 2007) <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-environ-obs-research-sps-analysis05-jun07.pdf>

3.4 Types of SPS entitlements

3.4.1 *England*

3.4.1.1 Initially there were many different types of entitlements issued by the RPA under the SPS (as well as already issuing separate entitlements for different land area classifications) as follows:

- | | |
|-----------------------|---|
| SAS
(Set
Aside) | <p>(1) Set Aside entitlements obligated the holder to claim the Single Payment against a hectare of fallowed land managed according to the Set Aside Rules, or a hectare of industrial/non-food crop (i.e. a crop grown to produce goods for manufacturing, for example of fibre for clothing, rather than food for consumption). These were the most restrictive of the entitlements, as it was incumbent on every applicant holding Set Aside entitlements at midnight on the 15th May annually, to “set aside” an area of land equal to their Set Aside entitlements for the whole claim year, and manage it according to the Scheme rules otherwise penalties were applied.</p> <p>(2) Set-aside became compulsory in 1992 for large arable farmers. It was originally set at 15% of the total land farmed and reduced to 10% in 1996. Following the introduction of decoupled payments in 2005, farmers were allocated a number of set-aside 'entitlements' equivalent to 8% of their productive land excluding permanent pasture. In order to receive payment on these set-aside entitlements, an equivalent number of hectares had to be removed from agricultural production. This was particularly a problem for dairy farmers, who traditionally used all their land to graze their animals, had never been required to comply with this before and could not easily meet the requirements of this rule.</p> <p>(3) Set-aside land was shown to be an effective way to improve soil chemistry and increase biodiversity on arable farmland, especially on 5-year non-rotational set-aside.</p> <p>(4) On the 16th July 2007, the European Commission (EC) announced its intention to publish a proposal to reduce the set-aside requirement to 0% in 2008, and the proposal was adopted on the 26th September 2007. This was to help mitigate current shortages in the EU cereals market, increase cereals supply to the market and therefore reduce prices following two consecutive lower EC harvests.</p> <p>(5) The EC agreed in November 2008 to abolish set aside completely through the CAP Health Check, and the set aside rate for that year was set at zero. By the 2009 SP Scheme Year all SAS entitlements were converted to normal Flat Rate entitlements in England.</p> |
| NML | <p>Normal entitlements enabled the holder to claim the Single Payment against a hectare of cereals, oilseeds, dry peas/beans, sugar beet, grass etc.</p> |
| NMF | <p>Normal Fruit, Vegetables and Potatoes (FVP) Authorised entitlements enabled the holder to claim the Single Payment against any eligible land use including fruit, vegetables and potatoes. The FVP was inextricably linked to a Normal Entitlement. These too were phased out at the end of</p> |

2008, and became normal Flat Rate entitlements for 2009.

- SAF FVP Authorised Set Aside entitlements which were rare but were awarded to applicants who grew more FVP in 2003 or 2004 than the area that they established entitlements on in 2005. The FVP could be removed from an SAF Entitlement and attached to a NML Entitlement.
- ERS English Reserve entitlements which were awarded where the reference amount of the applicant was enhanced by more than 20% as a result of an award from the National Reserve. All Reserve entitlements had to be claimed every year (rather than every third year in the case of Set Aside and Normal entitlements) and were not transferable without land until the 2010 Scheme Year. If not claimed upon in any scheme year they were taken back to the National Reserve.
- ERF FVP Authorised English Reserve entitlements (phased out when NMF entitlements were phased out at the end of 2008).
- SPE Special entitlements, the holder of which did not have to annually match a hectare of land against each entitlement in order to receive the Single Payment (as with all the other types of entitlement), but instead had to maintain his production of non-land-using enterprises at at least 50% of the average during the period 2000-2002.

3.4.1.2 As the Single Payment Scheme “bedded in” most of the different types of entitlement were gradually withdrawn. The Set Aside entitlement for instance, which received such bad press in the non-agricultural community, caused serious problems for livestock farmers who used all their available land to graze livestock. They had not routinely left fields out of production as their arable counterparts did, and so for this to be compulsory meant many dairy farmers, for instance, often paid other farmers to take on their Set Aside entitlements so they could continue to farm as they always had. Furthermore landowners who had large areas of unused land were able to profit from doing nothing with their land. In 2007-08 the requirement to activate Set Aside entitlements was suspended and they were converted to Normal entitlements in 2009.

3.4.1.3 With the arrival of the BPS, which superseded the SPS, in 2015, there are now no “special entitlements” in England, just the different area entitlements.

3.4.2 *Wales, Scotland & Northern Ireland*

In 2005 there were three main types of entitlements allocated to claimants, and unlike England there was only one region. The three types of entitlements were:

- *Standard*: claimed using 1 hectare (or part hectare – minimum 0.3 hectares) of eligible land for each entitlement.
- *Special Conditions*: these were not supported by land but could be claimed by meeting the livestock unit requirements.
- *Set Aside*: (see definition above in 3.4.1.1(1)-(5))

3.5 SPS Entitlement Value Calculation

3.5.1 *England*

3.5.1.1 DEFRA decided to combine a percentage of the historic support claimants had been receiving from the eleven previous subsidy schemes (Beef Suckler Premium Claims, Sheep Annual Premium Claims, arable area payments, the dairy premium etc.), based on the claims they had made in 2000-2002 (the “reference period”), with a percentage of a flat rate payment. The plan was then to gradually reduce the historic support percentage and increase the flat rate percentage over the seven years of the scheme (see table below²⁰), so that by 2012 no-one was paid any historic element, and all English claimants would be paid the flat rate for each payment region. This system was known as a “Dynamic Hybrid”.

Table 3.5.1.1	2005	2006	2007	2008	2009	2010	2011	2012
Flat rate %	10	15	30	45	60	75	90	100
Historic element %	90	85	70	55	40	25	10	0

3.5.1.2 Due to the EU not agreeing the CAP reform package by 2012 as was the original target, the SPS eventually continued until 2014, with all English claimants by then receiving the flat rate. The replacement Basic Payment Scheme (BPS) came into force in 2015.

3.5.1.3 In February 2006, the RPA announced that it had definitively established entitlements under the SPS and calculated the flat rate value for payments for the three English regions for 2005 (see table below). At the same time, the scale back for the National Reserve was announced at 4.2% UK-wide.

Calculated flat rate payment values in 2005²¹

Table 3.5.1.3	Euro/ha (a)	£/ha (b)
Non-SDA	€28.20	£19.23
SDA	€23.59	£16.09
Moorland	€3.36	£2.29

(a) Data refers to the 10% 2005 flat rates. They include the National Reserve deductions but exclude deductions for modulation (set at 5% for England in 2005).

(b) Conversion rate applied was 0.68195, the value of the Euro on 30 September 2005.

²⁰ As per footnote 14.

²¹ From page 5 of “Distribution of payments and payment rates for the 2005 Single Payment Scheme” produced by DEFRA Agricultural Change and Environment Observatory Research Report no. 07 (May 2007). <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-environ-obs-research-sps-analysis05-jun07.pdf>

3.5.2 *Wales and Scotland*

In Wales and Scotland the Governments decided to pay eligible SPS claimants an historic payment based on an average of what they had received previously from all CAP subsidies (i.e. Arable Area Payment Scheme, Beef Special Premium Scheme, Dried Fodder, Extensification Payment, Seed Production Aid, Sheep Annual Premium Scheme, Slaughter Premium Scheme & Suckler Cow Premium Scheme) in the qualifying reference period (2000-2002).

3.5.3 *Northern Ireland*

Claimants were allocated entitlements based on two elements, namely a reference amount (80%) and an area amount (20%). The reference amount was a combination of a historic reference amount based on the average subsidy claimed between 2000 and 2002, a dairy premium account (based on milk quota held in March 2005) and a National Reserve award (based on an additional amount where a farmer applied for and received an award under special situations). The area amount was calculated at €78.33 per eligible hectare declared for use under the SFP Scheme. The reference amount and the area amount led to the calculation of the payment entitlement established in the first year of the Scheme (2005). This system was known as a “Static Hybrid”.

3.6 **SPS Entitlement usage rules**

- 3.6.1 If a claimant did not activate an entitlement for three years, it was withdrawn and put into the National Reserve, except in cases of force majeure or exceptional circumstances. They could only be used in the UK region and/or area of England where they were established.
- 3.6.2 However SPS entitlements all had individual “Block ID” numbers (as they all had a different historical value attached to specific entitlements which needed to be recorded by the administering authorities), and therefore the prior usage of an entitlement could be tracked. It was common practice for the RPA etc. to activate the oldest available unused entitlements when processing a claim for a farmer, which meant the farmer could hold more entitlements than he actually needed for his claim as the usage would be ‘rotated’ to keep them all “live”. This was a way of keeping the asset of entitlements on the farm books ready and available should more land be taken on, or just keeping the surplus available to sell at a time to suit the farming business.
- 3.6.3 For example, if a claimant had 90 entitlements but only 30 hectares of eligible land in 2006, they could use 30 entitlements in 2006, a different 30 entitlements in 2007, and then the remaining 30 entitlements in 2008. They could then use the first 30 entitlements again in 2009, and so on. This meant the claimant could use all of their entitlements at least once every three years.

3.7 **National Reserve**

- 3.7.1 As part of the CAP reform the European Commission, in accordance with EU law, required all EU member states to set up a National Reserve to supply entitlements to those farmers who did not automatically receive them in the first year of the scheme, as it was recognised that some farmers in 2005 would not have been allocated SPS

entitlements otherwise due to changes during or since the 2000-2002 reference period. The European Commission set up a financial ceiling for each member state to meet the cost of the SPS from 2005.

3.7.2 In order to apply for the National Reserve an applicant must have been a farmer carrying out “agricultural activities” at the time of application. This meant that the holding must have been in the UK and the farmer must have been involved in producing, rearing or growing agricultural products and/or maintaining land in good agricultural and environmental condition. Farmers were required to ensure that the land declared to support Reserve entitlement applications complied with the CAP cross-compliance standards and the land had been at the disposal of the farmer for a continuous 10-month period.

3.7.3 Early SPS guidance in 2005²² further added the following categories as being eligible to apply for entitlements from the National Reserve:

- investors;
- lease and purchase of leased land;
- transfer of leased land;
- dairy (hardship);
- dairy converters;
- nationally funded agri-environment schemes;
- Energy Crops scheme.

3.7.4 The UK National Reserve in 2005 was funded from the following:

3.7.4.1 A deduction of up to 3% from all historic reference amounts allocated for SPS.

3.7.4.2 The difference, if any, between the UK financial ceiling and the sum of the value of entitlements allocated to farmers across the UK.

3.7.4.3 Amounts withdrawn from farmers who did not establish SPS entitlements by submitting their single application form (previously known as IACS) by the 15th May 2005.

3.7.4.4 A further deduction was able to be applied to the reference amounts for SPS if there were insufficient funds to cover all successful awards from the National Reserve.

3.8 **Transfer of entitlements under SPS**

3.8.1 Entitlements were able to be transferred between eligible farmers, so as to enable those retiring or giving up, to sell their entitlements to those who were not eligible to

²² See page 35 of the RPA Single Payment Scheme : Handbook & guidance for 2005
[http://webarchive.nationalarchives.gov.uk/20140305104944/http://rpa.defra.gov.uk/rpa/index.nsf/15f3e119d8abcb5480256ef20049b53a/8023c4858466f7c88025701b00481cb2/\\$FILE/ATTUNU2Z/SPS%20Guidance%20\(version%201.0\).pdf](http://webarchive.nationalarchives.gov.uk/20140305104944/http://rpa.defra.gov.uk/rpa/index.nsf/15f3e119d8abcb5480256ef20049b53a/8023c4858466f7c88025701b00481cb2/$FILE/ATTUNU2Z/SPS%20Guidance%20(version%201.0).pdf)

apply to the National Reserve, i.e. tenants buying their farms, renting extra land or new tenants.

- 3.8.2 Entitlements could be transferred either with or without land, and by either a permanent or temporary (lease) transfer. Under the SPS, a farmer was defined as “a natural or legal person, or group of natural or legal persons, whatever status is granted to the group and its members by national law... and who exercises an agricultural activity”.
- 3.8.3 Entitlements could be transferred at any time of year by submitting a paper transfer application form, but the transferor would have to submit the application at least six weeks before the transfer was due to take place (although it was possible to specify an effective transfer date further than six weeks ahead if wished).
- 3.8.4 If the transferor did not specify a transfer date on the application form, the transfer would automatically take effect six weeks from the date the relevant payment agency (RPA, RPW, SGRPID, DARDNI) received the form. If the payment agency did not contact the transferor to object to the transfer within six weeks, the transfer took effect from the date stated on the transfer application form, and the payment agency would confirm this in writing to both parties in due course.
- 3.8.5 If the payment agency did object to a transfer because it did not meet the requirements of the regulations as stated in Article 25 (3) of Commission Regulation (EC) No. 795/2004, a fresh application would need to be submitted.
- 3.8.6 In order to claim payment on an entitlement, a farmer must have held the entitlement on the 15th May in the scheme year. Therefore, taking account of the six-week notification period, a transfer must have been notified to the payment agency on or before the 2nd April if the entitlements concerned were to be claimed on in that scheme year.

3.9 **Transfer of entitlements by lease under SPS**

- 3.9.1 Entitlements could be leased only with an equivalent number of eligible hectares of land.
- 3.9.2 To be considered as a lease with land, the lease of entitlements must have been accompanied by the lease of a corresponding area of eligible land. The leases for land and entitlements had to be for the same period of time and have the same start and end dates, which must have been stated on the transfer application form. At the end of the lease agreement, the land and the entitlements automatically reverted to the lessor.

4. BASIC PAYMENT SCHEME

4.1 **Difference between SPS and BPS**

4.1.1 The Single Payment Scheme (SPS) was originally set to run until 2012, but the CAP Reform negotiations took longer than expected and so the date of moving to the new scheme was “slipped” (i.e. delayed) to align with the next budget period so it eventually ran until 2014, when it was replaced in 2015 by the Basic Payment Scheme (BPS) which is currently set to run until 2020 (the next reform date).

4.1.2 The SPS payment was a payment per ha (at the rate set for each “region”, i.e. SDA, Non-SDA, Moorland in England etc.) based purely on the eligible area farmed, less a percentage deduction called “modulation”. Compulsory Modulation enabled the EU to take a percentage of every SPS payment in each member state to help fund rural development programmes. In addition each regional government had an option to collect an additional contribution (called “voluntary modulation”) to fund the national Rural Development Programmes. These development programmes included support for agri-environmental, forestry, less-favoured areas, and socio-economic measures. Modulation was taken from the payment due a farmer after the national administering authorities had applied any penalties (except those resulting from a breach in cross compliance). The first €5,000 of an SPS payment was exempt from European modulation but not exempt from national modulation.

4.1.3 In England, the SDA entitlement payment values under the Single Payment Scheme were considerably lower than Non-SDA. However the RPA re-assessed the payment value of the Basic Payment Scheme regional entitlements from the start of the new scheme (2015). SDA entitlements subsequently were made practically equal to Non-SDA entitlements (which were reduced in value slightly to fund this change), bringing SDA (excluding greening) to €170.60, and Non-SDA (excluding greening) to €171.83. The Moorland BPS entitlement payment value was also increased by about 90% to €45.07 (excluding greening).

4.1.4 The BPS rules therefore are fairly similar to the SPS, but one big difference is that 30% of the payment now depends on claimants meeting the new “greening” rules (land certified as organic qualifies for the greening payment automatically). The greening rules are summarised in section 5.8 below.

4.2 **BPS entitlement allocation in the UK Regions in 2015**

4.2.1 As English SPS entitlements had already all been converted to Flat Rate, negotiations took place with the EU which resulted in the RPA gaining permission to simply convert (rollover) existing SPS entitlements so they became entitlements to the BPS payment, and therefore no new allocation was required.

4.2.2 However as the Welsh and Scottish administering authorities had not yet regionalised their payment entitlements they had to allocate new entitlements to farmers/crofters for the BPS, and the Northern Irish Government also chose to allocate new entitlements to those who submitted a valid claim in 2015. They also reviewed the different geographical area classifications (re-mapping) and how they would allocate payments at this time.

- 4.2.2.1 The Welsh Government (after a very unpopular false start where they announced three different regions with those above the moorland line receiving greatly reduced payments) eventually decided to treat the whole country as a single region, moving towards a single Flat Rate payment rate in five annual steps to be completed by 2019 (which is expected to be €124 per ha with an additional redistributive payment of €119 per ha being made on the first 54 ha).
- 4.2.2.2 The Scottish Government classified all agricultural land into three regions: Region 1 (better quality agricultural land), Region 2 (rough grazing) and Region 3 (rough grazing with a Less Favoured Area grazing category A). The BPS payments are moving towards a Flat Rate by 2019 for each region in five steps, so the 2015 payment was 20% Flat Rate, 80% Historic, etc.
- 4.2.2.3 The Northern Irish Government decided to classify the land as a single region, and issued new entitlements to those farmers submitting valid claims in 2015, with the entitlements held on 15th May 2014 being used to calculate the initial value of the new entitlements allocated. The NI Government decided that they would increase in equal annual steps the unit value of those BPS entitlements below the regional average by 71.4%²³ of the difference between their initial unit value in 2015 and the regional average by 2019. For entitlements above the regional average, the NI Government will apply a linear decrease to the difference in order to generate the required funds for the increase to the below regional average payments. This approach is consistent with reaching a Flat Rate by 2021, which represents a 7 year transition period.
- 4.2.3 Under BPS, in all UK regions, there remains a National Reserve which is required to be open for applications every year, and unused entitlements are notionally transferred to this “pot” so as to be available to be allocated to New Entrants and Young Farmers. The entitlements allocated from the National Reserve will only match the eligible area on the land farmed by the applicants. The “pot” however is limitless, and new entitlements will always be allocated to eligible applicants, even if the applicants surpass the amount confiscated to the National Reserve. The total BPS funds available are then effectively spread “more thinly” by the administering authorities adjusting the BPS entitlement and greening payment values each year.

4.3 BPS National Reserve

“New” and “young” famers can apply for new entitlements (see more detail in section 5.4).

²³ See page 14 – CAP Pillar 1 Direct payments – Summary of Decisions, published by DARDNI Policy & Economics Decision 25 Feb 2015 <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/cap-pillar-i-direct-payments-summary-of-decisions-250215.pdf>

4.3.1 New farmers need to show that:

- 4.3.1.1 they are at least 18 years old when they make their 2016 BPS application;
- 4.3.1.2 they are in “control” of the farm business that is applying for BPS - this can be as a sole trader;
- 4.3.1.3 their business started its “agricultural activity” in 2014 or later;
- 4.3.1.4 they didn’t carry out (or weren’t in control of carrying out) any agricultural activity in the 5 years before their business started its agricultural activity;
- 4.3.1.5 New farmers must also apply for BPS entitlements no later than 2 years after the calendar year in which the business started its agricultural activity (farming);
- 4.3.1.6 New farmers who have received these entitlements once cannot apply for them again.

4.3.2 Young farmers need to show that they:

- 4.3.2.1 are at least 18 years old but not more than 40 years old when they make (or made) their first successful BPS application;
- 4.3.2.2 are in control of the farm business that is applying for BPS;
- 4.3.2.3 set up or took control of their farm business for the first time on 1 January 2011 or later.

4.3.3 To apply to the National Reserve, farmers must fill in a separate application form and return it to the relevant Payment Agency with their BPS application form by midnight on the 15th May (or the next working day). They must:

- 4.3.3.1 be an active farmer in accordance with the rules as set out by the relevant UK region;
- 4.3.3.2 say whether they are applying as a young farmer or a new farmer;
- 4.3.3.3 provide evidence to prove their “new” or “young” farmer status. Successful applicants will not be able to apply for entitlements again in future years (unsuccessful applicants can apply again).

4.4 BPS payment calculations in the UK Regions

- 4.4.1 The BPS payment for each region in the UK (England, Wales, Scotland, Northern Ireland) is first split between the two Pillars (Pillar 1 is for direct payments to farmers, i.e. the BPS claim, and Pillar 2 to schemes that promote rural development, i.e. agri-environment schemes, woodland grants etc.). The Pillar 1 payment is broken down into various elements, the main two being: the flat rate Entitlement Value and the Greening Value (which for all UK regions relates to 30% of the total subsidy payment available and is only payable if the claimant abides by the Greening Rules – see below). All UK regions must allocate 2% of the Pillar 1 funds to the Young

Farmer's Scheme, and then in England and Northern Ireland the remaining 68% is paid to farmers with appropriate entitlements based on their eligible area. Scotland & Wales split the remaining Pillar 1 payment further (see table below²⁴), and there are also "historic" Entitlement values included in the payments for the time being (see below). Pillar 2 is the "pot" for Rural Development Programme (RDP) scheme funds, such as the Countryside Stewardship or Woodland Grants in England.

Table 4.4.1	England	Scotland	Wales	N. Ireland
2016 BPS Pillar 2 Transfer Rate	12% *	9.50%	15%	0%**
Element of direct support:		% of NC after Pillar Transfer:		
Basic Payment Scheme (mandatory)	68%	58%	38%	68%
"Greening" measures (mandatory)	30%	30%	30%	30%
Young Farmer's Scheme (mandatory)	2%	2%	2%	2%
Coupled Payments	0%	10%	0%	0%
Redistributive Payment	0%	0%	30%	0%
Payment in Areas with Natural Constraints	0%	0%	0%	0%
Small Farmers Scheme	0%	0%	0%	0%

* DEFRA have indicated this may rise to 15% for 2018 & 2019

** DAERA to review in 2017 and this may increase in 2018-19

NC = National Ceiling, i.e. Total amount of BPS funds EU allocates to each member state for Pillar 1 payments

4.3.2 The focus of BPS is no longer simply ensuring adequate food supplies and a fair market as was the case with previous CAP subsidy schemes, but to encourage farmers to commit to meeting environmental, public, animal and plant health and animal welfare standards, and to keep the land in good agricultural and environmental condition.

4.5 Summary of BPS claim rules as set out in 2016 BPS guidance

4.5.1 To be eligible to claim payment under the Basic Payment Scheme a claimant must be an "Active Farmer", as set out in the BPS handbooks and as defined below (see 4.5).

4.5.2 To ensure a claimant also receives the additional "Greening" element of the BPS payment (approx. 30% of the total) the Active Farmer must also comply with the Greening rules, which are summarised as follows:

- Farmers with 10 or more hectares of arable land (i.e. land cultivated for crop production, fallow land or temporary grassland) need to follow the crop diversification Greening rule.
- Farmers with more than 15 hectares of arable land must follow the crop diversification and the Ecological Focus Area (EFA) Greening rules.
- Farmers with less than 10 hectares of arable land don't need to do anything differently – they are exempt from the crop diversification and EFA area rules.

²⁴ Page 215 – Agricultural Buildings & Costings Book No. 83 (Nov 2016)

- Farmers with permanent grassland must follow the permanent grassland Greening rule.

4.5.3 They must also:

- Hold at least 5 BPS entitlements (England & Wales) or 3 BPS entitlements (Northern Ireland & Scotland) and have 5 ha (England & Wales) or 3 ha (Northern Ireland & Scotland) of eligible agricultural land, or are eligible to activate at least the minimum number of BPS entitlements by applying to the National Reserve (England, Wales, Scotland) or Regional Reserve (Northern Ireland);
- Must be undertaking agricultural activity on the land that they are declaring to activate entitlements (claiming);
- The land must be at their disposal on the 15th May (or the next working day if this is a weekend) in the year of the claim, and remain eligible for the full calendar year;
- Any individual field declared to activate BPS entitlements must be at least 0.1 hectares (except for common land).

4.5.4 A farmer must therefore have the appropriate entitlements for their UK region, and then the correct type of entitlements for the land they farm within that region if applicable, when making a claim, and must comply with cross compliance rules. If a farmer is unsure about what region his land is classified under, it is his responsibility to check this either by contacting the RLR or the mapping department of his administering authority, checking with the RPA, RPW, SGRPID or DAERA, or checking on Magic Map website (see section below) or other mapping software.

4.5.5 If, following an inspection, a claimant is found not to be abiding by the Greening rules, the amount of their Greening payment will be reduced. The table below sets out the formula for the deductions applied in England in 2016:

Table 4.5.5

Greening rule	Size of reduction (in hectares)
Crop diversification: 2 crops	2 x the amount (in hectares) the main crop exceeds 75% of the arable land
Crop diversification: 3 crops	2 x the amount (in hectares) the main crop exceeds 75% of the arable land Plus 10 x the amount (in hectares) the two main crops exceed 95% of the arable land
Ecological Focus Area (EFA)	10 x the equivalent amount (in hectares) of missing EFA
<i>(Please see the Greening Section 5.8 under “Practical Information” for more details on this element of the BPS payment.)</i>	

4.6 Active Farmer Definition

4.6.1 In England, the 2016 definition was:

“a person/group of people, or a business that does at least one of the following on their holding:

- produces, rears or grows agricultural products – including harvesting, milking, breeding animals and keeping animals for farming purposes
 - keeps some land in a state suitable for grazing or cultivation by keeping it clear of any scrub that can't be grazed (sometimes known as 'dense scrub')
- 4.6.2 Farmers who do not operate one of the five “non-agricultural” businesses (which are airports, railway services, waterworks, real estate services or permanent sport & recreational grounds), or whose total 2015 BPS claim was worth £3,656.45 (€5,000) or less, automatically qualify as active farmers.
- 4.6.3 Farmers who operate one of the non-agricultural businesses or otherwise do not automatically qualify can still apply if they can satisfy one of the following criteria:
- 4.6.3.1 They have at their disposal 36 ha or more of eligible land;
- 4.6.3.2 Their total agricultural receipts were at least 40% of their total receipts in the last financial year;
- 4.6.3.3 In the last financial year, the value of their BPS claim was equivalent to at least 5% of their total non-agricultural receipts.
- 4.6.3.4 See page 40 onwards of RPA Basic Payment Scheme: rules for 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562030/BPS_2016_scheme_rules_v2.pdf for more details
- 4.6.4 In Scotland the definition of an “active farmer” is similar to above, but requires that the claimant has the decision-making power, obtains the benefits, and takes the financial risks in relation to the agricultural activity on the land declared to activate entitlements. There is no 36 ha rule in Scotland, but there are minimum stocking levels and minimum levels of agricultural activity (which are different for Region 1, and Regions 2 & 3, to reflect the differing agricultural land quality – see <https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/basic-payment-scheme-full-guidance/eligible-hectares-and-minimum-activity---bps/> for more detail) (See the Scottish Government Greening 2016 handbook for more details: [https://www.ruralpayments.org/publicsite-rest/fscontent/repository/portal-system/mediadata/media/resources/full_book~4.pdf](https://www.ruralpayments.org/publicsite/rest/fscontent/repository/portal-system/mediadata/media/resources/full_book~4.pdf))
- 4.6.5 In Northern Ireland the definition is similar to Scotland. However the Northern Ireland (www.daera-ni.gov.uk) website specifies that for those farmers who operate the airports, railway services, waterworks, real estate services etc. only need to have at their disposal 26 ha or more of eligible land rather than the 36 ha specified by the RPA in England. (See page 24 onwards of DAERA Guide to the Basic Payment Scheme 2016 <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2016-guide-to-the-basic-payment-scheme.pdf>)
- 4.6.6 In Wales the definition of an “active farmer” requires that farmers who do not automatically qualify must satisfy one of the following criteria:
- 4.6.6.1 The annual amount of direct payments is at least 5% of the total receipts obtained from non-agricultural activities in the most recent fiscal year for which such evidence is available.

4.6.6.2 A farmer’s agricultural activities are not insignificant if that farmer’s total holding size is greater than or equal to 21 hectares.

4.6.6.3 A farmer’s principal business or company objects consist of exercising an agricultural activity where that farmer provides the Welsh Ministers with evidence that at least 40% of the total receipts obtained by the business in the most recent fiscal year for which evidence is available were obtained from agricultural activities.

4.6.6.4 See the Welsh Government 2016 Greening booklet <http://gov.wales/docs/drah/publications/150812-basic-payment-scheme-greening-guidance-2016-en.pdf>.

4.6.7 However in respect to Northern Ireland, Scotland and Wales, care needs to be taken to understand “naturally kept land” issues, and variances between the UK regional approaches. Care is also needed to differentiate in Northern Ireland between the use of the “active farmer” definition which addresses their “land at disposal” test, and shifting eligibility from conacre²⁵ owner to conacre takers.

4.7 Dual Use

This is defined as one party claiming BPS and another claiming under an agri-environment scheme on the same land.

4.7.1 *England*

Dual use is currently allowed by the English RPA (with the exception of mid-tier Countryside Stewardship) provided the BPS claimant has the land ‘at their disposal’ and the agri-environment scheme claimant has ‘management control’ of the scheme, and responsibilities under both schemes are clearly set out. Care should be taken to ensure that there is a prior signed, written and dated agreement between the parties as evidence of this arrangement.

4.7.2 *Wales*

In Wales dual use of land for the purpose of claiming BPS subsidy and Glastir (see Glossary) is not permitted; only one person or business (i.e. the same name) can make claims on one parcel of land.

4.7.3 *Scotland*

4.7.3.1 In Scotland it is possible in certain circumstances for the same agricultural area to be used as support for a claim by the landowner of Rural Development support and by a tenant (as grazier or someone who grows crops). The Scottish RPA advises however that it must consider the situation

²⁵ Conacre is a system of letting agricultural land that is unique to Ireland. For more information please see the Glossary in Appendix 4.

on a case-by-case basis, taking into account the eligibility conditions and requirements under the respective schemes. The latter is a key consideration because the European Commission have also re-stated the principle that there should be no double-funding of similar activities under both pillars of the CAP. (Direct Payments are funded through Pillar 1, Rural Development support by Pillar 2.)

- 4.7.3.2 The Scottish Rural Payments Inspections Directorate (RPID) will assess the admissibility of claims involving dual use as part of the assessment of eligibility. They state that it is up to the landowner and tenant to follow their standing advice on determining who has the land “at their disposal” for support under each Pillar. This means that the lessor and lessee need to reach a workable agreement that takes into account their respective obligations to ensure that claims likely to result in double-funding are avoided. It also means that the parties must have written evidence of their respective rights, responsibilities and land at their disposal as at the 15th May. This evidence could be a tenancy agreement, grazing licence or letter.
- 4.7.3.3 Please note – ‘dual use’ is not permitted where the Basic Payment and Less Favoured Area Support Schemes (LFASS) are involved because both schemes rely on the applicant meeting the same ‘farmer’ / ‘Active Farmer’ obligations. (See page 14 of Scottish Government BPS guidance <http://www.gov.scot/Resource/0047/00475977.pdf>)

4.7.4 *Northern Ireland*

- 4.7.4.1 In Northern Ireland dual use claims involving the Basic Payment Scheme and any other area-based payment, i.e. the Greening payment, Young Farmers’ payment and Areas of Natural Constraint Scheme are not permitted²⁶.
- 4.7.4.2 However dual use claims do remain possible under the agri-environment programme. Page 9 of the 2016 NI BPS Handbook states: “*Existing agri-environment schemes may continue to be claimed by the existing agreement holder in 2016 and until the end of the agreement even if this creates a dual use claim with the Basic Payment Scheme. In such cases the field parcel will, for the purposes of the calculation of greening requirements, be regarded as on the holding of the farmer claiming the Basic Payment Scheme.*”

4.8 **Financial Discipline Mechanism**

Each year the European Commission will use some of the BPS budget to create a ‘crisis reserve’ (also called the National or Regional Reserve). This is funded by the Financial Discipline Mechanism (FDM), which is a method of deducting a small percentage from all payments made to farmers and growers. In 2015 the percentage was 1.393041% of payments over €5,000. The provisional FD percentage rates for the schemes years to 2019 are set out

²⁶ See page 8 of DAERA 2016 Guide to the Basic Payment Scheme (link in Appendix 6)

on the SPS/BPS payments tables in Appendix 3. Should this reserve remain unused, a refund is eventually returned to all claimants (e.g. in 2016 claimants received a refund for the unused FDM collected from the 2014 SPS budget as a percentage of their 2015 successful claim.)

4.9 Effect of Brexit on BPS

At the time of going to print, the UK Chancellor has stated he will match the funding from the EU for claims in 2019 (the payment window for which closes in June 2020). Therefore BPS will continue as it is as long as the UK is still part of Europe in that we are governed by the Common Agricultural Policy. However, technically the UK could be out of the EU from March 2019. The 2017 and 2018 claim years will be unaffected under BPS. 2019 should see BPS effectively continue for the whole year, funded either by the EU or the UK, although whilst the Chancellor has promised to “match the funds” that the EU were making, he has not yet explained how these funds will be distributed, and whether this will be using a type of BPS and entitlement scheme or not. For 2020, of course, we are looking at a new scheme whether in the EU or out.

5. PRACTICAL INFORMATION

5.1 Who owns the entitlements?

- 5.1.1 Prior to 2005, subsidy payments were linked to production and it was clear that the farmer producing the crop or livestock received the payments and the right to do so. However from 2005 the subsidy payments were allocated based on land that was at the disposal of the claimant. This created disputes in some cases, if the land was let or used by multiple parties, reminiscent of when milk quotas were first introduced and the Agriculture Act 1986 created a compensation arrangement for tenants. Although milk quota was attached to the land itself, unlike entitlements, anyone subsequently owning land was careful when letting land to try and reserve any future quotas that might be allocated. Complex clauses were inserted into the agreements, some of which worked and some of which didn't, as of course one was hypothesising as to what type of "quotas" or subsidy benefits might be created in the future.
- 5.1.2 In the years leading up to 2005, only some landlords letting on long-term tenancies were able to successfully insert clauses in new lettings whereby a tenant, having entitlements allocated to them in 2005, would transfer them at the end of the tenancy to the landlord free of charge. Other landlords let on short-term tenancies leading up to 2005, so the most up-to-date information was available when drafting these clauses and as a result the landlord's ownership of the entitlements could not be disputed.
- 5.1.3 Subsequently, as tenancies come to an end, each can have different arrangements and different effects as to the landlord or tenant owning the entitlements, and these need to be checked carefully. Other than in respect to multiple landlord and tenant arrangements, entitlements will be owned in the name of whom they are registered with the relevant Payment Agency, i.e. the farmer claiming the annual payment, other than if held in trust for third parties. Such third party interests however are not noted on the register kept by the Payment Agency or other regional administering authorities who try their best not to get involved in such ownership disputes. They do not act as the Land Registry does, where such legal rights are noted. Subsequently in very rare cases, other than those named on the Payment Agency register, there can only be contractual interests, which would have to exist between the Payment Agency registered owner and the third party.
- 5.1.4 If entering into a tenancy agreement, if the landlord is providing entitlements with the let land, these can either be permanently transferred to the tenant, or leased using the RPA leasing mechanism. The leasing provides extra comfort to the landlord as the entitlements should be returned automatically compared with registering an asset in a third party's name where the payment agency will usually only recognise the landlord's interest with written confirmation of this from both parties. Subsequently if entitlements had been permanently transferred to a tenant it is relatively easy for the tenant to sell on the entitlements, although landlords can attempt to have a "running notice" with the payment agency so that they are notified of any transfers out by the tenant. Practically this is not ideal, as the tenant could own his own entitlements as well. Even if notified, the authors have had experience with the RPA where in some cases an injunction has to be taken out against the tenant, as the RPA will carry out a transfer ignoring any contractual arrangements. If carrying out a permanent transfer, a landlord should be aware that they are lending an asset that can

be sold on, and is not attached to the holding. Neither leasing nor permanent transfer prevents a tenant from having entitlements confiscated if a tenant does not observe the two-year usage rule. The landlord is therefore advised to prepare appropriate clauses for the tenancy agreement, which usually will try and catch any subsequent allocation of asset/right to a subsidy/quota that may be created following the end of the current scheme, whether due to the landlord's entitlements being in the name of the tenant, or because there is the opportunity to acquire them subsequently. It is of course difficult to predict in advance what the next scheme of subsidy/benefits/quotas will be created, especially now with the added twist of Brexit. Plenty of attempts at these clauses have failed in the past to "bite" and have not properly protected landlords. If possible short-term lettings should always try and give vacant possession to the landlord as near as possible to a current scheme coming to an end, so that the land can be re-let with the most up-to-date information available about any new scheme. Some landlords were successful in adopting this policy in 2004, prior to the Single Payment Scheme entitlement allocation the next year. This enabled landlords to claim ownership of the entitlements, having their new tenants register the land and make a claim and receive the allocation of entitlements in May 2005, on the basis that these would remain the property of the landlord. A similar approach therefore seems sensible leading up to the 1st January 2020 when the current scheme will come to an end. However this of course is complicated by Brexit, in case the UK leaves Europe before this. If we don't, then again landlords will have to "be on their toes" after 2020 as to when any UK scheme will be introduced. Brexit of course makes it even more complicated in trying to predict the type of scheme that might be introduced.

5.2 Submitting a BPS claim

5.2.1 *England*

The RPA has indicated that from 2016 they wish all claims to be submitted via RPA Online, although those farmers who are unable/unwilling to use this system will still be allowed to submit paper claim forms for the time being. The farmer must identify his/her land using the RPA online mapping screens (part of the Rural Land Register), declare the "eligible area" and specify what cropping will be in place on the 15th May, and confirm whether they are abiding by the Greening Rules or not. Then if they also have the correct number of entitlements, they will be paid the Basic Payment and Greening Payment per eligible ha. However the RPA online claim facility is only available once the RPA has processed most of the claims from the previous year, and has actioned all the RLE1 land parcel amendments and entitlement transfers. The RPA therefore will not commit to a date from which this will be available, or when pre-populated BP5 claim forms will be sent to those who have requested them, but clearly this has to be well before the 15th May deadline.

For more details on the online claim procedure please see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546386/How_to_apply_online_-_GOV.UK_version.pdf

5.2.2 *Wales*

From 2016 Rural Payments Wales intend that all claims should be submitted using the Rural Payments Wales (RPW) online system. In extreme cases where internet applications are impossible, special procedures will be put in place to allow

claimants to submit an application, although such scenarios are expected to be very rare. The application process mirrors that of the English system, with a system known as ‘Manage My Land’ used to identify land parcels. Should field data need to be amended (boundary changes etc.) this will require the use of a ‘Field Maintenance and Land Transfer Form’ (FM Form). The online application software is likely to become available in February or March of each claim year.

For more details on the online claim procedure please see:

<http://gov.wales/splash?orig=/topics/environmentcountryside/farmingandcountryside/rpwnline/how-to-complete-online-applications/how-to-complete-online-single-application-form/>

5.2.3 *Northern Ireland*

Farmers can apply for area-based schemes using the online Single Application and Maps Service or the paper Single Application Form (SAF), although the Department would prefer to receive applications online. Farmers must only declare and claim the land that they are farming, irrespective of whether that land is owned by them, or land is leased in or taken in conacre. Land which they own but are not farming because it is leased out/let in conacre to another farmer should not normally be declared on their application. Rather it should be declared on the application of the person who is actually farming it.

For the full guide to claiming BPS in Northern Ireland, please go to:

<https://www.daera-ni.gov.uk/publications/guide-basic-payment-scheme-2016>

5.2.4 *Scotland*

The Scottish Government, like DAERA in Northern Ireland, offers applicants the choice of submitting claims either online or by paper. Paper application forms are not sent as standard and must be requested some time in advance of the submission deadline. The online SAF automatically calculates areas and will highlight any potential errors within the application. Information including parcel sizes and cropping is prepopulated on the online system to assist applicants with the process. The online system and claim forms will become available in March of each claim year.

For the full guide to claiming BPS in Scotland, please go to:

<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/basic-payment-scheme-full-guidance/activating-your-entitlements---bps/>

5.3 **What should a Purchaser consider when looking to buy BPS entitlements?**

5.3.1 They should consider whether they need to buy them, i.e. do they meet the criteria of a New Entrant, or a Young Farmer, as if so, they should be able to apply to receive them free from the National/Regional Reserve (see section above).

5.3.2 If they are not a New Entrant or a Young Farmer, they should firstly calculate the exact number of entitlements they need, based on each entitlement being equivalent to 1 ha of the eligible area that will be at their disposal. As most people buying

entitlements are new tenants, or farmers who have bought more land, the new land will first have to be added to their holding on the relevant Payment Agency online system. Once this is done, this will help a purchaser work out the total eligible area of their holding, and they will be able to see how many entitlements they are short, and therefore how many to buy.

- 5.3.3 The minimum claim size is 5 ha in England & Wales, and 3 ha in Northern Ireland and Scotland, so if the potential purchaser's eligible area is less than this, there is no point in acquiring BPS entitlements.
- 5.3.4 They should consider whether they are able to claim on the entitlements in the scheme year in which they are purchasing them. All BPS entitlements must be activated once every two years or they are taken back to the National Reserve, however the use-by date is now attached to the farmer via their unique business identifier (the Single Business Identifier [SBI] number in England, Customer Registration Number [CRN] in Wales, Business Reference Number [BRN] in Scotland and Business ID in Northern Ireland) rather than the entitlements themselves. The purchaser must consider whether they activated all their entitlements in the previous year, as if they didn't, and they then buy some and do not activate them all in the second year, the unused entitlements will be confiscated.
- 5.3.5 Calculating "eligible area" is a precise and sometimes involved process that may need professional advice. Care should be taken relying on areas used by others previously, even if successfully used in making past claims or on RLR plans/schedules providing eligible area figures. These have not necessarily been "approved" by the administering authority nor does it mean they are accurate. (See section 5.13 on Mapping in England below.) It should be remembered that the information in most cases has only been provided by previous claimants, and they may have got it wrong. Warranties should also be given from those handing on land to another claimant part-way through a claim year that while under their management the land will be farmed under GAEC and Cross Compliance rules.
- 5.3.6 They should be sure of the land classification of the eligible land they wish to include on their claim (i.e. in England is it Non-SDA [Non Severely Disadvantaged] or SDA [Severely Disadvantaged] or SDA Moorland [Severely Disadvantaged Moorland]). For Welsh and Northern Irish farmers, all entitlements are for a single region, and in Scotland there are three different Regions (1 = Better Quality agricultural land, 2 = Rough Grazing and 3 = Rough Grazing with a Less Favoured Area grazing category). This can be double-checked on the DEFRA website, <http://magic.defra.gov.uk/>. (See section 5.14 on Magic Map.)
- 5.3.7 As confirmed by the recent UK King v DEFRA case and previous cases, the land must be at the disposal of the claimant on the "snapshot" date (the 15th May or closest working day after in all regions) and the claimant needs to have management control on this day at least, and a way of ensuring legally/contractually the land will comply with GAEC and Cross Compliance for the whole calendar year (1st January to 31st December).
- 5.3.8 If the purchaser is a first time buyer, they should ensure they read, understand and can comply with the rules of the Basic Payment Scheme as set out by the relevant regional administering authority, e.g. they are an "active farmer" as defined by the

rules, have a claim of more than 5 ha in England and Wales, or 3 ha in Scotland and Northern Ireland, etc. If the purchaser cannot meet the eligibility requirements, then any claim to the BPS may be unsuccessful, regardless of whether they have purchased entitlements.

5.3.9 The purchaser should bear in mind that the entitlements will not be transferred to them until either the online entitlement transfer facility is made available each year, or the paper application forms are processed. A purchase however can always be agreed prior to the transfer facility being available, and made legally binding by an exchange of contracts, with arrangements set up so that the online transfer application is actioned as soon as the transfer facility does become available. The purchaser will need to transfer the purchase monies to a stakeholder account (usually the land agent brokering the sale) where they would stay until there is confirmation of the transfer in writing from the relevant administering authority.

5.3.10 Most entitlements are sold “without land”, and as such are eligible for VAT, as long as the vendor is VAT registered. Therefore if the purchaser is not VAT registered, they should ask the entitlement agent if any of their vendors are also non-VAT registered, as the 20% saving can usually be split between the two parties.

5.4 **How to apply for BPS National Reserve entitlements, and Usage Rules**

5.4.1 *England*

5.4.1.1 *National Reserve applications*

5.4.1.1.1 “New” or “young” farmers can apply for new entitlements to be allocated to them (from the National Reserve) as long as they:

- are an active farmer with at least 5 hectares of eligible land;
- can say whether they are applying as a “young” farmer or a “new” farmer;
- provide evidence to prove their “new” or “young” farmer status.

5.4.1.1.2 “New” farmers must have not carried out an “agricultural activity” in the 5 years before the new business started, and must apply for BPS entitlements no later than 2 years after the calendar year in which the business started farming (i.e. if a farming business started in 2014, the farmer must have applied for BPS entitlements in 2016 at the latest, and must not have carried out – or been in control of carrying out – any agricultural activities from the 1st January 2009 to 31st December 2013).

5.4.1.1.3 A “young” farmer needs to show they are at least 18 years old, but not more than 40 years old, when they make their first successful BPS application (in which they are applying for BPS entitlements to be allocated to them from the National Reserve). They must be “in control” of the farm business that is applying for the BPS, and they must have taken up control of their business for the first time (for 2016 entitlements) on the 1st January 2011 or later (i.e. no more than five years before the year they are making their first claim and applying for new entitlements).

5.4.1.1.4 “Young” farmers can also apply for a “top-up” payment on top of their BPS payment which is worth up to 25% of the average value of the entitlements – but only on the first 90 entitlements activated. The exact percentage paid will depend on the number of young farmers applying for this top-up.

5.4.1.1.5 To apply for the entitlements, “new” or “young” farmers need to send the RPA a certificate (which will be published on GOV.UK) to confirm their status. The RPA must receive this no later than midnight on the BPS deadline (usually the 15th May). The certificate must be completed by a solicitor or accountant (who is not an employee or a director of the farmer’s business). The farmer needs to provide documents for the solicitor or accountant to check.

5.4.1.1.6 For more detail please see the relevant section in the BPS 2016 handbook:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546336/BPS_2016_scheme_rules_FINAL_DS.pdf (or any updated BPS handbook that may be published by DEFRA/RPA).

5.4.1.2 *English BPS Entitlement Usage Rules*

Farmers don’t have to use all of their entitlements in any given year. However, if they don’t use all of their entitlements (in a single application) at least once in every two years, they will lose some in the second year. If a number of entitlements go unused for two consecutive years, that number of unused entitlements will be lost. This means farmers won’t be able to keep hold of entitlements by ‘rotating’ (swapping) the ones they use from year to year. If a farmer leases in some entitlements from someone else and also holds some of their own entitlements, lost entitlements will be taken away proportionately. (See Page 34 of RPA BPS Scheme Handbook 2016)

5.4.2 *Wales*

5.4.2.1 *National Reserve applications*

5.4.2.1.1 A Welsh farmer may apply for Welsh National Reserve entitlements if they are:

- a new entrant (must have started agricultural activity no more than two years before the application year – i.e. 2015 if applying in 2017);
- a young farmer (must be 40 years old or less in the year of application, and must be setting up for the first time as a head of holding or have control of a partnership/legal person (e.g. limited company).

- 5.4.2.1.2 To apply for Welsh BPS National Reserve entitlements a farmer must:
- complete a National Reserve form (including proof of Production) to provide evidence of your eligibility for an allocation of BPS entitlements;
 - complete a Single Application Form (SAF) to request an allocation of BPS entitlements.
- 5.4.2.1.3. The forms are available online, and can be completed using the RPW online system, or via a Customer Contact Centre.
- 5.4.2.1.4 New entrants must also submit a completed Customer Details (Wales) (CDW) form to register their business details. They must submit a completed Unique Identifier Capture Form (UICF) to provide the National Insurance numbers for all members of the business. If they intend to declare land on the SAF not previously registered with WAG they must complete a Field Maintenance form (FM) and provide supporting maps to register it. A CDW, FM or UICF form can be requested by contacting the local Customer Contact Centre.
- 5.4.2.1.5 If the National Reserve application is successful and the claimant has submitted a SAF requesting an allocation of entitlements, they will be allocated a number of BPS entitlements equal to the number of eligible hectares declared on the SAF that are at their ‘disposal’ on 15th May in that Scheme Year. They will be valued at the average entitlement rate per payment region classification in the year they are allocated and will move in equal steps to the final rate in 2019. Those who already hold BPS entitlements and also qualify under the National Reserve will have the value of those entitlements topped up to the average entitlement rate for that payment region. As with England, there is an additional payment under the Basic Payment Scheme for Young Farmers which will need to be claimed for on the relevant Scheme Year SAF.
- 5.4.2.1.6 Please go to <http://gov.wales/docs/drah/publications/141126-national-reserve-form-including-proof-of-production-guidance-notes-en.pdf> for more information.

5.4.2.2 *Welsh BPS Entitlement Usage Rules*

All Welsh entitlements are now Standard entitlements, and are subject to a two year usage rule, i.e. farmers must ensure they use all their entitlements in at least one scheme year during a rolling two-year period, therefore it is no longer possible to “rotate” entitlements, using some one year and the remainder in year two. If a claimant does not meet the two year usage rule, they will lose any unused entitlements to the National Reserve.

5.4.3 *Scotland*

5.4.3.1 *National Reserve applications*

5.4.3.1.1 Applications may be made to the Scottish National Reserve for entitlements if the applicant is:

- a young farmer, as defined under the Young Farmer payment;
- a new entrant to farming, defined as a person or a business who started their farming activity in the previous two years (i.e. 2014 for a 2016 claim) and who submitted a Basic Payment Scheme application no later than two years after starting.

5.4.3.1.2 There is a separate National Reserve for those farmers who do not have automatic eligibility.

5.4.3.1.3 As with Wales, if the National Reserve application is successful, and a Single Application Form is submitted declaring at least 3 ha of eligible land, and meeting the criteria for being an active farmer, the farmer will be allocated an amount of Basic Payment Scheme entitlements equal to the number of eligible hectares declared on their Single Application Form that are “at their disposal” on the 15th May in the Scheme year of the application. The allocation will not be confirmed, however, until after the entitlement transfer and BPS submission deadline.

5.4.3.2 *Scottish Entitlement Usage Rules*

All Basic Payment Scheme entitlements, including entitlements allocated from the National Reserve, are subject to a two-year usage rule, i.e. over any two-year period the farmer must activate (use) all of their Basic Payment Scheme entitlements in at least one year. Therefore it is not possible to rotate entitlements using some in year one and the remainder in year two.

Please go to <https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/national-reserve/national-reserve-full-scheme-guidance/> for further details.

5.4.4 *Northern Ireland*

5.4.4.1 *Regional Reserve applications*

Applications for entitlements from the Regional Reserve (RR) (i.e. the Northern Irish version of the other UK regions’ National Reserve) may be made by:

- Farmers who qualify as Young Farmers (including those who never held entitlements and those who will otherwise have established entitlements with a unit value below the regional average) can apply to the RR to have

- entitlements allocated at the regional average value or to have the value of entitlements increased to the regional average in 2016;
- Farmers who have commenced their agricultural activity and qualify as New Entrants (including those who never held entitlements and those who will otherwise have established entitlements with a unit value below the regional average) can apply to the RR to have entitlements allocated at the regional average value or to have the value of entitlements increased to the regional average in 2016;
 - Farmers who were prevented from being allocated entitlements due to Force Majeure or Exceptional Circumstances;
 - Farmers eligible for revised entitlements following a court ruling or administrative act by DAERA.

For more information please see <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/guide-to-young-farmers-payment-regional-reserve-final.PDF>

5.4.4.2 *Northern Irish usage rules*

The DAERA 2016 Guide to the BPS states all farmers are advised to activate all their entitlements every year to avoid losing them by declaring an equal number of hectares to the number of entitlements they hold. It is no longer possible for DAERA to rotate which entitlements are activated each year. This means that if a farmer does not activate all of their entitlements in 2 consecutive years, the non-activated entitlements will be confiscated. The farmer may sell or lease out surplus entitlements and if they are activated by the buyer/lessee each year, they will not be confiscated.

5.5 **BPS entitlement Usage Rules summarised**

All active farmers must successfully claim using all their entitlements once in every two years (i.e. they cannot be “rotated”), and if not the unused surplus entitlements will be confiscated to the National/Regional Reserve.

5.6 **BPS entitlement values in England, Wales & Scotland**

Please see Appendix 3 for tables of historical payment rates for SPS and BPS for England, Wales and Scotland.

5.7 **Penalties for non-compliance with the EU Regulations**

5.7.1 If a claimant fails to meet the eligibility criteria for the Basic Payment Scheme they may incur severe penalties which could result in a reduction to their payment, loss of entitlements, or even their entire application being rejected. A false declaration made deliberately or recklessly may also lead to criminal prosecution. See the appropriate section of each UK region Basic Payment Scheme handbook (see useful links at the end of this book) for further information on penalties.

5.7.2 If, following an inspection, it is found a claimant doesn't meet (even by mistake) all the GAEC and SMR rules that apply to them, their scheme payment(s) may be

reduced. These penalties will apply to all the schemes for which they have claimed payment in that calendar year, and which are affected by cross compliance.

- 5.7.3 If a claimant refuses to allow an inspection allow an inspection to be carried out on their holding, they could lose all their payment(s) and all their BPS entitlements.
- 5.7.4 Under the EU Regulations, the regional Payment Agencies do not have discretion to waive penalties, but in limited circumstances, may accept that the requirements of the Basic Payment Scheme were not met because of events outside of the applicant's control; this is known as "force majeure" or exceptional circumstances beyond your control. Where this is the case, the Payment Agency will not normally apply penalties, or would return them following a successful appeal on this basis.

5.8 Greening

5.8.1 "Greening" was a major innovation agreed under the 2013 CAP reform, and put in place in the BPS rules, which fulfils the intention to make the direct payments system more environment-friendly. Farmers who use farmland more sustainably and care for natural resources as part of their everyday work benefit financially. Greening supports action to adopt and maintain farmland practices that help meet purely environment and climate goals, and acknowledges that market prices do not reflect the effort involved in providing these public goals. Therefore from 2014-2020 the Greening element payments account for 30% of the EU countries' BPS payments to farmers, and farmers must follow specific rules, which are reviewed and amended each year by their administering authority.

5.8.2 There are three Greening requirements as follows:

- Permanent grassland - relates to the requirement to retain a certain amount of permanent grassland and to protect environmentally sensitive permanent grassland throughout the UK.
- Crop diversification - is designed to encourage a diversity of crops on holdings with 10 or more hectares of arable land.
- Ecological Focus Areas (EFA) - is designed to improve biodiversity on farms and to provide habitats for species in decline or at risk of extinction on holdings with more than 15 hectares of arable land.

5.8.3 ***Interpretation of EU Greening rules in England in 2016 (basic summary)***
(http://www.ala.org.uk/sites/default/files/Greening_2016_FINAL.pdf - full details)

- Farmers with less than 10 ha of arable land don't need to do anything differently – they meet the crop diversification and EFA Greening rules automatically.
- Farmers with 10 or more ha of arable land need to follow the crop diversification Greening rule.
- Farmers with more than 15 ha of arable land must follow the crop diversification and the EFA Greening rules.
- Farmers with permanent grassland must follow the permanent grassland Greening rules.

5.8.4 ***Interpretation of EU Greening rules in Wales in 2016 (basic summary)***
(<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/basic-payment-scheme/?lang=en> - full details)

- Farmers with less than 10 ha have no requirement to follow crop diversification rules or have an EFA;
- Farmers must follow crop diversification rules if more than 10 ha and less than 15 ha of arable land (unless they have an exemption), but no requirement to have an EFA;
- Farmers with more than 15 ha of arable land must follow crop diversification rules and have an EFA;
- Organic land automatically qualifies for the Greening payment;
- Farmers with 75% of eligible land in permanent grassland, or lying fallow, or being used to produce grasses or for the cultivation of crops under water, are exempt from EFA conditions.

5.8.5 *Interpretation of EU Greening rules in Scotland in 2016 (basic summary)*
 (<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/greening-guidance/> - full details)

- Farmers with less than 10 ha have no requirement to follow crop diversification rules or have an EFA;
- Farmers must follow crop diversification rules if they farm more than 10 ha and less than 15 ha of arable land (unless they have an exemption), but no requirement to have an EFA;
- Farmers with more than 10 ha and with 75% of arable land in temporary grass, as long as remaining arable land is 30 ha or less, are exempt from crop diversification rules and have no requirement to have an EFA;
- Farmers with more than 10 ha and with 75% of arable land in temporary grass, and remaining arable land is between 10-30 ha, and 75% of total land is temporary or permanent grass, there is a minimum two crop requirement, but are exempt from EFA requirements.
- Farmers with more than 15 ha of arable land, where more than 75% of the arable land is in temporary or permanent grass, 5% of the arable land must be put into an EFA, and a minimum of three crops are required.

5.8.6 *Interpretation of EU Greening rules in Northern Ireland in 2016 (basic summary)*
 (<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2016-guide-to-the-greening-payment.pdf> - full details)

- Farmers with less than 10 ha have no requirement to follow crop diversification rules or have an EFA;
- Farmers must follow crop diversification rules if more than 10 ha and less than 30 ha of arable land (unless they have an exemption), but no requirement to have an EFA. Minimum of two crops on arable land, the main crop must not cover more than 75% of the arable land;
- Farmers with more than 30 hectares must have a minimum of three crops on arable, with the main crop covering no more than 75% of the arable land; and the two main crops added together must not cover more than 95% of the arable land.

5.9 BPS minimum claim size

In England and Wales the decision was to set a minimum claim size of 5 ha, whereas in Northern Ireland and Scotland the minimum claim size is 3 ha.

5.10 Eligible area

Any agricultural area that is used for an “agricultural activity” which is defined as either producing, rearing or growing agricultural products (this activity can include harvesting, milking, breeding animals and keeping animals for farming purposes), or maintaining an agricultural area so that it is kept clear of dense scrub.

5.11 Artificiality

5.11.1 Under BPS, Article 60 of the EC Reg 1306/2013 is the “Circumvention clause” now dealing with artificiality:

“Without prejudice to specific provisions, no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.”

5.11.2 This is an important aspect that should always be considered before carrying out any more than straight-forward transactions. We have seen how this has been applied in the 1990s when retail producers of milk were able to take advantage of purchasing small amounts of milk quota with a high butterfat base, and effectively converting the rest of their milk quota to this higher level, being then able to sell the quota at an increased price or use it themselves to produce more milk against. Otherwise the latest example of how the circumvention clause can be used, as detailed in the King v DEFRA section below, was in relation to the Single Farm Payment. Then the circumvention clause was under Article 30 and read as follows:

“Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of the scheme.”

5.11.3 The RPA currently are not commenting as to whether the slight change in the wording referring to sectoral agricultural legislation and the objectives of that legislation, compared with provisions in individual support schemes and the objectives of the support schemes makes any difference to how the King v DEFRA precedent will relate now to BPS.

5.12 Inspections

5.12.1 All Member states’ administering authorities’ have a duty to ensure that the payments they make are correct, and that all claimants have submitted claims in time, and have correctly notified them of their land parcel sizes, the field boundaries, and land use. They also have to ensure that all claimants have kept their eligible land in Good Agricultural & Environmental Condition (GAEC), and have complied with the scheme rules. They therefore carry out farm inspections, and each EU regional administering authority has their own teams of inspectors who go out and look at farms on the ground, and the supporting paperwork farmers hold, to check the claimants comply and have claimed correctly. In addition they also carry out desk-top inspections, which reference the official mapping data and satellite imagery (such as the Rural Land Register in England).

5.12.2 Penalties are applied (as set out in the relevant Payment Agency BPS handbook for each scheme year) if:

- 5.12.2.1 an application is late;
- 5.12.2.2 a late change is made to an application (this includes changes to supporting information or evidence submitted as part of the application);
- 5.12.2.3 the application doesn't contain all the agricultural land on a farmer's holding;
- 5.12.2.4 the area of eligible land the farmer claims payment on is significantly larger than the area the farmer actually has;
- 5.12.2.5 a farmer provides false evidence in an attempt to qualify for the young farmer payment;
- 5.12.2.6 a farmer refuses to allow an inspection;
- 5.12.2.7 the farmer doesn't follow the cross compliance rules. The most common breaches are failure to comply with the following:
 - Cattle identification and registration rules (SMR7);
 - NVZ rules (SMR4);
 - Soil protection rules (GAEC1)
 - Sheep & goat identification (SMR8)
 - Hedges & watercourses rules (GAEC14)
 - Animal welfare rules (SMR18)
 - No-spread zones rules (GAEC19)
 - Plant protection products rules (SMR9)
 - Food & feed law (SMR11)
 - Public Rights of Way (GAEC9)

5.12.3 In cases of force majeure and exceptional circumstances, the RPA may not reduce a claim or apply penalties.

5.13 Mapping in England

5.13.1 The RPA use Rural Land Register (RLR) records to calculate the eligible areas of holdings to verify claims made under the SPS/BPS. These records have been built up over the years from a combination of sources including: IACS returns from the 1990s, inspections, OS plans/rough maps posted to them by claimants, and more recently Google Earth/satellite images. A lot of data is still reliant on what farmers have provided therefore their accuracy should never be relied upon without carrying out one's own checks and survey. The RLR is not the same as the Land Registry in as much as it is not proof of legal title to a piece of land, merely that the land exists and can be used to claim an SPS/BPS subsidy under the CAP.

5.13.2 In 2009 the RLR undertook a major re-mapping exercise sending many inspectors out with trundle-wheels and GPS mapping software. The re-mapping page on the RPA website explained the reasons for seeking to update all their maps as follows:

“Why are we doing this?”

We are responsible for complying with the EU Regulations and for providing data that is as accurate as possible to ensure that the amount of money paid to farmers is correct. To help us do this, we are upgrading the mapping information on the Rural Land Register, which is currently based on Ordnance Survey MasterMap 2001, to OS MasterMap 2008.

This update will include a number of improvements of the mapping information we currently hold, such as:

- *Positional Accuracy Improvements (PAI) where plotting points are realigned to the National Grid more accurately. More information about PAI is available at: <https://www.ordnancesurvey.co.uk/business-and-government/help-and-support/navigation-technology/undertaking-pai.html>.*
- *Real World Change (RWC) that will show new roads, housing developments, water courses etc.*
- *Permanent ineligible features will also be included, making it easier to highlight and remove them and will help farmers calculate their SPS eligible area.”*

5.13.3 There were many problems experienced during this particular re-mapping process, with land parcels suddenly disappearing from RLR records, land being re-classified as SDA where once it was Non-SDA and vice versa, or extra land being attached to a holding incorrectly. From an entitlements’ trading point of view, there were a number of farmers who found out that they could not claim on their land using the Non-SDA or SDA entitlements they had always used, and they had to buy different entitlements and hope to sell their now incorrect existing ones.

5.13.4 Mapping remains a tricky issue, and there were many problems experienced in 2015/2016 when many farmers and agents who had sent in RLE1 forms adding or removing land parcels in 2015 found that these forms had simply not been processed by the RLR/RPA before they processed the 2015 BPS claims, resulting in many errors in the payments received, and also meaning the maps were wrong when they prepared the 2016 claims. The RPA has advised the process of adding land parcels to a holding should be easier from 2016 onwards, but it is known they are continuing to sort out problems from 2015/2016, most notably for the Commons claimants.

5.13.5 Claimants should therefore be aware that they cannot always rely on the maps provided by the RPA (or view on RPA online screens) as being correct, and it is always advisable to check the plans very carefully, ensuring that any ineligible features that may have been added or removed (such as dung heaps, fences or tracks) are updated and correct, and that all the land parcels are included correctly. This is particularly important if someone is working out how many entitlements they need to buy, or have available for sale.

5.14 **Magic Map website**

There is a website made available by DEFRA called Magic Map [<http://magic.defra.gov.uk/MagicMap.aspx>] which is a useful resource for any English farmer wishing to check on the classification of land they farm (i.e. Severely Disadvantaged [SDA], Moorland or Non-SDA). In the authors’ experience, however, it can be confusing to use, and so we set out below a basic guide on how to use the software to do this.

- 5.14.1 Find your holding on the UK map (insert the postcode into the search box).
- 5.14.2 To select the layer of information to be displayed, click on Designations in the orange box on the left, then click on the + by “Land Based Designations”, then click the + by the Statutory option, and then tick “Moorland Line” and a layer will appear on the map which will show the edge of the moorland areas as a purple line on the map. Land within these lines is classified as SDA Moorland, and Moorland entitlements would be needed to claim BPS on this land.
- 5.14.3 Lower down on the left hand list there is an option for “Less Favoured Area” box; click the + and then select Severely Disadvantaged and this will then show the SDA land as a pink shading on the map. SDA entitlements would be needed to claim on this land.
- 5.14.4 If there are purple lines within the Severely Disadvantaged pink shaded area, then the areas they enclose will be SDA Moorland.
- 5.14.5 Any land in England that is not either shaded pink, or enclosed within a purple line on the Magic Map, is Non-SDA.
- 5.14.6 Although Magic Map covers all of Great Britain, it does not display the Scottish BPS Regional boundaries. Claimants in Scotland wanting to decide which Region entitlements they need would need to either log in to their SGRPID online account, or refer to datasheets of the land provided by SGRPID for their SAF, both of which would set out clearly which Regional classification has been applied to their land parcels. As set out earlier, all of Wales and Northern Ireland are classified as one region for BPS.

5.15 VAT

VAT is chargeable on a “without land” sale or lease of entitlements, if the vendor is VAT registered. There is no VAT chargeable on a “with land” sale or lease unless the vendor has opted to register the land for VAT, in which case VAT will be chargeable.

5.16 Tax

- 5.16.1 The BPS claim payment received by a farming business each year should be declared as income on the business tax return.
- 5.16.2 Entitlements that are issued at the beginning of a new subsidy scheme by the administering authorities have not cost the business anything and therefore although a capital asset, have no acquisition cost. Accordingly gains arising from sales of payment entitlements are subject to CGT in the usual manner.
- 5.16.3 The acquisition cost of purchasing entitlements will not be allowed as a deduction for income tax purposes, as they are a capital asset for the business. On disposal they are chargeable assets for capital gains purposes, and therefore if sold for less than the acquisition costs, the loss can offset a capital gain elsewhere in the business, or if sold for more than the acquisition cost, CGT will be payable on the gain. Therefore evidence of the acquisition costs (i.e. receipts/VAT receipts of the cost of purchase) should be kept by the business, as with any asset.

- 5.16.4 Should a situation then arise where entitlements suddenly have no value (i.e. as happened with Milk Quota in March 2015 when they were phased out by the EU), then the farming business may be able to use the capital loss generated by this asset becoming of negligible value to offset any capital gain their business may have in any one year. Generally it is permitted to take a capital loss two years forward or two years back, however a business should always take the advice of their accountant, who understands the specific business situation, when considering tax planning for the business.
- 5.16.5 HMRC's current advice²⁷ is that SPS entitlements in England were simply rolled over into the BPS, and therefore they did not have a "negligible value" as at the 1st January 2015. However in Wales, Northern Ireland and Scotland new BPS entitlements replaced SPS entitlements, and therefore those farmers who purchased SPS entitlements, and are able to prove the acquisition cost, could now submit a "negligible value" claim. The below is an excerpt from a paper published on the 12th December 2014 on the HMRC website:

In Northern Ireland, Scotland and Wales, all Single Payment Scheme Payment Entitlements will cease to exist on the 31st December 2014. HMRC accepts that Single Payment Scheme Payment Entitlements in Northern Ireland, Scotland and Wales became of negligible value on the 16th May 2014 because the 15th May 2014 was the last day that the entitlement must have been held in order for a person to establish that they were eligible for a payment under Single Payment Scheme. A negligible value claim may be made to HMRC in relation to an entitlement on or before 31st December 2014, subject to the conditions for a valid claim being met.

A negligible value claim may specify that the disposal occurs at an earlier time, as long as the conditions for making a valid claim are met at the time the claim is made and at the earlier specified time. It is not accepted that Single Payment Scheme Payment Entitlement was of negligible value before the 16th May 2014 and HMRC will reject a claim specifying a date before then.

- 5.16.7 Entitlements do not qualify for Agricultural Property Relief for Inheritance Tax purpose, and a disposal/sale is not subject to Stamp Duty Land Tax.

²⁷ See <https://www.gov.uk/government/publications/revenue-and-customs-brief-48-2014-making-a-negligible-value-claim-for-an-asset-affected-by-common-agricultural-policy-reform/revenue-and-customs-brief-48-2014-making-a-negligible-value-claim-for-an-asset-affected-by-common-agricultural-policy-reform>

6. TRANSFERRING BPS ENTITLEMENTS

BPS entitlements can be transferred to ‘active farmers’ with or without land, either permanently as a Sale/Gift, or can be leased and even sub-leased, or passed on through Inheritance, or just “Surrendered” if no longer being used and the owner does not wish to sell them. Transfer applications should be submitted online for England, Wales & Scotland, but must be submitted on a paper TE1 form to transfer Northern Irish entitlements. However to apply to sub-lease, transfer through inheritance or just surrender entitlements in England, Wales & Scotland, a paper transfer form must be submitted (please see below).

6.1 England

6.1.1 An entitlement owner (or their authorised agent) can either submit an online transfer application by the Scheme Year deadline (usually the 15th May) through the RPA online website, or submit a paper RLE1 transfer form (available on the RPA website). RLE1 transfer forms however do not get processed until after all the online transfer applications have been submitted. The RPA online system for transferring entitlements will remain unavailable until the bulk of the previous year’s BPS claims have been processed and paid out, as it is only then that the status of the entitlements is confirmed for the next claim year. For 2017 the RPA has indicated this may be as late as February 2017.

6.1.2 The procedure for transferring entitlements online is in their booklet available on the RPA website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512628/RLE_Guidance_2016_v2.0.pdf

6.1.3 The procedure in England for submitting a permanent entitlements transfer application online in 2016 can be summarised as follows:

6.1.3.1 Go to the RPA online website and log on to your business details.

6.1.3.2 Click on “Entitlements” (this option is not available all year round).

6.1.3.3 Then select the option to transfer the entitlements (this option will not be available until after the bulk of the BPS applications have been processed and paid out for the previous claim year);

6.1.3.4 Select “Sale/Gift of entitlements”; click continue.

6.1.3.5 Type in the SBI of the person you are transferring the entitlements to and click continue. This should then display the business name of the transferee.

6.1.3.6 You will see on screen a list of all the entitlements you have available to transfer.

6.1.3.7 On the right hand side, in the appropriate box enter the number of entitlements you wish to transfer out.

6.1.3.8 When you click submit, you will see a summary of the transfer details on a confirmation screen, so you can check all the details of the transfer are correct before you proceed.

6.1.3.9 If all details are correct, then click the “Transfer” button followed by “Yes, we want to proceed with this transfer”.

6.1.3.10 You will then see a dialogue box confirming you have submitted a transfer application, and it is advisable to either print or take a screen shot of this screen to confirm the transfer application was submitted.

6.1.4 An improved online entitlement transfer facility, including leasing, is expected for 2017 in February 2017.

6.2 Scotland

6.2.1 In 2016 transferors had to submit a paper PF23 form to submit a transfer request (available on their website), and the Scottish Government have stated their intention that they expect to move the transfer application to an online process in 2017. The deadline for submitting a paper form transfer application is the 4th April in 2017 (i.e. six weeks before the 15th May). For more guidance please see <https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/basic-payment-scheme-full-guidance/guidance-on-transfer-of-entitlements/>

6.2.2 Entitlements in Scotland however are mainly transferred with land, usually agreed when the land is sold/transferred/rented out, or are leased to a tenant with the land, as any entitlements transferred without land are subject to a 50% siphon of the value of the entitlements (i.e. whoever claims on those entitlements next will only receive 50% of their original value). Once they are transferred, the “phasing” (i.e. annual 20% reduction in value to reach Flat Rate by 2019) will start again.

6.3 Northern Ireland

6.3.1. Transferors can either submit a paper TE1 form (available on the DAERA website) or preferably transfer them online for straightforward sale, gift or lease transfers. Both parties will have had to register with the Government Gateway and the transferor would require the Business ID and Entitlement Transfer ID of the transferee to submit the transfer application. The window for submitting paper forms or transferring online is the 4th April to 3rd May. Entitlement Statements should be available from early March.

6.3.2 For more details please see: <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2016-transfer-of-entitlements-notes-for-guidance.pdf>

6.4 Wales

6.4.1 All entitlements must be transferred using the Rural Payments Wales (RPW) Online portal. Therefore all Welsh farmers who wish to transfer entitlements must be registered on this online system, as indeed they are now encouraged to do, in order to submit their annual SAF, which allows them to apply for all the elements of the Basic Payment Scheme (Greening Payment, Redistributive Payment, Young Farmer Payment or National Reserve Entitlements), as well as all the Rural Development

Programmes running from 2014-2020 (i.e. Glastir Entry, Advanced and Organic, the Glastir Woodland Management and Creation grants, and the Improved Land Premium). Detailed screenshot guidance can be found here <http://gov.wales/docs/drah/publications/160302-basic-payment-scheme-transfer-of-entitlements-how-to-complete-en.pdf>. To use this service both parties must have registered to use the RPW online via their Government Gateway ID, or authorised an agent to submit the transfer on their behalf. The deadline for submitting entitlement transfer applications in 2017 is expected to be the 3rd May as it was in 2016.

- 6.4.2 Farmers can authorise an Agent, a Woodland Agent or a Farming Union & Farming Association to submit claims or “Manage Entitlements” on their RPW Online account by completing an Authorisation form which can be accessed on the RPW Online portal <http://gov.wales/docs/drah/publications/150217-rpw-online-agent-authorisation-en.pdf>. This form will also need to be signed by the person/firm being authorised, and then must be sent by post to Welsh Government, PO Box 1081, Cardiff, CF11 1SU for processing. The agent/firm nominated must also be registered with the RPW Online and have their own CRN number in order to be included as an agent on a farmer’s Online account.
- 6.4.3 A farmer’s RPW Online account allows them to view all the details RPW have on their farm, their land, financial information and to view previous applications and claims, as well as to check what entitlements they own. The Welsh Government has provided guides explaining how to use all of these different sections, including one about what the Entitlement screens will show, which can be found here: <http://gov.wales/docs/drah/publications/131104-rpw-online-entitlements-customers-en.pdf>. Entitlements owned can be checked, their use by date, the unit value, and their origin (i.e. are they leased in, or “original”, i.e. owned). It is always important to check what is owned before deciding to buy, lease or sell entitlements, so the correct information is provided to the agent or the person receiving the entitlements. This screen could however include entitlements which will be “clawed back” to the National Reserve, if Usage Rules have not been met or other penalties are applied, once the RPW processes the SAF claim relating to these entitlements.

6.5 Entitlement Correction

- 6.5.1 When arranging a transfer of entitlements in England, both parties should be aware that, despite the wording of the RPA Confirmation of Transfer letter/email/online account message, the RPA has advised it reserves the right to amend/change/cancel transfers retrospectively if later investigations (called Entitlement Correction) show the original entitlements were incorrectly allocated, or previous transfers are found to have been made incorrectly. Subsequently sellers should be aware that if the RPA discover that they, the transferor or previous owners of the entitlements being sold have incorrectly claimed on the entitlements since 2005 for two or more years, the RPA may be able to retrospectively confiscate them. There also may be other reasons why the RPA may confiscate them.
- 6.5.2 If following a sale of entitlements the RPA do remove them from the buyer’s SBI due to Entitlement Correction, and the seller is unable to resolve the issue with the RPA or transfer any other entitlements to the buyer in the relevant scheme year, the seller will then be in breach of contract with the buyer, and would be responsible for the resulting damages they suffer, which could include claims and penalties in respect to ongoing claims they make for Basic Payment, plus their professional or

legal costs, as well as the seller's agent charges for dealing with such complications. It is therefore always advisable for a seller to contact the RPA to ask for further written confirmation that the entitlements are irrevocably theirs, and not subject to any pending Entitlement Correction investigations, prior to instructing an agent to arrange a sale/transfer of entitlements on their behalf.

- 6.5.3 Although in 2015 the Welsh, Scottish and Northern Irish administering authorities allocated new BPS entitlements to claimants in their regions, the allocation was of course based on claims made in previous years, and therefore if it is found that errors were made in those years, there is also the potential a similar Entitlement Correction approach could be made by the UK regions also. All EU Member states have a duty to ensure that the BPS is paid correctly to eligible claimants, and are liable for fines if they are found to have made errors, and therefore must take action to correct any errors, if they discover them.

6.6 **Problems that arose during the English RPA online entitlement transfer application process in 2016**

In 2016 several problems arose with the new online entitlement transfer application system that either delayed the process or meant that the transfer could not take place, which are set out below.

- 6.6.1 There was a computer glitch which the RPA were aware of and said would be addressed by the end of March 2016 but in effect was still happening up to the deadline and beyond. This involved the usage year given on screen for the entitlements. If it showed 2015 this indicated the transferor had not yet been paid, however the computer glitch meant that in some cases people had been paid but the computer hadn't caught up with it yet.
- 6.6.2 If the screen showed a 2016 usage year, theoretically this meant that the entitlements were to be confiscated (as it implied they had not been activated in 2015 – “the use it or lose it” year), however again there was a computer glitch in respect to this. For example 50% of our BPS claim clients had 2016 usage year, but on further investigation with the RPA the majority should have shown a usage year of 2017, and in reality this query only applied to one or two clients, and then only for some of their entitlements.
- 6.6.3 If the online screen usage year was 2017, then theoretically one could proceed with the transfer as the computer was showing that the entitlements were successfully activated in 2015. The official response to a lot of these problems was that Claim Statements were being sent out, and that the Entitlements Statements that followed would resolve these problems. In reality Claim and Entitlements Statements were only sent out to a few clients and eventually people had to rely on the payment they received and check their online account for the number of entitlements they held. (The RPA have since advised that they will no longer be sending out Entitlement Statements, and farmers will have to rely upon what is displayed on their entitlements page on their RPA online business details.)
- 6.6.4 It was vital for 2016 that anyone involved in transferring entitlements understood that the RPA had made clear one could not assume that successfully submitting an online transfer actually meant the transfer had been processed and approved, even though on-screen it might instantaneously show that entitlements had moved. The

onscreen dialogue box that appears after a transfer application is submitted online says: “Entitlement transfer request received. We will contact you to confirm the transfer.” Therefore, the message to those who transferred entitlements was, do not rely on what is displayed on-screen in respect to entitlement transfers, and this was the conclusion of those using the online system for claims as well as transfers. In 2016 we were told by the RPA there would be a delay before they confirmed a transfer as they needed to carry out manual checks to ensure that the online system was working properly, but it has since become clear that they also have to be able to confirm the “active farmer” status of the transferee, and the process of doing this on the RPA online system is either by submitting a BPS claim for the relevant year, or by ticking the “I am an active farmer” declaration on the RPA online business details.

- 6.6.5 The RPA were unable to confirm, even when entitlements had a 2017 usage year, whether the entitlements could be claimed on and transferred. When transferring entitlements the authors found some transfers with 2017 usage years were rejected. On subsequent investigation it was found that those entitlements weren't available, having been confiscated to the National Reserve. This could have caused real problems in the last days of trading, if it was widespread, as there was no time to find out what actually was available to sell.
- 6.6.6 Other issues included rejected applications remaining as "live" on the online system. These then needed to be manually removed and it raised the query as to what happens following the rejection of an application. Entitlements were also appearing as registered with clients when they should not be. Some even had no identification as to whether they were Non-SDA, SDA or Moorland.
- 6.6.7 Another query that developed was, if a “new farmer”, or someone who submitted paper claims rather than online ones, had not made the Active Farmer declaration at the time the button was pressed to transfer entitlements to them, the transfer would be held back. Eventually the purchaser would query why they had not received the entitlements, and after making the declaration the transfer could take place.

6.7 **Known RPA online computer issues moving forward into 2017**

- 6.7.1 The RPA Online system is known to be carrying over certain problems from 2015 into the 2016 scheme year processing, which have implications for 2017 scheme year entitlement transfers. One issue the authors’ are aware of affects farmers who had their 2015 claim put into Post-Payment Amendments (PPA) (i.e. where, for instance, land parcels were left off their 2015 claim by the RPA in error). In many cases top-up payments were issued to them in October 2016 to correct the shortfall caused by the RPA error, however, as 2015 was a “use it or lose it year”, where the RPA had missed fields off a farmer’s claim due to mapping errors or not processing RLE1 forms adding land parcels, the Online system automatically removed the entitlements equivalent to the hectareage of the missing land parcels from that farmer’s SBI and sent them to the National Reserve.
- 6.7.2 Even when the PPA process then makes a payment correction on the Online system so the farmer receives the 2015 payment for the omitted land parcels, the computer does not then simultaneously automatically “return” those lost entitlements to the farmer’s SBI. The entitlements can be manually returned by the RPA if someone contacts them, explains the situation, and requests this to be corrected. However a

manual entry does not then update the use-by date to 2017! The RPA feel that, as most farmers would then be making a claim in 2016, the entitlements would be properly activated in 2016 and would then show the 2018 use by date, so they are hoping this will not become a big issue. We are however aware that there will be farmers who then did not claim on all their entitlements in 2016, and although this should not be a problem because they activated all their entitlements in 2015 (and a farmer only has to activate all his entitlements once in every 2 years), if they went through PPA there is a chance that the manually-returned entitlements will then once again be taken back to the National Reserve in error, causing more confusion and inconvenience for the farmer to get them back so they can then sell them or use them in the following year.

- 6.7.3 There is also some concern about leased entitlements, and how these will work in respect to the RPA Online system. For instance, if Farmer A leases out entitlements to Farmer B, the online system allows Farmer A to specify a date by which the entitlements will be returned to him which in theory can be a few days after the Scheme Year deadline. However the entitlements cannot be “live” on two farmers’ SBI numbers at the same time; so they will remain as “active” entitlements on Farmer B’s SBI (and will be identified as Leased in on their “Entitlements balance” screen) until Farmer B’s 2017 BPS claim is processed, and in the meantime will show as “Leased out” on Farmer A’s Entitlement “Transfers In & Out” screen (and will not be included in the Total Entitlements showing on their “Entitlements balance” screen). It is not until Farmer B’s claim is processed (usually around December each year) that the RPA can establish whether the leased entitlements were activated correctly. If it is found that Farmer B had miscalculated his eligible area, or did not cross comply or meet greening requirements, then he could be in the position of having some entitlements confiscated to the National Reserve. If this is the case, the RPA has advised that they would remove the entitlements “proportionately” from the leased in entitlements, and the owned entitlements. So although technically Farmer A had set his entitlements to return to him in, say, June, he might not find out until Jan/Feb/March the following year whether he has had all his entitlements returned to him safely. This may make it difficult for Farmer A to know for sure how many entitlements he owns until close to the 15th May deadlines. In some extreme cases he may not know for sure until June, after the deadline for transfer. The RPA have however updated the Entitlements screen for 2017 and issued a new onscreen help guide although this unfortunately still needs some further explanation from the RPA to make the new Entitlements screen safe to use: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584068/Onscreen_help_-_GOV.UK_combined_v6.0.pdf

6.8 Trying to obtain compensation from the RPA for an error

- 6.8.1 The difficulty with complaining directly to the RPA, and the level of compensation or repayment they might offer once they have admitted fault, often arises when dealing with customer helpline staff who are not legally trained and do not understand the concept of returning all parties to the position they would have been in had an error not occurred. The first hurdle to overcome is to break through this “barrier”, and speak with someone who can actually make decisions and has the appropriate legal knowledge regarding damage claims.
- 6.8.2 One remaining problem at present involves the actual procedure at the RPA for obtaining damages. Until recently the RPA have not been “geared up” to process

claims for additional costs/damages resulting from their errors, which goes some way to understanding the lack of knowledge regarding compensation claims at case worker level.

- 6.8.3 Until recently the RPA had no procedure to deal with compensation for professional costs as part of a damages claim, having not paid out for these on a regular basis before now. This suggests many may have given up trying to bring the RPA “to book” and illustrates the authors’ concern that there appears to have been a culture or policy of obstruction which encourages people to give up pursuing legitimate compensation.
- 6.8.4 It is always wise, if contacting the RPA to complain about a decision, to keep a log of all contact had with the RPA (i.e. note down dates of telephone calls, length of time waiting for response, copies of letters and replies etc.), record the name of the person spoken to, and follow up all advice given verbally with an email sent to the RPA confirming your understanding of the result of the telephone call, and asking them to write back if your understanding is incorrect. The aim should always be to have something in writing before relying on any answer given verbally.
- 6.8.5 The RPA complaints procedure unfortunately is not legally binding on the RPA so it is often the case that even following an appeal recommendation in a claimant’s favour, it is not accepted by the RPA/DEFRA. Therefore it can, in certain circumstances, be more cost effective to take the RPA straight to court, the decision of which is binding on the RPA.

6.9 Administering Authorities (Entitlement Transfers) (as at August 2016)

England: Rural Payments Agency, PO Box 352, Worksop, S80 9FG
Contact: ruralpayments@defra.gsi.gov.uk or 03000 200301

Wales: Rural Payments Wales, PO Box 1081, Cardiff, CF11 1SU
Contact: rpwonline@wales.gsi.gov.uk or 0300 062 5004

Scotland: Rural Payments & Inspections Division, Entitlement Transfer Unit, 10 Keith Street, Stornoway, HS1 2QG
Contact: entitlementtransferunit@gov.scot or 01851 702392
For general BPS enquiries contact regional office as set out on the website: www.ruralpayments.org/publicsite/futures/topics/customer-services/contact/

N Ireland: Dept of Agriculture & Rural Development Area-based Schemes Payments Branch, Orchard House 40 Foyle Street Derry/Londonderry BT48 6AT
Contact: areabasedschemes@daera-ni.gov.uk or 0300 200 7848
For general BPS queries contact appropriate regional office as set out on the DAERA website: <https://www.daera-ni.gov.uk/contacts/daera-direct-regional-offices>

7. NAKED ACRE LETTING & HOSTING IN ENGLAND

7.1 Background

In 2005 the Single Payment Scheme rules allowed the permanent transfer of entitlements with or without land, but a lease (temporary transfer) could only be done with land. UK farmers had become used to the flexibility of leasing quota when needed (as they had with milk quota and other subsidies), and there was immediate demand from those with excess entitlements wanting to either “lend” them to those with eligible land which was not being claimed upon, or to rent eligible land to include on their own claim so they could activate their surplus entitlements. There were also farmers/landowners who had unclaimed eligible land (“naked acres”) but who did not have the funds available to purchase entitlements, and who often also were resistant to getting involved with the complex paperwork and cross-compliance regulations, and therefore did not wish to complete a SPS claim each year and deal with the RPA. It was in response to this demand that many land agents set up the “naked acre” or “paper acres” letting arrangements whereby a farmer with surplus entitlements would pay a farmer with naked acres to in effect rent his land for a period around the 15th May, so they could then include this land in their SPS claim. A Farm Business Tenancy agreement would be drawn up and either just a contract farming arrangement (where no livestock was involved), or also a grazing licence granted back to the landlord. Originally these lettings were only for a matter of days operating on or around the claim date of the 15th May. The landlord would also agree to comply with Cross-Compliance and maintain the land in a good agricultural and environmental condition (GAEC) throughout the Scheme year from the 1st January to the 31st December.

7.2 The RPA accepted Naked Acre letting between 2005 and 2011

7.2.1 Initially the RPA openly acknowledged and accepted these naked acre letting arrangements, but subsequently got cold feet following a case in Europe which raised concerns about whether these arrangements could be considered to be artificial under Article 30 of Council Regulation (EC) No. 73/2009, which states: *“Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.”*

7.2.2 Effectively this created a two-test criteria and a claimant would have to fail both in order for them to be in breach of Article 30.

- (1) Is the arrangement artificial?
- (2) Is what is going on contrary to the objectives of the support scheme?

7.2.3 The effects of the RPA’s increasing nervousness created more and more complex naked acre letting arrangements, involving longer term FBTs, evidence of practical management decision-making arrangements, appropriate invoicing at the end of the contracting arrangements, and appropriate arrangements for dual use NVZ and Soil Protection reviews.

7.2.4 The RPA were always concerned about the level of fines that could be applied by the EU, should they be found not to have administered the Single Payment Scheme correctly, and they started to challenge such lettings for the 2011 scheme year. Initially the RPA approached the naked lettings tenant and were checking on any likely dual use issues where the landlord was still claiming stewardship of the same

land let to someone else claiming the Single Payment. They carried out random checks in order to support the UK's claim that dual use should be allowed, which of course it continues to be, but on the back of this approach they then raised claims of artificiality in respect to naked acre letting arrangements.

7.2.5 Whilst the RPA were unable to substantiate their claim that naked acre claims were artificial under Article 30, in the meantime they withheld the Single Payment for some until the claimants had proved the arrangements were not. In light of this approach most entitlement owners decided that the risks involved were too great, even though it was a random process whereby the RPA selected which naked acre lettings would be targeted for inspection. As soon as Townsend Chartered Surveyors were aware of the RPA's approach they recommended landlords should consider alternative arrangements including "Hosting". This involved the actual transfer of the excess entitlements to the landowner with excess land who then subsequently made the claim and passed the payment on to the entitlement owner, returning the entitlements at the end of the season. This reduced the risk of the RPA claiming such an arrangement was artificial but introduced a new risk to the entitlement owner whereby he was lending entitlements to a third party without any security.

7.3 BPS accepted the need for flexibility and leasing without land

Thankfully the Basic Payment Scheme in 2015 incorporated the need for more flexibility and introduced leasing without land. This reduces the risk further for the entitlement owner with an automatic return of the entitlements by the RPA after they have been lent to the landowner with excess land. However there still remains a risk, however small, that the lessee/claimant does not comply with the 2-year usage rules and the entitlements are confiscated into the National Reserve. For many this is an acceptable risk, although last year there was little enthusiasm from landowners as naturally if lending or leasing something, the leasing fee is usually expected in advance from the lessee. This dampened demand from lessees in the 2016 season as those leasing in were generally those that did not wish to pay or could not pay to buy entitlements, and therefore were reluctant to pay the leasing fee upfront. With naked acre letting and hosting payment was required upfront but the other way round with the entitlement owner having to pay the fee rather than the landowner and this suited the market. The 2017 season is likely however to see a greater demand from those with excess entitlements wanting to retain them where they were not claimed on in 2016, which otherwise will be confiscated if not used in 2017.

7.4 Naked Acre letting in other UK Regions

Similar naked acre letting arrangements have also been used in the other UK regions and for some interesting background information see *FRANK A SMART & SON LTD v THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS*²⁸, and *MESSRS W J HENDERSON & SONS v THE SCOTTISH MINISTERS*²⁹, both of which refer to naked acre letting in Scotland.

²⁸ <http://www.ukvatadvice.com/wp-content/uploads/2014/12/TC04179-FRANK-A-SMART-SON-LTD.pdf>

²⁹ <http://www.scottish-land-court.org.uk/decisions/SLC.108.11.rub.html>

8. KING V DEFRA

The outcome of this test case “R (on the application of T & S KING (a partnership)) v SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS 20160 EWHC 1692”³⁰ may now revive the use of naked acre letting arrangements. When considering naked acre letting in 2017, this High Court case has ruled that such arrangements are not in breach of Article 30³¹ of Council Regulation (EC) No 73/2009 (under the Single Payment Scheme), and as the RPA have not appealed the case, this now sets a precedent going forward for the aspects of the law the judge dealt with which can be relied on unless overturned in another case subsequently, or it is found not to apply to the new Basic Payment Scheme which refers to Article 60 of the new Council Regulation (EC).

8.1 What does this test case tell us?

8.1.1 *Nothing about the 1st test*

Unfortunately the judge was not asked to make a ruling in respect to the first of the two tests of Article 30. The Claimant (T & S King) decided it would be better to concentrate on the second test only (i.e. is it contrary to the objectives of the scheme?) and therefore for this purpose accepted that the naked acre letting arrangements were artificial. This perhaps is the more difficult test to pre-determine and sadly without the judge making a ruling there is no authority about whether Farm Business Tenancies and contract farming arrangements, promoted by Hugh Townsend in the late 1980s³² (then using Gladstone v Bower tenancies) are considered artificial. The same type of arrangement was used for most of the UK’s milk quota sales between 1985 and 1994, proving a “change of occupation”.

8.1.2 *The RPA had no rules to prevent speculation and accumulation contrary to the Scheme objectives*

However what the King case does confirm is that under the Single Payment Scheme, the UK had not introduced any special rules to prevent speculative transfers and the accumulation of payment entitlements without a corresponding agricultural basis. (This suggests that however much the RPA thought someone was doing this, there was little they could do about it.) There were no arrangements positively to further the objectives of the Scheme.

³⁰ See <http://www.bailii.org/ew/cases/EWHC/Admin/2016/1692.html> for full case summary

³¹ Article 30 of Council Regulation (EC) No 73/2009 - Circumvention clause: *Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.*

³² Click on link to “Articles about the requirements of selling milk quota” on Townsend Chartered Surveyors’ website: <http://www.townsendcharteredsurveyors.co.uk/c.do?category=285>

8.1.3 *Naked acre letting can be used to meet an objective of the Scheme*

One of the objectives of the Scheme was to avoid agricultural land being abandoned and to ensure that it was maintained in good agricultural and environmental condition (GAEC). This naked acre letting arrangement therefore passed this second test as it was found the Single Payment was not obtained contrary to the objectives of the Scheme i.e. it encouraged naked acres to be entered into the Scheme, complying with Cross-Compliance and GAEC regulations. In return, effectively, the person responsible for maintaining the land from the 1st January to the 31st December received a payment indirectly from the Single Payment, the remainder of which was paid to the entitlement owner (T & S King).

8.1.4 *Need to be a “farmer”*

Article 2 of Regulation (EC) No. 1782/2003 raises the query as to the person receiving the Single Payment needing to be a “farmer”. This is defined as a person or group who exercises an agricultural activity. An agricultural activity means “*the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes or maintaining the land in good agricultural and environmental condition as established in Article 6*”. This allows a Member state to define at national or regional level the minimum requirements for good agricultural and environmental condition for land. As we know, there were the GAEC and Cross Compliance rules, and the Kings were able to demonstrate they were farmers.

8.1.5 *Only need to let land for one day*

8.1.5.1 The case confirmed that even when land is let for a short period of time (as little as one day) the land could be considered to be at the disposal of a claimant on the 15th May in order that they can make a claim. However the land must have and continue to comply with GAEC and Cross-Compliance rules for the entire season from the 1st January to 31st December, even if the land was then not at the disposal of the claimant. (In this case the claimant was able to enforce compliance with these through their contractual arrangement from the 1st January to the 31st December.) This helpfully confirmed and dealt fully with any remaining queries about what period a naked acre letting should be for as in the King’s case they entered a three-year letting arrangement set up in the Spring of 2009, the letting being for each year for a period of only 10 days from the 10th to the 20th May. The old 10-month rule had been removed since 2008.

8.1.5.2 The ruling also clears away some doubt which the RPA raised about the indirect control or enforcement mechanism in respect to GAEC, as there was only a contractual arrangement between the claimant and a third party (the contractor). The judge felt that the arrangements had the effect of ensuring as a matter of law that the land was maintained in accordance with these rules, and that the objectives of the Scheme would not have been better achieved if the Kings had merely sold their entitlements and bought them back again when needed.

- 8.1.5.3 One interesting legal point was that the judge felt that Article 30 did not apply as the naked acre letting arrangement was not detrimental to at least one of the objectives of the Single Payment Scheme.

8.2 Summary of Test Case

The case confirms, under the Single Payment Scheme rules, the following:

- 8.2.1 There remains little or no precedent as to whether naked acre letting was artificial in respect to the first test under Article 30, but confirms naked acre letting did not breach the second test and therefore did not trigger Article 30.
- 8.2.2 Land need only to be at the disposal of the claimant on the “snapshot” day set, usually the 15th May.
- 8.2.3 In the UK there were no national rules to prevent speculative transfers and the accumulation of payment entitlements without a corresponding agricultural basis.
- 8.2.4 The claimant must be a “farmer” under Article 2, which would only have a minimum requirement of maintaining land in good agricultural and environmental condition under the GAEC rules, and may be also a “real” farmer which is not yet defined, as the Kings undoubtedly were.
- 8.2.5 GAEC rules and Cross-Compliance rules must apply to the land it is claimed on for the full 12-month season from the 1st January to the 31st December. The claimant remains responsible for this, but practically can employ a contractor (a third party) to carry out these responsibilities for them.
- 8.2.6 Temporary control over agricultural land does not prevent it being at a claimant’s disposal on the 15th May.
- 8.2.7 It was Townsend Chartered Surveyor’s naked acre letting arrangements that the judge ruled on, so care is needed not to assume all naked acre letting arrangements used by other agents are the same.
- 8.2.8 Of course, the outcome of this High Court case will not bind other courts, and the ruling does not have direct authority in Scotland or Northern Ireland, whereas for Wales it will be relevant.

8.3 What about under Basic Payment Scheme rules?

- 8.3.1 What the High Court case does not tell us is whether the ruling would have been the same under the Basic Payment Scheme rules. For instance there is now an “active farmer” test. However this should not be confused with the definition of “farmers” as set out in Article 4.1(a) of Regulation 1307/2013. A naked acre letting arrangement now to someone who is not a farmer, or in common sense terms not a “real farmer”, may leave the arrangement still open to challenge. It should also be pointed out that maintaining land in “Good Agricultural and Environment Condition” (GAEC) under BPS is no longer an activity that would be considered “agricultural” on its own. “Agricultural activity” is defined as:
- (i) Production, rearing or growing of agricultural products, including harvesting, milking, breeding animals and keeping animals for farming purposes;

- (ii) Maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond the usual agricultural methods and machineries, based on criteria established by Member states on the basis of the framework established by the Commission.
- (iii) DEFRA has not taken up the opportunity, though, of having a “minimum activity” definition on agricultural areas naturally kept in a state suitable for grazing or cultivation.

8.3.2 Subsequently, in the authors’ experience, most of those who have, or are interested in, naked acre letting, or what was Hosting, would be considered “real farmers” and would not on these grounds be in breach of Article 60. However the jury remains out in respect to the slight amendments to the wording of the circumvention clause under BPS. There is no doubt however that the RPA now, having gone through the expense of a test case with King –v- DEFRA, will have a better defence to any EU criticism in future that naked acre lettings breach Article 60.

8.4 Conclusion

8.4.1 Of course it is satisfying for the authors to see Townsend Chartered Surveyors’ agreements so thoroughly validated as they were in this case, where Townsend Chartered Surveyors were the “national agents” involved in setting up and managing the arrangements between the landowner and the Kings. Subject to the outstanding query between the difference of the wording of Article 30 and Article 60, on the face of it, it seems that the King case gives a clean bill of health for naked acre letting arrangements going forward. For those though that wish to minimise risk, it may seem that the RPA leasing mechanism is the obvious method to use when temporarily transferring entitlements between someone having excess entitlements and someone with excess eligible land. However there is still risk with the RPA leasing mechanism. While it initially gives the comfort that the entitlements will be automatically returned to the lessor on the date specified, this is however on the basis that the lessee complies with his own two year usage rule and does not lose any to the National Reserve. The RPA so far has been applying, or attempting to apply, a pro-rata reduction on all entitlements held by a lessee in such circumstances, thereby reducing the number of entitlements being returned to the lessor. It is interesting to note that the RPA leasing scheme was little used in 2015 and 2016, with those having excess land becoming used to receiving a payment upfront, rather than making a payment upfront themselves. And in our opinion, following the outcome of the King v DEFRA case, it seems on balance there may be little difference in the risks for either party between a naked acre letting arrangement, and using the RPA leasing without land option. And as the driver in such an arrangement is usually the farmer with the excess entitlements who wants to keep them “live”, naked acre letting arrangements may once again become popular.

8.4.2 Despite relating to lettings arrangements agreed several years ago, this test case illustrates the care needed in handling any entitlement/quota/subsidy scheme arrangements. The case was won by the Kings, with £100,000s at stake, and illustrates how important it is to use specialised professional advice and appropriate documentation.

9. COMMONS IN ENGLAND

9.1 Background

- 9.1.1 Common Land is land legally owned collectively by a number of persons, or by one person, but over which other people have certain traditional rights. A person who has a right in, or over, common land is called a commoner.
- 9.1.2 Common land rights date back to the medieval ages when Lords of the Manor would hold large areas of land, divided into smaller plots. A “commoner” would be the person who had use of a particular plot or area for the purpose of grazing, fishing, the removal of soil for fuel, extraction of minerals, and collection of firewood.
- 9.1.3 To this day these rights continue to exist, with the rights held by commoners ordinarily defined by number (of stock etc.), type and time of year the rights can be exercised. There are around 572,000 hectares of common land in England and Wales, ranging from large hill commons to smaller lowland heaths. Some commons, such as the New Forest (which although technically not a common as it is exempted from registration, is treated as such by the RPA for BPS), do not limit rights by number, but make use of marking fees, which serve as receipts for the amount of stock grazing the forest. In this case there are no limits to the amount of stock that can be turned out, although over-grazing can result in the imposition of a stinting period whereby access is limited to prevent damage.
- 9.1.4 There are also commons in Northern Ireland, Wales & Scotland (see table below which shows % land area for England, Wales & Scotland) however the rest of this section deals only with arrangements in England for claiming BPS on common land.

9.1.5 *Common Land areas in Scotland, Wales and England*³³

Table 9.1.5	Hectares	% land area
Common Grazings		
Scotland	591,901	7%
Registered Common Land		
Wales	173,366	8%
England	372,941	3%
Commons exempted from registration		
New Forest	21,995	
Epping Forest	2,458	
Exempted by Order	1,020	
Forest of Dean	3,100	
Total Commonable Land in Great Britain	1,166,781	5%

³³ From <http://www.foundationforcommonland.org.uk/the-commons-lands-of-great-britain>

9.2 Common Land Registration Act 1965 – England & Wales

- 9.2.1 To this day most commons are based on the ancient rights that apply to the land, also known as common law, which predate statute law laid down by Parliament. Due to the nature of these (ancient) rights, and their basis from long-held traditions, there is often a lack of formal documentation and an absence of written records.
- 9.2.2 In the late 1960s the Commons Registration Act was passed to provide a registration system within England and Wales for common land and town and country greens. The following information was included within the register at the time:
- 9.2.2.1 Land – a description of the land, a plan of the land, the details of the person(s) who registered the land and the date land became registered.
- 9.2.2.2 Rights – a description of the rights of common, the name of the holder(s) of the right(s) and whether the right(s) were attached to the land in the ownership of the right holder(s), or whether it was a right in gross (a right not dependent on ownership of tangible property).
- 9.2.2.3 Ownership – the details of the owner(s) of the common land.
- 9.2.3 Those with common land rights had a three-year period within which details of the common land rights could be registered. In many cases rights were not registered under the Act and have subsequently ceased to be recognised. In other cases some areas of land had clearly been wrongly registered as common land, but the Act provided no mechanism to enable such land to be removed from the Register.

9.3 Commons Act 2006 – England & Wales

In 2006 the Commons Act was passed to assist in the regulation of common land and to update, and continue to update, the Commons Register. The 2006 Act is made up of five parts:

9.3.1 *Part 1 - Registration*

This provides for the continuation of the registers, and permits amendments to be made to the Register originally introduced in 1995, although the original registration system was replaced.

9.3.2 *Part 2 - Management*

This enables the appropriate national authority to establish commons councils to manage the agricultural activities, vegetation and the exercise of “rights of common” on common land (or on town or village greens where “rights of common” exist over such land).

9.3.3 *Part 3 – Works*

This contains provision to prohibit the carrying out of works on certain common land without the consent of the appropriate national authority.

9.3.4 *Part 4 – Miscellaneous*

This contains provisions conferring powers of intervention on the appropriate national authority to deal with situations where unauthorised agricultural activities are taking place and damaging the common.

9.3.5 *Part 5 – General*

This contains powers to amend the application of enactments to common land and village greens.

9.4 **Common Land under the SPS**

9.4.1 *Allocation of land*

Commoners were notionally allocated part of the area of the common. This was based on the number of registered grazing rights they had as a proportion of the total number of grazing rights on that common. The notional area was not increased to take account of any rights which were unclaimed by other commoners. Grazing rights were then converted into livestock units (LUs) in order to take account of different types of animals with rights to graze.

9.4.2 *Establishment of entitlements*

To establish an entitlement on common land, a claimant must have had a legal right to use that land. The right will normally have been a right of grazing registered under the Commons Registration Act 1965 (i.e. common rights), but it may have been possible to show other rights (such as an owner's right to surplus grazing). A commons claimant must also have been a farmer, as defined in paragraph 7 of the Act.

9.4.3 To claim on common land in 2005 at the start of the Single Payment Scheme, Annex 5C was used to declare these rights. The name of the common and the common land number, as well as the type and number of rights, had to be noted. Sections E, F and G required confirmation of whether entitlements were to be established and activated on these commons, and whether the common was owned by the claimant.

9.5 **SPS Common Land Judicial Review**

9.5.1 In 2014 the Committees for the Minchinhampton and Rodborough Commons instigated a judicial review of the method by which the Single Payment Scheme was implemented on commons.

9.5.2 Minchinhampton and Rodborough Commons have a very high number of registered rights in the common land register, under the Commons Registration Act 1965. These rights are largely held by non-farming landowners who have not exercised their rights on the commons. (The number of rights held on these commons surpasses the commons' capacity in any case.) The system applied by the RPA as of 2005 meant that those who were exercising their rights on the commons were receiving a payment for a small fraction of the total eligible area of the commons.

9.5.3 On the 16th March 2016 the RPA admitted that the implementation of the Single Payment Scheme in 2005 on common land in England was flawed.

9.5.4 “We have concluded that the basis adopted in 2005 for allocating the eligible agricultural area of the common amongst Single Payment Scheme (SPS) claimants does not comply with European regulations. That decision has been taken in light of a legal challenge by those with rights over Minchinhampton and Rodborough Commons.”

9.6 Claiming on Common Land for BPS

As a result of the Common Land Judicial Review, the process by which entitlements on common land could be claimed changed at the commencement of the Basic Payment Scheme. Common land claimants were able to claim on a proportion of the total eligible area, calculated according to the ratio of the rights held to the total number of rights held by claimants who make a BPS claim in that year. This change meant that the full eligible agricultural area of each common would be available to claiming farmers.

9.7 BPS Commoner Definition

A farmer is “using” a common if they exercise their grazing rights by turning out stock on it. If so, they must declare all of their rights in their BPS application form, even if they choose not to claim for payment on all of the eligible area. A farmer is also “using” a common if they do either of the following:

- Participate in an Environmental Stewardship agreement on the common.
- Contribute to the appropriate management of the common by keeping some of it in a state suitable for grazing or cultivation, through the clearance of any scrub that can't be grazed, or by some other beneficial activity such as clearing bracken or maintaining boundary walls or fences.

9.8 SPS Common Land Claim Form

9.8.1 As the method adopted in 2005 was found to be “not in accordance with the regulations”, some claimants may be entitled to claim additional amounts under the SPS for previous years. To enable them do so the RPA has made a claim form available for those who believe that they should receive additional entitlements backdated to the start of SPS in 2005.

9.8.2 In order to qualify as eligible to submit this claim form the farmer must have:

- claimed SPS in 2005 on commons where the full area was not allocated to claimants; and
- have claimed in each subsequent year to date.

9.8.3 Other commons claimants who had a consistent claim history from 2005 until they ceased claiming in a subsequent year may also be entitled to claim additional amounts.

9.8.4 The method of calculating backdated entitlements and payments owed to common land claimants has now been finalised. The RPA has sought legal guidance and is compensating on the basis that “commoners will be put in the correct position”. In order to do this the RPA has confirmed that it will be using 2015 mapping data (referred to later) to assign eligible areas from 2005 onwards. This of course raises questions about whether the eligible areas in 2015 are the same as when the scheme was initially implemented in 2005. The RPA is therefore in a difficult position as this exposes it to complaints from commoners who believe the eligible area was larger in 2005 than in 2015, whilst potentially overpaying those whose commons have increased in size during this period.

9.8.5 If the RPA did not use the 2015 mapping data it would have to make use of the mapping data used in 2005. This was a combination of plans submitted during the registration period of the Common Registration Act 1965, and plans produced by

Aberystwyth University, as no CAP-specific plans had been created. It is therefore hard to conclude that the processing of SPS common land claim forms will result in all common land claimants being left in “the correct position”, as the RPA has no means to determine the eligible areas in the period between 2005 and 2015.

9.8.6 Furthermore, claims made using this form are limited to being backdated just six years as set out in the Limitation Act, although it is unclear as to how the Act has been applied by the RPA in this case.

9.8.7 This is the RPA’s stated position, but it is believed there may be other circumstances in which compensation or a further allocation of entitlements is appropriate, particularly in scenarios where claimants in 2005 chose not to register their common rights with the RPA as they had been incorrectly informed about the method of entitlement allocation. Recourse may also be possible further back than six years by not using the RPA form, i.e. claiming through the courts.

9.9 Mapping of Common Land under BPS

In addition to the introduction of a new method for the calculation of Eligible Areas, the RPA has also undertaken a new remapping process of the commons. This commenced in 2013 on the basis that the new plans would be finalised for the introduction of the BPS in 2015. This has proved not to be the case, with the RPA failing to produce a significant number of plans before claims had to be submitted in 2015 and 2016. Although the physical mapping of these commons has now been completed, the method by which this information is digitised to determine an eligible area has been slow. Some commoners have now been sent plans of their commons, providing them with an opportunity to check, and then dispute, plans should they be seen to be incorrect. A number of commons are still awaiting copies of these plans, particularly where it has been found that the eligible area is significantly smaller than that established in 2005.

9.10 New Forest

9.10.1 Under Section 11 of the Commons Registration Act 1965, the New Forest is excluded from the registration provisions of the Act, although it and the other commons excluded from the Act were/are treated as commons by the RPA for the purpose of SPS/BPS. The present boundary or perambulation of the New Forest was laid down by Section 1 of the New Forest Act 1964. In the subsequent 52 years the forest has changed, with the border now somewhat expanded from when it was last set out in the Act, and there are significant differences between the area now within the Forest and its extent before 1964.

9.10.2 There has been no judicial interpretation of Section 11 of the Commons Registration Act 1965, but it is believed that the registration authority refused to accept registration of any common rights exercisable over the New Forest.

9.10.3 As a result there is no definitive register of the rights held within the New Forest, and therefore demonstrating these rights has been an area of concern for commoners submitting their claims. Although the RPA does not require confirmation of these rights when processing claims, should an inspection take place, it is vital that claimants have sufficient documentation as evidence of these rights. The RPA does however require the submission of Marking Fee Receipts; these are receipts produced by Agisters (officials of the New Forest) when stock is put out to pasture,

and confirms the number of stock de-pastured, and the money which has been paid for this.

- 9.10.4 In 2005 New Forest commoners were allocated one eligible hectare of common land for each livestock unit grazed in the Forest in the 12-month period immediately preceding the announcement of the treatment of New Forest commoners under the SPS. This allocation method was subsequently changed in 2007 to a notional area of 3.03 ha per livestock unit, based on the total eligible area of the common established for SPS. This change led to a recalculation and distribution of entitlements and payments for those who had been under allocated entitlements in 2005.
- 9.10.5 Following the remapping process discussed above, the RPA have found that the eligible area of the New Forest is somewhat smaller than was established in 2007. As a result of the RPA finding the eligible area to be 15,251.41 ha, the eligible area per livestock unit was calculated to be 2.392. This reduction from the figure used in 2007 has resulted in a number of claimants losing a significant number of entitlements and receiving a reduced 2015 payment. It is accepted by the RPA that this mapping is likely to change following challenges from the commoners.

10. COMPLAINTS/DISPUTES WITH STATUTORY AUTHORITIES

10.1 RPA Complaints Procedure in England

10.1.1 If a claimant is unhappy with a decision by the RPA in respect to a claim, a payment, a reduction in payment, a penalty applied, entitlements allocated (or confiscated), a mapping issue or anything else, they have a right to complain, and should as a first step email ruralpayments@defra.gsi.gov.uk.

10.1.2 There is a form that can be downloaded from the [RPA website](#) if wished.

10.1.3 Once the RPA receive a complaint the Complaints Resolution Team will try and settle the complaint.

10.1.4 If the complainant is still unhappy, the RPA will look at the case again, and the complainant can also ask them to pass the complaint to the Complaints Review Team who won't have seen the complaint before. They will make an independent decision within 30 working days.

10.1.5 If the complainant remains dissatisfied with the decision of the Complaints Review Team, depending on whether the complaint is about their service or is a challenge to a decision they have made, the complainant can either:

- Write to their MP (if it is about the service received) and ask them to raise the case with the Parliamentary & Health Service Ombudsman; (which must be done within 12 months of the initial complaint) or;
- If it's about a decision they have made, the complainant can appeal (within 60 working days of receiving the decision letter).

10.1.6 A complainant can appeal a decision about an RDPE scheme if they think the RPA has:

- Made a mistake with their application; or
- Made a processing error; or
- Got the law wrong.

10.1.7 To appeal against an RPA decision a complainant is required to fill in a [CA1 form](#) and send it to Rural Payments Agency, Sterling House, Dix's Field, Exeter, EX1 1QA, tel: 01392 315853. The RPA charge a fee to appeal against a decision, and for appeals about Basic Payment Scheme decisions, there is a charge of:

- £100 toward the appeal panel costs if the amount disputed is less than £2,000;
- £250 if the amount disputed is between £2,000-£10,000, and
- £450 if the amount disputed is more than £10,000.

10.1.8 Alternative approach to disputes with RPA

10.1.8.1 However as set out above, the RPA's procedure for resolving any problems can be long and laborious and many who try often give up long before the process is concluded, whether due to frustration, time or the cost of engaging professionals to deal with the RPA. Cases can range from any number of issues relating to entitlements, and particularly entitlement correction and maladministration due to the length of time taken for the RPA coming back on a particular issue, incorrect advice being provided by

the RPA, or a range of other issues that have led to poor or incorrect advice being provided by the RPA and subsequently relied upon.

- 10.1.8.2 One of the most common cases the authors have experienced involves previous transfers of entitlements which have recently undergone Entitlement Correction, and the RPA have found errors meaning that the entitlements should have expired some time ago (in some cases even prior to the previous transfer). This can mean that a purchaser's ownership of the entitlements can be at risk from vendors who have previously transferred entitlements in from elsewhere, or who have not followed the 'usage rule' themselves. This is not picked up by the RPA (or the RPA confirmed the entitlements' 'live' status despite the 'usage rule'). To be fair to the RPA "usage rules" can cause historic problems the RPA are not responsible for. One way of safeguarding against this is to obtain a full determination of title in respect to the entitlements, which can be a long and expensive process. Alternatively one can ensure that any entitlement sales contract contains an undertaking from the vendor that they have previously complied with scheme rules and have good title to the entitlements they are transferring. This then provides a clear chain of liability if anything does go wrong, whereby the purchaser can make a claim relying on the vendor's contractual undertaking, and the vendor can subsequently claim their damages from the RPA as long as they have evidence that the RPA were at fault.
- 10.1.8.3 More recently some clients have had problems caused by the RPA not processing RLE1 forms adding land parcels or recording boundary changes that were submitted by the 2015 deadline, and these changes were then not included in their 2015 claim assessment. This resulted in not only the loss of the payment for the new land parcels which had been omitted, but in some cases the farmer being penalised for over-claiming by a further deduction from the payment for the remaining land. Furthermore these errors often then rolled over into their 2016 claim, involving time and often professional costs to get them corrected by the RPA.
- 10.1.8.4 The authors have found, in some cases, claimants have completed the Appeals process, and even when it has found in their favour, the RPA has declined to accept the outcome. It is important to realise the Appeals system is not a judicial process, and is not binding on the RPA. Subsequently, due to the time and costs involved in going through the Appeal process, consideration needs to be given as to whether it would be more cost effective, and less frustrating, to take the matter straight to a court. The added advantage with this approach is that some of the professional costs can be recovered, if successful, and of course it is binding on the RPA.
- 10.1.8.5 In other disputes with the RPA, even where the RPA admits liability for such things as maladministration, the RPA is still resisting reimbursing claimants for professional fees in most cases, but this approach is yet to be challenged in the courts.

10.2 DAERA Complaints Procedure in Northern Ireland (Review of Decisions Procedure)

If a transfer request is rejected, or a claimant is unhappy with a decision affecting their BPS claim, they have a right to request a review of that decision, so long as their request is lodged in writing within the time limit specified in the decision letter. This is a two-stage process; Stage One Review is an internal review conducted by officials in the scheme processing branch who were not involved in the original decision. If the complainant remains unhappy they can request the complaint to be escalated to the Stage Two Review process for which the complainant would have to pay a fee. This is a review by an external panel which makes a recommendation to the Department. The final decision is made by the Head of Paying Agency. If the complaint is upheld at Stage Two, DAERA will refund the review fee.

10.2.1 *Judicial Review*

If a complainant wishes to challenge the final decision on a point of law, they may seek a judicial review through the High Court. Applications for judicial review should normally be made to the High Court within three months of the complainant receiving the final decision.

10.2.2 *Assembly Ombudsman for Northern Ireland*

If a complainant considers that the procedures have not been followed correctly, they can take their complaint through a Member of the Legislative Assembly (MLA) to the Assembly Ombudsman for Northern Ireland. Complaints would normally need to be raised with the sponsoring MLA within 12 months of receiving the final decision. Where there is recourse to a review procedure the Ombudsman's role is to be satisfied that the complainant has had access to the review procedure and they were treated fairly and consistently within that system.

Full details of the complaint procedure can be found on: <https://www.daera-ni.gov.uk/publications/how-do-i-make-complaint-if-i-am-unhappy-quality-service-i-received>

10.3 Scottish Rural Payments Complaints Procedure

10.3.1 The Scottish Government has a two-stage complaints procedure: Stage One – Frontline Resolution, and Stage Two – Investigation. A complainant will need to submit the complaint in writing and address this to the officer in charge of the staff they have been dealing with. The aim of the Frontline Resolution is to address each complaint within five working days of receipt. If the complainant is dissatisfied with the response they can ask for the complaint to be considered at Stage Two. The complaint will be acknowledged within three working days and an independent investigating officer who has in-depth knowledge of the issue being complained about will be appointed. The complainant should then receive a report of the investigation no later than 20 working days after receipt of the Stage Two complaint.

10.3.2 If following Stage Two being completed the complainant remains unhappy, they will have the right to ask the Scottish Public Services Ombudsman (SPSO) to investigate the case, as long as the event happened no more than a year ago, and the matter has not been taken to another court (i.e. the Scottish Land Court).

10.4 Rural Payments Wales Appeals procedure

- 10.4.1 The appeals process consists of two stages - applicants who are dissatisfied with the decision reached at Stage 1 have the right to apply for a review by an independent panel.
- 10.4.2 Applications at both stages must be received no later than 60 days after the date of the letter notifying of the decision that is being appealed against. Appeals received after this deadline cannot be considered.
- 10.4.3 The appeal process is limited to a consideration of the facts of a case and the relevant rules and regulations. Complaint issues, such as maladministration, cannot be considered under the appeals process and must be dealt with in accordance with the [Welsh Government policy on complaints](#).
- 10.4.3.1 **Stage 1:** the decision will be reviewed by the Rural Payments Wales Customer Contact Unit or local agri-environment office (if appropriate).
- 10.4.3.2 There is no charge for the Stage 1 review and applicants will receive a formal written response detailing the reasons for a decision. Applicants who are dissatisfied with a decision reached at Stage 1 have the right to request a further review by an independent panel.
- 10.4.3.3 Note: decisions must be reviewed at Stage 1 before a Stage 2 appeal can be considered.
- 10.4.3.4 **Stage 2:** a panel of independent appointees will reconsider the earlier decision. The applicant may choose to attend an oral hearing, (usually held at the most convenient Welsh Government office), or request that the case be considered in writing.
- 10.4.3.5 A charge of £50 (for a written review) or £100 (for an oral review) is levied, but this is repaid in full if the appeal is successful or partly successful.

10.5 Definition of Maladministration

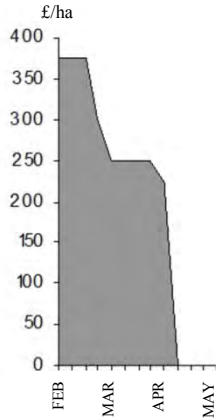
Maladministration is the name for failures in administrative actions, whether through poor administration or applying the rules incorrectly. If a claimant thinks they have suffered losses that could have been avoided due to maladministration of their BPS claim or entitlement transfer etc. by the Administering Authority/payment agency, the claimant may be entitled to submit a complaint and receive compensation.

The following list provides some examples of maladministration:

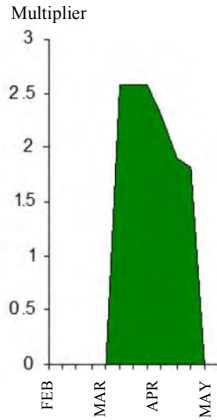
- avoidable delay;
- faulty procedures applied or failing to follow correct procedures;
- failing to tell a member of the public about any rights they might have;
- unfairness, bias or prejudice;
- giving advice which is misleading or inadequate;
- rudeness and failing to apologise properly;
- mistakes in handling a claim;
- not offering a suitable solution when one is due.

APPENDIX 1: SINGLE/BASIC PAYMENT SCHEME ENGLISH NON-SDA, SDA & MOORLAND ENTITLEMENT TRADING GRAPHS 2006-2016

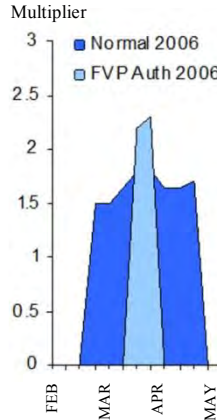
SPS 2006 SDA
€100-€200
£/ha (paid by Transferor)



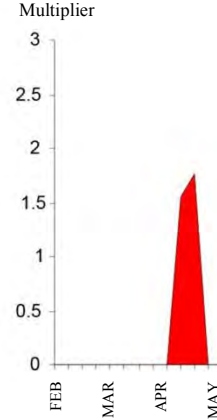
SPS 2006 Normal Non SDA
€28.2-€400
Price/£ 2005 Statement Value



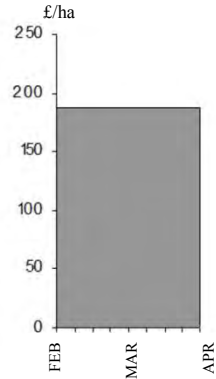
SPS 2006 Normal Non SDA
€400-€750
Price/£ 2005 Statement Value



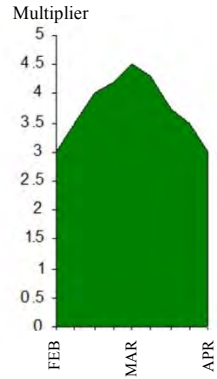
SPS 2006 Normal Non SDA
€750-€5,000
Price/£ 2005 Statement Value



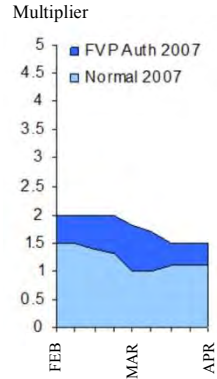
SPS 2007 SDA
€100-€200
£/ha (paid by Transferor)



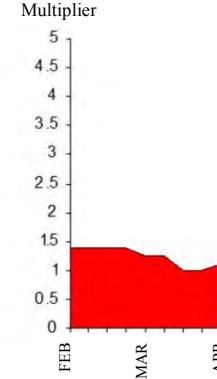
SPS 2007 Normal Non SDA
€28.2-€400
Price/£ 2006 Statement Value



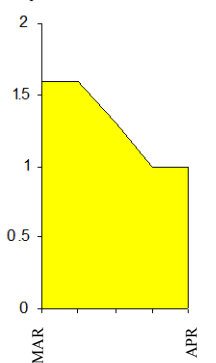
SPS 2007 Normal Non SDA
€400-€750
Price/£ 2006 Statement Value



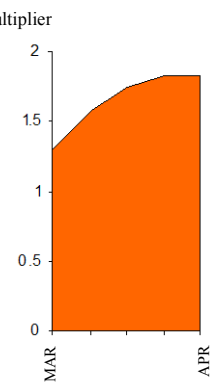
SPS 2007 Normal Non SDA
€750-€5,000
Price/£ 2006 Statement Value



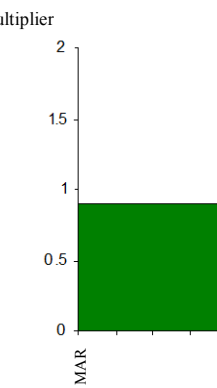
SPS 2008 SDA
€100-€200
Price/£ 2007 Statement Value
Multiplier



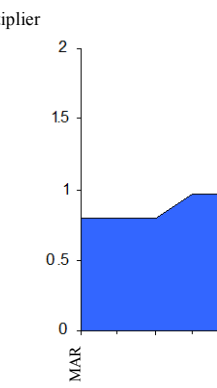
SPS 2008 Normal Non SDA
Flat Rate €95.13
Price/£ 2007 Statement Value
Multiplier



SPS 2008 Normal Non SDA
€190.47-€200
Price/£ 2007 Statement Value
Multiplier

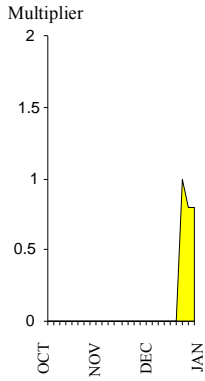


SPS 2008 Normal Non SDA
€200+
Price/£ 2007 Statement Value
Multiplier

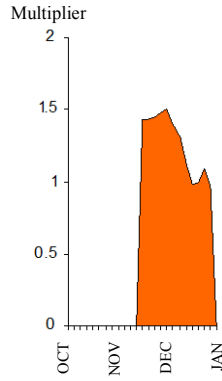


The multipliers used in the above graphs vary depending on the specific entitlement values and number of hectares being traded, these graphs represent averages and are for illustrative purposes only. Prices of traded entitlements are expressed in £. Exchange rates used were those set for the previous payment year.

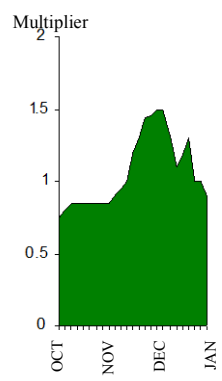
SPS 2009 SDA
€100-€200
Price/£ 2008 Statement Value



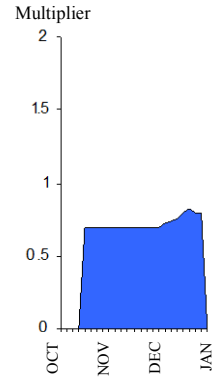
SPS 2009 Normal Non SDA
Flat Rate €141.93
Price/£ 2008 Statement Value



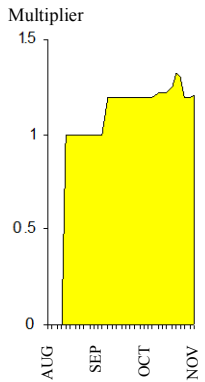
SPS 2009 Normal Non SDA
€141.93-€300
Price/£ 2008 Statement Value



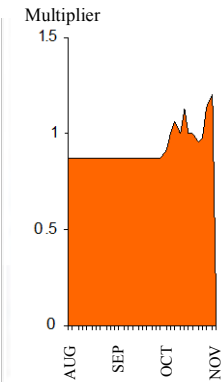
SPS 2009 Normal Non SDA
€300+
Price/£ 2008 Statement Value



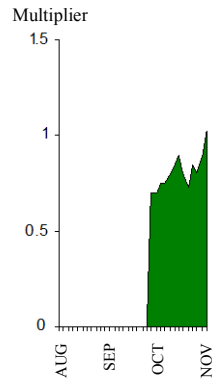
SPS 2010 SDA
€100-€200
Price/£ 2009 Statement Value



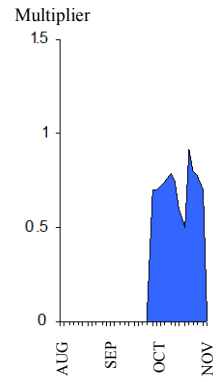
SPS 2010 Normal Non SDA
Flat Rate €190.47
Price/£ 2009 Statement Value



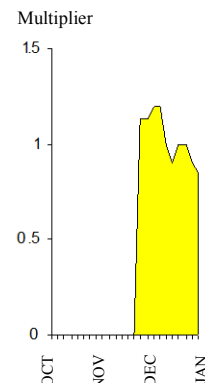
SPS 2010 Normal Non SDA
€141.93-€300
Price/£ 2009 Statement Value



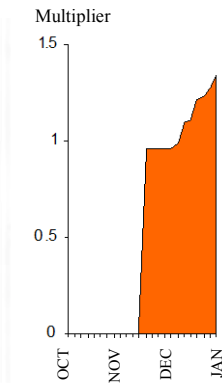
SPS 2010 Normal Non SDA
€300+
Price/£ 2009 Statement Value



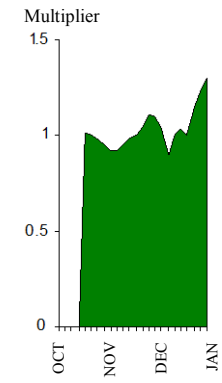
SPS 2011 SDA
€100-€200
Price/£ 2010 Statement Value



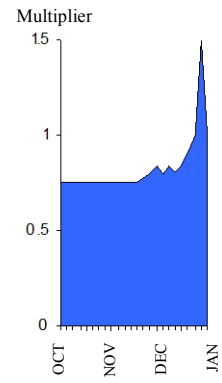
SPS 2011 Normal Non SDA
Flat Rate €241.14
Price/£ 2010 Statement Value



SPS 2011 Normal Non SDA
€190.47-€300
Price/£ 2010 Statement Value

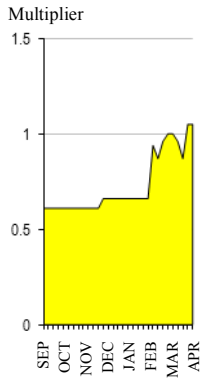


SPS 2011 Normal Non SDA
€300+
Price/£ 2010 Statement Value

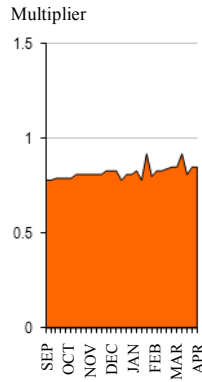


The multipliers used in the above graphs vary depending on the specific entitlement values and number of hectares being traded, these graphs represent averages and are for illustrative purposes only. Prices of traded entitlements are expressed in £. Exchange rates used were those set for the previous payment year.

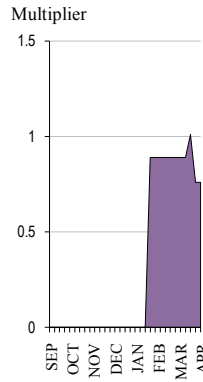
SPS 2012 SDA
Flat Rate €260.29
Price/£ 2011 Statement Value



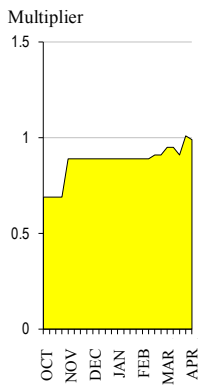
SPS 2012 Normal Non SDA
Flat Rate €323.91
Price/£ 2011 Statement Value



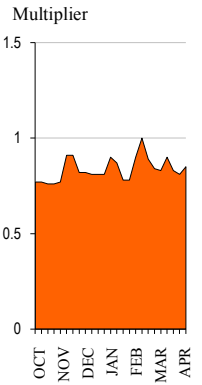
SPS 2012 Moorland
Flat Rate €45.47
Price/£ 2011 Statement Value



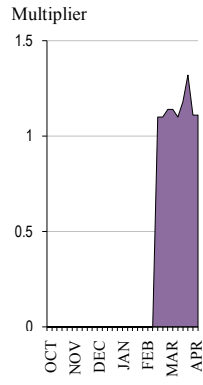
SPS 2013 SDA
Flat Rate €260.29
Price/£ 2012 Statement Value



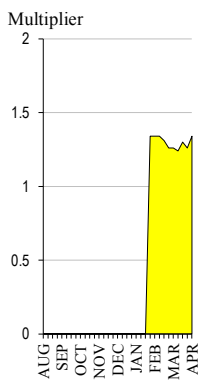
SPS 2013 Normal Non SDA
Flat Rate €323.91
Price/£ 2012 Statement Value



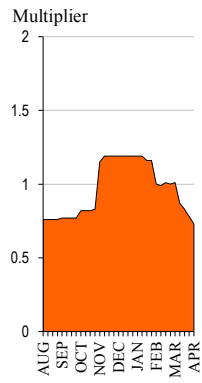
SPS 2013 Moorland
Flat Rate €45.47
Price/£ 2012 Statement Value



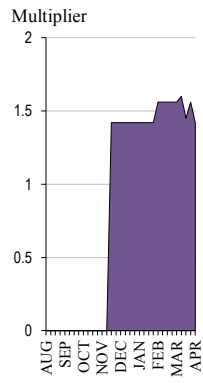
SPS 2014 SDA
Flat Rate €260.29
Price/£ 2013 Statement Value



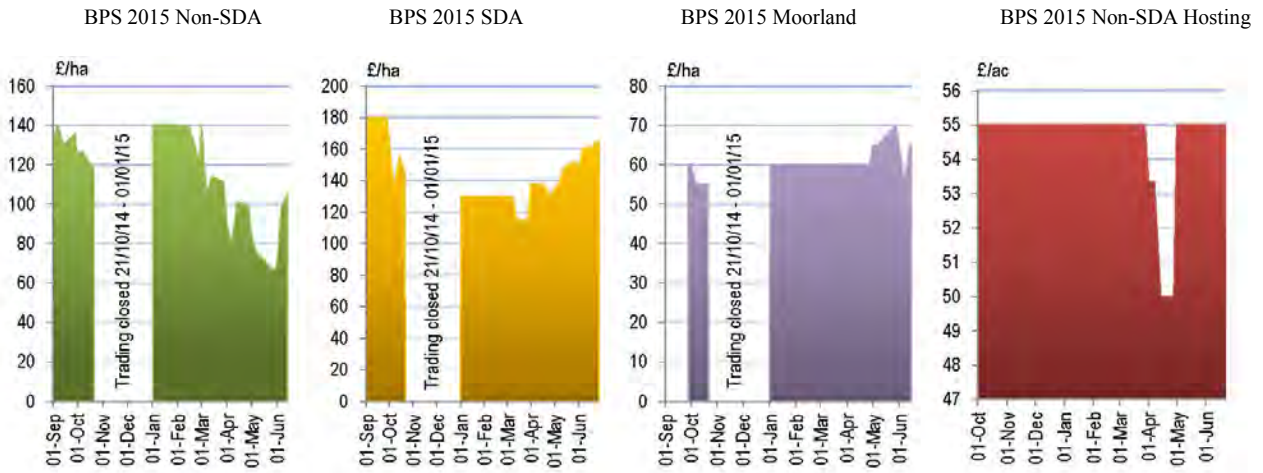
SPS 2014 Normal Non SDA
Flat Rate €323.97
Price/£ 2013 Statement Value



SPS 2014 Moorland
Flat Rate €45.47
Price/£ 2013 Statement Value

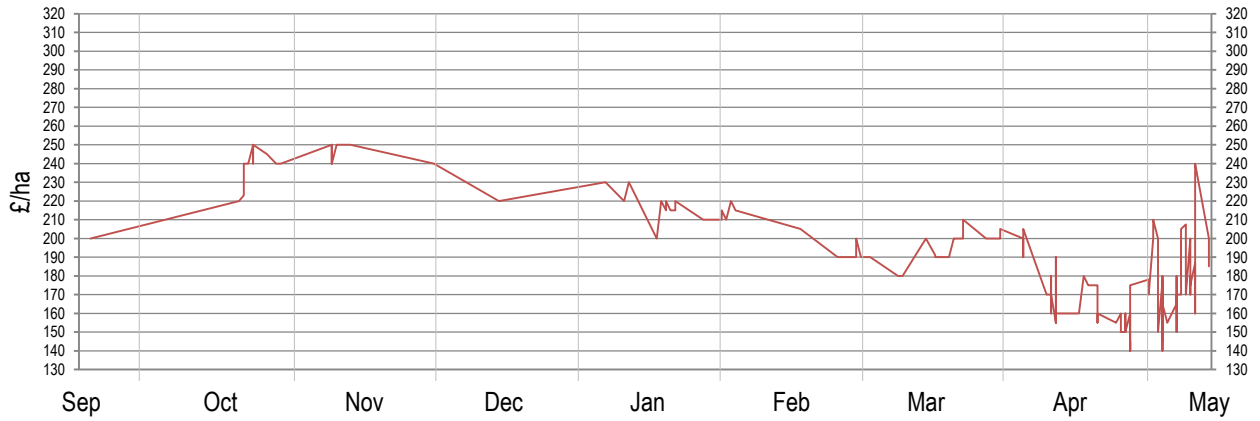


The multipliers used in the above graphs vary depending on the specific entitlement values and number of hectares being traded, these graphs represent averages and are for illustrative purposes only. Prices of traded entitlements are expressed in £. Exchange rates used were those set for the previous payment year.



The prices used in the above graphs vary depending on the specific entitlement values and number of hectares being traded, these graphs represent averages and are for illustrative purposes only. Prices of traded entitlements are expressed in £s.

BPS 2016 Non-SDA VAT registered sales of >10 ha



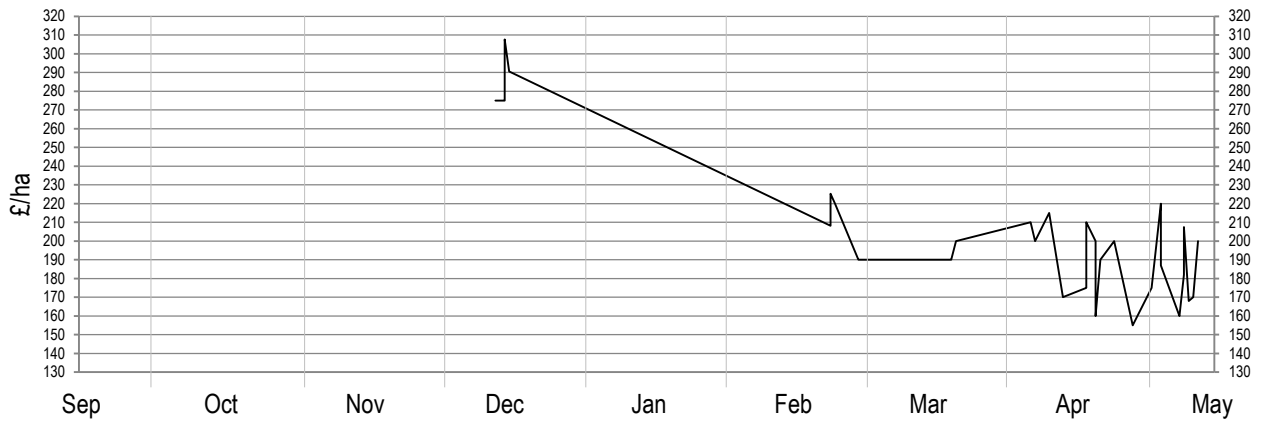
BPS 2016 Non-SDA VAT registered sales of <10 ha



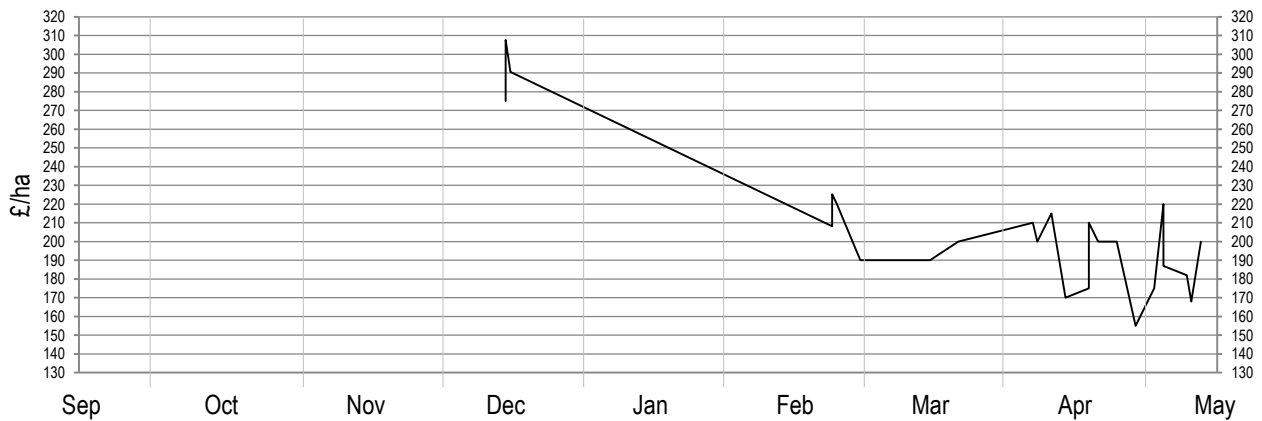
BPS 2016 Non-SDA VAT registered sales – all lot sizes



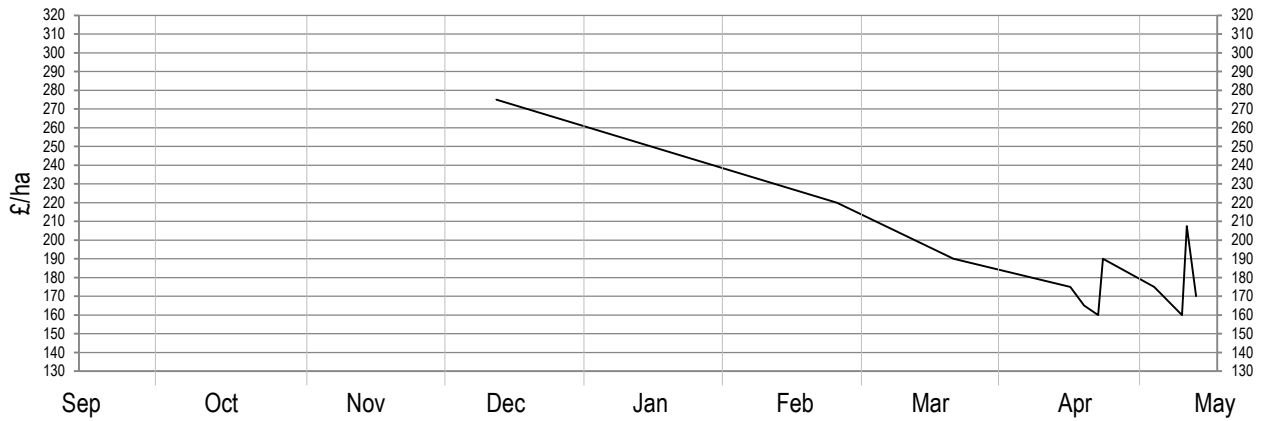
BPS 2016 Non-SDA Non-VAT sales – all lot sizes



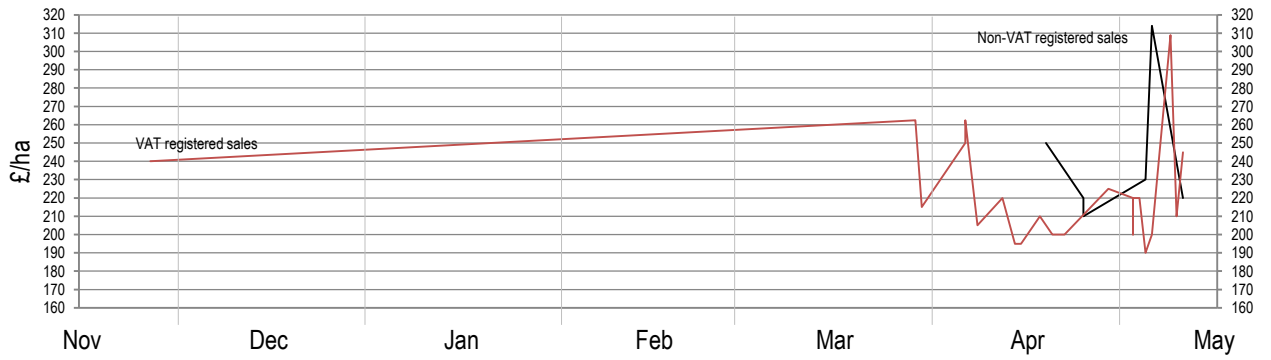
BPS 2016 Non-SDA Non-VAT registered sales <10 ha



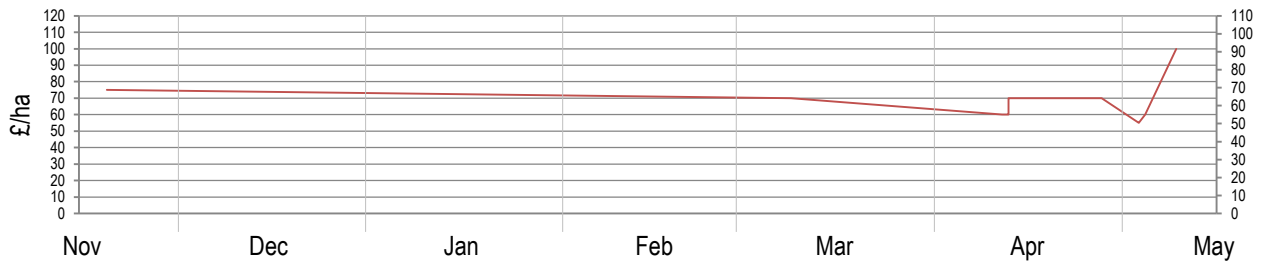
BPS 2016 Non-SDA Non-VAT registered sales >10 ha



BPS 2016 SDA – all lot sizes – VAT and Non-VAT registered sales



BPS 2016 SDA-Moorland– all lot sizes – VAT registered sales



APPENDIX 2: UK SINGLE & BASIC PAYMENT TABLES

ENGLISH - NON-SDA

SPS Year	Flat rate %	Historic %	Flat Rate € Before Mod (ha)	Flat Rate £ Before Mod (ha)	Flat Rate € Before Mod (acres)	Flat Rate £ Before Mod (ha)	Flat Rate € After Mod (ha)	Flat Rate £ After Mod (ha)	Flat Rate £ After Mod (acres)	Modulation (both EU & UK)	€ to £ Exchange rate
2005	10	90%	€28.20	£19.23	£7.78	£18.27	£7.40	£7.40	5%		£0.68
2006	15	85%	€45.92	£31.12	£12.59	£28.01	£11.33	£11.33	10%		£0.68
2007	30	70%	€95.13	£66.28	£26.82	£55.02	£22.27	£22.27	17%		£0.70
2008	45	55%	€141.93	£112.17	£45.39	£90.86	£36.77	£36.77	18%		£0.79
2009	60	40%	€190.47	£173.33	£70.14	£140.40	£56.82	£56.82	19%		£0.91
2010	75	25%	€241.14	£207.38	£83.93	£167.98	£67.98	£67.98	19%		£0.86
2011	90	10%	€289.94	£251.28	£101.69	£203.53	£82.37	£82.37	19%		£0.87
2012	100	0%	€323.91	£258.50	£104.61	£209.39	£84.74	£84.74	19%		£0.80
2013	100	0%	€323.97	£270.85	£109.61	£219.39	£88.78	£88.78	19%		£0.84
2014	100	0%	€251.39	£195.40	£79.08	£195.40	£79.08	£79.08	0%		£0.78
BPS Year			€ Before FDM (ha) inc. greening	£ Before FD (ha) inc. greening	€ Before FD (acres) inc. greening	£ Before FD (ha) inc. greening	€ After FD (ha) inc. greening	£ Before FD (acres) inc. greening	FD		€ to £ Exchange rate
2015	100	0%	€248.02	£181.37	£73.40	£178.85	£72.38	£72.38	1.393041%		£0.73
2016	100	0%	€252.98	£215.61	£87.25	£212.69	£86.07	£86.07	1.353905%		£0.85
2017	100	0%	€252.98	£215.61	£87.25	£212.69	£86.07	£86.07	1.353905%		£0.85

Red = Hectares Blue = Acres Estimated

POST-2016 PREDICTIONS: These are highlighted in grey, and are subject to exchange rate fluctuations and other adjustments. All figures are strictly for guidance purposes only. SPS ran until 2014, and SPS entitlements were rolled over into BPS entitlements which started in 2015 and are due to run until 2019 (subject to Brexit negotiations)

MODULATION: A deduction made from the SPS payment made by EU and UK governments per ha to fund European-wide and UK Rural Development Programmes, which was applied differently by each UK regional government. This was discontinued in the final year of SPS (2014) and instead 12% modulation was taken BEFORE the payment rates were calculated per ha, hence the payment rate initially seemed much lower. First €5,000 exempt from EU (but not UK) modulation.

FD (Financial Discipline) This is a percentage of the BPS payment that is kept back to fund an EU Crisis Reserve. If it is unused, or only partially used, this is refunded to claimants on a pro-rata basis (i.e. in 2016 farmers received a small refund relating to the 2014 FDM, based on 1.300% of their 2015 BPS claim). FD deductions only apply to payments above €2,000.

ENGLISH - SDA												
SPS Year	Flat rate %	Historic %	Flat Rate € Before Mod (ha)	Flat Rate £ Before Mod (ha)	Flat Rate € Before Mod (acres)	Flat Rate £ Before Mod (acres)	Flat Rate € After Mod (ha)	Flat Rate £ After Mod (ha)	Flat Rate € After Mod (acres)	Flat Rate £ After Mod (acres)	Modulation (both EU & UK)	€ to £ Exchange rate
2005	10	90%	€23.58	£16.03	£6.49	£6.49	£15.23	£15.23	£6.16	£6.16	5%	£0.68
2006	15	85%	€38.02	£25.47	£10.31	£10.31	£22.93	£22.93	£9.28	£9.28	10%	£0.68
2007	30	70%	€76.89	£53.05	£21.47	£21.47	£44.03	£44.03	£17.82	£17.82	17%	£0.70
2008	45	55%	€116.21	£91.81	£37.15	£37.15	£74.36	£74.36	£30.09	£30.09	19%	£0.79
2009	60	40%	€156.09	£141.93	£57.44	£57.44	£114.97	£114.97	£46.53	£46.53	19%	£0.91
2010	75	25%	€194.78	£167.50	£67.79	£67.79	£135.68	£135.68	£54.91	£54.91	19%	£0.86
2011	90	10%	€233.95	£202.75	£82.05	£82.05	£164.23	£164.23	£66.46	£66.46	19%	£0.87
2012	100	0%	€260.29	£207.84	£84.11	£84.11	£168.35	£168.35	£68.13	£68.13	19%	£0.80
2013	100	0%	€260.29	£217.61	£88.06	£88.06	£176.27	£176.27	£71.33	£71.33	19%	£0.84
2014	100	0%	€201.32	£156.49	£63.33	£63.33	£156.49	£156.49	£63.33	£63.33	0%	£0.78
BPS Year			€ Before FD (ha) inc. greening	£ Before FD (ha) inc. greening	€ Before FD (acres) inc. greening	£ Before FD (acres) inc. greening	€ After FD (ha) inc. greening	£ After FD (ha) inc. greening	€ After FD (acres) inc. greening	£ After FD (acres) inc. greening	FD	
2015	100	0%	€246.24	£180.07	£72.87	£72.87	£177.56	£177.56	£71.86	£71.86	1.393041%	£0.73
2016	100	0%	€251.16	£214.06	£86.63	£86.63	£211.16	£211.16	£85.46	£85.46	1.353905%	£0.85
2017	100	0%	€251.16	£214.06	£86.63	£86.63	£211.16	£211.16	£85.46	£85.46	1.353905%	£0.85

Red = Hectares

Blue = Acres

Estimated

POST-2016 PREDICTIONS: These are highlighted in grey, and are subject to exchange rate fluctuations and other adjustments. All figures are strictly for guidance purposes only. SPS ran until 2014, and SPS entitlements were rolled over into BPS entitlements which started in 2015 and are due to run until 2019 (subject to Brexit negotiations)

MODULATION: A deduction made from the SPS payment made by EU and UK governments per ha to fund European-wide and UK Rural Development Programmes, which was applied differently by each UK regional government. This was discontinued in the final year of SPS (2014) and instead 12% modulation was taken BEFORE the payment rates were calculated per ha, hence the payment rate initially seemed much lower. First €5,000 exempt from EU (but not UK) modulation.

FD (Financial Discipline) This is a percentage of the BPS payment that is kept back to fund an EU Crisis Reserve. If it is unused, or only partially used, this is refunded to claimants on a pro-rata basis (i.e. in 2016 farmers received a small refund relating to the 2014 FDM, based on 1.300% of their 2015 BPS claim). FD deductions only apply to payments above €2,000.

ENGLISH - SDA MOORLAND

SPS Year	Flat rate %	Historic %	Flat Rate € Before Mod (ha)	Flat Rate £ Before Mod (ha)	Flat Rate € Before Mod (ha)	Flat Rate £ Before Mod (ha)	Flat Rate € After Mod (ha)	Flat Rate £ After Mod (ha)	Flat Rate £ After FDM (ha)	Flat Rate € After FDM (ha)	Flat Rate £ After FDM (ha)	Modulation (both EU & UK)	Exchange rate € to £
2005	10	90%	€3.36	£2.28	€3.36	£2.28	€0.92	£1.85	£7.40	€7.40	£7.40	5%	£0.68
2006	15	85%	€6.48	£4.34	€6.48	£4.34	£1.76	£3.52	£11.33	€11.33	£11.33	10%	£0.68
2007	30	70%	€13.40	£9.25	€13.40	£9.25	£3.74	£7.49	£22.27	€22.27	£22.27	17%	£0.70
2008	45	55%	€20.53	£16.22	€20.53	£16.22	£6.56	£13.14	£5.32	€5.32	£5.32	18%	£0.79
2009	60	40%	€27.37	£24.91	€27.37	£24.91	£10.08	£20.17	£8.16	€8.16	£8.16	19%	£0.91
2010	75	25%	€34.20	£29.41	€34.20	£29.41	£11.90	£23.82	£9.64	€9.64	£9.64	19%	£0.86
2011	90	10%	€40.82	£35.38	€40.82	£35.38	£14.32	£28.66	£11.60	€11.60	£11.60	19%	£0.87
2012	100	0%	€45.47	£36.29	€45.47	£36.29	£14.68	£29.39	£11.89	€11.89	£11.89	19%	£0.80
2013	100	0%	€45.47	£38.01	€45.47	£38.01	£15.38	£30.79	£12.46	€12.46	£12.46	19%	£0.84
2014	100	0%	€35.26	£27.41	€35.26	£27.41	£11.09	£27.41	£11.09	€11.09	£11.09	0%	£0.78
BPS Year			€ Before FDM (ha) inc. greening	£ Before FDM (ha) greening	€ Before FDM (ha) inc. greening	£ Before FDM (ha) inc. greening	€ After FDM (ha) inc. greening	£ After FDM (ha) inc. greening	€ After FDM (ha) greening	£ After FDM (ha) greening	FD		
2015	100	0%	€65.06	£47.58	€65.06	£47.58	£19.25	£46.91	£18.98	€18.98	1.393041%	£0.73	
2016	100	0%	€66.36	£56.56	€66.36	£56.56	£22.89	£55.79	£22.58	€22.58	1.353905%	£0.85	
2017	100	0%	€66.36	£56.56	€66.36	£56.56	£22.89	£55.79	£22.58	€22.58	1.353905%	£0.85	

Red = Hectares

Blue = Acres

Estimated

POST-2016 PREDICTIONS: These are highlighted in grey, and are subject to exchange rate fluctuations and other adjustments. All figures are strictly for guidance purposes only. SPS ran until 2014, and SPS entitlements were rolled over into BPS entitlements which started in 2015 and are due to run until 2019 (subject to Brexit negotiations)

MODULATION: A deduction made from the SPS payment made by EU and UK governments per ha to fund European-wide and UK Rural Development Programmes, which was applied differently by each UK regional government. This was discontinued in the final year of SPS (2014) and instead 12% modulation was taken BEFORE the payment rates were calculated per ha, hence the payment rate initially seemed much lower. First €5,000 exempt from EU (but not UK) modulation.

FD (Financial Discipline) This is a percentage of the BPS payment that is kept back to fund an EU Crisis Reserve. If it is unused, or only partially used, this is refunded to claimants on a pro-rata basis (i.e. in 2016 farmers received a small refund relating to the 2014 FDM, based on 1.300% of their 2015 BPS claim). FD deductions only apply to payments above €2,000.

WELSH (illustrative only)

SPS/BPS Year	Flat rate %	Historic %	Example: Low Ent		Example: Med Ent		Example: High Ent		Redistributive Payment per ha	Example: Med Payment £/ha after FD inc. greening	FD % reduction	€ to £ Exchange rate
			Value €/ha inc. greening	Value €/ha	Value €/ha inc. greening	Value €/ha	Value €/ha inc. greening	Value €/ha				
2012	0%	100%	€ 100.00	€ 450.00	€ 217.80	€ 450.00	€ 450.00	n/a	£173.81	0.00%	£0.80	
2013	0%	100%	€ 100.00	€ 450.00	€ 217.80	€ 450.00	€ 450.00	n/a	£178.47	2.45%	£0.84	
2014	0%	100%	€ 76.60	€ 344.70	€ 166.80	€ 344.70	€ 344.70	n/a	£128.41	1.30%	£0.78	
2015	20%	80%	€ 88.06	€ 302.54	€ 160.22	€ 302.54	€ 302.54	€ 25.60	£133.77	1.39%	£0.73	
2016	40%	60%	€ 99.52	€ 260.38	€ 153.64	€ 260.38	€ 260.38	€ 51.40	£171.90	1.37%	£0.85	
2017	60%	40%	€ 110.98	€ 218.22	€ 147.06	€ 218.22	€ 218.22	€ 77.20	£187.77	1.50%	£0.85	
2018	80%	20%	€ 122.44	€ 176.06	€ 140.48	€ 176.06	€ 176.06	€ 103.20	£202.99	2.00%	£0.85	
2019	100%	0%	€ 133.90	€ 133.90	€ 133.90	€ 133.90	€ 133.90	€ 129.40	£218.20	2.50%	£0.85	

Estimated - Exact FR % increase per annum is unknown

The Med Payment per ha column illustrates the Medium Ent Value converted to £, including the Redistributive Payment and greening, and after the FD. The Redistributive Payment is only paid on the first 54 ha of any claim. Please see the Pillar Transfer chart for further detail on how the BPS is paid in Wales. The payment values above are examples as each individual farmer will have a different value allocated to them on the basis of their historic claim.

For SPS (up to 2014) farmers in Wales were given entitlements with a value based on their historic claims in the reference years (2000-2002). From 2015 new entitlements were allocated for the BPS and all purely historical entitlements were "extinguished" and new entitlements with a rising element of Flat Rate and an element of historic were allocated to farmers submitting an eligible claim that year. Therefore the values given in the table are for illustrative purposes only, and give examples of Low value, Average (mid) value and High value entitlements. The historic element will be reduced in instalments so all entitlements will be Flat Rate by 2019. We do not yet know the exact percentage that these instalments will represent. The predicted percentage instalments in the table above are therefore only illustrative.

FD (Financial Discipline) This is a percentage of the BPS payment that is kept back to fund an EU Crisis Reserve. If it is unused, or only partially used, this is refunded to claimants on a pro-rata basis (i.e. in 2016 farmers received a small refund relating to the 2014 FDM, but based on 1.300% of their 2015 BPS claim). FD deductions only apply to payments above €2,000.

SCOTTISH (illustrative only)

SPS/BPS Year	Flat rate %	Historic %	Example: Region 1 €/ha before FD inc. greening	Example: Region 2 €/ha before FD inc. greening	Example: Region 3 €/ha before FD inc. greening	Example: Region 1 £/ha after FD inc. greening	Example: Region 2 £/ha after FD inc. greening	FD % reduction	€ to £ Exchange rate
2012	0%	100%	€ 237.70	€ 83.20	€ 41.60	£189.70	£66.40	0.00%	£0.80
2013	0%	100%	€ 237.70	€ 83.20	€ 41.60	£194.78	£68.18	2.45%	£0.84
2014	0%	100%	€ 182.90	€ 64.00	€ 32.00	£140.80	£49.27	1.30%	£0.78
2015	20%	80%	€ 194.72	€ 58.58	€ 27.94	£140.17	£42.17	1.39%	£0.73
2016	40%	60%	€ 206.54	€ 53.16	€ 23.88	£173.15	£44.57	1.37%	£0.85
2017	60%	40%	€ 218.36	€ 47.74	€ 19.82	£182.82	£39.97	1.50%	£0.85
2018	80%	20%	€ 230.18	€ 42.32	€ 15.76	£191.74	£35.26	2.00%	£0.85
2019	100%	0%	€ 242.00	€ 36.90	€ 11.70	£200.56	£30.58	2.50%	£0.85

As with the Welsh, all Scottish claimants received different value entitlements based on their claim history, therefore this table shows the predicted effect on an example value over each of the three regions and is illustrative only. The Scottish Government has indicated eventual flat rate will be around €242, €37 and €11.7 for each respective Region

Estimated

For SPS (up to 2014) farmers in Scotland were given entitlements with a value based on their historic claims in the reference years (2000-2002). From 2015 new entitlements were allocated for BPS and all purely historical entitlements were "extinguished". New BPS entitlements with a rising element of Flat Rate and an element of historic were allocated to Scottish farmers submitting an eligible SAF claim in 2015. Scotland is also split into three Regions, with Region 1 being the better quality agricultural land, Region 2 rough grazing, and Region 3 LFA rough grazing. Therefore the values given in the table are for illustrative purposes only, and give examples of (mid-value) average payments per ha for Regions 1, 2 & 3, and the £ Av. Payment column shows examples of the £ payment for Regions 1 & 2, after the FD has been applied, and including greening. The historic element of Scottish entitlements will reduce in five equal instalments over the five years between 2014 and 2019 so all entitlements will be Flat Rate by 2019.

FD (Financial Discipline) This is a percentage of the BPS payment that is kept back to fund an EU Crisis Reserve. If it is unused, or only partially used, this is refunded to claimants on a pro-rata basis (i.e. in 2016 farmers received a small refund relating to the 2014 FDM based on 1.300% of their 2015 BPS claim). FD deductions only apply to payments above €2,000.

APPENDIX 3: GLOSSARY OF ABBREVIATIONS

ANC	Areas Facing Natural Constraints
BPS	Basic Payment Scheme (2014-2019)
CAP	Common Agricultural Policy
CDW	Customer Details Form (Wales) – To register business details with RPW
DAERA	Department of Agriculture, Environment & Rural Affairs (Northern Ireland)
DARDNI	Department of Agriculture and Rural Development Northern Ireland (replaced by DAERA in 2016)
DEFRA	Department of Environment, Farming & Rural Affairs
EAGF	European Agricultural Guarantee Fund (provides finance for direct payments, i.e. BPS, to EU Member states under Pillar 1 of the CAP)
EC	European Commission - an institution of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties, and managing the day-to-day business of the EU.
EEC	European Economic Community
EFA	Ecological Focus Areas
EU	European Union
FDM	Financial Discipline Mechanism
FM	Field Maintenance form (to add new land to a claim in Wales)
GAEC	Good Agricultural and Environmental Condition
IACS	Integrated Administration and Control System
LFA	Less Favoured Area
LFASS	Less Favoured Area Support Schemes (RPA Scotland)
MAFF	Ministry of Agriculture, Fisheries & Food (replaced with DEFRA in 2001)
NC	National Ceiling – the total CAP subsidy allocated to each Member state by the EC each year for them to then distribute between Pillar 1 and Pillar 2
PPA	Post-Payment Amendments (England)
RDP	Rural Development Programme (Pillar 2)
RLE1	Rural Land & Entitlements paper transfer application form
RPA	Rural Payments Agency (England)
RPW	Rural Payments Wales
SAF	Single Application Form (Scotland & Northern Ireland)
SFP	Single Farm Payment Scheme (Scotland & Northern Ireland) (2005-2014)

SGRPID	Scottish Government Rural Payments & Inspections Division
SMR	Statutory Management Requirement
SPS	Single Payment Scheme (England & Wales) (2005-2014)
UICF	Unique Identifier Capture Form (Wales)
WG	Welsh Government

APPENDIX 4: GLOSSARY OF TERMS

Areas Facing Natural Constraints	The new designation, based on bio-physical criteria, as required by the European Commission for land that is constrained or less favoured. This needs to be in place by 2018 at the latest and will replace the existing Less Favoured Area designation
Capping	A threshold over which payment are reduced by a percentage amount.
Coupled payments	<p>Coupled payments are those linked to the production of a particular crop or keeping a particular type of livestock – for example the Scottish Beef Scheme. There has been a general move away from coupled payments since decoupling was introduced by the 2003 CAP reform. Removing the link between payments and production – which gave rise to sugar mountains, for instance – was designed to give farmers greater freedom to meet market demands.</p> <p>However, in Scotland, coupled payments are an important way to meet the needs of Scotland’s livestock sector. There are provisions in the new CAP regulations to use up to eight per cent of national ceilings for coupled support from 2015.</p>
Conacre	Conacre is a system of letting agricultural land that is unique to Ireland. The current use of 'conacre' originated with the Land Acts of the mid-nineteenth century. Today the term is used to reflect the system where landowners who wish to retain their land but not farm it can licence the land to another farmer, usually for a period of eleven months
Countryside Stewardship	Countryside Stewardship (England) provides financial incentives for land managers to look after their environment through activities such as: conserving and restoring wildlife habitats; flood risk management; woodland creation and management; reducing widespread water pollution from agriculture; keeping the character of the countryside; preserving features important to the history of the rural landscape; encouraging educational access. The scheme is open to all eligible farmers, woodland owners, foresters and other land managers; suitable for many types of land use (for example conventional and organic farmland, coastal areas, uplands and woodlands); competitive; scored against local priority targets to maximise environmental benefit. There are 3 main elements to the scheme in England being Mid Tier, Higher Tier and Capital Grants.
Cross Compliance	Cross-compliance is a set of mandatory requirements which farmers must comply with in order to receive their CAP payments. The requirements are grouped into two main areas; Good Agricultural and Environmental Condition (GAEC) and Statutory Management Requirements (SMRs). GAEC is based on a framework provided by the Commission covering soil, water and land related issues. The SMRs are based on existing legislative standards covering the environment, public health, plant health and animal health and welfare penalties (payment reductions) are applied if any of the requirements are breached. Penalties can range from 0-5% for “negligent” breaches and 15-100% for “intentional” breaches.

Ecological Focus Areas	Ecological Focus Areas are among the proposed measures for Greening the CAP. The EFA proposals require farmers to identify five per cent of their land as an ecological focus area. There is the possibility that this percentage will be increased to seven per cent following a review by the Commission in 2017.
Force Majeure	An unforeseeable circumstance beyond their control that prevents someone from fulfilling a contract.
Glastir	Glastir is the All Wales entry level agri-environment scheme under Axis 2 of the Common Agriculture Policy (CAP) Rural Development Pillar which is accessible to all farmers, an upper level Targeted element which targets issues of concern in pre-defined priority areas, a Common Land element, the ACRES (Agricultural Carbon Reduction and Efficiency Scheme) capital grant element and a stand-alone Woodland Creation element. This replaced previous schemes in Wales in January 2012.
Intervention	The commercial definition is “the action of the EU buying up surplus produce when the market price drops to a certain value”. In agricultural policy, the intervention price is the price at which national intervention agencies in the EU are obliged to purchase any amount of a commodity offered to them regardless of the level of market prices (assuming that these commodities meet designated specifications and quality standards). Thus, the intervention price serves as a floor for market prices. Intervention purchases have constituted one of the principal policy mechanisms regulating EU markets in sugar, cereal grains, butter and skimmed milk powder, and (until 2002) beef.
Less Favoured Area (LFA)	LFA means land located and included in the list of less favoured areas adopted by Article 2 of European Council Directive No.75/268EEC on mountain and hill farming in less favoured areas. In the UK, LFAs have two distinct classifications - the Severely Disadvantaged Area (SDA) or the Disadvantaged Area (DA) which are shown on the Magic Map website (see section 5.14)
Modulation	<p>Modulation refers to the transfer of funds from Pillar 1 to Pillar 2 which became compulsory across the EU in 2005. Modulation was applied to Pillar 1 direct payments, such as the Basic Payment and the Scottish Beef Scheme, at a variable rate according to the size of the payment. The payment the farmer received was the net figure after deduction of modulation.</p> <p>Since January 2014 modulation has been replaced by “flexibility” which allows member states and devolved administrations to transfer up to 15% from Pillar 1 to Pillar 2. Instead of being applied to individual farmers’ payments, flexibility is applied to the Pillar 1 National Ceiling.</p>
National Ceiling	The total CAP subsidy allocated to each EU Member state for them to then distribute between Pillar 1 and Pillar 2
National Reserve	The National Reserve is a reserve of funds which has been top-sliced by each member state and region from their direct payments budget. This reserve can be used for a number of purposes, such as allocating payment entitlements to new entrants and young farmers, or compensating farmers for specific disadvantages.

Payment Agency	In England this is the Rural Payments Agency (RPA), in Wales it is Rural Payments Wales (RPW), in Scotland it is the Scottish Government Rural Payments & Inspections Division (SGRPID), and in Northern Ireland it is the Department of Agriculture, Environment & Rural Affairs (DAERA)
Pillar 1	This refers to payments made directly to farmers via the Basic Payment Scheme by the EU via the relevant Payment Agency as income support in return for keeping land in good condition and meeting cross-compliance conditions. Direct payments account for around three-quarters of the CAP budget.
Pillar 2	This refers to payments through the regional Rural Development Programmes which support a range of initiatives in rural areas, including capital investments, agri-environment/climate schemes, Countryside Stewardship (England), Glastir (Wales), Land Management Options (Scotland) support for Less Favoured Areas, advice, skills and training, woodland creation, diversification, and community projects.
Set Aside	The policy of taking land out of production to reduce crop surpluses.

APPENDIX 5: USEFUL LINKS

BPS handbooks:

England (2016) –

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562030/BPS_2016_scheme_rules_v2.pdf

Wales (2016) –

<http://gov.wales/docs/drah/publications/160518-single-application-form-2016-rules-booklet-en.pdf>

Scotland (2016)

<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/basic-payment-scheme-full-guidance/>

Northern Ireland (2016)

<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2016-guide-to-the-basic-payment-scheme.pdf>

UK Parliament information on Pillar 1 and Pillar 2 fund distribution between UK regions from 2014-2020

<http://qna.files.parliament.uk/qna-attachments/484382%5Coriginal%5CPQ%2032054%20CAP%20Pillar%201%20and%202%20allocations.pdf>.

BPS Entitlement Transfer guidance notes:

England (RPA 2016)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512628/RLE_Guidance_2016_v2.0.pdf

England RPA Online Guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584068/Onscreen_help_-_GOV.UK_combined_v6.0.pdf

Northern Ireland (DAERA 2016)

<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/2016-transfer-of-entitlements-notes-for-guidance.pdf>

Scotland (SGRPID 2016)

<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/basic-payment-scheme-full-guidance/guidance-on-transfer-of-entitlements/>

Wales (RPW 2016)

<http://gov.wales/docs/drah/publications/160302-basic-payment-scheme-transfer-of-entitlements-guidance-en.pdf>

Home pages for UK regional Payment Agencies

RPA: <https://www.gov.uk/government/organisations/rural-payments-agency>

RPW: <http://gov.wales/topics/environmentcountryside/farmingandcountryside/rpwonline/?lang=en>

SGRPID: <https://www.ruralpayments.org/publicsite/futures/topics/>

DAERA: <https://www.daera-ni.gov.uk/>