



## CONSULTATION ON THE ALLOCATION OF LAND ON THE NEW FOREST COMMON FOR THE BASIC PAYMENT SCHEME

Date: 3<sup>rd</sup> February 2021

The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners, and those with an economic, social and environmental interest in rural land. Our members own or manage around half the rural land in England and Wales and more than 250 different types of businesses.

### Consultation background

The Rural Payment Agency is [consulting](#) on the way in which the Basic Payment Scheme (BPS) payments are calculated in the New Forest following a legal challenge. The basis of the legal challenge is that by using marking fees to determine the eligible area, the BPS payment is unlawfully coupled to agricultural production. The Commons Registration Act 1965 did not apply to the New Forest, and therefore the grazing rights have never been quantified and recorded in the same way as other commons.

Graziers in the New Forest are required to pay an annual marking fee for each animal turned out on to the Forest. The RPA has historically allocated BPS entitlements in accordance with the number of marking fees the applicant paid in the previous calendar year. A grazier that paid 1% of the marking fees in the previous year would be allocated 1% of the eligible area of the New Forest in the current year. There has been a clear upward trend in the number of marking fees paid since 2012, as commoners have increased their animal numbers in order to be allocated a greater eligible area for BPS.

The RPA have proposed 3 options:

- Option 1- Use of a reference year.

This option would take the number of marking fees during a specified reference period as a reasonable representation of the rights exercised on the common. The eligible area and BPS payment would be calculated based on the fees held during this period.

- Option 2- Levancy and Couchancy

This option would refer back to old principles of common law, whereby the rights of pasture would be quantified by referring to the carrying capacity of the home holding over-winter.

- Option 3- Broadening the allocation calculation to include de-couples agricultural activity

This option would seek to allocate BPS payment based on the amount of non-productive agricultural activity being undertaken, for example hours spent cutting gorse or clearing scrub.

It is intended that any changes would be implemented in 2021 and remain in effect for the duration of BPS.

### **Consultation questions**

**Please rank the 3 options in your order of preference, 1 being your most favoured option and 3 your least favoured option.**

1. Option 1
2. We are of the view that neither option 2 or 3 is administratively feasible.

**Please let us know why you prefer your top option and whether, despite preferring it, you see any difficulties with it.**

Option 1 appears to be the most practical of the three options that have been put forward. It provides an easily administered and understood method of calculating future payments. The difficulty with this option will be determining the reference period, particularly if a more historic period is chosen to reduce the beneficial effect caused by increasing stocking numbers in more recent years. The effect of this option would be that those that had paid for marking fees after a certain period would not have those fees factored in to their BPS payment. Should a fixed period of say 2012-2016 be used as a reference period, those that paid marking fees for the first time in 2017, such as new commoners would not be eligible to claim BPS.

**Please let us know why you do not prefer the other 2 options.**

Option 2 refers to the 'home holding.' Today's commoners will farm under a variety of agreements. If we take the 'home holding' to mean the holding with common rights attached, the size of this holding may be small and not reflective of the area the commoner farms.

Option 3 is highly impractical and would be difficult to monitor and enforce. We agree that the legal and practical difficulties associated with this option make it unattractive.

**Is there anything else it would be helpful for RPA to know?**

Left blank.

**Would you like your response to be confidential?**

No



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**For further information please contact:**

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