

Response to 'Commons and Pillar 1 Support post- 2013' paper

The Federation of Cumbria Common Land is grateful for the opportunity to respond to the 'Commons and Pillar 1 Support post- 2013' paper. The comments below are based on a discussion between committee members of the Federation of Cumbria Commoners during our most recent committee meeting held on 24th May 2011. This discussion was written up and distributed to members for further comment and correction.

Q. Does the group agree that the existing SPS methodology for commons is unsatisfactory, and that Defra should consider alternatives?

Yes, the consensus is that the current method of paying SPS is flawed and we recognise all the disadvantages of the current method as set out in the discussion paper. We would rather see a commons-proofed system of administering SPS continuing under a reformed Pillar 1 from 2014 onwards.

Q. Does the group agree that Defra should strive to deliver Pillar 1 support on commons after 2013 through commoners' associations? If so, does it agree with the assessment of the difficulties of such an approach (paragraph 4.9, and of the powers which Defra would require (paragraph 4.10)?

In principle the Federation would like to see a system that enables Pillar 1 support to be handled by the smallest, most local competent authority which is most likely to be a commoners' association or preferably a commons council as the latter has statutory powers. However, given the diversity of commons as noted in paragraph 2.2 of the paper, we believe that whatever methodology is used to administer Pillar 1 support on commons, it must include a level of flexibility and suite of options to accommodate different circumstances. On commons where active and effective commoners' associations do exist, some may be sufficiently well set-up to deliver Pillar 1 monies. However, we believe that many will need support to get to a stage where they have the required governance and operational skills and capacity to do so efficiently. Funding will be needed to support all commoners' associations to become democratic, well run organisations.

Furthermore, if Pillar 1 payments are to be delivered through commons councils/ commoners' associations, we believe that it is essential that Defra develops a set of clear, unambiguous rules and guidance on how to claim, what can be claimed, who can claim and how to allocate SPS payments to individual commoners. We favour the principle that bulk SPS of payments should go to active graziers. In addition, on commons where active graziers are in the minority there needs to be some mechanism so they cannot be out voted by the majority non-active graziers who are claiming SPS.

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These rules will need to be piloted across different types of common to gauge if they can be delivered at the local level in all circumstances or where flexibility should be built in to fit local exceptions.

In general, we thought that the assessment of the difficulties of this approach as set out in paragraph 4.9 could be overcome. In our opinion many of the highlighted difficulties are, in fact, requirements for entry into agri-environment schemes and are already in place and working. In more detail:

- *Commoners' associations are not themselves entitled to the use of rights of common, or of the land*
This could be overcome if the association was a commons council – also we know of one common where the owner of rights has leased their rights to the commoners association, who has successfully been accepted by the RPA as a claimant for SPS.
- *Commoners associations are generally unincorporated voluntary bodies and lack an assured legal status (there is considerable uncertainty about the extent to which such bodies can enter into agreements and be held liable for any breaches)*
Commoners' associations have entered into HLS and UELS agreements and through the internal agreements have a contract between the participants to deal with breaches, this has worked well under ESA, CSS and now ES, and there is no reason why it shouldn't work for SPS
- *Commoners associations are not necessarily inclusive of all those who exercise rights or the common, nor of those who hold (but do not exercise) rights*
Currently, there is a requirement to consult all rights holders before entering into an Environmental Stewardship (ES) agreement. Providing the consultation process is sufficiently robust it should meet criteria for inclusivity.
- *A commoner exercising rights may claim under the SPS, but not participate in an ES agreement, and vice versa*
This is complicated and it is certainly true that there are SPS claimants who are not ES participants though rare. It is also true but rare that there are ES claimants who are not SPS claimants unless they are the owner. On some commons UELS and HLS are split differently according to the activity of the commoner and there is no reason why SPS should not have a different split to UELS or HLS. However, there is an argument that a rights holder has to be either in or out with respect to an agreement i.e. they cannot expect to claim SPS but be in breach of HLS agreements over the same land. In our experience the majority of active graziers are claiming both (where they are able to) and therefore this is not much of a problem.
- *Commons owners may be entitled to part of the grazing of a common, but are unlikely to be engaged in the commoners' association*
Our experience is that owners who are also active graziers are usually active in their local commoners' association and most new internal agreements for ES include the owner where they are active managers (even if they are not a grazier) undertaking activities such as burning or grip blocking

- *A commoners' associations has no mandatory powers of management over the commons (but can only act by consensus): so its power to deliver (for example) GAEC is dependent on cooperation and can be weakened by dissent*
HLS/UELS agreements are being set up in this context.
- *No individual commoner is necessarily identifiable as responsible for breaches of GAEC (depending on the nature of the breach), because the common is managed and grazed by a number of claimants*
This difficulty can be dealt with using Internal Management Agreements as in the case with HLS and UELS
- *Commons council may be established for some commons, but will not be established for the majority (and therefore they do not provide a solution for commons generally?)*
Umbrella commons councils could either: a) act on behalf of commoners' associations or informal groups of commoner (where associations do not exist) or, b) allow commons associations to draw down powers from the umbrella council

Para 4.10

In our experience all the powers needed to overcome the difficulties set out in the bullet points are already in place for delivering UELS/ HLS. However we would not be in favour of Defra suspending payment (final bullet point) unless invited. Steps to resolve internal disputes should be included in internal management agreements and adhered to.

Q. Are there alternative approaches to delivery of Pillar 1 support which Defra should consider?

We find it difficult to answer this question as we are not experts in European Regulations and do not have a good idea of the permissible parameters for delivering Pillar 1 subsidies. In general we are in favour of extinguishing entitlements as the basis for subsidy payments on commons. We would like subsidy payments to be based on active live registers. As mentioned above, any approach must be flexible, recognise and have the ability to encompass the diversity of common land management and use.