

Federation of Cumbria Commoners

Affiliated with Lancashire & Northumberland

Newsletter Summer 2015



Looking Forward,

I am writing this just after the longest day and we are still waiting for spring conditions, never mind summer! What a difference to last year. But we will just have to hope that we get more normal weather for the rest of the summer. Fingers crossed.

Members of the Federation Committee as usual have been really busy trying to draw attention to the powers that be (Defra, RPA and Natural England) all the potential pitfalls of BPS and Countryside Stewardship on commons. Over the last few months there have been so many changes going on all at the same time, and many of them last minute, that it really is a challenge for us to try and keep up and advocate for a new CAP reform that can work for commoners.

We are so lucky to have such a range of expertise with among the Federation Committee members. We can, and do, engage positively with those who have authority and influence at the highest levels.

We have the skills, confidence and relationships with policy makers, so if you think the Federation can help with any issues you have as a commoner, please get in touch. I hope the rest of this year's weather can be more helpful to all of us.

We all need to work together.

Joe Relph, Chairman.

The work of the committee—your voice on the fell and in meetings

As usual there has been a lot going on behind the scenes since the last newsletter. As you can imagine we have been heavily engaged with the new CAP reform. There is no one better equipped to speak up on behalf of the commoner than the commoner him or herself. But our voice alone is not strong enough. We have been part of a loose coalition of organisations including the Dartmoor Commons Council and the Yorkshire Federation of Commoners, working closely with the Foundation for Common Land and the NFU uplands committee to lobby and negotiate with Defra/RPA.

Last year we successfully campaigned for a substantial increase in the Moorland payment to €70 hectare. This was good news, but we couldn't rest on our laurels, there was still the whole issue about how BPS was going to be implemented on common land to be decided. The group has lobbied and influenced through numerous meetings, e-mail exchanges and teleconferences with senior civil servants. We invited **a senior RPA spokesperson to our AGM so he could hear commoners' concerns and** we have signed joint letters of concern to the Minister.

The judicial review brought by the Commons Committees for Minchinhampton and Rodborough Commons in Gloucestershire (see article on page 5) concluded that the way Defra paid SPS on commons was wrong. On March 16th Defra announced a policy change on common land payments. This was another good result and something we had been lobbying about for a long time. Under the new BPS most of you should find your notional hectareage will increase and some of you will also receive additional entitlements and payments in compensation for monies owed to you from the previous SPS scheme. But the devil is in the detail and we still have more work to do to make sure that all commoners get fairly treated.

Another consequence of the judicial review is that Defra has had to tighten up the criteria for those claiming BPS on common land. Very late in the day, they hurriedly

developed and published three “use” criteria in their latest guidance “**Claiming common land**” (15th May). It is likely that their definition of the “use” of commons could have negative consequences for those currently grazing common land as non-graziers find ways to meet the “user” criteria. **We have told Defra this in no uncertain terms. They have got the message. They have asked us, along with our coalition partners to provide ideas on how to improve the ‘use’ criterion for 2016.**

As you know the RPA have recently undertaken a mapping exercise of all commons that have been subject to a SPS claim in the past. The purpose of the mapping exercise, was to identify and map any ineligible features on the common. This has resulted in a large proportion of commons having their eligible area reduced somewhat.

We criticised the timescales of the mapping process and managed to get Defra/RPA to reconsider the time they allowed for comments on the maps. RPA has now extended the deadline for comments until the end of September. We still need clarification on procedures for further revision of the maps. There may also be challenges on how RPA calculates the area of the common (plan area as opposed to topographical). Also concerns have been raised about the legal status of the requirement for an Association to declare that the maps are correct on their annual HLS claim form.

To sum up influencing the new BPS has been hard work and frustrating at times. We have been constantly on the back foot having to react quickly to poorly thought-through policy from Defra/RPA. We have spoken plainly and clearly to lobby and negotiate on behalf of commoners. We now have an imperfect BPS that partially serves commoners but it could have been worse! Defra/RPA know that the current BPS needs improving, if it is to work on common land. The Federation will be right there speaking up on behalf of the commoner to get a BPS that works for active commoners.

And not forgetting the local

We have also continued to engage with RSPB and United Utilities over their land management policies at Naddle and Swindale farms. We are encouraging them to be good neighbours to the surrounding commoners. More recently we have responded **to some concerns about the National Trust’s new Sustainable Land Management Principles** in the Lake District. We will be attending a meeting with the National Trust at the end of July with the NFU and the Herdwick Sheep Breeders Association.

Annual Meeting 2015

This year’s AGM and Conference was held at Newton Rigg on Friday 6th March.

Around 40 people turned up to hear four interesting speakers on topical issues. First, Simon Lunnis, Customer & Stakeholder Relations, RPA provided an update on BPS implementation. Unfortunately, at the time of the AGM many of the key decisions on **BPS implementation on commons had not yet been made. So members’ questions were left unanswered. However the time wasn’t wasted, the audience provided** Simon with numerous questions, ideas and concerns that he could take back to RPA.

Alyssia Ashurst of the Commons Registration Service gave a useful presentation on what Cumbria County Council is doing to implement of the Commons Act, 2006 in **Cumbria . This was followed by Sam MacAlister providing an insight from a solicitor’s** point of view of implementing the 2006 Act.

Last, Steve Ratcliffe from the Lake District National Park Authority gave a presentation on the World Heritage Site Inscription. The partnership leading the bid is seeking inscription under the cultural landscape category. They recognise that the spectacular landscape of the Lake District has been shaped principally by farming, and latterly by industry, Picturesque landscape design and the conservation movement. If this bid is successful it could be very important for the future of hill farming and commoning in Cumbria. It gives us a powerful tool to put hill farming centre stage. We will be able to say that commoning in the Lake District makes it globally important... and UNESCO and 190 countries also agree.

Financing the Federation

The Federation is self-financing and relies almost entirely on subscription income to keep going. This allows us to be independent and not beholden to anyone except you, our members. Members were told at the AGM that in 2014 the Federation made a small loss. The membership fee has remained at £15 for the last 5 years. While the membership income has remained steady, costs have increased. The Committee is minded to request raising the subscription fee to £20 at the next AGM (2016)

We know that all commoners will get a bigger slice of the CAP money this year, so we hope you will be prepared to invest an extra £5 from this increase to help fund the Federation, so it can continue to work on your behalf.

CAP Reform and common land

The following short articles provide some more detail on the BPS scheme and some pointers for Countryside Stewardship

Defra U-turn on how BPS is claimed on commons

Following a long drawn out battle with the RPA and Defra, in March Defra finally admitted that its implementation of the Single Payment Scheme on common land in England had been fundamentally flawed from the outset.

The admission came in the face of a judicial review brought by the Commons Committees for Minchinhampton and Rodborough Commons in Gloucestershire.

These two commons have a very high number of registered rights of common under the Common Registration Act 1967, way in excess of the grazing capacity of the commons and largely held by non-farming landowners. The system applied by the RPA meant that individual claims, by the few farmers who have been turning out livestock to graze the commons, have only been receiving single payment on a fraction of the area of the commons, despite the fact that they have been fully grazing the commons (in accordance with the provisions of Higher Level Stewardship agreements held by the Commons Committees).

To the address the issue, claims for SPS were made through the Committees, who have been responsible for delivering the agricultural management of the commons, but those claims were rejected by the RPA. The Committees appealed and lost. They commenced a judicial review last summer, and the RPA and Defra were forced to acknowledge and accept that their implementation of the SPS on commons was flawed.

As a result, the RPA has indicated that it will recalculate claims by farmers on commons historically, so as to divide the eligible area of a common between the claiming farmers. Back payments will be made to some farmers accordingly. The revised methodology will also be applied going forward under the Basic Payment Scheme. A copy of the RPA's announcement can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428535/May_2015_update_Changes_to_rural_payments_for_common_land.pdf

This is good news for commoners who claimed single farm payment on their commons rights. You should receive approximately 20% extra per year on your commons rights for the last 6 years as on average about 20% of the common was not

claimed.

But there are still issues to be resolved about who is eligible for compensation. Currently only farmers who claimed SPS in 2005 are eligible. We don't believe this is right. We are lobbying to get this changed so that all who claimed SPS no matter what year they started claiming could be eligible for compensation.

Revised methodology for claiming BPS on common land

For the new BPS, the eligible area of a common will be divided up only among the farmers who:

- use the common; and
- declare their rights in Part E of their BP5 application form

After all BPS applications have been submitted, the RPA will be able calculate each **farmer's 'notional area' based on:**

- The total number of rights of common declared by all farmers that year for a common land unit.
- How many rights each individual farmer declares (as a percentage of that total).

For example:

Total eligible area of the common is 1000ha

Farmer A has declared the equivalent of 75 livestock units

Farmer B has declared the equivalent of 60 livestock units

Farmer C has declared the equivalent of 45 livestock units

Total declared livestock units is $75+60+45 = 180$

Farmer A gets $75/180 \times 1000 = 417$ ha

Farmer B gets $60/180 \times 1000 = 333$ ha

Farmer C gets $45/180 \times 1000 = 250$ ha

This new approach under BPS will make it difficult for farmers to know how many entitlements they will need to use for their BPS claim in 2015. We are waiting for guidance from Defra on what happens next.

“Use” of common definition for BPS

According to Defra a farmer is ‘using’ a common if they either:

- exercise their grazing rights by turning out stock on it,
- or participate in an Environmental Stewardship agreement on the common, or
- contribute to the appropriate management of the common by keeping some of it in a state suitable for grazing or cultivation by keeping it clear of any scrub **that can’t be grazed, or by some other beneficial activity, for example clearing bracken or maintaining boundary walls or fences**

The Federation Committee can support the first bullet point, but it needs a much clearer definition of what turning out stock to the common entails i.e. for how long? What breeds of livestock etc. Also we can support bullet point two.

But the Committee cannot support the third bullet point. The majority of commons rights are for grazing livestock only and most commoners do not have rights to **“contribute to the appropriate management of the commonthrough scrub clearance etc.”**

What do you think?

Is your agri-environment scheme on the common due to run out in 2016 or 2017?

Under the new Countryside Stewardship (CS) commons agreements will only be **“higher tier”**. **Applications for the higher tier are by the way of a an expression of interest (EOI) process.** This process allows Natural England to manage resources and allocate project officers to the applications. This year EOIs have to be submitted by 15th July 2015.

Experience shows that it can take up to 18 months to negotiate a new agri-environment scheme on a common, so it advisable to consider making an EOI well in advance.

The expression of interest guidance and form is published on the gov.uk website

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/439302/cs-higher-tier-eoi-form.pdf

A portrait of Langstrath and Coombe common

Langstrath and Coombe common is 1,698 ha (4,200 acres) covering an area from the the Borrowdale valley over to the Scafell range with most of the land being above 2000 feet and including Glaramara at 2,569 feet. The Common is contiguous with commons in Eskdale and Great Langdale.

It is an extensive area of steep rocky fell with heather moorland, acid grassland, heathland, and blanket peat bogs with relic woodland pasture. The common is owned by the National Trust.

There are 7 active graziers and no non-graziers. The agricultural management of the **common is managed by a Commoners’ Association with its own constitution and officers.** The commons was previously in an Environmentally Sensitive Area (ESA) agreement and when this ended the commoners entered into a 10 year Higher Level Stewardship Scheme (HLS) agreement which started in June 2011.

The HLS agreement is aimed at protecting and regenerating dry heath and montane **heath, protecting the River Derwent’s tributaries, relic wood pasture, upland flushes** and blanket bog. As part of the agreement 74 ha (183 acres) of land has been fenced off for 20 years. This new enclosure is for scattered newly planted trees and naturally regenerating trees. It is managed by the National Trust. The primary reason for the tree planting is to prevent future soil erosion and downstream flooding by reducing the rate of water run-off into Borrowdale (a valley prone to flooding) and reducing the quantity of sediment reaching Bassenthwaite Lake.

A particular issue for the graziers is the cut in stock numbers as a result of the agri-environment schemes over the last 20 years or so. To join the ESA the commoners agreed to a 40% reduction in sheep grazing number. They then had to agree to a further 28% reduction to get into HLS. These lower numbers are resulting in the breakdown of the hefting system with sheep straying both to other hefts within the common. This results in the commoners having larger areas to shepherd and gather their flocks increasing labour requirements.

In terms of the management of the common, the Commoners’ Association enforces the following grazing rules:

- All sheep must be part of flocks comprised of regular numbers of even ages and all must be properly hefted.
- Flocks must comprise of hardy native breeds appropriate to the area
- All sheep to be properly marked to show ownership

- On suspicion of sheep scab to inform the Chairman or Secretary and to arrange appropriate treatment
- No feed bags or litter to be left on the common and no ring feeders allowed
- No supplementary feeding to take place except in accordance with the management plan.
- All graziers must take part in communal gathers of the fell when required.

Implementing the Commons Act, 2006

Courts say rights of common cannot be created by prescription

The Littejohns family have for a long time exercised rights of common on three Dartmoor commons. But for whatever reason, they did not register any grazing rights under the 1965 Act before the cut-off date of 2 January 1970. As these rights weren't registered they were extinguished on July 31, 1970. But they continued to graze, without objection, on the three commons.

When the Commons Act 2006 was brought in to force in Devon (and several other areas) in 2008, the Littlejohns wanted to know if they could claim new rights by prescription as they had been grazing these commons since 1970. In March 2010 they applied to Devon County Council to register their claimed prescriptive rights. Four years later and after much consideration, the council refused their application. The Council concluded that a right of common could not be created by prescription after 2 January 1970 over land registered as common.

The Littlejohns, supported by the National Farmers Union, then challenged that decision by way of judicial review. But the High Court Judge sided with Devon County Council. They are now taking it to appeal but an appeal could fail as well.

You can read the High Court Judgement at http://www.cumbriacommoners.org.uk/files/littlejohns_judgment_copy_2.pdf

So what happens now?

If you had no rights registered by 2 January 1970 then you still have no rights, and this cannot be corrected unless you can point to a mistake by the County Council, for example failing to register an application duly made before the 1970 deadline. That is unless the Littlejohns win at appeal.

The army in retreat at Warcop?

In our last newsletter we wrote about the Ministry of Defence's application to deregister Warcop common in Cumbria, part of the army training estate. We now understand that the application has been withdrawn.

If the Ministry wants to renew its application for deregistration it will now have to do so under the Commons Act 2006. The options under this Act don't seem to be very promising: after all, the Act was precisely intended to safeguard registered common land from deregistration.

Schedule 3 to the 2006 Act does however provide an opportunity to register historic events preceding the date of commencement, but it would be necessary to show that the compulsory acquisition of the rights of the commoners some years ago is a 'disposition' which not only extinguished the rights but also caused Warcop common to cease to be common land.

Implementing the 2006 Act in Cumbria

Alyssia Ashurst, Commons Registration Officer provides an update

We have received over 70 applications in the first 6 months of implementation of the 2006 Commons Act. In the first instance all applications get forwarded to our legal department for them to do some initial checks. We need to decide if the applications are duly made and inform the applicants if the applications have been accepted as "duly made". **We cannot give you any information on an application until it has been accepted as "duly made".**

Once applications are accepted as "duly made", notice of the application will be issued shortly afterwards (as per Regulation 21). This Notice will be placed on our website and will be sent to all relevant parties as per Schedule 7 of the 2014 Regulations, this includes anyone who has requested to be added to our list to receive a copy of all notices by email.

If you wish to be sent copies of all notices for applications and proposals received by email please send your request to: commons.registration@cumbria.gov.uk

We cannot give a timetable for the processing of any applications as each application is treated individually and the time taken to process each application will differentiate according to requests for further evidence, objections being made, the need for any inquiries, referral to the planning inspectorate etc.

We are working on all applications as expeditiously as possible.

Bodmin Commons Council Establishment Order

In March, Defra issued a consultation to gauge whether there was substantial support for an Order to establish the Bodmin Moor Commons Council. The consultation was seeking the views of:

- persons with a right over, or who occupy, the common (other than rights of common);
- persons who have rights of common over the common; and
- persons who have a legal function related to the maintenance or management of the common.

Currently the Government is analysing the feedback and will be responsible for deciding whether to make the Bodmin Moor Commons Council Establishment Order.

What the heck is my HLS agreement for?

Chris Kaighin, Manager, Natural England Cumbria Area team provides information on how HLS agreements will be monitored

Many commons in Cumbria are in HLS agreements, negotiated with Natural England, that are intended to maintain and enhance the wildlife, landscape and historic value of the land. To play our part in these agreements Natural England advisers visit your commons from time to time, so I want to tell you about the different visits we make and how we can work together to make the most of these.

HLS Aftercare programme

In addition to informal conversations, the most important of way for us to keep in touch with commoners, and all agreement holders, is through our HLS Aftercare programme. Natural England aim to visit 20% of all HLS agreements every year, which means that you can expect an Adviser to ask to come and visit a common in HLS twice in the course of a ten-year agreement.

Aftercare visits are made so that we can discuss with you what your agreement is intended to achieve, how we can judge success and whether you are having any difficulties in managing the agreement, including other impacts that the agreement may be having. **Visits are arranged in advance through the commons' association and would always involve going out onto the common to look at the ground.**

What we hear from the Federation and from some commoners is that you don't always understand what Natural England would like to achieve through the HLS agreement, so we will be taking the time to talk to you about this. We also make a phone call to each HLS agreement holder every year, so if you have questions let the

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chair of your common know so that they can pass them on to us – or just raise them with us anytime.

SSSI monitoring

If your common is a Site of Special Scientific Interest (SSSI) then a Natural England Adviser will also want to visit to assess the scientific interest, by comparing what we can see on the common with targets set for the site, for example the cover of bog mosses and range of plant species present on areas of blanket bog or a thriving breeding population of birds like peregrine or golden plover. We aim to visit SSSIs roughly every six years to check on site condition and the UK government has set us a target of getting 50% of SSSIs in favourable condition by 2020 and the rest in management so that they will eventually recover to favourable condition. These more detailed surveys would be in addition to HLS Aftercare visits.

Specialist surveys

Natural England also sometimes contracts specialists to carry out surveys for us and this year there are two particular surveys being carried out. One is to monitor the overall performance of the Environmental Stewardship scheme by looking at a small sample of upland sites with HLS agreements. A couple of Cumbria commons are likely to be selected and visited with the aim of finding out whether the management prescriptions have been successful at achieving the aim of the scheme, including the perspective of the agreement holder.

The other survey is research into how habitats in England are doing when they are not in a SSSI and some Cumbria commons may be selected for a condition assessment. As the local Natural England team, we have asked that any contractors visiting commons in Cumbria take the time to discuss what they are looking for with the Chairman of the commons. We will also know when they are visiting so that we can help explain and explore the findings afterwards with you. The NE Cumbria Area team will be keen to tell you about the results of this in a future newsletter.

Natural England's purpose is to conserve and enhance the natural environment and the landscape for future generations and we can do this best by working together with local people who have practical, day to day knowledge and experience. Therefore we are very keen to listen to your concerns and to explain what we are trying to achieve. We are also talking with the Federation about how best to achieve this.

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Bog Asphodel and 'Saut' Lamb

Recently, bog asphodel has become more prevalent in Cumbria, partly due to the management regimes put in place for agri-environment schemes.

Bog asphodel, is found on acidic damp habitats – wet heaths, wet and boggy moorlands up to about 1000 m in elevation. It produces spikes of bright yellow flowers in summer.

Bog Asphodel is poisonous to both sheep and cattle, causing serious kidney problems and a photosensitive disorder. Chemicals in the plant get into the liver and block up the bile ducts, causing liver failure and jaundice. Normally, the chlorophyll in these plants is converted in the rumen into a poison and in healthy animals this poison is dealt with by the liver. When the bile ducts are blocked this poison goes into the bloodstream and, in areas not covered by wool and exposed to sunlight, a chemical reaction occurs resulting in tissue damage. The symptoms occur on the head and ears and along the back. Ears become hot and drop, followed by itching and pain. Oozing fluid leads to infections and ears snuff off. Wool falls out and lambs can go blind because their eyelids are affected. It can be fatal. If caught early the animals can be saved.

Saut affects lambs turned out on to the fells between May and July. If you have Bog Asphodel on your fell you need to carefully consider your grazing regime to minimise the risk. The only real solution at present is to remove the lambs from the fell at the height of the grazing season or as soon as the problem is spotted. Any lambs suffering from it should be brought inside out of the sunlight until it passes through their system. Antibiotics can be also given for the infection and anti-inflammatories to deal with the pain.

If you are entering agri-environment or in an agri-environment scheme for the fell with bog asphodel present, you will need to consider discussing grazing arrangements with your Natural England project officer.

Reducing bovine TB risks: best practice guidance for common land graziers

There are a few suspected cases of TB of on land bordering commons in Cumbria. Defra is drafting guidance for TB on common land and have asked for input.

Defra's TB Policy team and the Animal and Plant Health Agency (APHA) have worked closely commoners' groups in Dartmoor to reduce the negative impact of TB cattle controls on commons graziers. They advocated for maintaining the pre-movement testing exemption for moves to and from common land. They have developed TB control plans for their common land, and subject to approval by APHA, the local offices will license some movements off common land without a TB test being required.

APHA have recently set up a working group to look at ways to ensure consistent application of TB controls across the regions and across different common grazing practices. They are developing a best practice guidance leaflet covering the use of CPH and reporting movements; biosecurity; and sharing information. The aim is to help graziers better understand the risk landscape and what they can do to reduce the impact on their business of a TB breakdown.

The Federation will review the draft best practice so that it can be of real use for **graziers. We will promote and share the guidance when it's published.**

New Hill Sheep Husbandry Guide

Andrew Humphries has recently completed a new guide for professionals working in upland management: Hill Sheep Husbandry: Adaptive to change in diverse ecosystems.

There are a wide range of people and groups who have an interest in the uplands. Many are articulate and effective at promoting their agendas. But often there is a big gap in their understanding of commoning and pastoral practices. To fill this gap Andrew Humphries has written a 90 page booklet on hill sheep husbandry for professionals working in upland management. The material will also be useful to students in a range of land-use disciplines.

The contents include: The evolution of hill sheep husbandry, Key principles of nutrition, Relationship between soils, vegetation and grazing levels, Grazing characteristics behaviour and food intake, Nutrition and vegetation succession, Feeding value of hill plants commonly grazed, husbandry and future changes. Also a glossary of terminology and guide to further information and reading.

The booklet will be available soon as hard copy or in PDF format on the Foundation for Common Land website <http://www.foundationforcommonland.org.uk/>

George Wilson— an obituary

Andrew Humphries has sent us the following obituary

Cumbria's standing as a hill farming county based on sound and progressive

husbandry is well known and reflects in considerable measure the varied contributions of local leadership by individuals with special gifts. George Wilson ranks high among these.

A member of a farming family well heaved in the county George committed himself to the cause of hill farming in his own particular way. He and Norman farmed the 3,000 acres of National Trust land centred on Glencoyne. His special gift as a communicator he used to promote the case of Cumbria, hill farming and hill farmers.

Education of the public was meat and drink to him and began with 'Look Ins' from

1963 including one that attracted 1,700 people. He travelled to Australia in conjunction with British Airways and Quantas as an ambassador and promoter of tourism in Northern England. Many leading politicians and environmental experts **were better informed after their visits to Glencoyne. George's travels included study of agriculture and the 'new' sheep pens on the farm with their diamond pen,** three way drafting, round dipper and many other features reflect his time in New Zealand.

George was a Newton Rigg student 1951-2 and later was awarded the Newton Rigg scholarship. Following employment at the Hill Farming Research Organisation at Sourhope in the Borders, his attributes led to being invited to become a Board **member. George was a founder member of the National Trust Tenants' Association.** His service as a magistrate spanned many years and spawned many reflections of local justice and the characters that appeared before him.

My memories of George Wilson cause me to think it a privilege to have benefitted from his understanding. In 1972 a major sheep demonstration was held at Newton Rigg. Partner organisations included NSA, MLS, NFU, ADAS, Sheep Societies and the Central Council for Agriculture. The aims were to show how different organisations can collaborate, and that the promotion of local breeds was worthwhile and important. George provided a masterly commentary I well remember the lamb sales at Troutbeck. When the Glencoyne Cheviot/Herdwick lambs came into the ring, we all paid attention.

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