

# Common Land and Shared Grazing

Supplement to the Environmental Stewardship Handbooks

Updated October 2011

## Introduction

This supplement contains important additional information which should be read and understood by applicants to Environmental Stewardship (ES) in respect of common land and shared grazing, before an application is submitted.

This document supplements the 3rd edition of the scheme handbooks and provides important additional information about making an application.

You can apply under the following strands:

- Entry Level Stewardship (ELS)
- Uplands Entry Level Stewardship (Uplands ELS)
- Higher Level Stewardship (HLS)

You can apply for combined ELS/HLS and Uplands ELS/HLS agreements and references in this supplement to ELS and Uplands ELS will also apply to these combined HLS agreements (unless stated otherwise).

Common land and shared grazing are not eligible for Organic ELS or Organic Uplands ELS, unless there is only a single grazier involved, in which case you must be confident that no other grazier exists or no other party is likely to graze the common or area of shared grazing for at least the period of the agreement (also, see the notes below).

- Please read this supplement together with the ELS and HLS handbooks as appropriate (the ELS handbook also provides information about Uplands ELS). **Where there is any inconsistency between this supplement and the handbooks, you should follow the guidance in this supplement.** Also, where we say in this supplement that you must do something, it will be a condition (along with the requirements in the ELS or HLS handbook) of your ES agreement.

- **If your application is made by the landowner who owns the whole common and has sole use of the land**, the common can be entered as the landowner's holding or be attached to the landowner's holding as part of a normal application and this supplementary guidance does not apply, and you do not need to complete a supplementary application form.
- **If your application is made by the landowner who does not have sole use of the land this supplementary guidance will apply.** You will need to complete a Common land and shared grazing supplementary application form (NE-CLA4), set up a commoners' association and produce an internal agreement. You do not need to establish a commoners' association, if there are only two parties (landowners or commoners) benefiting or contributing to the delivery of the agreement (e.g. where commoners are not exercising their grazing rights but are involved with land management operations such as scrub control) see Q1.
- **In all cases where there are three or more parties benefiting from or contributing to the delivery of the agreement** a commons association or stewardship group will need to be established.
- **Part common agreements are only permitted under exceptional circumstances**, as agreed with Natural England (see point 2 under Annex A).
- **A 'common' and 'common land'** mean any land included on the statutory registers of common land held by commons registration authorities under the Commons Registration Act 1965 or the Commons Act 2006 (or commons specifically exempted from registration under these Acts).
- **'Shared grazing'** means communal pasture where graziers have a legal entitlement to graze (for example, a pasture used jointly by tenants) but where the land is not registered as common land.

## Before making an application

**Before you make an application** to enter common land or shared grazing into ES please read Annex A, which provides helpful guidance on the things you need to consider before making an application. In particular, it deals with commons or shared grazing designated as Sites of Special Scientific Interest (SSSIs) (at point 6), as a large proportion of common land is covered by this designation. All landowners and occupiers of an SSSI (including commoners) notified about the SSSI designation in accordance with the Wildlife and Countryside Act 1981, need consent from Natural England to carry out operations listed in the notification. An application for ES constitutes a notice under the Act and an ES agreement constitutes consent from Natural England for the management specified in the agreement: a separate consent is not therefore required.

**Once you have read the guidance at Annex A, and have decided what you need to do, you will first of all need to agree the person who will make the application and who will complete the various steps of the application process.** This person (who can be an agent) will be the main business contact for the application and subsequent agreement. Where we use 'you' in this supplement, we mean the person, who acts on behalf of the commoners' or graziers' association.

## Making an application

In addition to the requirements outlined in the ES handbooks, to make an application in respect of common land or shared grazing you must complete each of the seven steps set out below: the questions and answers referred to in brackets provide further details about each stage of the application process.

<b>Step 1</b>	If not in existence already, and if required, set up a commoners' or graziers' association to represent all of those who will be actively managing the common or shared grazing for the purposes of delivering your ES agreement [Q1 – Q3].  <ul style="list-style-type: none"> <li>■ Establish a bank account on behalf of the commoners' or graziers' association.</li> </ul>
<b>Step 2</b>	If not already registered, register the commoners' or graziers' association as a customer with the Rural Payments Agency (RPA) [Q4 – Q13] to:  <ul style="list-style-type: none"> <li>■ Obtain a Single Business Identifier (SBI) for the commoners' association or graziers' association (if your commoners' or graziers' association already has an SBI, please first check with the RPA that the existing SBI will be valid for your new agreement).</li> <li>■ Obtain a unique vendor number to ensure payments can be made to the association's bank account.</li> <li>■ Obtain a County, Parish, Holding (CPH) number for the common or area of shared grazing, if you are applying for HLS.</li> <li>■ Authorise the individual who will act as the main business contact on behalf of the association.</li> <li>■ Register all those who are participating in the ES agreement against the SBI.</li> </ul>
<b>Step 3</b>	Register the common or shared grazing onto the Rural Land Register with the RPA, who will send you a map of the common to which you will need to refer when requesting an application pack [Q14 – Q25].
<b>Step 4</b>	Contact Natural England for an application pack [Q26 – Q29].
<b>Step 5</b>	Negotiate an internal agreement between all those who wish or should participate in an ES agreement, i.e. those who actively manage the common or shared grazing and who will contribute to the management required under the ES agreement [Q30 – Q40].
<b>Step 6</b>	Complete your application (following the procedures set out in the ELS/HLS handbooks as necessary) [Q41 – Q45], including the supplementary form (which conveys the consent of the owner of the common or shared grazing [Q44]). HLS applicants will also need to submit a completed Farm Environment Plan (FEP).
<b>Step 7</b>	For ELS and Uplands ELS applications without HLS, await approval of your application by Natural England [Q46 – Q48]. For HLS applications await an offer of an agreement by Natural England and then decide whether to proceed.

These steps are explained in more detail below. They are also included in the 'Practitioners guide for making an application' under Annex B.

## Step 1 Set up a commoners' or graziers' association

### Q1 Does a commoners' or graziers' association need to be set up?

A Yes, you must set up a commoners' or graziers' association, because an association is essential for delivering management on common land or shared grazing under ES. In the event there are less than five members and agreement cannot be reached as to who the officers will be the members may agree to establish the association as a "stewardship group" and appoint an independent administrator to run the group, e.g. a land agent, solicitor or other respected member of the community. All other rules pertaining to the association detailed below will apply except for the appointment of officers and an internal agreement is still required.

### Q2 What if a commoners' or graziers' association already exists?

A If there is already a commoners' or graziers' association in place, it is acceptable provided it can fulfil the minimum requirements of a new association, as explained under Q3 below. If there is an RPA inspection, the inspector may ask to see evidence that the association exists and operates effectively, for example, the constitution and minutes of recent meetings.

### Q3 How can a new commoners' or graziers' association be set up?

A If you need assistance in setting up an association, this may be available from farmers' representative bodies, a federation of commoners (if there is one covering your area), a land or agricultural agent or surveyor, or a solicitor specialising in rural practice. They may charge for assistance but note your Uplands ELS agreement will include a £5/hectare annual supplement where there are two or more graziers involved. This payment is intended to contribute towards the cost of drawing up agreements in accordance with the particular requirements of Uplands ELS as outlined under UX1 in section 'U' of the ELS handbook. You may also be able to claim a 'supplement for group applications' under an HLS agreement.

In setting up a new association, you must:

- Consult the landowner and other people who may have a legal or an active interest in managing the vegetation on the common or shared grazing, e.g. the owner of the shooting rights. The association should effectively represent all those who have a legal and active interest in the management of the land. Whilst some landowners may not wish to be involved, they can be represented by their agents or their tenants who are permitted to graze or utilise rights (e.g. shooting game).
- Hold a general meeting inviting the landowners and all the commoners or graziers with rights to graze the common or shared grazing. The general meeting could also serve to brief the graziers and people who are entitled to exercise rights of common of a possible application for an ES agreement. The invitation could be

extended to individuals and organisations who have an interest in the land, for example Natural England if the land or part of it is an SSSI, or members of the community. There are obviously practical considerations where there are several right holders — see point 11 under Annex A.

- Agree a constitution for the association. A draft or template constitution may be obtainable from any of the bodies or individuals providing assistance mentioned above, but you should make sure that the constitution meets the needs of the particular circumstances of your common or shared grazing.
- Elect or agree officers to manage the association – a chairman, secretary and a treasurer are essential.
- Authorise elected officers or an agent to conduct certain business on behalf of the association (e.g. to enter into agreements, to open and operate a bank account) – you should keep a record of the meeting at which it was agreed.
- Open a bank account in the name of the association or agree the use of an existing bank account. A bank will need to see evidence that the association has authorised the opening of an account and the signing of instructions to the bank (such as cheques), so you will need to produce a record of the meeting which gave instructions for an account to be opened and operated.

## Step 2 Registering the commoners' or graziers' association as a customer with the Rural Payments Agency (RPA)

**Q4** Am I entitled to apply to register the commoners' or graziers' association as a customer?

A You should discuss making an application with the other commoners or graziers, and the landowner of the common or shared grazing, before applying. The person who applies to register the commoners' or graziers' association on the RPA's Customer Register should normally be the main business contact for all communication between the RPA, Natural England and the association (see Q8 for how to nominate your main business contact).

**Q5** Do I need a separate Single Business Identifier (SBI)?

A Yes, you must have a separate SBI for the commoners' or graziers' association (even if members of the association already have their own SBIs). Where a common has not previously been mapped on the Rural Land Register (RLR) (as will be the case if it has not previously been included in an agri-environment scheme agreement, even if it has been used to claim under the Single Payment Scheme (SPS)) you will need an SBI in order to apply to include the common on the Rural Land Register and to enter into an ES agreement. If the common has previously been in an agri-environment scheme it should already have an SBI. You can check this with the RPA's Customer Service Centre (CSC).

**Q6** How do I get an SBI?

A To obtain an SBI, you must complete an RPA Customer Registration form CRego1, which you can obtain from the RPA's CSC or download from the RPA's website:  
<http://tinyurl.com/rpacregform>.

The RPA will send you guidance with the form. If you download the form from the RPA's website, you should also download the guidance (CRego2).

**Q7** Who should be included in the Customer Registration?

A Your completion of the CRego1 form will give the RPA more information about your association, including:

- the status of your association (e.g. a voluntary group);
- your main business contact (who will deal with correspondence with the RPA and Natural England);
- every other person who will benefit from or contribute to the proposed ES agreement.

If you cannot supply the RPA with details of everyone who will benefit from, or contribute to, the proposed ES agreement when you complete form CRego1 (see Q8), you must supply them at a later stage (see Q42). The details will be required before Natural England can approve an ELS or Uplands ELS agreement or offer a HLS agreement.

**Q8** How do I complete the CRego1?

A Please refer to the general RPA Customer Register Guidance (CRego2) and also read the specific guidance for commoners' or graziers' associations below to help you complete form CRego1 (the guidance does not specifically cover commons and shared grazing).

You should write "Commoners' (or Graziers') association ES application" boldly under the heading on the front page (next to the RPA logo) so that the RPA can more readily identify your form for processing.

**Part A, question A3** (*List the persons who are legally responsible for your business*) – you must supply at least two people who will be primarily responsible for the commoners' or graziers' association and will have full empowerment to manage the business in respect of the proposed ES agreement; those people must then sign Part E. Both should be members of the association contributing to the delivery of the agreement. The RPA has produced a useful booklet called Empowerments Guidance see [http://rpa.defra.gov.uk/rpa/index.nsf/b50e2d95daobobda80256f8100404bc7/2aabed9f6008f4af802578850054c7a9/\\$FILE/empowerments%20leaflet%20v2.o.pdf](http://rpa.defra.gov.uk/rpa/index.nsf/b50e2d95daobobda80256f8100404bc7/2aabed9f6008f4af802578850054c7a9/$FILE/empowerments%20leaflet%20v2.o.pdf).

For each person included here, the column marked 'role' should be completed as '5A' unless another category is more appropriate: '5A' means a commoners' or graziers' association member, who shares responsibility for all matters.

There is only room on the form to enter up to four people at Part A, question A3 and up to two people at Part E. If you wish to enter more people at this stage, you will need to ask the RPA CSC to supply additional copies of Part A, page 2 or Part E, or if you download the form from the RPA website, you can print additional copies of these pages.

If you wish to enter people who will have partial empowerment, you should include in a separate letter all their names and full addresses and obtain each person's signature on the letter. Partial empowerment, rather than full empowerment, allows a person to access all information held for the business on the Customer Register but they will not be able to make any amendments to information held for the business. Alternatively, if you do not know at this stage all those who will benefit from or contribute to the proposed ES agreement, you may supply this information at a later stage but you must do this before you apply for an ELS or Uplands ELS agreement or, for an HLS agreement, before an offer of an agreement is made (see Q42). If you do not include information about other people at this stage, those people included in Part A, question A3 will be the legally responsible persons for the association until the registration is amended.

**Part A, question A5** (*Which of these best represents the legal status of your business?*) – you must leave the boxes blank and instead write in “commoners’ association” or “graziers’ association” unless, exceptionally, any of these boxes applies to your commoners’ or graziers’ association (this is an exception to the guidance in CRego2 which says that the form will be returned to you if you do not tick a box). For example, if your association is a voluntary body, you must leave the boxes blank and write in “commoners’ association” or “graziers’ association”. But if your association is incorporated as a limited company, you must mark the box *Limited Company* with an ‘X’ (do not write anything in). If your association was first established to make regulations under the Commons Act 1908 or to receive and distribute compensation money on a compulsory purchase of part of the common, you must leave the boxes blank and write in “commoners’ association” (do not mark the box *Statutory Body*).

If a limited company or partnership will benefit from or contribute to the proposed ES agreement, you may enter the name of the limited company or partnership. The business must already be registered with the RPA (if it is not, you will need a separate CRego1 form, completed by the business, to secure its registration). The RPA will then be able to link the registration of the association with directors of the company or business partners to show that the company or partnership is benefiting from or contributing to the delivery of the ES agreement.

**Part B** (*Business contacts*) – you must write in at least one person who will be authorised to act as the main business contact for correspondence between the commoners’ or graziers’ association and the RPA or Natural England. Normally, the signatory of the Common land and shared grazing supplementary application form (NE-CLA4) will be one of the main business contacts (see Q44). You may wish to appoint one or more of the individuals supplied at Part A, question A3 as the main business contact. Alternatively, you may appoint an agent as your main business contact.

**Q9** What if the association already has an SBI?

A You may use an SBI which has already been allocated to your commoners' or graziers' association, for example, if the common or shared grazing was previously under an Environmentally Sensitive Area or Countryside Stewardship agreement, but you will need to check with the RPA that the SBI is still valid – see Q8. If the SBI is valid but the business or contact details have changed, you will need to amend the registration by completing a CReg10 form – see Q42.

**Q10** Does the association need its own bank account to receive money?

A If you apply for an SBI, you must supply the details of a bank account to which payments can be made under your ES agreement. The bank account should be one which is acceptable to others who will benefit under the ES agreement (so a bank account for a farm business may not be suitable). If you have appointed an agent as your main business contact, you may be able to rely on a bank account used by your agent.

If you already have an SBI, you should check the bank account details included in the existing registration and, if this is not acceptable, you should amend the registration by using the CReg10 form.

**Q11** Can I register a commoners' or graziers' association which is a limited company?

A If your commoners' or graziers' association has been incorporated as a limited company, it may be possible to register it and obtain an SBI. However, the RPA may ask for further information about the company, so that it can understand the relationship between the commoners or graziers and the company.

**Q12** Do I need a separate vendor number?

A Yes. You will also need a vendor number – a unique trader registration number – allocated by the RPA. If the association has previously claimed payments under a Countryside Stewardship or Environmentally Sensitive Area agreement, you will already have been issued with a vendor number. If not, you will be automatically given a vendor number when you obtain an SBI.

**Q13** Do I need a County Parish Holding (CPH) number?

A You do not need to supply a CPH number for common land or shared grazing at this stage. The RPA will record any CPH number related to the common or shared grazing when it is registered on the RLR. But you may need the CPH number later when you apply for your ES application pack to include HLS (see Q26).

### Step 3 Registering the common onto the Rural Land Register (RLR)

**Q14** Am I entitled to apply to register the common or shared grazing?

A If you can supply a valid SBI for the commoners' or graziers' association, and are authorised as a business contact for the association, you may apply to register the common or shared grazing onto the RLR and receive a map of the common.

**Q15** When can I register our common/shared grazing onto the RLR?

A You may apply to register the common or shared grazing onto the RLR at any time, once you have been allocated an SBI for the commoners' or graziers' association, and you must have done this (and the mapping must be completed by the RPA) before you request an application pack for ES.

**Q16** I have the SBI and the vendor number for the commoners'/graziers' association: how do I apply to register the common/shared grazing on the RLR?

A You must obtain an RLE1 form from the RPA's CSC. The CSC will want to know the SBI and vendor number, so please have these ready. You must use the form which will be sent to you by the RPA (you cannot download or photocopy it). The RLE1 form must be signed by the person who is the main business contact otherwise it may be rejected.

**Q17** Where can I find guidance on how to complete the RLE1 form?

A The RPA will send you guidance with the form. You can also download the guidance (but not the form) from the RPA's website: <http://tinyurl.com/rparle1>. It may also be possible to arrange a meeting with an RPA representative who can give advice on completion of the form.

Write on the RLE1 form (under the heading), in bold, 'RDPE': this will help the RPA to identify and prioritise your application for mapping as part of an ES agreement.

**Q18** How long will it take for the RPA to complete the mapping on the RLR?

A The RPA aims to complete your mapping and send the RLR maps to you within 20 working days from the date of receipt. It may take longer if the RPA needs to contact you about any issues requiring action by the RPA or the commoners' or graziers' association. The time taken to complete the mapping can go beyond 20 days if the common covers a large area of land or there are boundary issues.

**Q19 Is the common/shared grazing already mapped on the RLR?**

A The common or shared grazing will already be mapped on the RLR if the commoners or graziers have previously claimed payments under a Countryside Stewardship or Environmentally Sensitive Area agreement, but the map of the common may need to be updated by the RPA. If you think that the map is not up to date, please contact the RPA CSC. If changes are required, you will need to complete the RLE1 form. As the application pack obtained from Natural England is based on the current map of the common or shared grazing, any subsequent changes will require a new application pack (see Q26).

**Q20 What if the commoners/graziers can't agree on how to register our land on the RLR? Do any boundary disputes need to be resolved before the RLR mapping process starts?**

A You should not proceed with an application until you have the agreement of the active commoners or graziers and the owner (through the commoners' or graziers' association if one exists). The commoners or graziers will need to be able to agree on how to enter the common or shared grazing into an ES agreement. You should also resolve any boundary issues with neighbouring commons and farms. If you apply and, later on, the other commoners or graziers, or the landowner, do not agree with the way the land is recorded on the RLR, it may delay your application.

**Q21 Do I need to consult the landowner about registering the common/shared grazing on the RLR?**

A You should consult both the landowner and the other commoners or graziers (if possible through the association) on your application to register the land onto the RLR. The landowner must consent to your application to enter the common or shared grazing into ES. If the owner cannot agree with the way the common or shared grazing has been recorded on the RLR, you may not be able to obtain their consent to your ES application.

**Q22 Does the land managed as registered common land have to be the same as the area of the common registered on the RLR?**

A No. The area of land which you apply to register onto the RLR need not be the same as the area of the registered common recorded on the register of common land held by your local authority (the "commons registration authority"), but it must include all of the land which is regarded by the landowner and commoners' association as part of the common. Your application should not include any land which is not regarded as part of the common (such as neighbouring in-bye land).

In your RLE1 application, please include a covering letter to explain any significant differences between the boundary of the land which you apply to register on the RLR, and the boundary of the registered common land, otherwise your application may be delayed while the RPA sorts out any discrepancies with you. Further guidance on registering common land onto the RLR is available from the guidance accompanying the RLE1 form (see Q17).

If possible, the RLE1 application area should be managed as a single grazing unit. It may comprise a single common land register unit as shown on the register of common land held by your commons registration authority. It may include a combination of two or more common land register units but not parts of common land register units unless there are exceptional circumstances – in which case you must discuss your application with your local Natural England adviser. Where common land is managed alongside parcels of shared grazing (not designated as common land) which are regarded as part of the same grazing unit, those parcels should, if possible, be entered into the same type of ES agreement at the same time, under a separate application, in order to maintain the same grazing management across the complete grazing unit.

**Q23** Can I use the map shown in the commons register as supporting information to register the common on the RLR?

A Yes. The map of the registered common shown in the commons register can be used if it is consistent with the area which is regarded as the common. If so, you may send a copy of the register map (see Q25), on which you have marked the boundary you want the RPA to adopt (please see *What type of documents can be sent to us* in the guidance accompanying the RLE1 form).

**Q24** There is no visible permanent physical boundary between our common land and the neighbouring common or other land. How is this dealt with?

A The RPA will need to identify the permanent physical boundary between your common and any neighbouring land or common land. The RPA can map a permanent physical boundary which follows the boundary of registered common land shown in the commons registers. However, if the boundary is not visible on the ground, for example, by a fence, wall, bank or ditch, nor links clearly defined features (such as isolated trees, distinctive rocks or stones, or streams), you may be asked to mark the boundary with posts or cairns, painted white. If the boundary is defined on the ground only intermittently, please explain in your application how it can be identified on the ground. Further guidance on mapping common land on the RLR is available from the guidance accompanying the RLE1 form (see Q17).

**Q25** Where can I find a map showing the registered common land boundaries?

A You can inspect the commons registers at your local authority (the commons registration authority): this will be your county council, metropolitan borough or metropolitan district council, or unitary local authority – please ask for the ‘commons registration officer’. The registration authority will also supply you with a copy of the register map, but you may be charged a fee.

You can also view the registered boundaries of common land on Defra’s MAGIC website (<http://magic.defra.gov.uk/>): click on *Interactive Map*, and in Step 1 (Select topic), select *Design my own Topic*, click on *Registered Common Land* and click *Done*. Now complete Step 2 by selecting the location, tick the box if you agree to the terms of use, and click on *Open Map*. Please note that the information contained on MAGIC was based on registers made under the Commons Registration Act 1965, as copied in 2001. In some cases the commons registration authority may have registers which show changes made since 2001.

## Step 4 Obtain an application pack from Natural England

**Q26** The common/shared grazing is registered on the RLR. How can I obtain an application pack for ES?

**A** You can obtain an application pack for ES from your Natural England office, details of which can be found in Appendix 1 of the ELS handbook. Natural England may want to know your CPH number (if you are making an application to enter HLS) or your land parcel number or numbers as registered on the RLR, so please have these ready. Natural England cannot send you an application pack until your commoners' or graziers' association is registered with an SBI and vendor number, and the common or shared grazing is registered on the RLR.

Natural England will populate your application using RLR data, which will show the area of the common land or shared grazing and calculate your points target for your ELS or Uplands ELS agreement.

**Q27** Can I apply online?

**A** Yes, for ELS and Uplands ELS (without HLS). For further information contact the ELS Online Team either by calling 0300 060 1482 or 0300 060 1638 or via email at [els.online@naturalengland.org.uk](mailto:els.online@naturalengland.org.uk) or go online to <http://www.businesslink.gov.uk/els> and click on ELS Online.

**Q28** Can I submit an ES application before the RLR mapping is complete?

**A** No, you must have received the RLR maps for your common or shared grazing, with no further questions to resolve, before requesting an application pack from Natural England. This is because your ES application pack will be populated with data for your common or shared grazing as registered on the RLR.

**Q29** Can I see the ES application guidance before I receive my application pack?

**A** Yes. We recommend that you read the ES guidance before you receive your application pack, so that you can consider your options and begin discussions within your commoners' or graziers' association at an early stage. Guidance on and requirements for ES, including the ELS and HLS handbooks, can be obtained from Natural England or downloaded from: <http://www.naturalengland.org.uk/ourwork/farming/funding/es>

## Step 5 Negotiate an internal agreement

### Q30 Do we need an internal agreement?

A Yes, if there is more than one party benefitting from or contributing to the delivery of the agreement – see notes under Introduction. An internal agreement is a commitment signed by all the parties to an application specifying the obligations placed on each person and the payments they may expect to receive. You must have an internal agreement for all ES agreements if the delivery of your ES agreement will require input from more than one individual. The internal agreement is intended to ensure that everyone who is involved in the ES agreement has a clear view of their responsibilities and minimises areas for disagreement. We advise you to employ an experienced adviser to undertake this work. See Annex C – guidance on drafting an internal agreement.

### Q31 How soon do we need to finalise an internal agreement?

A An internal agreement must be signed by all key parties before the application is made for ELS or Uplands ELS. For HLS agreements, you must finalise an internal agreement before accepting the offer of an agreement.

### Q32 Is an internal agreement part of an ES agreement?

A You must have an internal agreement as a condition of your ES agreement, but you do not need to send the internal agreement with your application for ES. An internal agreement must show how the ES agreement will work on the ground both in terms of management and payments. Natural England or the RPA may ask to see your internal agreement at any time.

### Q33 Who is responsible for administering the internal agreement?

A It is the responsibility of the Association to be managed in accordance with the Association's internal agreement and constitution. Compliance with the ES agreement management requirements and delivery of options is the shared responsibility of those who are party to the internal agreement (and all those registered under the SBI), but day to day administration should be the particular responsibility of the authorised business contact identified in your customer registration (see Q8).

### Q34 Should an internal agreement deal with the distribution of payments?

A Yes. Those involved in delivering an ES agreement should agree a formula for distribution of payments (see paragraphs 7–14 of the guidance on internal agreements under Annex C).

**Q35 Who should be included in the internal agreement?**

A The internal agreement should, if possible, include all those who are in the position to influence the level of grazing and the management of the vegetation and features required by your ES agreement (the delivery of an ES agreement requires effective collaboration between all those who have an active interest in the management of the land). **An internal agreement cannot in itself prevent those who are not participating in the ES agreement from exercising their legal rights of common or grazing.** The commoners' or graziers' association should therefore assess the risk of the objectives and requirements of an ES agreement being jeopardised by anyone not party to the internal agreement and provide for this in the internal agreement (see Q40). It is expected that all those contributing to an ES application are members of the commoners' or graziers' association, but not all members of the association need be party to the ES agreement.

**Q36 What should be included in an internal agreement?**

A The internal agreement is intended to ensure that everyone who is participating in an ES agreement has a clear understanding of their roles and responsibilities. It should set out the ground rules and requirements of the ES agreement.

**Q37 Should the internal agreement include the landowner?**

A The landowner, because of the landowner's own grazing rights or other land management responsibilities, should normally be party to the internal agreement. Co-operation will be needed from a landowner whose responsibilities extend to the protection of environmental features (such as archaeological remains, woodland and wetland), land drainage and management of scrub and heather, which you may wish to manage under an ES agreement. The active involvement of landowners and shooting interests is likely to result in more effective ES agreements and are essential for HLS.

**Q38 Should the internal agreement include inactive commoners or graziers?**

A The decision to include inactive commoners or graziers will depend on the judgement of the commoners' or graziers' association (see Q35). Those who have an active interest in the management of the land could include some non-graziers as well as graziers, particularly if they are involved in the delivery of the ES agreement, for example in carrying out scrub control and providing extra shepherding. The internal agreement may include those who have previously agreed to remove livestock from the common so that others can have a viable ES agreement that limits the level of stocking.

**Q39 Do those included in the internal agreement need to be notified to the RPA?**

A You must ensure that all those who benefit from or contribute to the delivery of the agreement (including non-active commoners or graziers) are included in the RPA customer registration for the common. You must do this either at the time you obtain an SBI for the common (see Q8) or at a later stage by using a CReg10 form to amend the Customer Register. For ELS and Uplands ELS, this means before you make an application; for HLS, this means before an offer of an agreement is made (see Q42).

**Q40 How should the internal agreement take account of graziers who wish to join in later?**

A Internal agreements should provide for additional graziers (not initially party to the internal agreement) who may wish to exercise their rights during the lifetime of an ES agreement. Where exercising these rights could jeopardise the delivery of ES objectives on the ground, it will be the responsibility of the commoners' or graziers' association to liaise with the new graziers and, if necessary, assess the potential for adjusting grazing levels to stay within the grazing limits required by the ES agreement. This will be an important part of the pre-application consultation which should always seek to involve those who may wish to exercise their rights (see Q35).

The commoners' or graziers' association must satisfy itself that any joining and existing graziers who wish to participate are able to comply with the requirements of the ES agreement for example, under Uplands ELS, to manage hefted stock that are acclimatised to the conditions of the common. It will be for the commoners' or graziers' association to decide the rules or conditions which apply to joining graziers wishing to become party to the ES agreement.

## **Step 6 Complete your application (in accordance with the ELS and/or HLS handbook as appropriate)**

**Q41 When can an application for ES be submitted?**

A For ELS and Uplands ELS (without HLS), you can apply once the internal agreement has been finalised (see Q30 and Q31) and if the RPA customer registration for your commoners' or graziers' association (see Q8) includes every person who will benefit from or contribute to the proposed agreement. If it does not, you must amend the RPA customer registration before you apply: please see Q42.

Contact Natural England to discuss your potential HLS application, what your agreement offer may include and to get agreement that the Farm Environment Plan (FEP) will be funded. For HLS, you can apply once the FEP is completed. You do not need to update the RPA customer registration using the form CReg10 (if necessary) before making your application, but Natural England will not offer an agreement until the RPA confirms that this has been done. You do not need to finalise the internal agreement until after the offer of an agreement is made, but you must finalise the internal agreement before accepting the offer.

**Q42** How does the association register with the RPA those who will benefit from the ES agreement?

**A** If, when you completed the RPA customer registration form CRego1 (see Q8), you did not include in Part A, question A3, every person who will benefit from or contribute to the proposed ES agreement, you must apply to amend the RPA customer registration to include these details before you apply for an ELS or Uplands ELS agreement; or for HLS applications, before an offer of an agreement is made.

To do this, you must complete an RPA customer amendment form CReg10 which you can obtain from the RPA CSC, or you can download from the RPA's website: <http://tinyurl.com/rpacregform>, and include the additional people at Part E. The additional people need not be given full empowerment and will normally be given partial empowerment (see Q8) but on the understanding that they retain legal responsibility as members of the commoners' or graziers' association and as participants in the ES agreement. You may need to ask the RPA CSC to supply additional copies of Part E to form CReg10 (you will need one copy for each additional person), or if you download the form from the RPA website, you can print additional copies of Part E.

For each person included in Part E, box E4 ('role') should be completed as '5A' unless another category (shown in Appendix B of the guidance notes) is more appropriate: '5A' means a member of a commoners' or graziers' association, who shares responsibility for all matters. The form CReg10 must be signed at Part F by every person who was included as fully empowered in the original RPA customer registration. You can use the CReg10 form to amend the number and names of people fully empowered and legally responsible for the commoners' or graziers' association, as well as to add new people.

The CReg10 form must be signed by those people who are fully empowered and legally responsible for the association (usually, those people entered in the CRego1 form at Part A, question A3 – see Q8).

The RPA will send you guidance with the form, or if you download the form from the RPA's website, you should also download the guidance (CReg11).

Once you have received confirmation from the RPA that the RPA customer registration has been amended, you may submit an application for an ELS or Uplands ELS agreement. For HLS, Natural England will not make an offer until the RPA confirms that the customer registration has been amended. If, following the offer of an agreement or during the course of an agreement, there are changes to the people involved, a further CReg10 form must be completed to update the register, see Q47.

**Q43** How do I complete an ES application?

A You should obtain an application pack from Natural England (see Q26). The application pack will include guidance on completing an ES application. Or for ELS and Uplands ELS only, you can apply online (see Q27).

**Q44** Are there any other forms I need to include with my application?

A Yes. Unless you are the landowner with sole use of the land – see the *Introduction* – you will need to include with your application a Common land and shared grazing supplementary application form (NE-CLA4), which will be sent to you with your application pack, or which you can download from the Natural England website at: <http://www.naturalengland.org.uk/ourwork/farming/funding/es/forms/default.aspx>.

You must be able to declare on the supplementary form that:

- The landowner of the common or shared grazing consents to the ES agreement. No separate consent is needed if the person signing the supplementary form is the owner.
- For ELS and Uplands ELS, the RPA customer registration (SBI) for the common or shared grazing includes the names of all people who will benefit from or contribute to the delivery of the ELS or Uplands ELS agreement (see Q8 and Q42).
- for HLS, the RPA customer registration (SBI) for the common or shared grazing includes the names of all people who will benefit from or contribute to the delivery of the agreement before Natural England can offer an agreement (see Q8 and Q42).

**Q45** What if there is no known landowner of our common or shared grazing?

A You do not need to obtain the consent of the landowner of the common or shared grazing to your application if there is no known owner (see point 8 under Annex A). If this is the case, please include a note with your ES application explaining the circumstances (e.g. indicate whether the ownership was recorded as unknown on the commons register).

## Step 7 Approval of your agreement by Natural England

### Q46 What happens once I have submitted the application?

A For ELS and Uplands ELS, if the application passes the eligibility requirements, you have entered all the necessary details on the application forms and all your RLR maps have been completed, Natural England will notify you that you have been accepted into the scheme.

For HLS, once the outcome of the FEP has been agreed and the application passes the eligibility requirements, Natural England will offer you an agreement. You can then decide whether to accept and proceed with the agreement.

### Q47 What happens if commoners or graziers leave the agreement (or others enter the agreement)?

A Your SBI customer registration includes details of all the commoners, graziers and owners who are party to your ES agreement. If anybody wishes to enter or leave the agreement, you must complete an RPA Customer Amendment form (CReg10) which you can obtain from the RPA's CSC, or you can download from the RPA's website: <http://tinyurl.com/rpacregform>.

The RPA will send you guidance with the form, or if you download the form from the RPA's website, you should also download the guidance (CReg11). Once your ES agreement is in place, you will only need to have the signatures of the fully legally empowered members and those people entering the agreement (and therefore being added to the RPA customer registration) to complete the CReg10. You do not need the signature of any other person included in the RPA customer registration.

### Q48 What happens if there is an SSSI included in your application?

A Natural England will consider whether the application is consistent with the conservation and enhancement of the SSSI's special interest. Before issuing an agreement, it may be necessary to re-negotiate some options or apply some conditions. No changes to the options or conditions will be imposed without discussion or negotiation with the applicants.

For a ELS/UELS only agreement on a SSSI then the applicant should liaise with the Natural England SSSI adviser before commencing an application to ensure that time is not wasted negotiating and drafting an internal agreement that does not include the conditions required by the SSSI consent.

Once the SSSI adviser has approved the application, issuing an ES agreement constitutes consent to carry out the specified operations on the SSSI, and a separate consent for those participating in the agreement is not required (see further information under Annex A, point 6).

## Advice and assistance

If you have any questions about registering your commoners' or graziers' association as a customer with the RPA or registering the common onto the Rural Land Register (including obtaining forms and guidance), please contact the RPA's Customer Service Centre:

Customer Service Centre  
Rural Payments Agency  
PO Box 1058  
NEWCASTLE UPON TYNE  
NE99 4YQ

0845 603 7777  
email: [csc@rpa.gsi.gov.uk](mailto:csc@rpa.gsi.gov.uk)

If you have any questions about your ES application, including obtaining an application pack, please contact your Natural England office, details of which can be found in Appendix 1 of the ELS handbook. You can download the handbook from:

<http://www.naturalengland.org.uk/ourwork/farming/funding/es/els/>

## Annex A: Points to consider before making an application

- 1 Please read the ES handbooks; there are a number of options, for example agreements could be made under ELS or Uplands ELS with, or without, HLS. Commoners, graziers and the landowner should form a working group to consider and discuss proposals more widely before thinking of making an application (see item 10).
- 2 Normally, the whole common or area of shared grazing must be entered into an ES agreement. Part-commons agreements will only be permitted if they meet all of the following criteria (and have been approved by Natural England):
  - They must cover a defined area of land with its own RLR parcel number or a different set of RLR parcel numbers.
  - Each agreement area must either be visibly distinct or be bounded by a physical barrier to mark it out from the non-agreement area.
  - They must be managed as a separate and single grazing unit, where land management practices on the remaining part of the common will not jeopardise the delivery of the agreement. Agreements may consist of one or more whole or part-commons which form a single grazing unit.
  - They must be subject to a separate and binding commoners' association or group internal agreement.
- 3 A number of common land units can be combined in the application if they are related to each other, for example to form a more effective grazing unit. The requirements of the agreement would apply across the whole area and the responsibilities shared between all those involved.
- 4 The commoners or graziers must authorise a main business contact, who can be an agent, to take responsibility for:
  - making an application;
  - corresponding with the RPA to obtain an SBI (and registering those who will benefit from and contribute to the agreement); and
  - managing the agreement.
- 5 Make sure that there is an effective commoners' or graziers' association in place. The officers of the association should consider whether it meets the requirements of the proposed ES agreement, as the association has the responsibility of drawing up an application and operating the agreement. If an association covers a number of commons, a separate group of members could be formed (under the auspices of the association) to create an internal agreement for their common or group of commons involved, i.e. to draw up the ground rules that would be necessary to operate the ES agreement. Guidance on drafting an internal agreement is shown at Annex C.
- 6 **Where the common land or the area of shared grazing is covered, either as a whole or in part, by a designated SSSI**, any landowner or occupier wishing to carry out operations on the notified list of 'Operations Likely to Damage' will need consent from Natural England. An application for ES constitutes a notice under the Wildlife & Countryside Act 1981; therefore,

issuing an ES agreement constitutes permission to carry out the specified management of the SSSI, and a separate consent is not required. Consents will apply to the signatory for the ES agreement and any others covered by the agreement. Consent will only be given if the proposals are consistent with the conservation and enhancement of the site's special interest. The SSSI case officer can advise on the process to secure consent and the levels of grazing required to meet the conservation objectives of a particular SSSI. Early consultation with the Natural England project officer (who may also be the case officer) is recommended. The case officer would need to be informed of those commoners or graziers participating and not participating in the internal agreement (see Q30–Q40). Those landowners or occupiers not involved in the agreement may need to obtain individual consent if they have no existing consent for the activities they wish to carry out. For details on the responsibilities for grazing on SSSI land, see **Sites of Special Scientific Interest (SSSIs) – England's special wildlife and geological sites (NE54)**, which can be downloaded from our publications catalogue at [www.naturalengland.org.uk](http://www.naturalengland.org.uk).

- 7 If you are considering applying for HLS, you should contact your local Natural England adviser at an early stage to organise a meeting to see if the common or shared grazing is a priority for HLS and, if so, can approve the preparation of a FEP to support your application.
- 8 The landowner must be involved (at least to consent to an application). The responsibility for management of some commons is vested in the local authority under a scheme of regulation made under the Commons Act 1899, including in some cases where the common has no known owner: in such cases, the local authority will be required to consent to the application. Where the landowner cannot be identified or contacted, an explanation to Natural England will be required to progress an application (see Q45). The contribution of the landowner will depend on the landowner's active interest in the land and what is required under the ES agreement.
- 9 The agreement should involve all the active graziers but non-graziers should also be considered, especially those who have the capacity to exercise their grazing rights (i.e. they have land available alongside or near the common and have the necessary skills to husband grazing livestock on the common). They may wish to exercise their grazing rights during the course of the agreement. Bear in mind that some non-graziers could lease their grazing rights. However the scope to do so would be dependent on whether the rights could be leased to farmers not involved in the agreement and who have the capacity to exercise those rights. Rights of common attached to land cannot be leased for more than two years (although the lease can be renewed at the end of each term): an RPA inspector may ask to see evidence of any lease.
- 10 In order to start the application process for ES, as noted at point 1 it is recommended that commoners' or graziers' associations form a working group of key individuals who can represent the various interests of the landowner and commoners. A working group should discuss:
  - the strategy to progress an application, including managing the wide consultation meeting at the start (see point 11);
  - the need to appoint an agent;

- appointing signatories for the Natural England application forms (and for the initial RPA customer registration (SBI) form, unless a valid SBI number for the common or shared grazing has already been obtained);
  - producing or updating a 'live' register, noting the commoners/graziers who are currently exercising their rights;
  - distribution of payments;
  - provision for new graziers;
  - the involvement of non-graziers;
  - any other issues relating to the common(s) or shared grazing.
- 11 A wide consultation is required for applications to enter common land into ES. The working group must contact all the landowners and practising commoners. Also, they must go to all reasonable lengths to contact any other right holders and anyone else or any organisation that has a legal interest in the management of the land. Other organisations and members of the local community could also be considered where they have a concern in the management of the land, for example those who are interested in archaeological features or particular species of wildlife. Invitations by letter could be complemented by placing notices in local newspapers and at access points to the common.
- 12 All those who are actively involved in the management of the land through grazing or other means should then be interviewed, either individually or collectively to obtain their views (possibly by the appointed agent). If possible, those who express a wish not to participate in the ES agreement or have a grievance should also be contacted. It may be possible to address their concerns and make them a party to the proposed application or, alternatively, since they can legally exercise their rights on the common, it may be necessary to negotiate ways that both parties can fulfil their aims without prejudicing the other. Their existing grazing practices and proposals for changes should be considered in case they could jeopardise the objectives and requirements of the agreement (particularly in the case of HLS agreements where there is a stocking limit). Try to reach an understanding, and review the situation on a regular basis, for example annually. Any agreement on the way forward should be written into the internal agreement or formally recorded in order to address any disputes that occur at a later date.

## Annex B: Practitioners guide to making an application

This summary assumes that a commoners' association or, in the case of shared grazing, a graziers' association is already established. The term 'association' may be replaced by 'group' where it is more convenient for an association to set up a separate group for the purpose of an ES agreement (for example, where an existing association covers a number of commons which are not part of the same grazing unit).

The following steps in the application process are based on the **Common Land Tool Kit (NE285)** produced by The Foundation for Common Land which can be downloaded from our publications catalogue at [www.naturalengland.org.uk](http://www.naturalengland.org.uk). Some of the steps can run concurrently and some do not apply to shared grazing.

- 1 Hold a meeting to discuss proposals; invite all the active commoners or graziers.
- 2 Consider employing an agent who is familiar with the process of making an application and creating an internal agreement (which will provide the ground rules for those involved in operating the Stewardship agreement).
- 3 If the land (or part of the land) is designated as SSSI contact the local Natural England case officer.
- 4 If it does not already have an SBI, register the commoners' association or group as a business with the RPA on form CRego1.
- 5 Set up an association or group bank account for the receipt of payments – you will need to include details on the CRego1 form.
- 6 Check if the common or area of shared grazing is mapped on the RLR (contact the RPA's CSC if unsure). If it is not mapped, apply using the form RLE1. If it is mapped, check the boundaries are correct as many are likely to be inaccurate (any errors will have to be resolved, if possible consulting the landowners).
- 7 Request an application pack from Natural England.
- 8 Contact the landowner and arrange for consent; the land owner may wish to be involved in the ES agreement (and will be asked to complete a section in the commons/shared grazing supplementary application form).
- 9 Bring the commoners' or graziers' association's record of those exercising their grazing rights up to date; take reasonable steps to inform all known commoners or graziers of the intention to make an application. Where several commoners are registered and their addresses are not readily available, you may need to display a notice on parish notice boards and place notices at access points to the common.
- 10 Invite all commoners and the land owner to an open public meeting to inform and discuss.

## Applications for ELS and Uplands ELS (i.e. without HLS)

- 1 Consult the ELS handbook to identify the requirements of an agreement and decide what options could be applied to meet the target number of points.
- 2 Hold a meeting for all active commoners or graziers to explain the requirements and prescriptions under each potential option.
- 3 Assess if there are any non graziers who are likely to exercise their grazing rights during the course of the agreement. If there are, discuss how they are to be managed – should they be party to the agreement?
- 4 Decide how the money will be distributed between those involved in the agreement.
- 5 Draw up an internal agreement as a deed binding all parties. It is advisable to consult a land agent who is familiar with such agreements; you may wish to contact the Central Association of Agricultural Valuers (CAAV) as its membership includes many experienced land agents, website at: <http://www.caav.org.uk/>.
- 6 Update the customer registration details on form CReg10 (if necessary) which can be downloaded from the RPA's website at: <http://tinyurl.com/rpacregform> to include all parties contributing to or benefiting from the agreement (this must be submitted either before an application is made or with the application).
- 7 Apply for an ELS/Uplands ELS agreement. At the same time, complete the Common land and shared grazing supplementary application form (NE-CLA4) and post to Natural England or apply on-line.

## Applications involving HLS

- 1 Consult the ELS and HLS handbooks to identify the requirements and potential options under both entry level and higher level.
- 2 Discuss possible options with your local Natural England adviser, who will be able to tell you about timings, suitable options, supplements and potential capital works.
- 3 Undertake the FEP using a qualified FEP surveyor.
- 4 Meet the landowner to discuss their input.
- 5 Hold a meeting for all active commoners or graziers and landowners (who wish to be involved) to consider and select the options.
- 6 Assess if there are any non graziers who are likely to exercise their grazing rights during the course of the agreement. If there are, discuss how they are to be managed – should they be party to the agreement?
- 7 Submit the application, FEP and the Common land and shared grazing supplementary application form (NE-CLA4) by post to Natural England. The selected options are regarded as provisional at this stage, pending further discussion with the Natural England adviser.
- 8 Draw up a provisional agreement with the Natural England adviser.
- 9 Follow up by meeting with the landowner and commoners who wish to be involved in the proposed agreement, meeting them all individually or in small groups to discuss their current and future grazing practices.
- 10 Decide on how the payments under HLS will be distributed between those involved in the agreement.
- 11 Draw up a provisional internal agreement as a deed binding all parties.
- 12 Update the customer registration details on form CReg10 which can be downloaded from the RPA website: <http://tinyurl.com/rpacregform> to include all parties contributing to or benefiting from the scheme (this must be submitted before a formal offer of an agreement can be made by Natural England).
- 13 Receive an offer of an agreement from Natural England (this will set out the options, prescriptions and payments).
- 14 Hold a meeting for all those involved to consider the offer and finalise the internal agreement and customer registration (completion of a further CReg10 form may be necessary depending on whether there are late entries or deletions). These actions must be done before accepting the offer of an agreement.
- 15 Accept or decline the agreement offer.

## Annex C: Guidance on drafting an internal agreement

- 1 Employ an experienced adviser to draw up an internal agreement for the commoners or group of graziers to agree:
  - how the land management requirements and prescriptions under the selected options will be complied with on the common or shared grazing;
  - an understanding of roles and responsibilities;
  - a method for distribution of payments;
  - a management mechanism for decision making and the resolution of disputes;
  - management of new graziers; and
  - management of changes to the circumstances of individual participants that have implications for the ES agreement, e.g. retirement and illness.
- 2 In addition, the internal agreement provides the graziers with an opportunity to agree on husbandry practices that help them work together to manage the common or shared grazing.
- 3 A locally based adviser may be preferred but the appointment should be agreed by all parties to avoid potential disputes about vested interests (you may wish to involve a land agent – see point 2 at Annex B).
- 4 Applicants should be advised that internal agreements must be drawn up as a deed to stand up to legal challenge and to limit the liability of the individuals involved. Whilst land agents and environmental and agricultural consultants can assist in drafting a deed, they should be aware that no one, except qualified lawyers, can be paid for drafting a legally binding document.
- 5 The internal agreement should make provision for the entry of new graziers and increases in grazing livestock numbers by those not involved in the ES agreement. If there is a maximum level of stocking prescribed, a clause could be inserted in the agreement to state that the graziers already involved in the agreement will, if necessary, reduce their stock numbers in order for the overall level of stocking to stay within the maximum.
- 6 Where the common or shared grazing includes SSSI land, if new graziers (who are not signed up to the internal agreement) wish to enter an ES agreement and their proposals are considered to be unreasonable by the members of the association or group, the members must refer the matter to Natural England. Any grazier not covered by the agreement will need to be covered by a consent, and anyone carrying out activities on an SSSI without consent may be acting in breach of the legislation.
- 7 The internal agreement could include or refer to a code of sound husbandry practice that is applicable to the conditions of the common or commons located in the same district. The codes, if breached, could result in problems with animal welfare or breakdown of collaborative practices that are necessary to maintain an effective system of grazing management on the common or shared grazing.

- 8 Agree a formula to allocate payments to members of the association or group (who would be expected to sign up to the agreement). They are likely to include all those who have an active interest in the management of the land, related to the requirements and delivery of options set out in the ES agreement (provided, of course, that they wish to be involved in the agreement). The formula should apportion payments according to their contribution and levels of responsibility.
- 9 Members of the association will use their local knowledge and experience to identify those who have an active interest in the management of the land, but the following may qualify:
  - those currently exercising rights of common;
  - those who are not exercising rights of common because they have agreed to withdraw their stock under a previous management agreement (such as a Countryside Stewardship agreement);
  - those who have recently ceased to exercise their rights of common (e.g. because of control measures during foot and mouth disease) but retain an interest in the management of the common (possibly to re-establish their use of the common in due course);
  - those who do not exercise their rights but who may wish to do so in the longer term, having the necessary skills and in-by land alongside or near the common;
  - landowners who exercise the right to utilise surplus grazing or perform any of the management requirements of an ES agreement, for example controlling scrub/bracken, weed control, maintaining drainage and heather burning; and
  - landowners or their tenants who wish to undertake land management requirements, e.g. heather burning to support their shooting interest.
- 10 Be aware that the requirements for the various strands of ES are different; so a formula for allocating payments under ELS and Uplands ELS may not be appropriate for HLS or combined ELS/Uplands ELS or ELS/HLS agreements.
- 11 Experience to date indicates that payments to commoners and graziers could be distributed in a number of ways, for example:
  - To graziers proportional to their registered or recognised rights. However, where these are disputed or historically underused, an alternative is to distribute payments proportional to the established number of grazing livestock turned out by each grazier.
  - Where significant reductions in the levels of stocking is required (typically under HLS agreements), allocate the payment per head removed, with additional payments for off-wintering and additional shepherding, if required.
  - Between landowners, shooting interests and commoners or graziers according to their contribution to delivering the ES agreement (e.g. employing staff to undertake heather burning, scrub and bracken control).
  - A two tier approach, distributing a basic sum of money proportional to registered or recognised rights (to all those who have an active interest in the management of the land), topped up with payment to graziers/land managers according to the requirements of the ES agreement.

The type of land, grazing practices and proportion of active and inactive graziers will vary from one common or shared grazing to another. The contributions from landowners and shooting interests will also vary from one site to another. Members of a commoners' or graziers' association should therefore keep an open mind on a formula for distributing payments; one size will not fit all.

- 12 Where ES agreements require the use of hefted stock, e.g. under Uplands ELS, the commoners' association may wish to scale payments to new graziers, e.g. over a three year period, to prove commitment in developing a hefted flock or herd of cattle.
- 13 If there is a reasonable likelihood that some rights will come back into use within the life of the agreement, it is advisable to recognise those rights in the distribution of payments and notionally apportion an amount of money, to manage expectations and minimise potential disputes.

It may be prudent to set aside a sum to cover contingency costs, for example to fund professional fees in the event of a dispute (and to agree this sum with all members of the association or group).

- 14 Remember that payments in relation to common land or shared grazing will, under Uplands ELS, include a supplement of £5/ha (where there are two or more graziers involved) to contribute towards the cost of facilitating the application and collaborative management of grazing stock. HLS agreements may offer a Group Supplement of £10/ha for one or more years although, where there is a combined Uplands ELS/HLS agreement, this will be reduced to avoid double funding so that the maximum payment that can be received each year is £10/ha. Consider how this payment should be retained or distributed: for example, should all or part be retained to cover contingency costs, to employ an administrator, fund extra shepherding or to repay the expenses incurred by employing an agent?
- 15 To facilitate management of the ES agreement, consideration should be given to employing an administrator to undertake ongoing administration work such as keeping records of active graziers and the numbers of grazing livestock (which form part of the Uplands ELS agreement) and making claims.



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