

# Public Money for Public Goods: Improving financial incentive design for New Forest grazing

## Response to the consultation on the allocation of land on the New Forest for the Basic Payment Scheme (BPS)

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### Summary

The significant value of the lowland landscape of the New Forest derives from the continuity of extensive livestock grazing through its historic system of commoning<sup>2</sup>. The design of the European Union Basic Payments Scheme (BPS) is ill-suited to this system. Since 2015 it has introduced a powerful financial incentive that has biased individual decisions over cattle numbers. The number of cattle registered for the New Forest more than doubled in the five years to 2020. The more a few respond to the incentive, the less support there is available to other commoners. Brexit has presented an opportunity to correct this situation, and to address concerns over the potential impact of more intensive cattle grazing on habitats and on public safety, and to ensure that the financial support is shared more equitably and effectively.

This response to the Rural Payments Agency makes two recommendations:

Firstly, to declare a **Reference Period for remaining BPS payments, based upon an average of several years, and subject to a £32,000 cap** (More than 15 times the average claim). This will slightly reduce the problem of entrenching inequities that have developed over the past five years).

Secondly, to re-establish an independent **Advisory Group on New Forest grazing**. Concerns over livestock numbers, habitat condition, and public access should be discussed openly and based on evidence. Unlike the current situation this would create clear and transparent local responsibility for grazing practice.

The New Forest is a valuable and complex mosaic of linked habitats, maintained by centuries of continuous grazing. Whilst most commoners have six or fewer animals, the majority of the livestock are owned by a small number of commoners with large herds of ponies, cattle or both. Support under the Common Agricultural Policy has played a significant part in improving the prospects for the survival of the commoning system. This followed serious concerns in the

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<sup>2</sup> Background notes on the commoning system are appended to this paper

1980s that this most “*practical and cost-effective*” means of maintaining the grazed habitats was unsustainable due to socio-economic pressures.

Since 2015, however, the Basic Payments Scheme has incentivised dramatic growth in the Marking Register for livestock eligible to graze the New Forest. The number of cattle marked has more than doubled in just five years (pony numbers have increased just 16%). This has harmed the reputation of commoning at a crucial time of policy change. The growth of several very large cattle herds has also been supported by Verderer decisions to allow feeding with concentrated feeds on the commons. This novel practice has raised new concerns for public safety due to its combined effects on herd size and cattle behaviour.

Declaration of a Reference Period as the baseline for direct payments whilst the BPS system is replaced will end the perverse incentive to mark additional animals. If this is combined with a cap on individual payments this would improve the equity of the system between 2021 and 2027, ensuring that recent increases in claims by a few do not have a sustained negative impact on the many. Other options put forward by the RPA would be complex, unworkable, and could negatively affect the development of a future system to sustain New Forest grazing and its unique commoning cultural heritage.

This paper is written from the perspective of a behavioural economist with a very strong interest in the New Forest, and with good understanding of its habitats and commoning system, and with no financial interest in the BPS.

## **Introduction**

The policy intent of the introduction of the Basic Payment Scheme (BPS) within the EU Common Agricultural Policy (CAP) was to remove production-based incentives. In the New Forest it has had the opposite effect due to the unfortunate interaction between area-based support shared on the basis of headage and legal rights of pasture limited only by the practical (and unregulated) issue of access to adequate back-up enclosed grazing land.

It is fortunate for the landscape that the way the scheme has operated has not required the animals upon which BPS has been claimed to physically graze the common land. All that is required to claim under the BPS is a receipt for the £24 (or less) marking fee paid to the New Forest Verderers. In practice it is possible for the animal to be marked multiple times, passing from one entitlement holder to another, or to be marked then sold out of the New Forest. Grazing pressures are also lower than implied by the Marking Register due to the diversity of commoning practice; Commoners operate many different systems for managing their animals, some will depasture only in summer, some by day, some by night etc. The vast majority of commoning households have 6 or fewer animals<sup>3</sup>, whereas the majority of animals are owned by a very small number of households. Grazing pressures are assessed against actual practices to monitor compliance with the requirements of the Higher Level Stewardship Schemes for the Crown Lands and the other commons within the New Forest, although this is not publicly reported. The statutory conservation bodies and environmental charities operating within the

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<sup>3</sup> Commoning Census, 2011. <https://www.realnewforest.org/wp-content/uploads/2018/11/Final-census-report-August-2011.pdf>

New Forest appear to be content with grazing levels across the various habitats, with longstanding concerns for “undergrazing” in some areas of the New Forest.

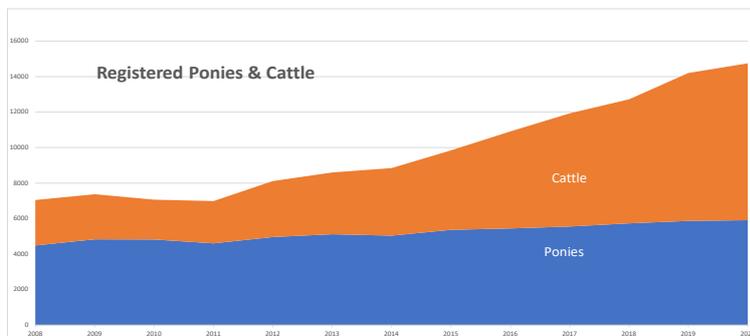
The continuous history of grazing by large herbivores and survival of the mosaic of linked habitats has made the New Forest an area of global importance for nature, for carbon capture and storage. This is additional to a unique cultural heritage based upon the vocational system of small-scale commoning.

There is a clear tension between current levels of winter poaching and the recreational popularity of the landscape: Winter poaching adversely affects the ease of public access, popular desires for a “tidy” landscape. Furthermore, and perhaps more importantly, the growth of cattle herds has coincided with recreation growth, notably dog-walking. This has led to an unprecedented spate of injuries to members of the public. The BPS has generated conflict between the multiple public goods provided by the New Forest.

### Perverse Incentives in the Basic Payment Scheme

In the 2011 Commoning Census two-thirds of respondents said that their commitment to the New Forest meant that they would continue commoning even if financial support through the Single Farm Payment (SFP) and Verderers Stewardship Scheme (VSS) were withdrawn.<sup>4</sup>

The Basic Payments Scheme was applied to the New Forest from 2015 to 2020. Up to 2015 the payments scheme had used a reference period to determine entitlements. This was abandoned following a legal case relating to the National Trust Minchinhampton Common in



Gloucestershire, throwing the RPA into disarray and creating substantial claims for back-payments. The case generated the perverse incentive to mark additional livestock. The impact on the number of cattle for which marking fees are paid has been striking,

with numbers more than doubling between 2015 and 2020 to a total in excess of 8500<sup>5</sup>. The impact on pony numbers has been mostly insignificant. For reference the totals on the marking register in the 1990s was around 3500 ponies and 2500 cows<sup>6</sup>, with some concern at the time that grazing was insufficient to maintain the habitats. By 2010 the Single Farm Payment,

<sup>4</sup> Ibid, p21

<sup>5</sup> Numbers for the year-end of 2020 are estimated, using figures released for October 2020 (the latest available in January 2021) and uprating these by the increase seen between October and December 2019.

<sup>6</sup> In the period 1966 to 2010 pony numbers on the register grew steadily from around 2200 to 5000, as the number of pony commoners doubled, however cattle numbers fluctuated between 1500 and 3200.

Verderers Stewardship Scheme and other initiatives had boosted pony numbers to almost 5000 (whilst also boosting quality) and managed to maintain cattle numbers a little in excess of 2000. Around 9 in 10 commoners graze ponies. Just 2 in 10 graze cattle<sup>7</sup>. In the 2011 Census a total of 24 commoners were turning out more than 30 cows. It is important to note, however, that “undergrazing” remains a commonly cited cause for SSSI unit decline in the 3.7% of the 582 New Forest SSSI units described as “unfavourable” and not “recovering” (noting however that many of these assessments pre-date 2015 and/or relate to units not on the open Forest)<sup>8</sup>. Slightly different systems operate across the Crown Lands and Northern and Western Commons of the New Forest, with some differences in commoning culture. The commons were only brought under the Verderers jurisdiction in the 1964 New Forest Act, and commoners registering livestock for the commons pay a significantly lower Marking Fee per animal to the Verderers than commoners depasturing on the Crown Lands. There are no boundaries between these areas however. The rate of increase in cattle marking since 2015 has been similar across both the Forest and Commons.

Given that the quantum of support for the New Forest is based on the eligible area, which has reduced by almost 1000 hectares due to vagaries in the statutory mapping exercise for BPS purposes (excluding important grazed habitats), support for those who do not game the system is reducing, to the benefit of those who exploit its perverse incentives. This is an ongoing worry for the viability of the New Forest’s typical holdings of small-scale cattle commoning upon whom the long-term future of the habitats will depend: The New Forest is the UK’s least affordable national park, typified by very living high costs and very low incomes.

### *Loss of Local Accountability*

It is important to note that the small number of livestock owners who cause most concern typically choose not to claim support under the locally-managed Verderers Grazing Scheme, which is a major part of the England’s largest agri-environment scheme. When the Verderers tighten controls within the Verderers Grazing Scheme in order to counteract the effects of the BPS on the Marking Register this may send the intended signal to the general public that action is being taken on their concerns, but it has no practical effect on the source of the problem. Furthermore, those who do not game the BPS system or who do not participate in the BPS face reduced financial support for the commoning as a result. The imposition of limits in the Grazing Scheme can be offset by claiming under multiple members of one household, but this is using another wrong to offset the first, not putting it right. The negative spillover effects of the BPS onto the behaviour of commoners desperate to sustain their grazing activities are of considerable concern. This affects the morale and motivation of all commoners, and is deeply divisive. All commoners are suffering from the reputational harm being done by growth of the marking register, its facilitation of accusations of “overgrazing” regardless of grazing practices and habitat conditions, and drawing attention away from the incredible habitat restoration and livestock condition achievements of the past 20 years.

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<sup>7</sup> Commoning Census (2011) op cit, p35

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<https://designatedsites.naturalengland.org.uk/ReportConditionSummary.aspx?SiteCode=S1003036&ReportTitle=The%20New%20Forest%20SSSI>

In order to tackle inappropriate winter poaching by cattle the Verderers have been providing cattle commoners with designated feeding areas on dry ground. Feeding is generally prohibited on the open Forest by the Verderers' Byelaws, but this limited privilege avoids poaching around farm gates. It does, however, also facilitate the growth of herds and can create new risks to recreational users due to the effects on livestock behaviour. In 2019/20 there were 12 active feeding areas used by 7 commoners. Concerns and complaints about feeding areas again harm the reputation of all commoners even though they involve 1% of the commoning community.

### *The Agricultural Transition*

In February 2020 I wrote, as Chair of the commoners association, to the Secretary of State requesting urgent action on the "Reference Period" due to the perverse incentive of this new policy<sup>9</sup>. This was supported by correspondence from the National Park Authority, Verderers, and Forestry England. The Secretary of State responded<sup>10</sup> with a commitment to consultation.

This consultation is, therefore, very welcome indeed. It must, however, find a solution for the Agricultural Transition that resolves these perverse incentives whilst supporting the long-term viability of small-scale cattle commoning. This is vital for the health of the habitats and for the cultural heritage of the New Forest.

Support for commoning since the 1990s has alleviated widespread concerns that the vocational commoning system was in terminal decline, putting the grazed habitats at risk. After an interdepartmental review the conclusion was drawn by the Secretary of State in 1992<sup>11</sup> that: "*The commoners' ponies and cattle are by far the most practical and cost-effective means of providing this grazing*". Specific policies for affordable back-up land and housing financial support since then has made an appreciable difference. Without this it is clear that the feared collapse in grazing levels to those of the 1980s could return quickly due to the economic and social pressures on the landscape and the time commitment involved in commoning.

### *Option 1 – A Reference Period*

The declaring of a reference year would be the most effective and deliverable policy, consistent with national policy.

The risk within this is that it may entrench the benefit to those who have increased their BPS receipts over recent years at the expense of most commoners. As the effect of this will last several years within a situation of general decline in direct support the risk to the sustainability of small-scale cattle commoning may be very real.

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<sup>9</sup> <https://www.realnewforest.org/wp-content/uploads/2020/05/Eustice-letter-Feb-2020.pdf>

<sup>10</sup> <https://www.realnewforest.org/wp-content/uploads/2020/05/Eustice-reference-period-for-delinked-payments.pdf>

<sup>11</sup> Letter from the Secretary of State (MAFF) to the Chairman of the Forestry Commission, 24<sup>th</sup> September 1992

The RPA should consider setting a reference period that uses the claimant's average claim 2015-19 (or part thereof for newer claimants). This would moderate the lasting effect of recent marking register increases by a few commoners.

In an ideal scenario a cap would be imposed, as this would ensure that the amount available to support the eligible area of common land is shared more equitably than has become the case. A review of BPS receipts for the local area suggests that commoners typically claim around £2000 per annum, amongst those who do claim under the BPS, with only a very small number exceeding £50,000 per annum. In the 20 years prior to the BPS the average size of large cattle herds (in excess of 40 animals) peaked at 80 animals: Assuming BPS support of around £400 per animal this would suggest that a cap of £32,000 would be consistent with recent commoning practice free of the BPS incentives on headage. As with the Verderers Grazing Scheme, however, a cap will not address the challenge of one household splitting its herd to escape the cap. The additional complexity is probably unwarranted due to the likely small gain involved for commoning.

### *Option 2 – Couchancy & Levancy*

Using “couchancy and levancy” as the basis for allocation would not be deliverable in practice.

New Forest commoners' back-up land does not need to carry rights of common. Rights can, for example, be derived from houses within a housing estate built on land with historic rights recorded in the Atlas of Rights. All householders in the estate will have rights. This is very common and applies equally to properties well beyond the modern boundaries of the New Forest.

Back-up land is a separate issue to “pasture” rights: Couchancy and levancy requirements apply only to the right of pannage, which bear little relevance to this consultation. Pannage rights are very limited in the Verderers Atlas and in practice, with around 600 pigs marked in a good year.

Back-up land can be rented, owned, or shared. Whilst a combined home-land arrangement adjacent to the common land is ideal, it is also relatively rare in New Forest commoning. Commoners often live beyond the New Forest boundaries and make use of several disparate plots if and when they need arise to bring their animals off the open Forest. This land need not be within the boundaries of the New Forest, however the boundary is defined.

At best a variant of this option could be incorporated alongside the Reference Period from Option 1 in order to cap individual payments. However, the only deliverable means of applying this would be to rely upon simple declarations of available back-up land from each claimant, ensuring that each plot is only claimed once. The imposition of a cap would increase the relative attractiveness of participation in the Verderers Grazing Scheme (or any locally-managed successor scheme). If those few claimants who cause most concern were to join the VGS this would open new opportunities for influence over their commoning practices.

### *Option 3 – Supporting “Non-Productive Activity”*

Any future scheme could indeed support “non-productive activity” as proposed. This would need very careful consideration and design. Commoners are generally prevented from carrying out land management activities on the commons, unless under contract to the landowner and with the appropriate consents in place as appropriate to the designations (generally SPA, SSSI etc). Any scheme to reward commoners for this work would overlap with contracts under HLS schemes and discriminate between those who are able to undertake such contracts and those who are not. This would be determined primarily by the nature of their primary occupation or employment status.

The commons of the New Forest fall under multiple ownerships. The Crown Lands are the largest holding, but the commons are also owned by the National Trust, counties and parishes, private estates and homeowners. Incentivising non-productive activity on these holdings would be fraught with legal complexity.

Valuable “non-productive activity” is currently supported either directly or indirectly by the Verderers HLS. For example, commoners are supported with small premiums to breed high-quality New Forest ponies and to keep young colts and stallions on their holdings. The scheme has supported the replacement of pounds around the Forest, to assist commoners in catching their animals. It does not, however, incentivise commoners to assist with the annual round-ups, with low participation in this important work in some areas of the Forest. Nor does it support the representation work of the commoners’ association. HLS support for the New Forest Land Advice Service has been of particular benefit, assisting commoners with essential paperwork and advising on the good management of their back-up land.

There is much “non-productive activity” worthy of support, but this should be an important discussion during the agricultural transition, looking beyond the HLS and BPS, not a short-term fix for the problems of the BPS.

Whilst I was a Member of the “Forest Farming Group” partnership I made the case for establishing a baseline<sup>12</sup> on the “public goods” of the New Forest. Given the diversity of the landscape this proved to be a challenging task, but it was an important starting point for the discussion of future priorities and support needs. It will be important that this detailed work continues during the Agricultural Transition, whether in Test & Trial or Pilot activities, but it is currently too early to determine the activities that should or could be supported.

In the meantime this consultation provides an opportunity to address the perverse incentives within the BPS whilst continuing to support the traditional model of commoning upon which the habitats and cultural heritage of the New Forest depend. This should serve to facilitate the transition to the new Environmental Land Management approach in development.

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<sup>12</sup> Deane R “Understanding the New Forest’s Natural Capital” (2019)  
<https://www.newforestnpa.gov.uk/app/uploads/2019/10/00995-NF-Natural-Capital-Report-web.pdf>

## Conclusions

### 1. Establish a Reference Period for payments, based on an average across years

There seems a single deliverable option for the treatment of the New Forest during the phasing out of the Basic Payment Scheme: Establish a Reference Period to set the baseline for the phase-out of direct payments.

The choice of Reference Period and the decision whether to impose a cap on individual claims are matters of detail. These decisions will have some effect over the next six years, but the effects will be quite limited in comparison to the effect of breaking the link between payments and the number of animals marked.

Taking an average of several years may be the most equitable and most popular approach, because it restricts the sustained reward for those most responsible for recent inflation in the number of cattle on the Marking Register. Imposing a cap based on the largest size of cattle herd prior to the application of BPS to common land would also restore some of the equity in the share of payments that has been lost since 2015, and help sustain the smaller cattle herds. We estimate that this would imply a cap of £32,000.

### 2. Re-establish a New Forest Grazing Advisory Group

The Verderers Higher Level Stewardship Scheme Agreement required<sup>13</sup>:

*“At the beginning of the new scheme an advisory group to be called the “Verderers HLS Grazing Scheme Advisory Group” (to include representatives of Natural England, Verderers, Forestry Commission, New Forest National Park Authority, Commons Defence Association, National Trust, Hampshire Wildlife Trust and any other key organisation as determined by the HLS Board) should be set up.”*

It also required that the Verderers:

*“Develop an improved system for recording and monitoring animal numbers/types and distribution across the forest and the relationship with habitat condition”*

This has not been achieved, probably linked to the abandonment of the advisory group.

The Verderers interpreted the first requirement as meaning that the advisory group was required only in the early years. It ceased to host meetings after three years. It also rejected a 2018 request<sup>14</sup> from the Commons Defence Association that the advisory group should be reconvened in order to discuss address high-profile concerns relating to the marking register, claims of “overgrazing” of damage to habitats. I represented the CDA as a member of the HLS

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<sup>13</sup> <https://www.hlsnewforest.org.uk/about-us/>

<sup>14</sup> <https://www.realnewforest.org/wp-content/uploads/2019/01/CDA-Presentment-May-2018.pdf>

Board for three years. Data fulfilling the second requirement on “recording and monitoring” was never brought to the board or placed in the public domain.

It would still be beneficial for the advisory group to be reconvened in order to oversee the implementation of the outcome of this review. This should be a condition of the new system and of any further roll-forward of the Verderers HLS or successor scheme. It would be beneficial to include the Freshwater Habitats Trust in this work given the importance of the New Forest wetlands and of the activities of the Trust within the New Forest. It would also be sensible to invite the RSPB, given the recent acquisition of Franchises Lodge adjoining the open Forest. The group should be hosted independently of those with a direct financial interest in grazing. It is inappropriate for the Verderers to lead on this monitoring and advisory work given substantial personal interests in grazing payments within the Verderers Court and the close relationships with the principal herd owners (Hence the decision to terminate the Advisory Group). The “Forest Farming Group” formed in 2019 to address the Agricultural Transition may provide a useful base for this monitoring and advisory work, if it enhances its membership and transparency.

This is an opportunity to rebuild clear local accountability for the management of grazing and to restore public confidence in the commoning system and appreciation of its vital role in the landscape.

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### **Background Notes**

- Commoning rights under the New Forest Acts are limited only by practical needs, primarily the amount of back-up grazing for livestock turned out to graze the commons.
- The Basic Payments Scheme (BPS) pays per animal upon production of a receipt for payment of the annual Marking Fee to the New Forest Verderers (A maximum of £24 per animal).
- Marked animals are not required to graze the New Forest. A single animal can be marked multiple times as it is sold on.
- The total sum available in the BPS is determined by the eligible area. If more are marked, then less is paid per animal.
- In 2020 the Government decided to use a Reference Year to establish the basis for direct payment from 2021-17, without declaring the Year, further incentivising additional marked animals.
- Average BPS claims by commoners are £2000 or less per annum (many do not claim at all), but a small number claim in excess of £75,000 with a disproportionate impact on the overall sum available
- Commoners who do not increase animal numbers have faced falling support, whilst the costs of commoning continue to increase
- To date there has been no evidence of general “overgrazing” in habitat assessments, but the risk is high as some herds have very clearly grown in size
- Declaration of the Reference Year remains an urgent priority.
- Using an average across several years and a cap in establishing the basis for ongoing payments during the BPS phase-out would improve equity during the transition from BPS.