



# Direct Payments on Common Grazings - ensuring equity for active graziers post-2013

## 1. Executive summary

Common grazings are important for the delivery of public goods in Scotland and for 20% of IACS businesses, concentrated especially in socio-economically Fragile Areas.

Under the current implementation of direct payments, graziers on sole use and common grazings get the same reward for the same historic activity. Under the proposed reform of the CAP, it is likely that this will change - most common grazings users will lose out since the areas they can claim in IACS are less than they use in practice. On average common graziers will get only 2/3 of the payment per hectare grazed compared to their hill farming neighbours, but some claimants could lose 95% of their potential payment. At present an estimated 177,000 ha is managed but cannot be claimed by the graziers.

Any proposal to remedy the situation must be in accord with EU regulations and Scots land, especially crofting, law and recognise the capacity for engagement on the part of grazings institutions and the agencies of the Scottish Government. An 'enabling' solution is proposed.

Agreement should be sought amongst grazings stakeholders in good time, so that any necessary adjustments can be proposed to EU Regulations and so that Scottish implementation rules have due regard *a priori* to the needs of common graziers. Proposals on how to make any voluntary solution work on the ground must also be drawn up. Scottish Ministers must engage in and coordinate such discussions and give guidance as to the time frames involved. Action to start the process is required immediately and the work must be completed by IACS 2014.

## 2. Scope of this paper

This paper is concerned with the relationship between the area used by direct payment (and Areas with Natural Constraints, ANC) claimants on common grazings and the area they are allowed to claim. It does not concern itself with the absolute size of the payments per hectare or with the relative size of the payment per hectare in the various regions of Scotland.

On common grazings, there are three types of shareholder in the context of direct payments: active; inactive but claiming SPS; inactive and not claiming SPS. While a meaningful definition of 'active farmer' is particularly important on common grazings - they should be used to test any proposal - this paper assumes that the implementation of direct (and ANC) payments in Scotland will put such a definition in place. The remainder of this paper is concerned with the relationship between claimed and unclaimed forage only.



### **3. Why common grazings matter for the Scottish Government**

Though covering only 10% of Scottish forage, common grazings are declared in 20% of Scottish IACS claims. They are particularly important in socio-economically vulnerable regions of the country, with 69% of both grazings area and claimants with grazings located in the HIE Fragile Areas, where they can account for 80% or more of all forage. They are of disproportionate significance for the delivery of a range of public goods, from biodiversity to carbon storage – financial rewards for delivering these services cannot by definition be delivered by the market.

### **4. Underlying assumptions**

This paper assumes that some basic principles underlie the allocation of payments in parishes with common grazings:

- Maintaining agricultural activity on common grazings is generally desirable and delivers many public goods
- Over time, agricultural activity on common grazings has largely been unprofitable without public support, and public goods are by definition not open to reward from the market
- Payments should only go to those who are actually delivering the public goods (and other policy goals) by active management or the temporary suspension of such management as part of a specific management plan
- Within any particular parish, there should be the same payment per hectare for the same activity, unless associated costs are variable, in which case the higher costs should attract the higher payment

### **5. Why active common graziers are likely to lose out from 2014**

Direct payments (SPS) are the main source of support for most claimants in marginal areas, accounting for around 2/3 of area-based payments and a very high proportion of the gross margin. On common grazings, they are usually claimed by the individual shareholder (sheepstock clubs are an exception).

Forage allocations in IACS are on basis of share of rights (souming), not according to the share of land actually claimed, let alone the proportion of grazings actually used. Thus on a common grazings with three shareholders, each can claim only 1/3 of the forage, even if only two make a claim or if only one is actively grazing the whole area.

However, the historically-based payment is effectively independent of forage area, since the rate per ha determined by combination of reference period payments and payment period forage claim, so that claimants with restricted areas have higher payments per hectare. The inability of active shareholders to split between their claims *all* the available forage only affects LFASS payments and has to date not been a political issue.

Post-2013, the current Commission proposals are for payment rates for the new Basic Payment to be set regionally or nationally. Since payment rates will not vary between neighbours, the eligible forage area available to the claimant becomes very important.



Assuming the rules can distinguish between active and inactive claimants (to avoid freeloading by inactive claimants on the back of the active), the main issue for the common grazings claimants the area and shares which they use but cannot claim (possibly in breach of the judgement of the European Court of Justice in the *Niedermair-Schiemann* case C-61/09).

Scottish Government data from IACS 2009 shows that only 360,360 ha were claimed on common grazings parcels whose total area is in fact 537,615 ha: 33% (177,255 ha) was unclaimed, but by implication was managed in GAEC by those producers who claimed forage on the same parcels. (Note that these figures do not include a further 54,286 ha of common grazings not claimed even in part and probably therefore not in use.) Losses to Scotland's most marginal areas can only be estimated until payment levels are set, but for each £10/ha of Basic and Natural Constraints payments, common graziers will lose over £1.7 million.

The 2014 IACS, since it establishes both the number and distribution of entitlements for the period 2014-20. The default outcome would be inequitable in terms of reward/payment for the delivery of public goods – differentiating between payments for no objective reason whatsoever, and impacting most seriously on the most vulnerable producers in the most marginal areas.

## **6. Potential solutions and stumbling blocks**

A number of potential solutions exist; none are without problems. They include:

### **6.1 Potential solution 1 – allocate all shares to 2014 claimants**

It would be consistent with the most recent version of the proposed Regulations and the current Scottish rules for share allocation if all 'unused' shares were to be reallocated in 2014 by the grazings committees to those shareholders who claim in that year (and who claimed in 2011 and are therefore able to activate entitlements?). In this way, there would be no unclaimed forage and no discrepancy between the payments made on sole use and common grazings.

It is however questionable whether such a solution would be consistent with crofting policy or produce an equitable allocation of payments between shareholders in subsequent years. It would 'freeze' the pattern of support to the 2014 (2011!) situation, while unused shares can only be reallocated one year at a time. What about new entrants or others not able to activate in 2014? Those who become inactive post-2014? Will such a solution make grazings more viable or accelerate the decline in active use?

Evidence from a recent questionnaire of ¼ of grazings suggests that at best 1/3 of grazings have actually reallocated forage in the past; in reality, one in five grazings has no regulations, while grazings committees are moribund in a large proportion of the rest. This solution is therefore not the easy fix which it appears to be at first sight.

### **6.2 Potential solution 2 – make grazings committees the only eligible applicant on grazings**

Grazings committees, where they exist, are responsible for the management of the grazings and might in principle be 'active farmers' under current proposals (maintaining land in GAEC through their regulatory function and control of pasturing livestock). It might be possible to make the grazings



committee the *only* eligible applicant and allocate it entitlements for entire area of grazings. As with solution 1, this removes the problem of unclaimed forage, and has the added benefit of vesting the payments in the body which is legally responsible for the regulation of the management of the grazings, a body which has the power to vary the allocation of monies to shareholders from year to year as equity dictates and its own regulations allow.

There are however a number of weaknesses in this solution. First, it implies that entitlements are in part removed from previous claimants and allocated to new claimants – something which is not clearly in accord with the spirit of the current proposed Regulations. Second, even if it were possible to implement such a solution in Scotland under subsidiarity provisions, the so-called ‘Irish clause’ in the current proposals limits eligibility to establish entitlements in 2014 to producers who also made a claim in 2011, thereby making most committees, who made no such claim, ineligible.

Such a solution would also raise huge practical issues. It would substitute the certainty of individual claims with uncertainty, the need to interact with neighbours and rivals and dependence on institutions which are known to be weak or in many cases non-existent. It is an idealistic solution which in practice is probably impossible to implement.

### **6.3 Potential solution 3 – grazings committees enabled to fill the gap**

The Common Grazings Regulation (Scotland) Act 1891 did not force regulation on common grazings; it is an example of empowering legislation whose effect was to support and encourage regulation on grazings which wanted it and set it within a legal framework. It would appear that any solution to the direct payment issue on common grazings will need to take a similar approach.

An example of such a solution might involve:

- Making grazings committees eligible for the national reserve, applying to IACS for the first time in 2014
- Official campaign to encourage/advise all unregulated grazings or grazings with inactive committee on how and why to be regulated by start 2014
- All eligible active claimants still establish entitlements on forage in their long-term control in 2014 (ideally they allow committee to claim on sublet shares)
- Committee forbids all informal temporary letting of shares in 2014
- Committee applies for entitlements on all unclaimed (unused??) shares in 2014
- Grazings regulations amended to reflect agreement on how money should be then be shared
- Specifically-funded guidance and support available to committees on appropriate protocols, procedures

Such a solution would require at most minimal adjustment to EU Regulations, is consistent with crofting policy and involves minimal disruption to the businesses of existing active graziers. But although legally and administratively relatively straightforward, it would require significant capacity-raising for grazings institutions and the extension of regulation to grazings where it is currently moribund or indeed has never existed. Funding would need to be redirected to ensure that this urgent support task is carried out, whether by Government directly, through the Advisory Activity programme of SAC or through civil society organisations. This would be a major task for 2013 and 2014.



## 7. Action plan

England, with no existing regulatory structures on its common land, has set up a working group on this topic, which has already had five meetings. A working group should be set up in Scotland

- To reach agreement within Scotland on what can and should be done, taking into account crofting law and socio-economic realities, including setting the principles which should underlie the allocation of payments on grazings and giving guidance on what practical steps need to be taken to implement the proposed solution on the ground. The findings should feed into the new programming approach to direct payments, as envisaged in the draft Regulations.
- To ensure, in good time, sufficient flexibility within EU Regulations, possibly necessitating the tabling of amendments to the current proposals
- To ensure the drafting of suitable implementation rules in Scotland
- To propose a system of advice and support by means of which to improve and extend grazings governance in Scotland to a point where the solution proposed can be widely implemented. The objectives of such a system would include both extending regulation to currently unregulated grazings and raising capacity in existing grazings committees. Possible funding mechanisms exist within the EAFRD, and include technical assistance funds and the farm advisory service measure.

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