



The Apportionment of Agri-Environment Schemes Monies on Common Land in England

Report

for the

European Forum for Nature Conservation and Pastoralism

By

Christopher Short (CCRI)
and
John Waldon (Environment Matters)

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Research Team:

Christopher Short and Nick Lewis (both CCRI),

John Waldon (Environment Matters) and Viv Lewis (FCL)

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Foundation for Common Land

c/o Newton Rigg College

Penrith

CA11 0AH

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Executive Summary

It is now more than 25 years since agri-environment schemes (AES) were introduced in England. Around 6.35 million ha of English farmland are included in such schemes, of which about 5% of this area is thought to be common land. Common land typically involves many stakeholders with different property rights (landowners, tenants and common right interests). Accordingly agreements on common land tend also to be complex and often reflect local practice or other arrangements in order to sustain the practices that shaped the landscapes and produced the biodiversity that the agreement is seeking to enhance. The requirement set out in Natural England's published guidance is for a single AES agreement, which, if followed, is drawn up to cover all legal interests on each common. This is supported by an internal agreement between all of the legal interests and this agreement also outlines the distribution of monies received under the AES. However, there is currently no general understanding as to how AES monies are distributed amongst the various stakeholders and how this relates to the active management of each common.

The aim of this research is to attempt to assess:

- who currently receives money from AES agreements on common land,
- the contribution such recipients make to land management on the common, and
- whether there are regional variations across England.

A postal/online questionnaire survey was undertaken. Representatives of over 250 commons in England were contacted and asked to provide information on how agri-environment funds were distributed. Some 76% of responses were from representatives with AES agreements on common land. Most of these were in the uplands.

The survey revealed striking variation in how agri-environment payments are divided amongst stakeholders. Active graziers benefit in 89% of agreements and collectively receive on average 77% of the monies. However, there is considerable variation between regions. The owners of common land also benefit in slightly over half the agreements and on average receive 18% of the financial value of a scheme; again there is considerable geographical variation. In a number of cases various non-graziers also receive monies from an AES agreement, although the amounts are small and the practice varies it would be worth investigating how the common benefits from this arrangement.

There were starkly defined regional and individual differences in how AES funds are distributed amongst stakeholders on commons. Further examination is needed to investigate why such variations have arisen. Whilst the survey did not seek to determine levels of satisfaction, only four cases volunteered examples where the respondents were not content with the current situation, suggesting that having the flexibility to decide on how to distribute the funding is generally acceptable. Nevertheless, there are a number of questions to ask regarding:

- how agreements are negotiated;
- whether funds are distributed according to how NE calculate the payments; and
- how localised power relations affect negotiations between the various legal interests.

The findings set out in this study casts doubt on whether those managing commons for the enhancement of environmental goods and services are consistently rewarded at levels commensurate with their contribution. In some cases inactive owners are rewarded at a level that cannot be readily explained except by the fact that their consent is required before an agreement can be concluded. Likewise the monies received by inactive graziers can also be questioned, although again the local context is important.

The findings also highlight a number of areas of further research and investigation that, should they be undertaken, would in our view benefit the development and implementation of both NELMS and potentially the replacement Basic Area Payment scheme.

1. The research shows that the internal agreement approach has been adopted by those interested in common land as standard as recommended by Natural England. However, the findings suggest that there is a lack of transparency in how these are generated and who actually signs them. More detailed guidance, perhaps including example templates, and monitoring from Natural England would lead to a more standardised approach.
2. The research also revealed great variation in terms of who are involved and those receiving payments from AES agreements, notably in the amount that they receive. In some instances it would appear that stakeholders received payment without actively contributing to the implementation of the AES agreement. The Foundation would favour an approach that rewards only active contributions to the enhancement of the environmental goods and services provided by the common and covered by the AES agreement.
3. Given the variation present across England we would suggest that NE might also like to look at the approach taken in Wales with Glastir where active and inactive graziers are defined and as a result receive an associated proportion of the payments or, in the case of inactive graziers, nothing.
4. It is worth noting that the Common Land element of Glastir also includes provision of facilitation in developing the internal agreement and developing to structures that will deliver the AES agreement. Early indications suggest that this is also being considered as part of NELMS and will be particularly important for those commons that are not already in AES agreements or where there have been past tension between various parties. Glastir has also highlighted the benefit of independent facilitators in preparing AES agreements on common land.
5. Finally, there may be future lessons to be learnt for other non-common land areas that are considering collaborative agreements, perhaps those associated with activities at the landscape-scale. It is quite clear that on common land the various legal interests have grappled with the complexities of preparing a single agreement and supporting internal agreement. It would be worth evaluating the barriers and opportunities presented by this approach and whether it should be considered as a worthy aspiration of future schemes even if it is considered inappropriate for NELMS.

Overall, the report supports a deeper investigation to examine if the current distribution of public monies is justified, and whether those who are actively managing the common are effectively disadvantaged through a culture which has become established in certain areas. Second, we suggest that in any revision of AES schemes, guidance should emphasise that active managers whether commoners or land owners receive payments proportionate to their contribution, whilst also preserving local characteristics associated with the traditional management and governance of these areas. We would suggest that there is a need for transparency and openness within some agreements so that there is a fair allocation of public monies and governance of these special areas.

1. Introduction and Report Structure

It is now more than 25 years since agri-environment schemes (AES) were introduced in England. Around 6.35 million ha of English farmland are included in such schemes, of which about 5% of this area is thought to be common land. Common land typically involves many stakeholders with different property rights (landowners, tenants and common right interests). Accordingly agreements on common land tend also to be complex and often reflect local practice or other arrangements in order to sustain the practices that shaped the landscapes and produced the biodiversity that the agreement is seeking to enhance. The requirement set out in Natural England's published guidance is for a single AES agreement, which, if followed, is drawn up to cover all legal interests on each common. This is supported by an internal agreement between all of the legal interests and this agreement also outlines the distribution of monies received under the AES. However, there is currently no general understanding as to how AES monies are distributed amongst the various stakeholders and how this relates to the active management of each common.

The aim of this research is to attempt to assess:

- who currently receives money from AES agreements on common land,
- the contribution such recipients make to land management on the common, and
- whether there are regional variations across England.

The report is in four parts:

- Section 2 reviews the relationship between AES and common in England.
- Section 3 reports on the results of the survey of representatives of English commons regarding AES agreements.
- Section 4 provides some examples of current practices.
- Section 5 outlines some conclusions and recommendations that can be drawn from the research and highlights areas of further research.

2. Common Land and AES

2.1 Common land in England

In England there are 372,941ha of registered common land comprising 7,052 separately registered units (Natural England 2013). These units form some 4,750 commons (Hoskins and Stamp 1963, Aitchison and Hughes 1987). Common land is found across England, even within towns and cities, but has a very uneven distribution; the southern lowlands have large numbers of very small commons, whereas the northern and western uplands have fewer but larger commons. Some 35% of all English common land is in the north-west, with extensive areas in the Lake District. The three northern regions together with the south-west, together account for over 87% of common land by area. By contrast the south-east, which has only 6% of common land by area, has 22% of the total number of commons, more than any other region (Aitchison et al 2000 and Defra 2013).

In addition to the areas of registered common land there are also commons with their own local or private Acts of Parliament, including the New Forest (c22,000 ha), Epping Forest (c2,500 ha), and 17 other commons or suites of sites, ranging from Mitcham Common at Merton (174 ha) to Cassiobury Common (Watford) at less than 1 ha. Together the total area of common land in England is estimated to be 401,514 ha (Defra 2013).

Common land is particularly prevalent within England's iconic landscapes; 48% (176,500 ha) of registered common land lies within National Parks and 30% (115,000 ha) of registered common land is within Areas of Outstanding Natural Beauty (AONB) (Foundation for Common Land (FCL) 2013).

Common land covers less than 4% of the land area of England. Whilst this may appear a relatively modest area the value of common land to the nation, in terms its environmental value, is disproportionate. For example:

- Over 55% of common land is notified as a Site of Special Scientific Interest (SSSI) of which 83% lies within the Less Favoured Areas (LFA).
- 49% of all common land is internationally important for its habitats and species.
- 11% of all scheduled monuments are on common land.
- Some 48% of common land lies within a National Park.
- Nearly all common land in Britain, extending to over 11,600 square kilometres, is available for public recreation, attracting millions of visitors each year.
- About 70% of Britain's water is collected from upland catchments, and about 14% of this derives from common land.

(Source: FCL 2013)

Maintaining and enhancing these national assets frequently requires management especially those practices related to livestock farming and common grazing.

2.2 Agri-environment schemes

Agri-environment schemes (AES) play a critical role in enabling ecosystem services and public benefits to be managed, enhanced and protected. Common land provides an impressive array of such services and public goods and this is reflected in the significant proportion of common land (estimated to be about 70%) currently under an agri-environment or similar agreements (Natural England 2013 and FCL 2009).

For the purposes of this report the AES covered included:

- The three strands of Environmental Stewardship (ES), available from 2005-current:
 - Higher Level Stewardship (HLS),
 - Entry Level Stewardship (ELS), and
 - Upland Entry Level Stewardship (UELS).
- Three other 'classic' schemes, now closed to new entrants, are still relevant due to the 10 year length of the agreements:
 - Environmentally Sensitive Area (ESA) (1985-2005),
 - Countryside Stewardship Scheme (CSS) (1991-2005), and
 - Wildlife Enhancement Scheme (WES) (2000-2005).

It is important to note that land entered into ES can benefit from two tiers of agreement, an entry level (ELS or UELS, the latter only available in the Severely Disadvantaged Areas (SDA)) and a higher level agreement HLS. In order to enter HLS some land usually needs to be entered into ELS, UELS or one of the 'classic' schemes as well. In terms of the 'classic' schemes, ESA and CSS are mutually exclusive and land could only be entered into one or the other.

2.3 Agri-environment schemes on common land

The situation in August 2012 regarding AES and common land is shown in the table below.

Table 1 Number of AES agreements on common land by AES scheme (Natural England 2012)

<i>AES agreement</i>	<i>Total Number as of 2012</i>
HLS	662
ELS	n/a
UELS	n/a
ESA	138
CSS	122
WES	22
<i>Total</i>	<i>944</i>

The total area of common land under an agri-environment agreement in 2012 was 272,655ha, 68% of all common land (Natural England 2013). Given the complexity and unique governance of these areas this is an impressive proportion. The total number of agreements on common land is more difficult to determine because within Environmental Stewardship as there is considerable overlap between UELS and ELS and HLS agreements.

What the national data do show is that the take up of higher level agri-environment schemes is generally greater in the uplands compared to the lowlands (Bonn et al 2008). In 2007, 90% of farmers on Dartmoor within the area of the ESA were signed into an agreement (LUC 2007) and in November 2012, 68% of the land area within Cumbria was under agreement (NE 2013). In contrast in lowland counties the area in agri-environment is usually below 50% of the land area (NE 2013). In the uplands agri-environment payments provide on average 15% of farm business incomes and play an essential role in maintaining hill farming (Harvey and Scott 2010 and Turner et al 2008).

Under Environmental Stewardship (ES) NE provides guidance to those commoners considering applying for ES. For the majority of commons the application will be initiated by the common's association, where one exists. Where there is no common's association other key stakeholders, such as the owner, might take the lead. Part of this NE guidance indicates that common land application must include an 'internal agreement'. This internal agreement or deed must include how the money received from the scheme agreement will be divided and distributed between the signatories and other individuals and interests.

A full transcript of the current guidance is shown in Appendix 1; however the key elements are to:

- include who can influence the level of grazing and the management on the common;
- set out the ground rules and requirements of the ES agreement.
- state that the agreement cannot prevent those not participating from exercising their rights;
- assess the risk of the objectives and requirements of an agreement being jeopardised;
- ensure all those contributing to an agreement are members of an association;
- include the landowner in the internal agreement;
- active involve shooting interests, especially for HLS applications;
- decide whether inactive commoners or graziers should be included.

Agri-environment agreements on common land are often complex with many people having a legitimate claim on the funding provided by a scheme. Given the breadth of the NE guidance it is understandable that identifying who receives money under an AES agreement is going to vary from one common land agreement to the next. Once the agreement is signed the payment is sent to the nominated bank account and this is distributed according to the divisions set out in the internal agreement. It is well known that securing an AES agreement on common land can be challenging (Short 2000 and Mills et al 2012), and the preparation of the internal agreement is part of this process.

The ownership of common land can be complex and many commons have multiple owners. It is thought that almost 2,000 common land units have no known owners. 1,740 commons (other than the 47 in the ownership of traditional estates) are in private ownership, 679 have private owners for parts of the land, 1,230 are owned by parish and other councils and 431 are owned by a variety of organisations including charities, trusts etc (Natural England 2013).

The aim of this report is to understand the extent of the variation in the distribution of payments and to consider whether this is the most effective and equitable outcome for the long-term benefit of the common. It is timely as there is a great deal of consideration being given to the structure of the New Environmental Land Management Scheme (NELMS) and different approaches have been tested in Wales under the Glastir scheme, which appear to have been well received (Brackenbury and Short 2012). The budget for NELMS will be significantly less than previous programmes and funds will be targeted so there is a focus on encouraging collaborative agreements at a landscape scale to deliver better outcomes. Given that many common land agreements are very large and require a high level of collaboration and associated legal underpinning there may be lessons that can be learnt for the wider AES development from AES agreements involving common land.

3. Survey of Common Land representatives

3.1 The survey

In October 2012 a questionnaire was sent to representatives of approximately 250 commons across England. The questionnaire was posted to approximately 210 commons' associations or key contacts while a further 40 commons were contacted via agents, usually by email. These contacts were secured from the database held by the Foundation for Common Land and through other contacts such as the South West Uplands Federation and individuals in organisations like the National Trust and the Wildlife Trust.

The questionnaire sought some basic information to identify the common land area and to avoid duplication, as well as whether or not that common was under an AES agreement and, if so, how the funding received was distributed. The questionnaire also invited further information on how this was determined. A second section, requested the views of the commons association's towards claiming the Single Farm Payment.

A copy of the questionnaire is included as Appendix 2.

3.2 Response profile

The survey generated a satisfactory response rate (40%) and 102 questionnaires were returned. Three contained insufficient information necessary to identify the location or status of the common and these were not included in the overall total or subsequent analysis. They did however hold useful qualitative information and these have been included in the report as appropriate.

Usable responses were received from 99 identifiable commons. The area of common land relating to these responses is 153,059ha, 38% of the total all common land in England. They were not particularly well distributed geographically as the figure below shows.

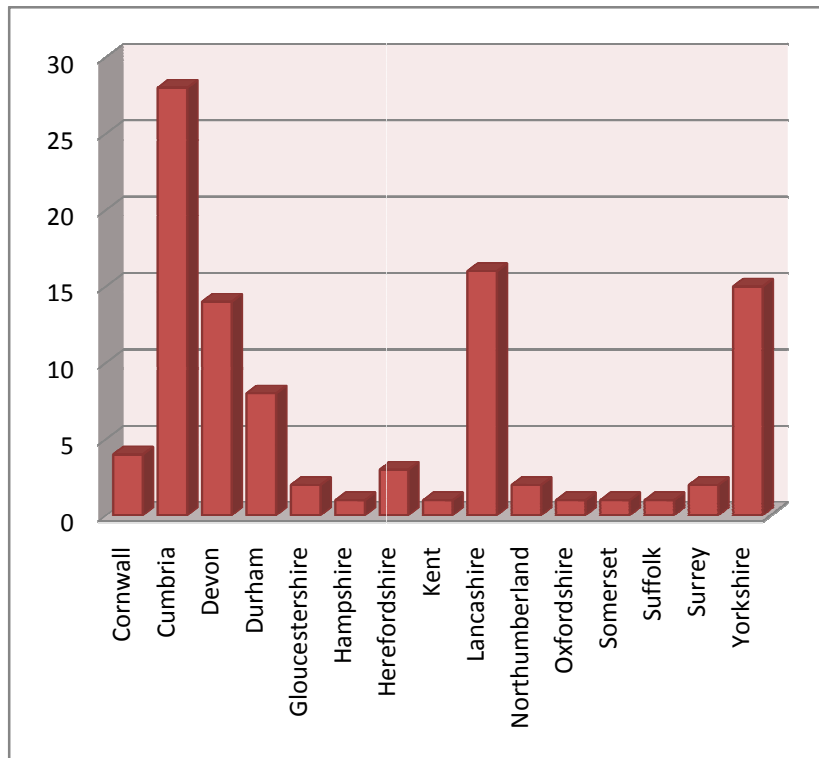


Figure 1 Distribution of Survey returns by English county

The highest number of returns was received from Cumbria (28) followed by Lancashire (16), Yorkshire (15) and Devon (14). If this is represented regionally, the picture largely reflects the main focus, in terms of area, of common land in England.

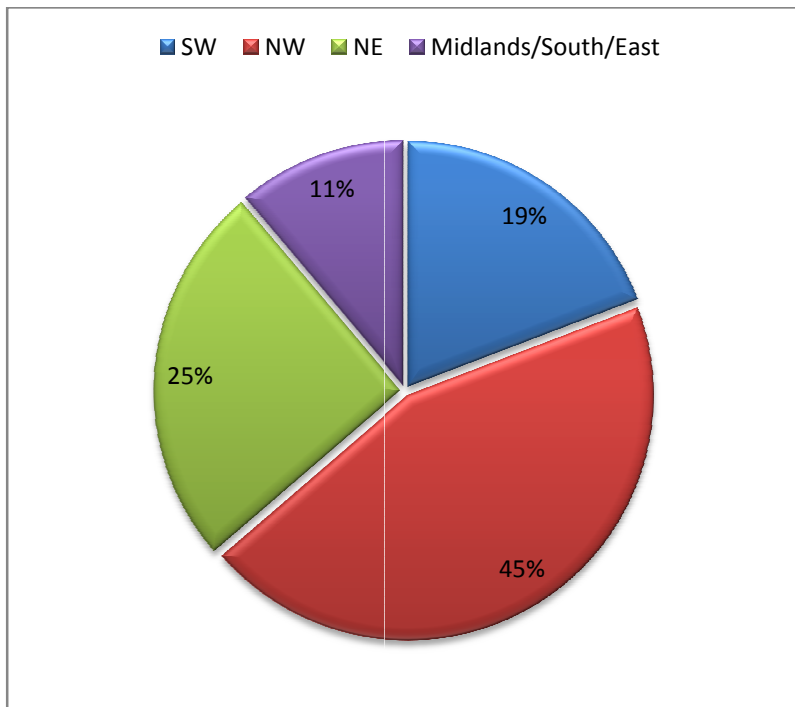


Figure 2 Response by English regions

Of the 99 useable responses, 75 (76%) were from commons currently in AES agreements and receiving payments. This represents approximately 13% of the total number of agreements on common land and just over 50% of the area of common land under agreement.

3.3 The survey and AES agreements

The division of the sample across the various types of AES agreement is shown below and reveals that most of the agreements for which responses were received concerned Environmental Stewardship agreements, namely HLS, UELS and ELS.

Table 2 Survey response distribution by type of AES agreements

AES agreement	Number in survey	%	Total AES agreements (2012)
HLS	53	42	662
ELS	13	8	n/a
UELS	53	42	n/a
ESA	2	1	138
CSS	7	4	122
WES	2	1	22
<i>Total</i>	<i>130</i>	<i>100</i>	<i>944</i>

Overall there were 65 ES agreements. There were 8 solely HLS agreements and 45 combined with other agreements, mostly UELS. There is 1 solely ELS agreement and 12 combined with HLS and/or UELS. There were 12 solely UELS agreements and 41 combined with HLS/ELS. Whilst it would appear that many commons have more than one AES agreement, this is often in reality a combined agreement offered by NE where the signatories sign a declaration for a combined UELS and HLS, each with its own internal agreement. Table 3 below is a breakdown the number of agreements per common.

Table 3 Number of AES agreements per common (n=99)

No. of AES agreements	No. in sample	%
Three agreements	8	8
Two	39	40
One	28	27
None	24	24
<i>Total</i>	<i>99</i>	<i>100</i>

All of the common land representatives with three AES agreements were HLS in conjunction with both UELS and ELS. This is probably because they were already in HLS and ELS when UELS was introduced in 2010 and so the likelihood is that UELS was added to an existing agreement. Those with 2 agreements mostly involved HLS, in combination with either UELS but with some ELS (4) or CSS (4) and there were 2 agreements combining the 'classic' schemes ESA and WES.

The majority of questionnaires were returned from commons within upland areas. For example 85% of the responses were received from counties with most of their commons in Severely Disadvantaged Areas (SDA). The high proportion of UELS agreements would also indicate this to be the case. The next 2 tables compare the response to this survey with the number of AES agreements in that county.

Table 4 Comparing Responses by upland (SDA) county and total county AES agreements

	Cumbria	Devon	Durham	Lancashire	Yorkshire	Other*
Total AES agreements**	172	81	24	30	125	n/a
No of survey responses	28	15	8	15	15	6
Responses in AES	28 (16%)	13 (16%)	7 (25%)	1 (3%)	14 (11%)	4

* Other includes Cornwall (4, 3 in AES) and Northumberland (2, 1 in AES)

** As of August 2012 includes HLS, ESA, CSS and WES (source Natural England)

This reveals that the high number of responses to the survey in Cumbria (28) is actually only 16% of the total for the county and all the responses received represented common land under AES management. Whereas only 1 of the 15 response from Lancashire was involved in AES, meaning this county was under represented. The situation on lowland commons is considered in Table 5.

Table 5 Comparing Responses by lowland county and total county AES agreements

	Hampshire	Gloucestershire	Surrey	Hereford	Oxford	Other*
Total AES agreements**	29	26	36	10	7	n/a
No of survey responses	1	2	2	3	1	2
Responses in AES	1 (3%)	1 (4%)	2 (6%)	2 (20%)	0 (0%)	2

*Other includes Somerset (1) and Suffolk (1), both in AES.

** As of August 2012 includes HLS, ESA, CSS and WES (source Natural England)

The table shows that across counties with predominantly lowland commons there is a lower response to the survey. The exception is Herefordshire where the 3 responses received; of which 2 were in AES represents 20% of the AES agreements on common land in that county. In further analysis the 11 lowland response are combined while the upland ones are divided into three regions, South West (19 responses), North West (43) and North East (25).

The stark contrast between the number of upland and lowland responses needs to be highlighted. However, explaining it is more challenging but it might reflect the nature of the Foundation for Common Land's database, although there is no intentional upland bias within this. It might reflect the importance of AES agreements to upland farm businesses, where the presence of a common's association also has a greater capacity to respond to the survey. Also many lowland commons have no graziers and some are managed by wildlife trusts or other organisations where they may have more than one agreement, making responding to the survey more challenging.

The survey also asked respondents to provide the total annual payment that was received from NE as part of the AES agreement. In most cases this represents 'income forgone' for activities that would have taken place in absence of the scheme, and by adjusting these activities there is an environmental benefit to the area under agreement. Other payments, such as those for capital works like blocking ditches for tree planting were excluded. The total annual payment received from the 67 surveys that provided a figure was just over £8m.

3.4 Who receives payment from agri-environment schemes?

This section looks at the how the money received through AES agreement is distributed. First is not surprising that the survey revealed that the AES payments received on the higher level schemes, such as HLS tended to be greater than the entry level agreements, UELS and ELS. When this is represented as pounds per hectare, the following division is found.

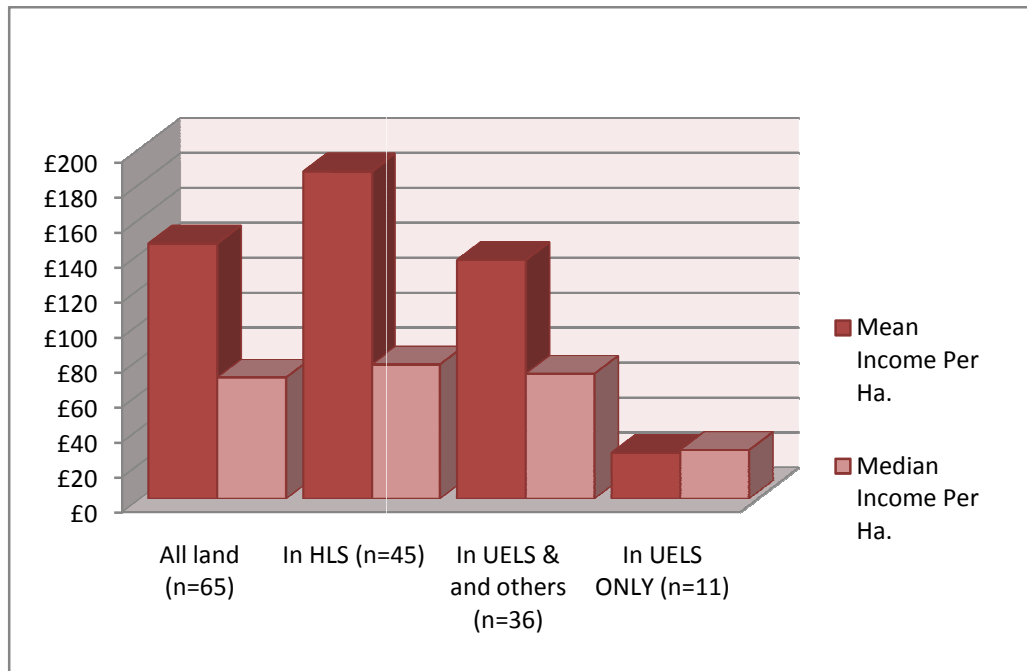


Figure 3 Average AES payment per hectare by type of scheme

The graph shows the mean and median payments for AES payments received, as indicated by the respondents. The first point to note is the wide variation, shown by the difference between the average (the total value divided by the number of responses) and the median (representing the mid-point value). Because of the small number of schemes it is only really possible to compare HLS and UELS agreements. The graph clearly shows the difference between HLS and UELS only agreements. Note also similarity between the average and median values for the UELS only response, suggesting that a flat rate payment was used to calculate the payment. The variation in the other agreements is most likely to be due to the different options included in the agreement. In many upland agreements the difference between ELS/UELS and HLS can be quite small (£28/ha for ELS/UELS and £35/ha for HLS with some supplements available). It is likely to be these levels that are represented by the median. However where greater intervention is required some higher per ha payments are offered and this has influenced the average.

A key area of enquiry for the survey concerned how the payments from the AES agreement were distributed amongst the various rightsholders and other stakeholder. The scheme guidance from NE does not outline how this should be undertaken but does offer some suggestions as to who might be considered. Because this was a postal questionnaire, it was not possible to ask questions relating to the *appropriateness* of the current distribution of monies received via the AES agreement. However, other research (Mills et al 2012) has shown this to be a source of contention on commons. As far as NE is concerned the process for distributing and funding received lies with the applicant(s). This might be a common's association, other grouping of commoners or an individual, such as the owner of the common. Of the 102 responses received only 4 responses provided details that related to perceived inappropriate applications and/or administration of funds. Of these, two related

to commons with schemes that had been terminated within the last 18 months. These two replies were treated as responses from commons not in AES agreements.

All of the 75 responses from representative of commons under AES agreements provided information on how the funds were distributed. Because this is a complex issue a number of options had to be provided in order to receive responses that were, as far as possible mutually exclusive. This is particular the case when subdividing those with rights to graze the common.

The survey defined an *active grazier* as someone who holds grazing rights on the common and who exercises those rights and who has signed the AES agreement. Two other categories of rights holders were included and are best described as *suspended graziers*; in both cases those in these categories have decided not to exercise their rights to put stock on the common. In the first instance they have grazed recently but have reduced their grazing on the common as outlined in the AES agreement. The second instance covers those who have rights but have not exercised them recently and this is not connected to the AES agreement. *Non graziers* were defined as those rights holders who are not farmers and would be unable to offer suitable stock to graze the common. The results are shown in Table 6, below.

Table 6 The number of agreements where the following rights holders and others benefit

<i>Category of recipient</i>	<i>n</i>	<i>%</i>
Rights holders who are active graziers, i.e. they put stock on the common	67	89%
Rights holders with a recent history of exercising their rights but who have suspended grazing the common through an agreement	19	25%
Rights holders who have not exercised their rights in recent years through choice.	24	32%
Rights holders who are non-graziers and not farmers (i.e. unable to offer stock)	16	21%
Common owner(s)	41	55%
Administration and Secretarial support	49	65%
Other	9	12%

The table shows that in 89% of cases the active rightsholders who place stock on the common receive a proportion of the AES payments. Later analysis will reveal what happens in the 8 cases where this group receives no payment. In a quarter of cases (19) rightsholders have 'suspended' their rights in order to support the AES agreement. In a third of cases (24) rightsholder who have chosen not to exercise their rights in recent years also received payments. All of these categories could potentially offer stock in order to fulfil the minimum requirements of the AES agreement.

Common rights holders who are farmers but do not exercise their rights also benefit in about a quarter of agreements. The reason they no longer exercise their rights may be complex, including agreeing not to put stock on the common to facilitate stocking rates required by the agreement; by not exercising their rights others can. Others may be farmers whose current farming practice does not include rough grazing or having stock suitable for grazing the common. Both categories of rights holders have the potential, with varying degrees of difficulty, to contribute to the management of the common by providing stock and other forms of land management, including swaling (controlled burning) and cutting vegetation.

Perhaps most surprising was that in over a fifth (16) of the agreements inactive rightsholders who would be unable to offer stock and, according to the respondents are not farmers also benefitted from the AES agreement. This practice seems to vary considerably between

different parts of the country. Non-graziers appear to benefit more frequently in the South West and only occasionally in the North West. This variation may be related to recent changes in land ownership; land and houses sold to non-farmers may have retained common rights, or it might be more to do with the stance taken by land agents involved in developing these agreements. There was one case which specified that non-graziers only received payment in return for practical work on the common.

The survey also wanted to assess who else, other than rights holder, was involved in the AES agreement and received some of the monies. The common owner is the owner of the land and it is not unusual for commons to have multiple owners. Within this sample just over half of the common owners received some of the payment. The last category outlined was that of administrative and secretarial support, in nearly two thirds of cases (49) this was recognised within the division of payments as set out in the internal agreement.

Having looked at the overall response it is also interesting to look at the different combinations of responses. This is set out in Table 7.

Table 7 The most frequent combination of beneficiaries

<i>Combined categories</i>	N	%
Active graziers and owner	18	27%
Active graziers only	13	19%
Active graziers, suspended rights holders and owner *1	13	19%
Active graziers, suspended rights holders including non-graziers and owner*1 &2	10	15%
Active graziers and suspended rights holders*1	7	10%

*1 Suspended rights holders include rights holders with a recent history of exercising their rights but who have suspended grazing the common through an agreement and rights holders who have not exercised their rights in recent years through choice.

*2 Rights holders who are non-graziers and not farmers (i.e. unable to offer stock).

The most frequent combination was that of active graziers and common owner(s), this related to just over a quarter of cases. Most of these were on HLS agreements. In 13 cases only the active graziers were involved and a good proportion of these were ELS or UELS type agreements. What is clear is that there was considerable variation in who received funding and the combinations of beneficiaries were complex. This is not surprising considering the various and disparate rights holders and others with a legitimate claim on any one common.

Of the 16 cases where non-graziers were involved, 10 also involved the active graziers and suspended rights holder and the common owner. In terms of the type of AES agreement, 5 involved ESA agreements, sometimes in combination with WES. In reality these will end in the near future. The other 11 cases involved HLS agreements, most often in combination with UELS. The survey did not ask for respondents to specify which AES agreements payments to inactive graziers are linked to but it might be reasonable to assume that it is more likely to be ELS or UELS as the expectations are less challenging. However the next section does look at the financial aspects in a little more detail.

Of the 8 commons where none of the payments go to active graziers, most (5) are in lowland areas. In many such cases there would be no active graziers and so the management work might be carried out by trustees with the common owners or a management committee which received the bulk of the funding. Of the remaining agreements, the shooting rights

tenant claimed all the funding on one common but no further explanation was provided as to why this was the most appropriate mechanism. No explanation was provided by the other two responses.

The respondents were asked to estimate the value of the funding made available to active graziers and to express this as a percentage of the annual payment. This is shown for the categories active grazier and common owner in Table 8. Most, but not all of the responses provided a breakdown of payments enabling the amount paid to active graziers and common owners to be calculated. The amount paid to active graziers annually totalled £5.5m and to owners a little over £0.5m.

Table 8 The average percentage of AES payment received by active graziers and common owners (by value)

Active graziers (n=54)	77%
Common owners (n=37)	18%

The percentage received by both active graziers and common owners varied considerably. In respect of graziers it varied from 33% to 100% (national average 77%). For owners it was from nothing to 100%, the smallest actual amount was 2% with many amounts under 10%. There are clear variations in local practice at work here as the table below outlines with many larger agreements from the North West involving 100% of payments to the active graziers.

Table 9 Active graziers: value of agreements within selected counties

county	Av % to active graziers	range
Cumbria (n=26)	95%	44 - 100
Devon (n=9)	74%	33 - 90
Durham (n=5)	52.4%	41 - 82
Yorkshire (n=12)	75.2%	67 - 100

The picture from a regional perspective is quite revealing, although we should be cautious as the numbers involved are small. Using the three regional categories helps overcome this to some extent as is shown in Table 9.

The common's owner or owners benefit in over half of the agreements. The amount that each owner received does vary considerably, within a pattern discernible at county level, notably Durham where the common owner receives almost half of the payments in the 5 AES agreements where data was received.

Table 10 Common owners: value of agreements within selected counties

county	Av % to common owners	range
Cumbria (n=23)*	1.5%	0 - 10
Devon (n=8)**	9.5%	3 - 19
Durham (n=5)	45.6%	18 - 63
Yorkshire (n=12)	11.8%	0 - 33

Figures in brackets refer to the number of commons that provided data.

* an entry of 65% omitted as it was unable to be confirmed

** an entry of 50% omitted as it was unable to be confirmed

Local practice would be an important consideration here. This is demonstrated by the responses from commons in the south west where the majority of owners receive about 10% of the total agreement. It is understood that when UELS was introduced the Dartmoor Commoners Council agreed with moorland owners that a set amount of 10% would be paid to owners. It is unclear if there is any expectation as to what land owners would contribute towards the agreement for receiving this level of payment. By contrast the low level in Cumbria might reflect the approach taken by the main land agents who negotiate these agreements. There was also considerable variation in how the amount is calculated with some apportionment relating only to the UELS or ELS agreement leaving the bulk of the HLS agreement funding to go to the active graziers. Specific examples are provided later in the report. A regional comparison of active graziers and common owners is shown in the table below.

Table 11 Proportion of payment received by active graziers and common owner by region.

	AREA TYPE					
	All areas	Upland areas	Lowland areas	SW Region	NW Region	NE Region
Mean percentage to active graziers & number of valid responses	77.6% 63	80.4% 59	36.5% 4	71.1% 13	95.2% 27	65.6% 19
Mean percentage to owners & number of valid responses	17.8% 51	13.6% 45	49.2% 6	11.3% 12	6.3% 16	22.3% 17

This table shows that average payment to active graziers in upland areas was highest in the North West and lowest in the North East. Lowland agreements were lower still but this equates to the lack of active graziers in the 4 responses received. The figures for the common owner reveal that in the North East they receive on average 22% of the payment compared to 6% in the North West and 11% in the South West. On the lowland commons the common owner receives about half of the payment.

In return for financially benefitting from agreements some common owners play a direct role in the management of the common. The survey asked respondents to best describe the contribution of the common owner by selecting one of a number of options. In all 31 responses were received, in almost half of the cases (15) this relates to the exercising of shooting rights. Whilst shooting in itself cannot be said to be contributing to AES agreements it was regularly linked with other activities such as burning management and bracken

control, which would be seen as having biodiversity benefits. It is worth noting that game shooting was reported only from northern England respondents.

Table 12 Descriptions of contribution by Common Owner.

<i>Best description of contribution</i>	n
Participates in burning and/or bracken management	24
No contribution	21
Maintains boundaries and fences	8
Provides professional advice and admin	5
Takes up surplus grazing	4
Contributes to animal welfare	2

Start-up costs were not requested by the questionnaire but annual administration/secretarial costs were. The majority of large commons allocated some funds to administration but the amounts, where recorded, were very modest. There is insufficient information to provide further information.

Other beneficiaries included staff of a management company, shepherd, third party monitoring, land owner to carry out controlled burning, owners of shooting rights, owners of stints, shooting tenant and local community.

4. Examples of AES agreements on common land

The inclusion of actual examples of current practice is offered to illustrate the great variations in how the commons associations distribute the funding received from agri-environment schemes. The selection is not exhaustive nor, because they have been selected should it be implied that they are examples of good or bad practice.

1. On this common a formula is used to determine who gets paid and the amount. The common is in a Countryside Stewardship Scheme. They operate a 3 tier payment system:
 - i. Active graziers receive a base payment and stock removal payment.
 - ii. Non-active graziers (farmers who could exercise their rights but don't) receive base payment only.
 - iii. Paper rights holders (those who are not active farmers) receive £25 or £50 per year depending on the number of rights held.
 - iv. The landowner is not involved in the agreement although permission was sorted at the time of the agreement being negotiated.

2. The common is in a combined HLS and UELS agreement. The Commons Association applies different formulae for different options. Option HL10 is distributed between all members (graziers and non-graziers). Non-graziers are paid at a set rate per grazing unit held and the balance of the fund is allocated to graziers in accordance with their percentage of grazing rights held.

HR2 is allocated according to the number of LSU (livestock units). The money for this option is divided by the number of LSU to give an allocation per LSU. Option HR1 is based on the previous option but to avoid disproportionality between cattle and sheep graziers, 75% of the total fund is allocated to cattle and 25% to sheep. The LSU is calculated accordingly. Option HL16 is distributed between all active graziers but conditional on receipt of satisfactory records. For UELS, only graziers and the land (common) owners are involved. Payments to graziers are made from the residue after the landowner payments are deducted and allocated according to number of LSU held.

3. The common is in HLS and UELS. The common owner receives HL12. Active graziers receive HL10, HL7 and HL15 as appropriate with individual payments negotiated privately to reflect stock numbers and agreed reductions. UELS is paid to all participants with an agreed surplus split between the number of rights held by each party.

4. The total payment, for HLS, UELS and ELS, is received by the owner (landlord), they retain a proportion for heather control, rabbiting etc. The graziers share is paid to the individuals based on a "per stint" ratio.

5. The owner receives half and the graziers receive half of the HLS agreement, (no reference to ELS or UELS).

6. The sporting tenant and one active grazier benefit entirely from the HLS agreement with no monies going to any other rights holders including an active grazier.

7. Common with agreement under the ESA scheme, which provides 10% to owner and then divides the remaining figure by the number of Livestock Units. This is paid on every registered LU.

8. Common with agreement in HLS and UELS. All registered commoners are paid according to a live register. The calculations for non-graziers is a price per LU x number of rights held. The LU is calculated by area x moorland grazing option divided by total number of LUs. Non-graziers with an SBI number are eligible for a share of the UELS payment. The rate per LU is the number of hectares x UELS payment (after deductions to owner and admin) and divided by total number of LUs held by SBI owners. Graziers are paid the non-grazier rate plus the UELS rate per LU plus the payment per hectare from the Moorland grazing option.

Common land is eligible for Single Farm Payment (SFP). As part of a reform of the Common Agricultural Policy (CAP) the SFP replaced most crop and livestock subsidy payments from 1 January 2005. Entitlements form the basis of the value of SPS payments and since 2012; all entitlements are valued at an area payment rate. The rate is different in three areas:

- English moorland within the upland Severely Disadvantaged Areas.
- Other land within the Severely Disadvantaged Areas.
- Land outside the Severely Disadvantaged Areas (i.e. lowland).

As part of the survey the opportunity was taken to include questions relating to current and potential practice of claiming SFP on commons. Of the 79 responses to these questions the overwhelming majority stated that the SFP on the common was claimed by individual farmers as part of their home farm claim or as a claim related to non-common land. Only in 7 cases did associations say they claimed SFP on behalf of their rights holders.

In response to the proposal, that in the future claiming through an association might be the preferred option, those commons willing to claim rose to 18 with 16 opposed to the idea. The remaining respondents (54%) did not state a preference and a 'don't know' reply was recorded.

The importance of the SPS payment to upland farmers has already been highlighted by a previous report (Short et al 2011). In this case there was a similar justification for the focus to be on payments for those actively contributing to the common and the goods and services that these areas provide. The report also highlights the complexity of common land and the need for more detailed guidance. The small number currently using the association to collect the SPS is already known but the number who would consider this approach suggests that it would be welcomed under the new scheme provided the guidance and process are not too complex.

5. Conclusion and Recommendations

The responses to the survey indicated a wide range of practice often with a local pattern. Whilst the survey did not seek to determine levels of satisfaction, only four cases volunteered examples where the respondents were not content with the current situation, suggesting that having the flexibility to decide on how to distribute the funding is generally acceptable. Nevertheless, there are a number of questions to ask regarding how agreements are negotiated, whether funds are distributed according to how NE calculate the payments and how localised power relations affect negotiations between the various legal interests.

We suggest that this report also highlights a number of areas of further research and investigation that, should they be undertaken, would benefit the development and implementation of both NELMS and the replacement Basic Area Payment scheme.

1. The research shows that the internal agreement approach has been adopted by those interested in common land as standard as recommended by Natural England. However, the findings suggest that there is a lack of transparency in how these are generated and who actually signs them. More detailed guidance, perhaps including example templates, and monitoring from Natural England would lead to a more standard approach.
2. The research also revealed great variation in terms of who are involved and receiving payments from AES agreements and in the amount that they receive. The research did not attempt to assess the value for money of this approach but in some instances it would appear that some stakeholders received payment without actively contributing to the implementation of the AES agreement. NE might like to consider if they feel that this open ended approach is acceptable, and whether they would like it to continue. Given the new opportunities present by NELMS it would be an optimum time to consider change, if any change is considered necessary. The Foundation would favour an approach that rewards only active contributions to the enhancement of the environmental goods and services provided by the common and covered by the AES agreement.
3. Given the variation present across England we would suggest that NE might also like to look at the approach taken in Wales with Glastir where active and inactive graziers are defined and as a result receive an associated proportion of the payments or, in the case of inactive graziers, nothing. Within Glastir the inclusion of the common land owner is crucial in terms of overall agreement and any receipt of payment is linked to activity and contribution towards meeting the requirements of the agreement.
4. It is worth noting that the Common Land element of Glastir also includes provision of facilitation in developing the internal agreement and developing to structures that will deliver the AES agreement. Early indications suggest that this is also being considered as part of NELMS and will be particularly important for those commons that are not already in AES agreements or where there have been past tension between various parties. Glastir has also highlighted the benefit of independent facilitators in preparing AES agreements on common land. This report did not consider the role of the HR8 Commons supplement available under ES but we would recommend that whether this was accessed or not any person preparing the AES application and internal agreement should be independent and not linked to one of the legal interests.
5. Finally there may be further lessons that can be learnt for other non-common land areas that are considering collaborative agreements, perhaps associated with landscape-scale activities. It is quite clear given the small number of responses showing concern that legal interests have grappled with the complexities of preparing a single agreement and supporting internal agreement. Given the growth of landscape-scale thinking and its

embedding within the emerging NELMS and wider conservation thinking it would be worth evaluating this approach and whether it should be considered as a worthy aspiration of future schemes.

Based on the evidence presented in this report the authors would like to propose three options for further consideration. All options would need to offer strengthened transparency regarding governance to emphasise the need for accountability regarding the receipt of public money to include management of bank accounts and non connected parties.

A) Consideration of an option similar to Glastir the type approach within NELMs where there is some money for facilitation that can be used to set up an AES agreement. This would be similar to Glastir in Wales and set out the proportions for different interests (active/inactive grazier, owner etc) in terms of minimums and maximums. Also as some money has to be provided up front, as an alternative to the HR8 supplement and this might mean that the actual annual payments might be less.

B) Those with a legal interest in the common, pay for (or do themselves) the preparation of their own AES application and internal agreement and confirm that all the necessary interests have been consulted. This is similar to the current ES situation but would include a stronger safety net for all interests and cover issues of transparency. The internal agreement would be checked and the signatories would receive a higher payment/supplement to cover the transaction costs.

C) Offer a hybrid where the facilitation is used to prepare a bespoke agreement to suit that common. It should be straight forward enough to determine the total level of payment and thus the amount available for facilitation can be taken off the whole amount.

We consider that this analysis is a first step in understanding how AES agreements on common land are developed and implemented. What we have found is interesting and highlights the need for and value of further investigation.

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Appendix 1 Copy of NE guidance on Internal Agreements on Common Land

Current NE guidance on Internal Agreements on Common Land

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. 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.

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.

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.

The decision to include inactive commoners or graziers will depend on the judgement of the commoners' or graziers' association. 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.

Note: this is compulsory and forms part of the ES Handbook
ELS Handbook:

<http://publications.naturalengland.org.uk/publication/30034?category=45001>

HLS Handbook:

<http://publications.naturalengland.org.uk/publication/2827091?category=45001>

(Source: Natural England 2011)

Appendix 2. The questionnaire:

A survey to establish who benefits from agri-environment agreements on common land in England.

You are invited to complete this questionnaire to help Government and commoners to understand the variations in practice throughout England. The survey is organised by the Foundation for Common Land (FCL). If you are unfamiliar with the work of the FCL please see our web site or contact us. Our details are at the end of the form.

The results will be used to identify who benefits from agri-environment agreements and the range of practices in use throughout England. The report will not reveal information on individual commons. All information will be treated in confidence and no comments will be attributable to a common or individual. However certain commons may wish to provide case studies, again these will be non-attributable unless consent is provided.

To avoid duplication and to avoid unnecessary reminders we would ask you to identify the common on the form and provide a contact name and address in case we need to clarify, with you, the information you have provided. Please complete one form for one common.

We would greatly appreciate your completing this questionnaire by the end of November 2012.

Please complete

Name of common –

CL number –

Area of common –

In what capacity are you completing this form –

Contact name and address – *(email or postal)+ phone number,*

This information will not be used other than for FCL administrative purposes only

Please tick or put a cross X in the relevant boxes.

Question 1

Is the common in an agri-environment agreement?

Yes
No

Go to 3

Agri-environment schemes include Environmentally Sensitive Area (ESA), Countryside Stewardship (CS), Higher Level Stewardship (HLS), Upland Entry Level stewardship (UELS) and Entry Level Stewardship (ELS).

Question 2

Which schemes have agreements currently on your common? Please tick or put a cross X in the relevant boxes.

Higher Level Stewardship (HLS)	
Entry Level Stewardship (ELS)	
Upland Entry Level Stewardship (UELS)	
Countryside Stewardship (CS or CSS)	
Environmentally Sensitive Area (ESA)	
Wildlife Enhancement Scheme (WES)	

Question 3

Are you in the process of or considering applying for one of these schemes?

Yes
No

If yes please indicate which scheme or schemes you are applying for.

Higher Level Stewardship (HLS)	
Entry Level Stewardship (ELS)	
Upland Entry Level Stewardship (UELS)	

If you are in the process of applying for a scheme or schemes please complete questions 5 to 10 as if you were already in a scheme.

Question 4

Please enter the total value of all the annual management payments, excluding capital works, relating to the common received in 2011. (Do not include Single Farm Payment)

Total annual management payment per year £
--

Question 5

Excluding agent fees and other costs incurred when setting up the agreement who benefits from the annual payments?

Yes No

Rights holders who are active graziers, i.e. they put stock on the common		
Rights holders with a recent history of exercising their rights but who have suspended grazing the common through an agreement		
Rights holders who have not exercised their rights in recent years through choice.		
Rights holders who are non-graziers and not farmers.(i.e. unable to offer stock)		
Common owner(s)		
Administration and Secretarial support		
<i>Other, please clarify</i>		

Question 6

Is a formulae or a percentage used on this common to apportion payments between commoners and/or to the common owner(S)? If it is can you please explain.

Question 7

Can you estimate what percentage of the total annual management payment is received by the active commoners (i.e. those farmers putting stock on the common or carrying out other land management activities)?

Can you estimate what percentage of the total annual management payment is received by the land/common owner?

Question 8 Common owners

If the common owner benefits from the agreement(s) can you briefly describe their contribution to the management of the common? Please tick the option that best describes the owners' contribution.

1. Does nothing
2. Exercises Field Sporting/Shooting interests
3. Takes up surplus grazing.
4. Participates in burning and bracken management
5. Provides maintenance of boundaries (fences, gates)

Do you consider that your agri-environment payments affects rents or agreements elsewhere? If yes are you able to provide details?

Question 9

Would you be prepared for this common to be used as a case study? This may involve a follow up phone call or meeting.

Yes
No

Question 10

Single Farm Payment

Does the Common's Association claim SFP for the common?

Yes
No

Would the Common's Association be prepared to claim SFP and allocate to rights holders?

Yes
No
Don't know

Does the Common owner claim SFP from land within the common?

Yes
No
Don't know

If yes are you able to provide details?

Thank you, the form is now complete.

Please return the completed questionnaire to Foundation for Common Land:

By e-mail: info@foundationforcommonland.org.uk

By Post: Foundation for Common Land, c/o Newton Rigg College, Newton Rigg, Penrith, Cumbria CA11 0AH

For further information please use the contact details above or telephone 0845 644 0631 or 01392 833310 (please note that both phone numbers are not always manned).

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