



Basic Payment Facts

2016

ENGLAND

**STRUTT
& PARKER**

THIS BRIEFING IS A SUMMARY ONLY OF THE RELEVANT DETAILS AS AT THE DATE OF PRODUCTION.

For full information please refer to the relevant Rural Payments Agency (RPA) guidance handbooks online at gov.uk/guidance/bps-2016

1. RPA Registration

Each farm business must have at least one 'Legally Empowered Person' registered with a Customer Reference Number (CRN) on the online Rural Payments service in order to be able to claim any of the CAP Schemes. Anyone not already registered can register online using 'Verify' or (much easier) direct with the RPA on the phone on 03000 200 301. Once registered, a farmer can authorise an agent to act on their behalf, and set individual permission levels.

In 2016, the RPA is encouraging farmers to complete their claims online but will send paper forms to those who request them, and also to those who applied on paper in 2014. As well as being able to complete their claim online, farmers (or their agents) must now use the CAP Information System 'CAPIS' to update business details, view and amend Rural Land Register maps, and request land and entitlement transfers.

2. Basic Payment Entitlements

BPS Entitlements can only be held by Active Farmers (*see 3(A) below for the definition of Active Farmer*).

The rules regarding activation of BPS Entitlements state that:

- At least once every two years you must activate ALL your entitlements in a single year.
- It is not possible to 'rotate' entitlements, so anyone with surplus entitlements will soon lose them under the new scheme.

The three English regions are Lowland, SDA (Severely Disadvantaged Area), and SDA Moorland. Under BPS 2015 the moorland payment increased to €65.06/ha, whereas SDA and lowland rates were very similar, at €246.24/ha and €248.02/ha respectively (including the Greening element). The values are not expected to change significantly for the 2016 claims.

The exchange rate used to convert Euros to Sterling for the 2016 BPS will be the average of the European Central Bank rates set over the month of September 2016.

A farmer may claim the annual payments only in respect of the land located in the region to which the entitlements relate.

A. National Reserve

The National Reserve Exists to provide BPS Entitlements for those who qualify as 'Young Farmers' or 'New Farmers'. See **3(F)** and **3(G)** below for more information on these.

B. Transferring Entitlements

Transfers of BPS Entitlements will be dealt with online and transfers will occur overnight. The transferee will need to have confirmed in advance that they are an Active Farmer for the transfer to go ahead.

3. Claiming Basic Payment

The claim deadline for the Basic Payment Scheme is 15th May each year (16th May in 2016 as 15th May falls on a Sunday).

A. Active Farmers

The Scheme is open to Active Farmers only. These are defined as any farmer except:

- A farmer whose agricultural areas are mainly areas “naturally kept in a state suitable for grazing or cultivation” and who do not carry out on those areas the minimum “agricultural activity” defined by Member States. DEFRA has confirmed that no land in this category exists in England, so only the following test will apply.
- A farmer whose business carries out activities which are included on the “negative list”, which covers “airports, railway services, waterworks, real estate services, permanent sport and recreational grounds”, unless the direct payment received does not exceed €5,000. The definition of “real estate services” applies to “property developers, real estate agencies and natural/legal persons managing real estate on a fee or contract basis.”

Renting out the following will not count as operating a real estate service:

- › accommodation facilities on a farm.
- › apartments or homes that are in a farmer’s private property for housing purposes.
- › part of buildings or surfaces on the holding.
- › agricultural land to third parties.

However, farmers who operate any of the ‘negative list’ activities may still qualify as an Active Farmer if they meet one of three “re-admission criteria”:

- that the annual amount of direct payments claimed (including Greening and any young farmer payment) represents at least 5% of the total receipts obtained from non-agricultural activities in the most recent fiscal year for which evidence is available; or
- that his/her agricultural activities are not

insignificant. In this context, agricultural activity will be considered significant where receipts from agricultural activities represent at least 40% of their total receipts in the most recent financial year. The test applies only to receipts from agricultural activities on their holding – thus income from agricultural contracting for third parties cannot be included. Income is to be assessed gross of VAT; or

- the farmer has at least 36ha of eligible land.

Where re-admission applies under the first or second of these criteria, the farmer will need to send a “certification form” signed by an independent solicitor or accountant to the RPA to show how they meet the criteria. Even if a certification form was submitted with the 2015 claim, if the business needs to rely on readmission criteria again in 2016, a new certification form must be completed and submitted.

B. Eligible Land

Land claimed must be eligible for the scheme; this includes any land used for an agricultural activity defined as arable land, permanent grassland and permanent crops.

C. Minimum Claim Area

The minimum claim area will be 5ha. Anyone with less land – or entitlements – will not be eligible to claim. The minimum parcel size is 0.10ha.

D. Land at your Disposal

Land used to activate entitlements must be at the claimant’s disposal on 15th May of the scheme year (but 16th May in 2016).

It is possible to permit a third party to graze livestock on land which the landowner is claiming to have at their disposal, and a well written cropping licence should also be satisfactory in some circumstances on arable land. Written agreements are vital in order to display the rights and obligations of the parties.

E. Dual Use

Dual Use applies where one farmer is claiming BPS and another farmer or land manager is claiming Environmental Stewardship, Countryside Stewardship or Woodland Grant scheme payments on the same parcel(s) of land. Dual Use is permitted for all existing Environmental Stewardship and Woodland Grant Schemes. Under Countryside Stewardship, Dual Use is permitted except for Mid Tier agreements starting 1st January 2016. Both parties must meet the scheme rules for the schemes they are under, and evidence for all Dual Use situations must be kept by both parties.

F. New Farmer

A “New Farmer” - also known as a “new entrant” - can apply for entitlements from the National Reserve. To qualify as a New Farmer in 2016, the farmer must be an Active Farmer, in control of the business and must be at least 18 years old. They must have started their farming activity in 2014 or later, and must not have carried out (or been in control of carrying out) any agricultural activity in the five years before that. They must provide evidence to support an application for entitlements from the National Reserve.

G. Young Farmer Payment

A “Young Farmer” is someone who is at least 18 years old but not more than 40 years old in the year of their first BPS application (i.e. they cannot become 41 years old within that calendar year), who took control of the holding for the first time on 1st January 2011 or later. Their Basic Payment will be topped-up by up to an additional 25% for the first five years after they started farming or took control of the business. This top-up will apply on up to 90ha only. To qualify, a ‘New or Young Farmer’ certificate must be completed by a solicitor or accountant to confirm they have seen documentary evidence that the claimant qualifies.

4. Greening

The Greening payment is incorporated within the Basic Payment and is made in return for the provision of certain agricultural practices beneficial for the climate and the environment. The measures involved are in addition to the Cross Compliance obligations. Member States will use 30% of their National Envelope to fund Greening.

Penalties for non-compliance will be proportionate to the extent to which Greening has been complied with, and will equate initially to up to 100% of this greening element.

The Greening measures involve three obligations – Ecological Focus Areas (EFAs), Crop Diversification (CD), and Permanent Pasture, which will apply to all farms unless they qualify for one of the exemptions.

Exemptions to EFA and CD:

- The eligible agricultural area included on a BPS claim is less than 10ha; or
- Land which is registered for organic production or in conversion for organic production; or
- More than 75% of the arable land is in temporary grassland or fallow or (in the case of EFA) is used for cultivation of leguminous crops, and the remaining arable area does not exceed 30ha; or
- More than 75% of the eligible agricultural area is permanent or temporary grassland, and the remaining arable area does not exceed 30ha.
- For CD only: more than 50% of the arable area was not declared by the claimant on their claim in the previous year, AND all of the area concerned is in a different crop to the previous year. (This relates primarily to specialist cropping arrangements).

A. Ecological Focus Area (EFA)

Where the arable area of a holding covers more than 15ha, at least 5% of the arable area of the holding must be maintained as Ecological Focus Area.

There are five qualifying options which will count as EFAs:

- › Fallow land
- › Buffer strips
- › Catch and cover crops
- › Nitrogen-fixing crops
- › Hedges

These options must be located on the arable land area, with the exception of hedges and buffer strips, which must be adjacent to, or within five metres of, the arable land.

EFA CONVERSION AND WEIGHTING FACTORS

<i>Feature</i>	<i>Unit</i>	<i>Conversion factor</i>	<i>Weighting factor</i>	<i>EFA value (m²)</i>	<i>Comments</i>
Land lying fallow	/m ²	-	1	1	-
Buffer strips	/m	6	1.5	9	>1m
Catch/ cover crops	/m ²	-	0.3	0.3	-
Nitrogen-fixing crops	/m ²	-	0.7	0.7	-
Hedges	/m	5	2	10	Up to 10m wide

i. Fallow Land

Fallow land is land which has no crop production or grazing on it, but which is nevertheless maintained in a state suitable for grazing or cultivation.

- Such land will have to remain in fallow throughout the period 1st January to 30th June in order to comply for EFA (and throughout the period 1st May to 30th June inclusive in order to comply for CD).
- Minimum width is 2 metres and minimum area is 0.01ha.
- One hectare of fallow land provides one hectare of EFA.
- No crops other than wild-bird seed mixes or nectar sources (which in both cases must be an unharvestable mix of at least two crops that support wildlife and pollinators) can be planted on such land during the fallow period; such mixtures cannot be harvested or grazed (either during or after the fallow period).
- Temporary grass can be located on fallow land as long as no agricultural production occurs during the period (thus grass used as 'fallow' can be grazed or ensiled immediately after 30th June). Grass can only be sown during the fallow period "for reasons other than agricultural production, such as where it is sown under an agri-environment scheme".
- Farmers can use herbicides and cultivations to control weeds such as blackgrass or ragwort during the fallow period; however, they must follow relevant cross compliance guidance.
- Land cannot be declared as fallow if straw bales, silage, muck or farm machinery is stored on it.

The foregoing all applies to fallow land counted towards Crop Diversification and/or EFA.

ii. Buffer strips

Buffer strips are different to field margins, and relate to land (a) next to a watercourse, or (b) parallel with and on a slope leading to a watercourse.

- Buffer strips must be located next to, or within 5 metres of arable land, and on the arable side of the watercourse
- A buffer strip may be separated from arable land by a man made feature (e.g. a fence); a landscape feature (e.g. a hedge); or a feature that is ineligible for BPS (e.g. a track).
- It is permitted to have both a buffer strip immediately alongside the watercourse and also an in-field buffer strip. However if there is a hedge alongside the watercourse which is carrying out the function of a buffer strip, this can be used for EFA as a hedge but cannot also count as a buffer strip.
- Minimum width is 1 metre from top of bank (as is also required for Cross Compliance).
- Such strips will count as 9m² per metre length regardless of actual width.
- No production can take place on the buffer strip – i.e. no cultivations, fertilising or spraying operations can occur - although grazing or cutting is allowed.
- If there is fallow land alongside a buffer strip, these areas must be “visually distinguishable” from each other during the fallow period (1st January to 30th June) by an inspector on the ground or from an aerial photograph.

iii. Catch and Cover Crops

These must be a sown mix of at least two different cover types – one a cereal, the other a non-cereal – which establishes and grows quickly, achieves ground cover, has differing rooting depths and will utilise available nutrients. However, as an alternative, grass can be used as either catch or cover crop as long as it was undersown in the previous crop and it is sufficiently established by the start of the catch or cover crop period.

- One hectare of catch or cover crop provides 0.30 hectares of EFA.
- Permitted crops in a sown mix are rye, barley, oats, phacelia, oilseed radish, vetch, mustard and Lucerne ONLY.
- Stubble turnips and kale are not included as these are usually grazed.
- Cover crops must be planted by 1st October and retained until at least 15th January following.
- Catch crops must be planted by 31st August and be retained until at least 1st October.
- These crops will count towards the EFA obligation for the year in which grown (i.e. to count for 2016 the crops would need to be planted in autumn 2016).

iv. Nitrogen-Fixing Crops

Such crops include legumes grown as arable crops such as beans or peas, and also pasture legumes (e.g. clover, lucerne and sanfoin) if grown in their own right and not as a mixture including non legumes.

- One hectare of nitrogen-fixing crop provides 0.70 hectares of EFA.
- There are no restrictions on pesticide applications.
- The crop must be in the ground during the inspection period (1st May – 30th June).

v. Hedges

A 1,000 metre length of hedge will be deemed to qualify as equivalent to 10,000 sq.m – or 1.0ha – of land area. To qualify:

- The hedge must be located on or within five metres of arable land, along its longest edge, which is at the claimant's disposal. It may be

separated from the arable land by a feature that is ineligible for BPS (e.g. a track).

- A hedge must be a continuous length of at least 20m; this can include gaps (including gateways) so long as each individual gap is not more than 20m. There is no limit as to how many gaps there can be.
- A hedge can have a continuous length of less than 20m where it meets another hedge at each end (at an intersection or junction).
- Hedges for EFA can be any width and any height. Newly planted hedges can count for EFA if they are in the ground when the BPS application is made.

If the farmer has arable land on both sides of the hedge at his disposal he can claim on the whole hedge (ie 10 sq.m. per metre run). If both sides of the hedge are at his disposal but there is arable land on one side and non-arable crop/land on the other side he can nevertheless still claim the full rate (of 10 sq.m); but if the farmer is responsible for the arable side only he can only claim on one half of the hedge (ie 5 sq.m. per metre run).

B. Crop Diversification (CD)

A farmer with arable land must:

- cultivate at least two crops on that land where the area exceeds 10ha but is less than 30ha, or
- cultivate at least three crops if the arable land area exceeds 30ha.

The main crop must not cover more than 75% of the area, and the two main crops together must not exceed 95% of the area. Winter and spring planted crops of the same species will qualify as different crops; temporary grassland/forage and fallow land will qualify as arable crops. However beware that certain brassica crops (e.g. cabbage and cauliflower) are treated as the same crop.

These two or three crops must be in place for the “inspection period”, namely 1st May to 30th June each year. If a crop has been harvested prior to 30th June, the existence of a stubble or crop residue can provide evidence of the crop concerned. Some farmers will opt to grow late sown crops or crops with a short cropping period, in which case records and evidence - including if possible seed certificates and photographs - should be kept.

For both CD and EFA purposes, temporary grass counts as an arable crop; land with outdoor pigs is classified as temporary grassland (unless so used for more than five years). Thus “arable land” includes land cultivated for crop production (including combinable crops, roots, maize, vegetables, cut flowers, bulbs and soft fruit), fallow land and temporary grassland – but excludes permanent grassland and permanent crops.

C. Permanent grassland

Permanent grassland is land which has been used to grow grasses or other herbaceous forage (that has not been included in the crop rotation) for five years or more. It can be self-seeded or sown. It will automatically be recorded as permanent grassland on the sixth SPS/BPS application on which it is recorded as grass/herbaceous forage. Herbaceous forage does not include forage maize, kale or fodder root crops, all of which are arable crops for this purpose. The area of land under permanent grassland (previously referred to as permanent pasture) must not fall by more than 5% from the area declared in 2012. (This calculation will exclude land lost to afforestation, other than Christmas trees, short rotation coppice or trees for energy production). If it falls below this level farmers who have ploughed up permanent grassland will be required to re-establish it. Note that this obligation is in addition to the Environmental Impact Assessment Regulations (EIA Regs), which already limit the ability to plough up permanent grassland.

D. Greening and Environmental Schemes: 'Double Funding'

There is potential for the new EFA obligations to overlap with existing Entry Level and Higher Level Stewardship Scheme - and now Countryside Stewardship Scheme - obligations. Where this occurs, there can be no "double funding". However DEFRA had already undertaken not to penalise farmers opting to enter into stewardship schemes before the October 2011 Reform announcement was made. Consequently, farmers with land in an HLS scheme, or an HLS scheme underpinned by ELS, or with an ELS scheme which commenced before 1st January 2012 will be permitted to continue those schemes (with full payment) and also to count relevant qualifying features towards their EFA obligation.

Farmers with an HLS or ELS agreement (including Organic ELS) starting on/after 1st January 2012 and farmers with a CSS that contains any of the double funded arable options will see a reduction in the value of their stewardship payment.

5. General

A. Flexibility

What was called 'Modulation' under SPS is known as 'Flexibility' under BPS. This is the mechanism which enables transfers of funds from Pillar 1 to Pillar 2.

Member States are permitted to transfer up to 15% of the Pillar 1 budget, and in England the transfer rate is 12%. This is likely to rise to 15% in 2018. This compares with 9% National Modulation under the previous SPS regime, which was in addition to 10% EU Modulation.

Unlike Modulation, Flexibility is transferred before the Basic Payment rate is calculated to individual farmers and so it does not appear as a separate deduction on the Claim Statement.

B. Financial Discipline

This mechanism, implemented in the event that there are insufficient funds in the budget, was first used in 2013. It is applied on all payments over €5,000, and in 2015 the deduction amounted to 1.393041%.

C. Accountable People

The RPA is required to gather details on the 'accountable people' behind each BPS claimant. These are the people who make decisions about how the business is run and who share in the profits or losses of the business i.e. those taking the financial risks (only people meeting both criteria are deemed to qualify).

Accountable people include:

Sole traders

Partners

Directors – but only if they share in business profits and losses

Major shareholders - i.e. those holding more than 10% of shares in a company

Trustees and executors – but only if they share in business profits and losses (which one expects would rule out most Trustees and executors)

Accountable people will not need to be registered on the RPA's online system but their name, National Insurance number and the percentage share/voting rights in the business will need to be provided.

This information will not be required in advance of the 2016 BPS application but must be provided before the 2016 BPS payments are released by the RPA. It is expected that the RPA will issue a form – either paper or online to collect this information during the year.

Date Diary for 2016

Basic Payment Scheme

<i>January</i>	1st	Start of Basic Payment Scheme year
	1st	End of closed period for applying high N organic manure to grassland and tillage land with shallow or sandy soils (but quantity restrictions for application of high N manures still apply) (SMR 1)
	1st	Start of period for calculating the annual livestock manure limit. Risk map must be completed if you spread organic manure on your holding (GAEC 1 & SMR 1)
	1st	EFA fallow land to be in place from this date
	15th	EFA cover crops must be retained until at least this date
	16th	End of closed period for spreading manufactured nitrogen fertilisers on grassland and tillage land (SMR 1)
<i>February</i>	1st	End of closed period for applying high N organic manure to grassland and tillage land on all soil types (but quantity restrictions for application of high N manures still apply) (SMR 1)
	28th	End of quantity restrictions for applications of high N organic manures (SMR 1)
<i>March</i>	1st	From this date, you must not cut hedgerows or trees (although coppicing and hedge laying can continue until 30th April (GAEC 7A and 7C), or cast up traditional hedgebanks (GAEC 7A)

Date Diary for 2016 Basic Payment Scheme

<i>April</i>	1st	The Environment Agency will make abstraction return forms available to those with winter, or all year round, abstraction licences. These need to be returned within 28 days. (GAEC 2)
	1st	You must not burn heather, rough grass, bracken, gorse or vaccinium on land other than in upland areas, from this date (GAEC 6)
	16th	You must not burn heather, rough grass, bracken, gorse or vaccinium in upland areas from this date. (GAEC 6)
	30th	You must have recorded the number of 'specified' livestock kept on the farm during the previous calendar year and calculated the amount of N they produced (SMR 1)
<i>May</i>	1st	You must not carry out hedge laying or coppicing from this date (GAEC 7A)
	1st	EFA nitrogen-fixing crops to be in place from this date
	1st	Start of cropping and fallow period for crop diversification rules
	16th	Closing date for notifying the RPA of Entitlement or land transfers to take effect for the 2016 claim year
	16th	Closing date for BPS applications (without incurring penalties)
	16th	Deadline for RPA to receive evidence for active farmer, young farmer or new farmer status
	31st	Final date for making certain amendments to your 2016 BPS application without incurring penalties

Date Diary for 2016 Basic Payment Scheme

<i>June</i>	10th	Final date for submitting, or amending your 2016 BPS application (penalties will be incurred)
	30th	Payment window for 2015 claims closes
	30th	Fallow land and nitrogen-fixing crops may be removed after this date
	30th	End of cropping and fallow period for crop diversification rules
<i>August</i>	1st	Start of closed period for applying high N organic manure to tillage land on shallow or sandy soils except where crops will be planted before 15th September (SMR 1)
	1st	Farmers who have been granted a derogation under GAEC 7A will be able to cut hedges from this date
	31st	EFA catch crops must be established by this date
<i>September</i>	1st	You can cut hedgerows and trees from this date (GAEC 7A and 7C), and cast up traditional hedgebanks (GAEC 7A)
	1st	Start of closed period for: - applying manufactured nitrogen fertiliser to tillage land (SMR 1), and - spreading high N organic manure on grassland with shallow and sandy soils (SMR 1)
	15th	Start of closed period for applying manufactured nitrogen fertiliser to grassland (SMR 1)

Date Diary for 2016

Basic Payment Scheme

<i>September</i>	1st - 30th	The exchange rate used to convert Euros to Sterling for the 2016 BPS will be the average of the European Central Bank rates set over the month of September 2016
<i>October</i>	1st	You may burn heather, rough grass, bracken, gorse or vaccinium on land in upland areas from this date (GAEC 6)
	1st	EFA catch crops can be removed from this date
	1st	EFA cover crops must be established by this date
	1st	Start of closed period for spreading high N organic manure to tillage land on soils which are not shallow or sandy (SMR 1)
	15th	Start of closed period for spreading high N organic manure to grassland on soils which are not shallow or sandy (SMR 1)
	31st	The Environment Agency will make abstraction return forms available to those with summer abstraction licences. These need to be returned within 28 days (GAEC 2)
<i>November</i>	1st	You may burn heather, rough grass, gorse or vaccinium on land other than in upland areas from this date (GAEC 6)
<i>December</i>	1st	You need to carry out your annual inventory of sheep (SMR 8)
	1st	Payment window opens for BPS 2016 claims
	31st	End of Basic Payment Scheme year

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