

Single Payment Scheme Handbook and Guidance for England 2009

(incorporating Area Payments for Nuts, Aid for Energy
Crops, Protein Crop Premium and
2010 Hill Farm Allowance)

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Key changes

What has changed for 2009?

We have provided information on changes to the Common Agricultural Policy (CAP) Health Check in the Single Payment Scheme (SPS) policy update. In this section we highlight some of the key changes that affect SPS 2009 and HFA 2010.

Guidance on the SPS 2009 form – Electronic submission of the SPS Application form (SP5)

In 2008 Rural Payments Agency (RPA) successfully launched the SPS electronic channel to a limited number of customers who had bought farm software from two providers. Those customers were able to download their pre-populated SPS data, amend it and submit it electronically. Following the success of that limited roll out there is no limit on the number of customers able to submit their 2009 SPS application electronically, using the software available from these two providers.

For further details on the electronic channel, future developments and the details of the two providers involved, visit the RPA website (www.rpa.gov.uk).

Permanent crops now eligible – including permanent fruit and vegetables, nursery crops and vines

Land used to grow permanent crops (shown below) is now eligible for SPS from 2009 and should be declared as OT1.

Farmers (growers) will be able to use land under permanent crops to activate their existing entitlements, or any entitlements bought or leased and which form part of your entitlement holding on 15 May 2009, in support of their application for SPS for the 2009 scheme year.

You must register this land on the Rural Land Register (RLR), if you have not already done so. You can only do this by using a *Request for changes to the Rural Land Register and for the transfer of entitlements* form (RLE 1) which you can get by calling the RPA Customer Service Centre (CSC) on 0845 603 7777. You should return the RLE 1 to RPA as soon as possible to make sure that your land is registered in time for you to be able to submit an application.

Land growing the following crops is now eligible for SPS:

Permanent fruit and vegetables

- apples, pears, apricots, peaches (including nectarines), cherries, plums, sloes and quinces
- citrus fruits, plantains, pineapples, figs, avocados, guavas, mangoes, mangosteens, papayas and locust beans
- mint, melissa and rosemary; and
- nuts, almonds, hazelnuts, walnuts, chestnuts, pistachios, pine nuts, macadamia nuts, pecans, other nuts (not areca or cola nuts).

If you have land on which you grow other permanent fruit and vegetable crops and you think that it may be eligible, let us know and we will consider it against the definitions in the European Union (EU) regulations.

Nursery crops

Areas of young woody plants grown in the open air, on soil in greenhouses or under polytunnels for subsequent transplantation:

- vine and root stock nurseries;
- fruit tree nurseries;
- ornamental nurseries;
- nurseries of forest trees (excluding those for the holding's own use grown within woodland); commercial forest-tree nurseries, whether in woodland or outside, are included in the definition, as are commercial forest-tree nurseries for the holding's own requirements grown outside woodland. Land used for growing Christmas trees will not usually be eligible as they are not grown for subsequent transplantation; and
- land used for growing trees and bushes for planting in gardens, parks, at the roadside and on embankments, for example, hedgerow plants, rose trees and other ornamental bushes, ornamental conifers including in all cases their stock and young seedlings.

Land growing any nursery crops not meeting the above definitions is not eligible for the establishment of new entitlements.

Vines

This includes all land where vines are planted out in the field, whether they are currently productive or not. Land used to grow vines under polytunnels is also eligible.

Other permanent crops

Land used to grow all other permanent crops is also eligible to use to support existing entitlements, but this land cannot be used to establish new entitlements. To date we have identified the following crops as falling in this category:

- lavender
- miscanthus
- reed canary grass
- short rotation coppice

For 2009 you can claim Aid for Energy Crops on land used for growing miscanthus, reed canary grass or short rotation coppice, even if that land is being claimed for SPS.

New entitlements for permanent fruit and vegetables, nursery crops and vines

Land used to grow all of the crops listed above (excluding 'Other permanent crops') is not only becoming eligible in 2009 to support an application using existing entitlements, but can also be used to apply for an allocation of new entitlements for first use under the SPS 2010.

To apply for new entitlements you should have already registered your interest with us to make sure that you receive the relevant information and forms. If you have not already done so and you wish to apply for new entitlements, you must urgently telephone the RPA CSC to register your interest. This applies to new customers and existing customers (even if your land is already registered on the RLR).

We have produced Information Note 2 giving guidance and instructions to anybody interested in applying for the new entitlements. This note is available on the RPA website (www.rpa.gov.uk).

If you have not yet registered your interest in applying for new entitlements, contact RPA's CSC as soon as possible on 0845 603 7777; if you delay you risk not being able to apply for what you may be entitled to.

If you have already registered your interest with RPA, we will have sent you a letter confirming your registration.

End of Set-aside entitlements

The EU has abolished the requirement for a farmer to set aside a portion of their land. This means:

- Set-aside entitlements will be converted to Normal entitlements. They will still be valued at the relevant SPS flat rate.
- You will not need to Set-aside any of your land for the 2009 scheme year, except where agri-environment scheme obligations, such as Environmental Stewardship options EF3, EF5, HF16, HF17, HF18 and HF19, require you to do so. You should use the code SA3 for this land on your SP5.

You can still choose, on a voluntary basis, to leave land uncropped and may use this to support Normal entitlements. Uncropped land will be subject to cross compliance requirements, in particular Good Agricultural and Environmental Condition (GAEC) 12. You can read further details on cross compliance in *The Guide to Cross Compliance in England*.

RPA will update its IT system to convert Set-aside entitlements to Normal entitlements during 2009. They are still shown as Set-aside entitlements on your 2008 Entitlements Statement as for SPS 2008, Set-aside entitlements were still in existence. They are called 'Normal; formerly Set-aside' entitlements on your SP5.

End of English Reserve entitlements

From the 2009 scheme year there will no longer be English Reserve entitlements. This means:

- We will convert English Reserve to Normal entitlements. The value of the entitlements will not change.
- You will not need to activate your former English Reserve entitlements every year to avoid the National Reserve top-up element being lost to the National Reserve. Instead, the usage rule for Normal entitlements will apply.

You can now transfer former English Reserve entitlements. The transfer rules for Normal entitlements apply (read the RLE 1 guidance for more information on these transfer rules).

RPA will update its IT system to convert English Reserve entitlements to Normal entitlements during 2009. They are still shown as English Reserve entitlements on your 2008 Entitlements Statement as for SPS 2008, English Reserve entitlements were still in existence. They are called 'Normal; formerly National Reserve' entitlements on your SP5.

Modulation refund payments

The first €5,000 of your payment is exempt from compulsory European modulation. Currently, modulation is initially applied to all of your payment and you then receive a refund at a later date for the modulation amount deducted for this €5,000. From the 2009 scheme year, your initial payment will reflect the exemption and there will be no need for RPA to make a separate modulation refund payment.

The exemption will continue to apply to existing European modulation only and not to the additional National modulation. There will be no change to the amount of total modulation paid on the first €5,000.

Entitlement transfers

The person transferring out entitlements no longer needs to be a farmer at the date of transfer. This means, for example, that a farmer can retire and then transfer out his entitlements. The person receiving the entitlements must be a farmer, as now.

You no longer need to have used at least 80% of your entitlements allocated in 2005 to be able to transfer entitlements by sale or gift without land.

Land in agri-environment and forestry schemes

Some agri-environment and forestry scheme land which previously was not eligible for SPS, is now eligible. Read section C of this guidance.

Short rotation coppice

You can now activate (use) your Normal entitlements on land used for short rotation coppice. Previously short rotation coppice was only eligible in some circumstances.

Aid for Energy Crops

The 2009 scheme year is the last year of the Aid for Energy Crops Scheme. This scheme is not being replaced. This is separate from the Energy Crops Scheme under RDPE, managed by Natural England, which provides planting grants for miscanthus and short rotation coppice and which will continue.

Uplands Entry Level Stewardship and the Hill Farm Allowance (HFA)

A new uplands strand to the entry level Environmental Stewardship scheme (Uplands ELS) will replace HFA in 2010. To avoid a long gap between the final HFA payment and the first payment under Uplands ELS the HFA has been extended for a further year into 2010.

We will set out full details in the *Hill Farm Allowance explanatory booklet 2010*, which will be available on the RPA website (www.rpa.gov.uk). Eligibility conditions will be the same as for HFA 2009.

Every year, a number of applicants forget really simple things. This can affect your payment. Here are some reminders for 2009.

Don't forget to sign your paper form. If you don't sign it, we will not be able to process it and you will not get paid.

Read the guidance booklets and use the checklist on the SP5. This should help you to remember everything.

It is your responsibility to make sure your form reaches us by 15 May. If you are posting it you must remember to put the correct amount of postage on your envelope when you return your SP5. The envelope may need more stamps than the usual first or second class delivery charge, especially if you are including supporting documents.

We recommend that you use a form of postage that will provide proof of receipt of your SPS application by RPA. You should keep the proof of postage slip provided by the Post Office and make sure that it clearly identifies beneath their stamp, that the item sent to us is your SPS application.

Royal Mail may not deliver the envelope to RPA in time to meet the 15 May deadline if the postage on the envelope is not correct. If you do not pay enough postage and the application is delivered late by Royal Mail, we will use the date that it arrives on RPA premises as the lodgement date of that application.

There is a separate booklet called *How to complete your SP5 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)* which includes land use codes. You should read this carefully before completing and submitting your SP5. You need to put all woodland on the SP5, not just that under a Forestry Commission (FC) scheme. (Read section C1.)

On your SP5 you must declare all land under the Rural Development Programme for England (RDPE) agreements, including all woodland under agreement with the FC, even if you are not using it to support your SPS application, EU regulations require this. You must declare any FC woodland which you are not recording under code SA2 using code FR3. (Read section C for detailed information about registering land.)

If your business structure has changed (for example, it has merged or split) you need to contact RPA immediately as the change can affect your entitlements and SPS application. (Read section B carefully.)

RPA will activate your entitlements for you. These will be activated in the order described in section F. If you want them activated in a different order (for example, you may have some with a lower value, but an earlier use by date) you must contact RPA to ask for an *Entitlements declaration form* (SP11). If the information on your 2008 Entitlements Statement is wrong, you should also request, complete and return an SP11. This must be returned to RPA with your SP5. (Read section F for detailed information.)

Some dates are really important – if you miss a deadline, it can affect your payment. Have a look at the dates below so you know if you need to take action.

Key dates

Date	Event
1 January 2009	Start of the 2009 scheme year
1 March – 31 July 2009	Hedgerows must not be cut during this period as it is the main breeding season for birds.
2 April 2009 (midnight)	Final date for notifying RPA of entitlement transfer for it to take effect by 15 May.
15 May 2009 (midnight)	Final date for application with no late receipt penalties.
15 May 2009 (midnight)	Final date for receipt of signed contracts for crops grown under the Aid for Energy Crops scheme.
15 May 2009	Date on which you must have SPS land at your disposal.
31 May 2009 (midnight)	Final date for making certain amendments in writing to a previously submitted SPS application form without incurring penalties.
9 June 2009 (midnight)	Final date of the late application penalty period, which runs from 16 May. Applications or written amendments received after 9 June will be rejected.
30 June 2009	2008 payment window closes.
13 August 2009	Final date for applications for new entitlements (for permanent fruit and vegetables, nursery crops and vines).
30 September 2009	Final date of the extended window for SPS 2008 Modulation Refunds.
1 December 2009	2009 Payment window opens.
31 December 2009	End of the 2009 scheme year.

NB *The Guide to Cross Compliance in England* contains more key dates.

A Introduction

Applying for SPS can seem complicated as the scheme has many rules which you need to meet. This section highlights the key rules for SPS 2009.

- A1. This handbook sets out the rules of the 2009 Single Payment Scheme in England and applications for the Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 HFA.

There is separate guidance called *How to complete your SP5 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)*. This explains how to complete your 2009 application form(s) for England.

Both of these booklets replace the earlier versions.

- A2. Before submitting your application, you should:

- complete your Soil Protection Review; and
- read the SPS information listed below.
 - *The Guide to Cross Compliance in England (including the latest updates)*
 - *Cross Compliance Guidance for Soil Management (2006 edition)*
 - *Management of Habitats and Landscape Features: Guidance for Cross Compliance in England*
 - *Hill Farm Allowance Explanatory Booklet 2010* (read section K) if it applies

An overview of the scheme

- A3. The SPS replaced most crop and livestock payment schemes on 1 January 2005. You do not need to grow crops or keep livestock in order to receive aid. You must:

- meet the definition of a farmer (read glossary);
- claim a hectare of eligible land on your SP5 for each entitlement you hold;
- meet cross compliance requirements on all the agricultural land on your holding (whether or not you use it to support your application for payment); and
- declare all your land parcels whether or not you want to activate payment for that area.

- A4. For each hectare of eligible land you established in 2005, you will have received an entitlement to payment which can be used in each scheme year. These entitlements form the basis of the value of your application. You must remember to claim upon enough eligible land to support your entitlements to be able to receive payment.

- A5. For SPS, the UK is divided into four regions: England, Northern Ireland, Scotland and Wales. England is further divided into three regions:

- (Non-SDA) – England outside the upland Severely Disadvantaged Area (SDA)
- (SDA) – English upland SDA (other than moorland)
- (SDA Moorland) – English moorland within the upland SDA

Within each region, there are two types of entitlements:

- Normal
- Special

- A6. You can only activate entitlements in a specific region for payment if the eligible land is in that region. For each entitlement activated you must have a hectare of eligible agricultural land at your disposal on 15 May of the scheme year.
- A7. To receive payment, you must apply to the scheme once a year. There are financial penalties and possible exclusion if you do not follow the rules of the scheme, which includes missing the deadline for us to receive your application.
- A8. No payment will be made to anyone who artificially creates the conditions required to receive payment under the scheme.

Relevant regulations

- A9. The rules in this handbook are based on EU and UK legislation as amended. At the time that this handbook goes to print the main regulations are:
- Council Regulation (EC) No 1782/2003 (as amended);
 - Commission Regulation (EC) No 795/2004 (as amended);
 - Commission Regulation (EC) No 796/2004 (as amended);
 - Commission Regulation (EC) No 1973/2004 (as amended);
 - Statutory Instrument 2004 No 2689;
 - Statutory Instrument 2005 No 218;
 - Statutory Instrument 2005 No 219 (as amended); and
 - Statutory Instrument 2006 No 169.

Disclaimer

- A10. This handbook reflects the RPA's interpretation of the SPS legislation at the time of going to print. It does not provide a definitive statement of the law. This can only be given by courts.
- A11. RPA reserves the right to review its position if circumstances change. For example, if the EU issues new guidance or RPA's interpretation of the legislation is revised. In particular, at the time of going to print, we do not yet have confirmed implementing regulations following the EU CAP Health Check. You may therefore wish to seek independent legal advice before making any changes to your own farming arrangements. RPA is unable to advise individuals or their legal representatives on specific circumstances related to their farming businesses.

B Who can apply?

There are rules about who can apply for SPS. This section tells you about the individuals and businesses that are able to apply for SPS 2009 and what to do if your circumstances have changed.

Background

B1. SPS is controlled by the Integrated Administration and Control System (IACS), which is required by regulation and defines the identification of a farmer, a holding, agricultural activity, eligible land, the identification and registration of payment entitlements, general principles in respect of agricultural parcels and how they are used to support an application for payment. RDPE schemes are also subject to these controls.

Eligibility for the SPS payment

B2. To apply for SPS you must be a farmer with eligible land and payment entitlements.

B3. You do not need to undertake any production in order to be regarded as a farmer for the purposes of the scheme but, whether or not you produce, you will still need to meet the requirements of cross compliance including Good Agricultural and Environmental Condition (GAEC) on all your agricultural land.

B4. The meaning of the terms 'farmer' and 'eligible land' in the context of SPS are explained in the Glossary of this handbook. (Read section F for guidance on payment entitlements. Read *The Guide to Cross Compliance in England* for further information on GAEC.)

If you farm in more than one UK region

B5. The IACS rules require that all the land you farm in the UK is covered by one SPS application. If you farm land in more than one UK region, your application will comprise two or more separate forms, one for each region, which must be submitted together, to the paying agency for the region in which most of your land is situated. (Read *How to complete your SPS 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)*.)

Involvement in more than one business

B6. You may be involved in a number of farming businesses within the UK that are separate legal entities (such as a limited company or a partnership), however it is the relationships between the different businesses that determine if you can make a separate SPS application for each one. Depending on how the businesses are structured and your involvement in them, it is possible that they should be treated as one business for SPS purposes. You must inform RPA if you have an interest in any other business which has not yet been assessed by RPA.

B7. If you have previously had a separate business assessment carried out under the former schemes or SPS and your business structures have not changed, the decision made then should still apply. If the decision then was that the businesses should be included on one application, you should continue to include those businesses on one SPS application.

- B8. On notification from you, RPA will need to determine whether the businesses you are involved in can be treated as separate under SPS, and a questionnaire will be sent to you asking for details including:
- the legal status of the businesses;
 - the names and responsibilities of those involved (including percentage share holdings if appropriate);
 - the extent to which the businesses are run separately on a day to day basis;
 - whether there are separate farm plans and accounts;
 - the extent to which there is independence of decision making; and
 - where the overall economic control and benefits lie.
- B9. None of these factors is conclusive in itself, and you may be asked to provide more information such as partnership agreements, accounts, Certificate of Incorporation or Articles of Association. The responsibility for proving to RPA that your businesses should be regarded as separate under the SPS rests with you.

Mergers & Scissions (Splits)

- B10. A merger is when two or more businesses join and at least one member from each of the original businesses is a member of the new business. A scission (split) is when one business splits to form two or more businesses each with one of the original members. As restructuring of your business could affect your SPS application, you may want to seek professional advice before making any decisions.
- B11. If your business has merged or split, this change may have an impact on both your business registration for SPS/IACS and your entitlements. You need to contact the RPA CSC to give details of the business change. You will then be sent an IACS 26/27 form which will allow RPA to decide if the businesses are new or continuing. We will tell you if you also need to complete an RLE1 to transfer entitlements.
- B12. RPA need to be notified of these changes to your business in good time to make sure that entitlements may be transferred if necessary and an SPS application is submitted by the correct business. If any business restructuring results in entitlements needing to be transferred, an RLE 1 would need to be submitted by 2 April to allow them to form part of your application on 15 May of the scheme year. (Read section G for further information on transfer of entitlements.)

Farmers of common land

- B13. There may be instances where you have an RLR sheet and field number for a common land area; for example, due to an environmental agreement. For SPS record your common land on Part CA only of your SP5, and remove from Part C, any field entries relating to common land. (Read *How to complete your SP5 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)*.)
- B14. If you have rights of common, you may be able to use them to activate entitlements under SPS. You must be a farmer and have a legal right to use the common (normally a right of grazing registered under the Commons Registration Act 1965). It may also be possible to demonstrate other rights (such as an owner's right to surplus grazing). Where an owner of a common assigns or lets his right to surplus grazing to a third party, that person could be eligible to use it as part of their SPS eligible area. The SPS does not alter your legal rights of common, or your ability to exercise those rights.
- B15. If you own a house or other land that has common grazing rights attached, you will only be able to use those rights to support an SPS application if you meet the definition of being a farmer.

- B16. You may apply for payment under SPS in respect of any right of common which entitles you to graze stock on the common, provided the common grazing is at your disposal on 15 May of the scheme year. There should be nothing in the Common Land Register that prevents you from being able to comply with this. Any common land over which your stock stray is not eligible, that is, where you have no registered right to graze or have not been assigned or let a common owner's surplus grazing.
- B17. Different rules apply to common land used solely to apply for HFA (read section K).
- B18. The common land used to support your application must meet all SPS eligibility requirements. It must be managed to meet the requirements of cross compliance including GAEC. This applies to the whole common, so if a GAEC rule is broken anywhere on the common the farmer (or farmers) to whom this is directly attributable may have their payments reduced in whole or in part. You do not need to carry out a Soil Protection Review for common land unless you are the sole occupier of the common land.

New Forest common rights

- B19. If you are using New Forest common rights to support your application, you must supply a photocopy of valid marking fee receipt(s). A valid receipt is one that is signed by an Agister. The receipt should show that marking fees have been paid for a period that includes 15 May.

Cross border commons

- B20. If you have rights on a common that straddles the border between England and Wales or Scotland, you must complete the relevant application forms with your cross border common land listed on each application. The number of rights you can hold and activate in England will be in proportion to the area of common actually in England, and the balance will be in the other region. You must make sure that you apply against the correct number of rights in each region. Similarly, if you have rights on a common that straddles English areas, you must make sure that you apply using the correct number of rights in each area.

Commoners' Associations

- B21. Exceptionally, a Commoners' Association (and other bodies) may activate entitlements, provided they can show that they meet the definition of a farmer. All such bodies who are considering applying for SPS should contact us and should also seek independent legal advice.

Evidence of right of common

- B22. If you are using a common right to activate entitlements you may be asked to provide proof of your right. You should be aware that your SPS payment may not be made until satisfactory proof is provided to RPA.

Share farmers

- B23. In cases where two or more farmers have a share farming agreement only one can receive the Single Payment. All the land within the agreement must be included on that designated farmer's SPS application and the entitlements activated must be held by that farmer. The entitlements for the agreement can only be activated for payment by the applicant who holds them on the date of application deadline (15 May) of the scheme year concerned. Responsibility for distributing the payments (or for any repayments, should this apply) rests with the applicant. Should the other members of the share farming agreement hold more land outside of the agreement they should submit their own application for this land (read also section B6).

- B24. All parties involved should consider carefully how the businesses are structured to make sure that they comply with the regulations. You may wish to seek professional advice on this especially if the agreement was made some years ago.

SP9 – Agent Authorisation form

- B25. If you are signing as an agent or partner, you must be authorised (empowered) to make the SPS application. If you are not already empowered to submit applications for the business, you must submit a valid *Agent/Partnership Authorisation (SP 9)* form with your SP5.

C What land is eligible under SPS?

You need to have land at your disposal on 15 May 2009 to apply for SPS (read section E). This section explains about the different types of land that you need to tell us about on your 2009 SP5.

Registering land

C1. You need to register all your agricultural land including all forestry and woodland, except for ineligible features, on the RLR if you want to apply for a payment under:

- Single Payment Scheme
- Area Payment for Nuts
- Aid for Energy Crops
- Protein Crop Premium
- HFA 2010

Even if you do not use all your land to support your application for payment, you must declare it all on your SP5. This also includes land under the RDPE including land under FC woodland agreements (WGS,EWGS/FWPS/FWS). You need to register this land on the RLR and declare it on your SP5.

C2. RPA will preprint your SP5 with the field data shown on your RLR map. However, if at the time your 2009 SP5 is preprinted, the validation of your 2008 SP5 is not complete then some fields may not appear or may need to be changed. It is your responsibility to check the application form and make any amendments to make sure that you accurately include, all the agricultural land on your holding.

Field Boundary Changes

C3. If there have been changes to field boundaries since the map was produced, or you want to include land on your SP5 that has not been registered before, you should complete an RLE 1 so that RPA can make the changes. You should include a map of the land. RLE 1s are available from the RPA CSC. A sample RLE 1 and guidance are available on the RPA website (and read paragraph G5).

C4. If you submit an RLE 1 well before the start of the SPS application period, you should receive confirmation of any new field numbers and areas in time to make corrections or additions by hand on your SP5.

C5. If you do not have the new RLR field numbers and sizes before the deadline for submitting your SP5, you should still enter the field on the form if it is agricultural land. You should quote the field reference you have (the same as the one you estimated on the RLE 1, if you have submitted one) and the estimated size in hectares to two decimal places. If you have made allowance for ineligible features, these will be deducted to give a new total area for activating SPS entitlements for that field.

C6. If your RLE 1 is still outstanding, do not resend it with your SP5 but send a covering letter explaining clearly which fields are still outstanding. If you have not sent an RLE 1 to tell us of new land or changes, and you send it with your SP5, you must send an accompanying map for any new land or permanent changes to field boundaries. If you do not send a map, and we cannot identify the field, we will not make a payment on that land parcel.

Cross checking land against RDPE

- C7. EU regulations state that we have to cross check land used to support your SPS application against land under RDPE agreements. If you do not correctly declare all your RDPE land on your SP5 this may lead to penalties on your SPS application (read paragraph N5 and N6) and to payment delays (on SPS and RDPE) due to the need to resolve cross check failures which may result from field data and land use incompatibilities. Where the land use you declared for SPS conflicts with the requirements of your RDPE agreement, your RDPE payment may be reduced (read paragraph C22 and C23).

Minimum area to be claimed

- C8. The minimum total area that you can use to support an application under SPS and other direct aid schemes is 0.3 hectare. The minimum application size will change from the 2010 scheme year and we will tell you about this new minimum once it has been agreed. The minimum individual parcel size is 0.1 hectares.

Area measurement for the SPS

- C9. In general, you can use the total area of the field shown on your RLR map to support the activation of entitlements. In a cropped field, you do not need to deduct uncropped areas such as grass banks and strips provided they are kept in GAEC, meet all cross compliance requirements and are at least able to be grazed (although they do not need to actually be grazed). In other words, the land must be agricultural for it to be included in the field size (column C3 on the SP5) and must be eligible to be used to support SPS entitlements (column C8 on the SP5). When you use grazed woodland to support your SPS application, you must make appropriate allowances for the area taken up by the trees (read paragraphs C41 and C42).

Split field and mapping

- C10. If you split a field into two or more parts, where you are using one of these parts to support your application for Protein Crop Premium, Area Payment for Nuts or Aid for Energy Crops you must include a sketch map with your SP5. All sketch maps showing temporary splits must be clearly marked 'temporary split'.
- C11. Alternatively, if you have a field which in the past you have cropped as two or more separate parts but where there are now adjoining (contiguous) parts with the same land use code, (for example, wheat and barley which are both OT1), you should declare these parts together. For example, if you have a field which was once in three parts but which is now cropped as wheat, barley and Protein Crop Premium respectively, you should now declare it as a two part field of OT1 and PR0. You need to supply a sketch map to show the 2 different land uses.
- C12. If this field is now all down to a single land use (for example, TG1), you should declare it as one field with no parts; a sketch map is not required.

Land which is eligible for SPS

- C13. Eligible land under SPS is any agricultural area of the holding used for arable land and permanent pasture except:

- forests; or
- areas which are used for non agricultural activities (read paragraphs C48 – C54).

- C14. You can use only eligible land to activate entitlements for payment under SPS. Eligible land includes:
- land used for normal arable/combinable crops including energy crops, protein crops and hemp;
 - land used for potatoes, sugar beet and other root crops;
 - land used for forage maize and forage rape;
 - land under grass for less than five years; land used for wild bird cover;
 - land used for fruit, including permanent fruit (such as top fruit and nuts) and strawberries;
 - land used for vegetables (including permanent vegetables);
 - land used for vines;
 - land used to grow other permanent crops, including lavender, miscanthus and reed canary grass;
 - land under greenhouses or fixed or mobile cover (unless made unsuitable for agriculture, for example by concreting);
 - land used for multiannual crops: artichokes, asparagus, rhubarb, raspberries, blackberries, mulberries, and loganberries; black, white or redcurrants and gooseberries; and cranberries, bilberries and other fruit of the genus 'Vaccinium';
 - nursery crops;
 - land used for cut flowers and bulbs;
 - land used for turf, except for fuel (for example, peat cutting);
 - fallow land maintained in Good Agricultural and Environmental Condition (GAEC);
 - land used for hops;
 - permanent pasture (read paragraphs C15 – C21);
 - in some circumstances, land that forms part of a grazed woodland (read paragraphs C25 – C30); and
 - short rotation coppice.

Permanent pasture

- C15. To determine whether your land is permanent pasture for the purposes of the scheme you should consider its status on 15 May each year.
- C16. Permanent pasture is land:
- used to grow grasses or other herbaceous forage, either naturally (self-seeded) or through cultivation (sown); not included in the crop rotation for five years or longer;
 - not Set-aside during this five year period (whether under the Arable Area Payments Scheme, the SPS or taken out of production under some agri-environment options); and
 - was not taken out of production under some agri-environment scheme options.
- C17. This means that land will be classified as permanent pasture when declared as being in grass or herbaceous forage on six consecutive SPS (or IACS) applications. For example, if you first declared a parcel as being in grass on 15 May 2004 (that is, was first put down to grass some time during the period 16 May 2003 to 15 May 2004) and remains in grass on 15 May 2009 then it will be classified as permanent pasture and you should declare it as such on your 2009 SP5.
- C18. Where you did not declare land on IACS applications, the same principle applies, that is, it will be classified as permanent pasture when it has been in grass or herbaceous forage on 15 May in six consecutive years.

- C19. Land which you have resown with grass or other herbaceous forage during a five year period is still counted as permanent pasture. However, land which is in long-term grass, but which you have reseeded following a catch crop such as stubble turnips in the last five years, is considered arable land.
- C20. Land which you have taken out of production under the following agri-environment scheme options should not be considered permanent pasture, even if it meets the permanent pasture criteria described earlier. These options do not need to be considered as permanent pasture as they are primarily margins and strips within arable fields which, following the end of the RDPE agreement, may revert to arable.
- Entry Level Stewardship EE1 (2 metre buffer strips on cultivated land);
 - EE2 (4 metre buffer strips on cultivated land);
 - EE3 (6 metre buffer strips on cultivated land);
 - EE8 (buffering in-field ponds on arable land);
 - EF4 (pollen and nectar flower mixture on arable land);
 - EF5 (pollen and nectar flower mixture on Set-aside land. Note; the land was Set-aside at the time the agreement was entered into);
 - EF7 (beetle banks);
 - Organic Entry Level Stewardship OE1 (2 metre buffer strips on rotational land);
 - OE2 (4 metre buffer strips on rotational land);
 - OE3 (6 metre buffer strips on rotational land);
 - OE8 (buffering in-field ponds on rotational land);
 - OF4 (pollen and nectar flower mixture);
 - OF5 (pollen and nectar flower mixture on Set-aside land. Note; the land was Set-aside at the time the agreement was entered into);
 - OF7 (beetle banks);
 - Higher Level Stewardship HE10 (floristically enhanced grass margin);
 - Countryside Stewardship R3 (6 metre margin);
 - R7 (2 metre grass margin);
 - R8 (2 metre beetle banks);
 - WM2 (pollen and nectar source);
 - Environmentally Sensitive Areas (ESA) The Broads (Tier 4B) Upper Thames Tributaries (Tier 3C); and
 - Habitat Scheme 1B.
- C21. Land which has been down to grass for five years or more but which was used to support Set-aside entitlements in at least one of the last five years, is not considered to be permanent pasture.

Land in agri-environment schemes

- C22. Participation in agri-environment schemes (Environmental Stewardship, Countryside Stewardship, Environmentally Sensitive Areas, the Habitat Scheme, Energy Crops Scheme and the Organic Farming Scheme) does not normally affect the eligibility of land for payment under SPS. Provided the land meets the SPS eligibility criteria, it can form part of your SPS application (read paragraph C14).

Although most agri-environment scheme land has always been eligible under SPS, there is some which was not previously eligible. This applies to options like reed beds and intertidal habitats under the Countryside Stewardship Scheme (codes R, IT2 and IT3) and some ESA woodland (that which isn't already eligible for SPS as grazed woodland). This land will be eligible under SPS from 2009 provided you used it to activate entitlements for payment in 2008.

EU regulations ask that we cross check all parcels you declare for SPS against agri-environment scheme details. Natural England will query all cases where the land use declared for SPS conflicts with the requirements of their schemes. They may withhold or recover their payments where any conflicts cannot be satisfactorily resolved. For example, land declared as protein crops for SPS would conflict with agri-environment requirements if that same area of land was being paid as permanent pasture by Natural England.

- C23. You should declare land under an agri-environment scheme using the most appropriate SPS code. In many cases this will be one of the agri-environment codes; PP4, TG3 or AE1. However, where you are growing specific crops such as Protein Crop Premium or Aid for Energy Crops you should use the appropriate code. And you should use code OT1 if you are growing cereals and other arable crops. You should use code AE1 for agri-environment land where there isn't a more specific code but the land is still eligible for SPS. For example, areas of marsh or fens which meet the SPS eligibility but would not be described as permanent pasture.

Land in forestry schemes

- C24. Land that was used to activate entitlements for payment in 2008 and which is now in an eligible forestry scheme (Farm Woodland Premium Scheme (FWPS) or England Woodland Grant Scheme (EWGS)) is eligible under SPS. However, your RDPE forestry payment may be reduced.

Areas which were used to activate entitlements for payment in 2008 and which receive certain national forestry grants may also be eligible. If you are unsure whether land under a particular forestry scheme qualifies, please contact the RPA CSC.

Grazed woodlands

- C25. Parcels of grazed woodland with less than 50 trees per hectare are eligible under SPS.
- C26. Parcels of grazed woodland with more than 50 trees per hectare may also be considered eligible if you can demonstrate that:
- there has been a history of acceptable grazing practice (for example, through previous scheme applications, or the presence of trees with features caused by browsing – such as basal swelling); and
 - grazing is not damaging the ecological value of the site, for example, by significantly reducing the number of existing tree seedlings and saplings or by reducing the occurrence of grazing sensitive plants such as bramble.
- C27. New woodland that is grazed may also be eligible, provided that the trees are adequately protected from grazing.
- C28. When using grazed woodland to support your SPS application, you must make appropriate allowances for the area taken up by the trees. In all cases deductions must be made in respect of areas within an agricultural parcel where trees or bushes are preventing the growth of vegetation suitable for grazing (including those areas taken up by tree trunks).
- C29. All relevant cross compliance standards, including those relating to over grazing and supplementary feeding, also apply to these areas of woodland.
- C30. You should use code PP1 (and not forestry codes) for eligible grazed woodland on your SP5.

Scrub and Bracken

- C31. Some land parcels may have scrub and bracken within them. If the cover is light and can clearly be grazed (that is, the scrub is not too dense or the density of the bracken/bracken litter does not prevent the growth of viable forage) the land is eligible for SPS. You can read detailed information about Scrub and Bracken cover and how to determine if it is eligible paragraphs C57 – C60.

Recording Agri-Environment Scheme Margins and Strips

- C32. You should record agri-environment scheme margins and strips such as beetle banks, buffer strips and conservation headlands, under the same land use code as the rest of the field. You do not need to declare them separately.

Wide field margins

For SPS

- C33. You can use the total RLR parcel area to activate entitlements for payment, subject to the removal of any ineligible areas (including excessively wide boundary features). In a cropped field, this means that even uncropped areas such as grass margins and banks are eligible, provided they can be grazed (although they do not need to actually be grazed).
- C34. For excessively wide boundary features, where the total RLR parcel area has been calculated from the centre of a boundary feature, such as from the centre of a hedge, you do not need to deduct the width of that feature that has been included in the total RLR parcel area, provided it is not larger than 3 metres. However, even wider widths are, exceptionally, permitted provided they are characteristic of the landscape.
- C35. Many boundary features, for example, roads and watercourses, appear as features (rather than a simple line) in their own right on Ordnance Survey (OS) maps because they are wider than 4 metres. These features will normally have been excluded from the total RLR parcel area and you will normally not need to consider if you have to deduct them. Hedges do not appear as features in their own right and you need to make sure that the part of the hedge, or the part of any other boundary feature, for example, part of a watercourse, that has been included in the RLR parcel area stays within an acceptable threshold. Where the width of that part of a boundary feature included in the RLR total parcel area is larger than the 3 metres threshold, you should deduct that whole width as an ineligible area.

For the Aid for Energy Crops and Protein Crop Premium schemes

- C36. For the total RLR parcel area to be used to support your application, the whole parcel must be fully used. A parcel is regarded as fully used as long as any uncropped area around the field margin is not wider than 3 metres, where the width is measured from the centre of the recognised boundary (such as the fence or the midpoint of a hedge or ditch). You can use the whole field area to support your application even if the margin is greater than 3 metres provided that:
- these features are characteristic of the landscape; or
 - form part of good agricultural cropping and utilisation practice.

C37. The above paragraph should be interpreted in the following way:

Where a boundary lies at the centre of a hedge/ditch, the area of that hedge/ditch or area of a hedge/ditch combination can be used to support your application provided the width of these features from the boundary point and extending into the field concerned is not larger than 3 metres measured from the boundary point (this does not mean that the full 3 metres is automatically allowed; it is the actual area up to 3 metres that is allowed).

However, wider widths are allowed if such wide features are characteristic of the landscape or form part of good agricultural cropping or utilisation practice. This means that, for example, you do not need to deduct turning areas for machinery at field edges. Similarly, you do not need to deduct 2 metres cross compliance buffer protection zones. If such a buffer forms part of an excessively wide width which does require deduction, for example a 5 metres wide area, you should deduct 3 metres rather than 5 metres (but you should make no such adjustment for small fields where there is no requirement to have a buffer).

Areas of bare soil, grass banks and grass strips (unless they comprise machinery tramlines/turning circles) are not eligible for payment and you should deduct them. Where these areas are at the field edge, you should include them in the field margin calculation to determine if the field margin is greater than the 3 metres allowed. This may therefore mean that, for a parcel used to support applications under both SPS and the Protein Crop Premium or Aid for Energy Crops schemes, the area eligible for each scheme may be different. (Read paragraph C61 about the ineligibility of grass/bare footpaths/tracks/bridleways for land used in applications for the other schemes.)

Land which is not eligible for SPS

C38. The following land is not eligible for SPS:

- land being used for peat production;
- forest (woodland and trees, including most Christmas trees (except nurseries)), except for short rotation coppice C14, some grazed woodlands C25 – C30, and land under some forestry schemes C24;
- land being used for non agricultural purposes; and
- non agricultural features.

C39. If this land is put to a different use in future it may become eligible for the scheme and could then be used to activate an entitlement for payment.

C40. You must declare ineligible agricultural land on your SP5, even though you cannot use it to activate entitlements. Read paragraphs N5 and N6 for the penalties that apply if you fail to declare all of your land.

Woodland and trees within land parcels

C41. Woodland is not, generally, eligible for SPS. However, that does not automatically mean all parcels containing trees are ineligible or even all areas of woodland within parcels are ineligible. You can use short rotation coppice as part of an application for SPS. A parcel containing trees is considered as an agricultural parcel provided agricultural activities can be carried out in a similar way as on parcels without trees in the same area. Areas of trees with a density of more than 50 trees per hectare inside an agricultural parcel, particularly trees with a potential use only for wood production, should, as a general rule be considered as ineligible areas. (Read paragraphs C25 – C30.)

- C42. To decide what deductions you need to make for the area taken up by trees in a parcel, you should apply the following rules:

Arable fields:

- For small numbers of trees dotted around a parcel, you only have to make a deduction from the parcel area if the area taken up by the tree trunks (together with any other ineligible area/features in the parcel) totals (without rounding) 0.01 ha or more.
- For clumps of trees (and any more extensive areas of woodland) in the parcel, you must deduct the area of the clump from the parcel area if the area of the clump (together with any other ineligible area/features in the parcel) totals (without rounding) 0.01 ha or more.

Other fields:

- For small numbers of trees dotted around a parcel, you only need to make a deduction from the parcel area if the area taken up by the tree trunks (together with any other ineligible area/features in the parcel) totals (without rounding) 0.01 ha or more.
- For clumps of trees in the field (up to and including a density of 50 trees/ha), you should only deduct the area of the clump from the parcel area if the area of the clump (together with any other ineligible area/features in the parcel) rounds up to a total of 0.01 ha or more and you do not use the clump for grazing. You must still make a deduction from the parcel area for the tree trunks area if the area taken up by the tree trunks totals (without rounding) 0.01 ha or more.
- For more extensive areas of woodland in the parcel (more than 50 trees/ha), you must deduct the area of the woodland from the parcel area – unless you use it for grazing and it meets the conditions described in paragraph C25. However, you must still make a deduction from the parcel area for the area taken up by the tree trunks if the area taken up by the tree trunks totals (without rounding) 0.01 ha or more.

Woodland schemes where land has to be taken out of agricultural production

- C43. The following schemes are not eligible for payment for SPS as grazed woodland:

- Woodland used to support an application under the Farm Woodland Scheme (FWS)
- Woodland used to support an application under the FWPS
- New planting under the Woodland Grant Scheme (WGS)
- Woodland Creation Grant and Farm Woodland Payment under the EWGS

- C44. This is because in order to receive payment under these woodland schemes, the land must have been taken out of agricultural production. This rule also applies to open space areas under the listed FC Schemes. If you include land under these schemes as grazed woodland in your SPS application, reductions may be applied. However, there are some circumstances under which land in these schemes is eligible under SPS (read paragraph C24).

- C45. Although you cannot use the majority of woodland to support your application for SPS (read paragraphs C25 – C30 for exceptions relating to grazed woodland), it is a requirement of SPS that you declare – but do not activate – all woodland on your SP5 for cross compliance purposes.

- C46. This includes land under FC schemes (FWPS/FWS/WGS/EWGS) which is also generally ineligible for SPS. EU regulations require us to cross check all land in the FC schemes against both SPS and the RLR, you must make sure that all land under FC schemes is correctly recorded on the RLR and declared on your SP5. If you don't do this it may lead to errors in cross checking and result in penalties on your SPS or FC scheme applications. You should use Forestry code FR3 for land under a FC scheme (FWPS/FWS/EWGS) which is not eligible for SPS on your application.

You should use Forestry code FR3 for land under a FC scheme (FWPS/FWSWGS/EWGS) which is not eligible for SPS on your application. Forestry code FR1 should be used for woodland which is not under a FC scheme and which is not eligible for SPS.

Pipelines and other utility works

C47. If you are unable to farm part of your land because a body with statutory powers of entry, such as a utility company carries out work on your land it may be difficult for you to meet SPS eligibility conditions. If you do not meet the eligibility conditions you should exclude the areas from your SP5. You should seek a compensation payment from the utility company or statutory agency concerned to cover the loss of aid on the land or to enable you to acquire alternative land. If you have already included the land in your application for payment, you must write to us requesting that the areas concerned should not be used to activate entitlements for SPS payment and/or be used to support your payment for Protein Crops Premium, Area Payments for Nuts, Aid for Energy Crops or HFA. If you do not do this you may face penalties. You should refer any other change of circumstances affecting eligibility to us in writing. These cases will be considered on an individual basis. Where work carried out on your land under statutory authority results in breaches of cross compliance standards, your SPS payment will not be reduced. Only breaches resulting from actions outside the statutory undertakers powers which you have consented to will lead to penalties.

Non agricultural use

C48. The eligibility of land which is used for non agricultural activities depends on the type of activity it is used for. Non agricultural activities are divided into three categories:

- category A – activities permitted without restriction;
- category B – activities permitted up to a 28-day limit; and
- category C – activities inconsistent with the land being considered as remaining in agricultural use.

C49. The following lists are for guidance only, and are not exhaustive.

Category A – activities permitted without restriction

Activities which are permitted without restriction include:

- walking;
- birdwatching;
- school or university nature or farm visits;
- horse riding along bridleways (in this context, bridleway, means any unsurfaced highway or route on which riding is allowed or for which a right of way on horseback exists. This may include statutory bridleways as well as other routes such as byways, permissive routes or field edges avoiding busy roads);
- bicycle riding along defined paths or bridleways;
- fishing;
- hedge laying competitions, local ploughing competitions or other cultivation demonstrations within the applicable GAEC rules (this excludes events where trade stands are present, which fall under category B);
- shooting (game);
- deerstalking;
- drag hunting; and
- paragliding and hang-gliding.

Category B – restricted activities – 28-day limit

Activities in this category are permitted up to a 28-day limit and include:

- shooting (clay);
- car boot sales;
- car parking (whether or not it is associated with any of the activities listed);
- country fairs and shows;
- farm auctions and sales;
- equestrian activities (except those described under category A);
- ballooning;
- festivals and events;
- scout or guide camps, or similar;
- TV and film locations;
- caravan sites (for periods of more than 28 days, the affected area should not be used to support an application. This need not affect a whole field);
- motor sports; and
- use of grass airstrips.

Category C – activities inconsistent with land being considered as remaining in agricultural use

This category includes situations where the main purpose of the land is for recreational or other non agricultural use, for example a golf course, any other permanent sports facility, gallop or airstrip. Game rearing is also viewed as primarily a non agricultural activity; areas taken up by pens used for game rearing are not eligible. However, if the pens do not remain in the same place for more than 28 days, the areas are eligible.

How the restrictions apply

- C50. The restrictions apply throughout the calendar year. In addition, cross compliance conditions (including GAEC and Statutory Management Requirements (SMRs)) will apply to the agricultural area for the whole calendar year. Rules on deducting ineligible features also apply (read paragraphs C55 and C56).
- C51. The limits apply to the number of days on which non agricultural usage takes place, not a number of 24 hour periods to be divided over a larger number of days. You should also take account of the number of days the land is reserved or is being prepared for the activity, not just the number of days on which the activity actually takes place.
- C52. If the limits are exceeded, the affected area (rather than the whole holding or whole field) will be regarded as ineligible. Special consideration will be given on a case by case basis where the 28-day limit has been exceeded due to force majeure.
- C53. This guidance is for SPS purposes only. If you have an agri-environment agreement you will need to check with Natural England to establish which activities are allowed on the land covered by your agreement. Other legal restrictions, for example planning restrictions, may also apply.

Land used for military training

- C54. Eligible land used by the Ministry of Defence for military training can be used to support an SPS application. Cross compliance conditions will, however, still apply.

Guidance on deducting ineligible areas

Areas of non agricultural features

C55. This ineligible category includes:

- buildings, sheds, hard standing, permanent ponds, fenced off pylons, metalled or surfaced paths;
- tracks/bridleways, and remnants of old field boundaries (for example hedges and ditches) if they cannot reasonably be used for grazing;
- areas taken up by dwellings where the primary purpose is non agricultural, for example pens for game rearing, (unless the pen is in place for no more than 28 days, read paragraph C49). Areas taken up by dwellings where the main purpose is agricultural, for example, duck housing, do not need to be deducted provided that the cross compliance conditions can be maintained on that area;
- areas used for car parking (even if the car parking is used for an agricultural activity such as a 'Pick Your Own' orchard);
- eligible crops grown in pots, containers or beds are only eligible where the land on which they are positioned is eligible agricultural land, for example, soil, matting on top of soil, sand beds on soil. Where they are situated on concrete or other hard standing (or on tables above such surfaces) then they are not considered eligible. This also applies to crops grown in polytunnels and greenhouses;
- areas taken up by manure unless the manure is to be spread on the field in which it is stored and will be spread according to the annual cultivation cycle. Therefore, areas taken up by larger amounts of manure, or which are stored beyond the normal time for spreading, are not eligible;
- areas taken up by bales of straw, silage or hay, unless they are stored in the field in which they were harvested or in the field in which they will be used. If these conditions are not met, they are not eligible; and
- some areas of woodland bracken and scrub cover (these are sometimes eligible but read paragraphs C57 – C60).

C56. This list is not complete, but gives an indication of the type of areas that must be deducted. If you have already had these areas deducted from the field area on your RLR map, you should not deduct them again. This will be shown by the areas being mapped out in a thick pink boundary line that is, the same as the rest of the field boundary. Please note that buildings within the field marked in a thin red line have not been excluded from the RLR field area and so it is your responsibility to deduct them.

Scrub

C57. Any distinct area within a parcel (which may even amount to the entire parcel area) which clearly can be grazed (that is, the scrub is not too dense) is eligible for SPS, while any distinct area which clearly cannot be grazed (that is, the scrub is too dense) should be excluded, even if such areas are adjoined. You must deduct areas within the parcel where the scrub is taller and/or denser and where animals cannot graze.

C58. For any individual areas of scrub within a parcel where it is difficult to separately identify and hence separately calculate the areas that can be grazed and cannot be grazed, for example, because the density of the scrub is such that in some parts of that individual area, animals can graze but in other parts of that individual area they cannot, the '50% test' should be applied to the specific area concerned within the parcel, that is, you should assess whether 50% of the specific area concerned can be grazed. If it is, then the full area of the specific area of scrub concerned is eligible for SPS. If it is not, then you must exclude the full area of the specific area of scrub concerned. You must follow this approach for each individual area of scrub within the parcel where it is difficult to separately identify and hence calculate the area that can be grazed and cannot be grazed. Where the entire parcel appears to be scrub and parts can be grazed but where it is difficult to separately identify and hence separately measure the areas that can and cannot be grazed, you should apply the 50% test to the whole parcel. (You should not view very dense areas of thistles as scrub. As such, they are eligible for SPS.)

C59. The following diagram illustrates the guidance set out above:

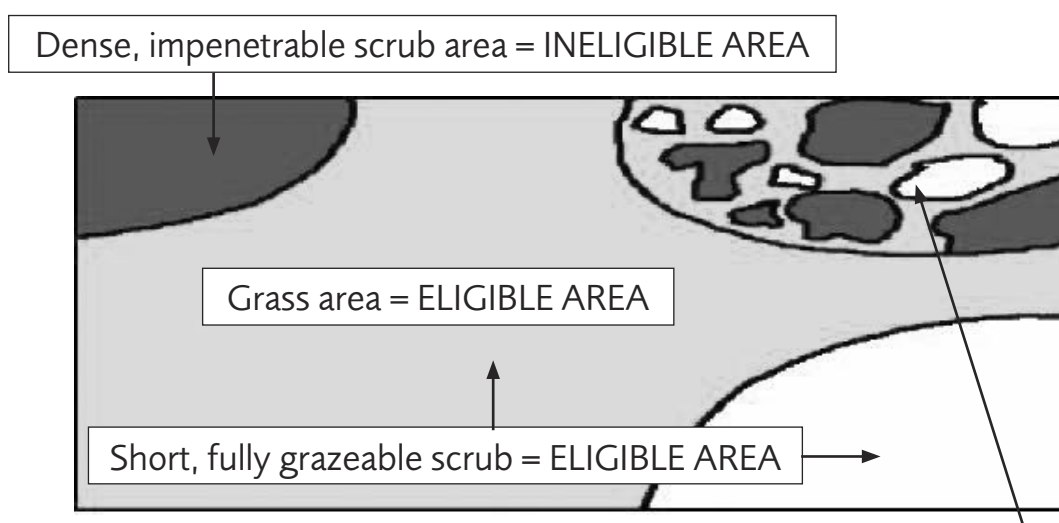


Figure 1

Dense, impenetrable scrub, mixed with scrub that can be grazed and/or grass =

Area fully ELIGIBLE, if scrub that can be grazed and/or grass area = 50% or more of the mixed area; or

Area fully INELIGIBLE, if dense, impenetrable scrub more than 50% of mixed area.

Bracken

C60. Scrub is generally grazed by livestock, bracken is not. It is poisonous to cattle and, if sheep do eat it, it tends to be only the very young growth in the spring and then only in the absence of other food. Scrub is essentially a permanent feature, the growth cycle of bracken means that it dies back each year. This can lead to a build up of dense litter. Where the area of bracken is being grazed or there is enough grass growth that it can be grazed, the area is eligible for SPS. Where the density of the bracken/bracken litter prevents the growth of viable forage, the area is not eligible for SPS.

Paths, tracks and bridleways

C61. As long as footpaths, tracks and bridleways are kept in GAEC they are eligible for SPS.

In relation to the Protein Crop Premium and Aid for Energy Crops, you should measure visible paths, tracks and bridleways which are not Public Rights of Way (PRoW) , and deduct the actual area from your application. If they are PRoWs, however, and they run across the field, the area to be deducted (even if covered by a crop) is:

- 1 metre multiplied by the length of a footpath; or
- 2 metres multiplied by the length of tracks and bridleways.

Where PRoWs run adjacent to a field boundary, the deduction is:

- 1.5 metres multiplied by the length of a footpath; or
- 3 metres multiplied by the length of tracks and bridleways.

D End of compulsory Set-aside

One of the major changes to SPS 2009 has been the removal of the requirement to Set-aside land.

From 1 January 2009 there is no longer a requirement to Set-aside land. The exception to this is where agri-environment scheme rules, such as Environmental Stewardship require you to do so.

You can still choose on a voluntary basis to leave land uncropped and may use this to support Normal entitlements. Agricultural land taken out of agricultural production will still be subject to cross compliance requirements, in particular GAEC 12.

E Land at your disposal

One of the SPS rules is that you must have land 'at your disposal' on 15 May 2009. This section explains what this means and what to do to make sure you meet this rule, especially if you are a landlord or tenant or share land with other people

- E1. Land used to activate an entitlement under SPS must be at your disposal on 15 May of the scheme year (this date is the same throughout the UK) and must be eligible for SPS for the entire scheme year.
- E2. These requirements only apply to land used to support an SPS application. They do not apply to land only used to support non-SPS schemes, such as the HFA.

Land 'at your disposal'

- E3. You will probably know which land is 'at your disposal' because you own and farm the land, have a tenancy under the Agricultural Holdings Act 1986 or a farm business tenancy under the Agricultural Tenancies Act 1995, and take full responsibility for managing the land.
- E4. The position may not be so clear where you and one or more other farmers carry out an agricultural activity on the same area of land. Considering the following factors will help you to establish whether or not the land is 'at your disposal'. This list is not complete, nor is it given in any particular order. It is to show the sorts of factors that you could take into account when establishing whether land is 'at your disposal':
 - whether one of you clearly does not have use of the land on 15 May;
 - who actually uses the land;
 - the predominant use of the land;
 - whether you actually carry out an agricultural activity, which includes keeping the land in Good Agricultural and Environmental Condition (GAEC);
 - who takes the profit from the land;
 - who takes the risks;
 - the terms of any agreement between you;
 - your legal rights, including the right to terminate and to carry out an agricultural activity on the land;
 - who has control over the use of the land and access to it, so as to make sure that it is put only to eligible uses; and
 - who has control over the use of the land and access to it, so as to make sure that it is maintained in accordance with cross compliance requirements including GAEC.

Examples

1. You are a landowner and use your own land farmed in hand to support your application. You farm the land yourself and, as there are no other farmers involved, you are able to apply for payments on eligible land provided you hold entitlements.
2. A farmer is operating with a farm tenancy covering a period which includes 15 May. The tenant's position is the same as that of the landowner farming in hand.

3. A landowner grants a grazing licence to a livestock farmer for a period including 15 May. Depending on the rights and obligations of both parties, an application could come either from the landowner or the licensee (grazier). For example, the landowner could apply, given that he/she has responsibility for looking after the quality of the land, fertilising and reseeding as required, and for maintaining key features such as hedges, gates and tracks. Alternatively, the grazier might apply on the basis that the agricultural activity is mainly under his/her control. Eligibility to apply for payment will depend on the contract or agreement between the landowner and the grazier, and how this works in practice on the land. Whoever makes the application is in most cases responsible for making sure that any cross compliance requirements are met (read paragraphs E8 – E12).

Sub-letting and contractual agreements

- E5. The terms of any sub-letting and contractual arrangements can have an important effect on your ability to make an application for payment. Existing agreements (even those that have been in place for years) may need to be changed to show the new situation. A written agreement is preferable, although oral agreements may be equally valid in law. If land is not in fact at your disposal, penalties may apply (read paragraphs N7 – N16).

Contract farming

- E6. A contract farming agreement does not usually convey rights to the land to the contractor. The contractor has access to the land to undertake his duties at the bidding of the farmer, and so simply acts as the agent of the farmer. In this case, only the farmer is eligible to apply for payment.

Resolving disputed claims to payment

- E7. You should resolve all issues concerning whether land is 'at your disposal' before making an application. If you do not, and it is later found that the land was not at your disposal, this will constitute an over declaration, and penalties will apply if applicable (read paragraphs N7 – N16).

Should two applications be made, no payment can be made and penalties will be applied to both applications until resolved.

Cross Compliance and Inspections

- E8. Although land used to activate entitlements need only be at an applicant's disposal on 15 May, cross compliance requirements will still need to be met for the whole calendar year.
- E9. It is the SPS applicant who is responsible for making sure that cross compliance requirements are met for the whole calendar year, and who would be liable for any breach of these requirements. This applies even if the applicant is not in occupation of the land for the entire year. For example, if the applicant were to take on some land after 1 January and use this land to activate SPS entitlements, they would be liable for any cross compliance breaches that occurred during any time during the calendar year, including, where relevant, any period between 1 January and the date they took on the land. Similarly, if an applicant used some land to support their application which they then transferred out after 15 May 2009, they would remain responsible for making sure that the cross compliance requirements relating to that land are met until the end of the calendar year.

- E10. Responsibility for ensuring compliance in relation to the identification and traceability of sheep, goats and pigs lies with the keeper, in this case the person with day to day responsibility for the animals. This applies regardless of who owns the animals and whose land they are grazing on. Responsibility for ensuring compliance in relation to the identification and traceability of cattle also lies with the keeper, in this case the person registered on the Cattle Tracing System (CTS). Responsibility for ensuring the welfare of all farmed animals lies with both the keeper (again, the person who has day to day responsibility for the animals) and the owner of the animals.
- E11. If you refuse to allow an inspection, intentionally obstruct an inspector or fail to give reasonable assistance, you may lose your payment (read section O). This condition will apply even if it is the new occupier of the land and not the applicant who refuses the inspector's access to the land.
- E12. Therefore, if you are transferring land (either in or out) during the year, you should carefully consider the terms of any contractual arrangements between you and the transferor or transferee. This is so you can make sure that your interests are protected if a cross compliance breach occurred, or access to inspectors was prevented, before or after the land transfer. Similarly, you should bear in mind the risks of not having contractual arrangements agreed and in place.

F Entitlement

You need to have entitlements to apply for SPS. There have been a lot of changes to entitlements since the start of SPS so this section explains about entitlements for SPS 2009.

- F1. Payment entitlements form the basis of payments within SPS. If you hold an entitlement you have the right to apply for a payment under the scheme (subject to certain conditions being met). If you wish to increase or reduce the number of entitlements you hold this can be done by transferring entitlements with other farmers. Information on the rules on the transfer of entitlements is included in section G.
- F2. There were previously four categories of entitlement, each of which were slightly different.

As from 2009 there are only two categories:

- Normal entitlements, which must be activated within a three year cycle, or they expire and return to the National Reserve; and
- Special entitlements, which need to meet the livestock requirement each year.

Former Set-aside and National Reserve entitlements will be converted to Normal entitlements for the following reasons:

- National Reserve entitlements - previously, you had to activate these entitlements for payment each year for five years. This rule has now been abolished. Instead, these entitlements will be subject to the usage rule that applies to Normal entitlements and will also be available for transfer using the transfer rules that apply to Normal entitlements.
- Set-aside entitlements - as compulsory Set-aside has now been abolished, these entitlements will also be converted to Normal entitlements.

Entitlement Usage rule

If you do not activate (claim on) an entitlement for three years it will be taken away from you and put into the National Reserve except in cases of force majeure or exceptional circumstances.

You can 'rotate' entitlements to make sure that they are used at least once in any three year period, but you can only use them in the area of England where they were established. So, if you have ninety entitlements but only thirty hectares of eligible land, you could have used thirty entitlements in 2007, a different thirty entitlements in 2008, and then the remaining thirty entitlements in 2009. This means you will have used all your entitlements at least once every three years. Read paragraph F5 for details for how to change the order of activation of your entitlements.

From the 2010 scheme year, the usage rule will change from once every three years to once every two years. However, entitlements activated in 2007 but not in 2008 or 2009 will not be lost to the National Reserve as long as they are activated in 2010. This means that in 2010 you will need to activate any entitlements that were last activated in 2007 or 2008 to avoid losing them to the National Reserve.

Activating entitlements

- F3. You will have received an Entitlements Statement showing the number of entitlements held at 15 May for the scheme year shown on the statement. These entitlements can be activated for payment each year you apply for SPS. With the exception of Special Entitlements (read paragraph F10), before you can activate all your entitlements, you must have at least an equal number of eligible hectares at your disposal included within your application.
- F4. If you have fewer eligible hectares than entitlements, RPA will activate for you the number of entitlements for which you have eligible hectares. Entitlement activation will default to the following order:
- Normal entitlements, with the highest value entitlement being used first; and
 - Special entitlements; only whole entitlements are activated in ascending order of value (a requirement of EU Regulations).
- F5. RPA will not activate entitlements in accordance with 'use by dates'. **If you do not want your entitlements activated in the order detailed above you MUST contact the RPA CSC to ask for an Entitlements Declaration Form (SP11)**. This will allow you to tell RPA in which order you want your entitlements to be activated. The example below may help you to understand how the activation order works.

Example

You hold 25 entitlements on 15 May 2009 as follows:

Block (1) 10 Normal entitlements worth €200 with an expiry year of 2010

Block (2) 15 Normal entitlements worth €141.93 with an expiry year of 2009

Option 1 – Default activation

You only have 23ha of land available to you in 2009. Therefore, we would activate:

- 10 Normal entitlements from Block (1) as they have the highest value, then
- 13 Normal entitlements from Block (2).

You will then have two entitlements remaining in Block (2) which have a 'use by date' of 2009.

To avoid losing the remaining two entitlements you should ask for an SP11 to tell RPA to activate in a different order to minimise any loss. (Read Option 2.)

Option 2 – Completion of the SP11

You could ask for the activation of entitlements in the following order

- 15 Normal entitlements in Block (2) as these have a use by year of 2009, even though these are worth less than the entitlements in Block (2), then
- 8 Normal entitlements in Block (1).

The remaining two entitlements in Block (1) can be activated the following year. This rotation will avoid any loss of the number of entitlements you hold.

Value of Entitlements

- F6. Initially, the value of entitlements varied from farmer to farmer depending on the region in which they were farming and differences in their historic reference amounts. The basic value of an entitlement is made up of a flat rate and some farmers will have an element of additional historic reference amount. The flat rate element of the entitlement increases each scheme year, and where it applies, any historic element reduces. By 2012 a single value will be established for all entitlements in each of the three English areas.
- F7. The flat rate is based on a percentage of the total amount available to pay SPS applicants in each of the English areas. Paragraph M7 shows the percentage for 2009 and later scheme years. The value of every entitlement in the same English area will be based on this flat rate.
- F8. Additional income support arising from the reforms of the EU Sugar Regime was incorporated into SPS from the 2006 scheme year. Eligible farmers received an additional Sugar Reference Amount based on their contracted sugar tonnage in the 2005/2006 marketing year. This Sugar Reference Amount is used in the calculation of the historic element of eligible entitlements.

If you have entitlements with a Sugar Reference Amount, read paragraph M8 to see how the value of these entitlements will be adjusted each year.

Entitlements subject to special conditions

Qualification for payment

- F9. To qualify for payments on special entitlements you need to meet certain conditions relating to the number of livestock that you maintain in your herd on your holding in the year of your application.

Activating special entitlements for payment

- F10. To activate your special entitlements for payment in 2009, you must maintain at least 50% of the level of agricultural activity (expressed in Livestock Units (LUs)) you had during the reference period.

Checks on livestock levels

- F11. Checks will be made to make sure that livestock levels are sufficiently maintained. This will include inspection of livestock records and checking available livestock movement databases for example, (Cattle Tracing System). We will check the number of LUs you have maintained on 31 October each year.

Transfers of special entitlements

- F12. You can generally transfer Special entitlements in the same way as Normal entitlements but will lose their Special status on transfer and become Normal entitlements, unless all are transferred or transferred through inheritance.

Conversion of Special entitlements into Normal entitlements

- F13. There are three sets of circumstances in which special entitlements will be converted into Normal entitlements:
- If you do not confirm (at E1 on the SP5) that you want your entitlements to keep their special status.
 - If, when completing your field data sheet, you declare more eligible land for the activation of entitlements than is needed to activate your Normal entitlements, the surplus will be used to activate the corresponding number of Special entitlements for payment. These entitlements will be converted into Normal entitlements.
 - If you transfer out Special entitlements without transferring all of them to a single purchaser, in one transaction.
- F14. In all cases the conversion of Special entitlements into Normal entitlements is permanent.

Entitlement corrections

- F15. New EU rules will mean that from 1 January 2010, there will be fewer circumstances under which we will make amendments to entitlement allocations. We do not yet have full details of this EU change.
- F16. In the meantime, we will continue to investigate any queries which are raised about the number or value of entitlements shown on your Entitlements Statement or SP5.

G Transfer of entitlements

You can transfer entitlements between different SPS applicants but there are rules about how and when this should happen. This section explains what you need to know if you want to transfer any entitlements before you apply for SPS 2009.

Introduction

G1. You can only transfer entitlements to a farmer. However, the person transferring out the entitlements does not need to be a farmer at the date of transfer. You can own or lease entitlements anywhere in the UK, but you can only use an entitlement to support an application for a payment in the region or area in which it was established. Transfers between farmers established in different Member States can only take place through inheritance, and the entitlements concerned may only be used in the originating Member State.

Notification of transfers

G2. You can transfer entitlements at any time during the year. You must notify RPA by submitting an RLE 1 at least six weeks before you want the transfer to take place. Provided RPA approves the transfer, it will take place on the date you have given on the form or 6 weeks from the date of receipt if either you have not given an effective date of transfer, or a date less than 6 weeks. The deadline for submitting an entitlement transfer to enable the transferee to use it as part of their application for payment on the transferred entitlements in that scheme year, is 2 April. For example, 2 April 2009 is the latest date for an entitlement transfer for the 2009 scheme year. Entitlement transfer applications received after 2 April will be allocated to the following scheme year.

Transferring entitlements

G3. Entitlements can be transferred:

- by sale or gift with land;
- by sale or gift without land;
- by lease with land; or
- through inheritance, merger or scission.

Surrender of entitlements

G4. If you want to surrender entitlements, you must complete an RLE 1.

New land parcels/boundary changes

G5. You must complete an RLE 1 and send RPA a copy of an OS map or a copy of your RLR map, amended to clearly show the changes that have been made. If the changes to your land are complex, you should also consider whether you can supply additional information, for example, copies of site plans, compulsory purchase orders which might help in processing your application. You should request a field number, or notify RPA of a change to the area of a field as soon as a change to the field boundary takes place. (Read paragraph C3.)

Supporting documentation

- G6. You will need to supply supporting documentation to RPA where you are registering a new land parcel, or where you are changing the boundary of an existing land parcel. You will also need to supply supporting documentation where you are transferring entitlements by inheritance. You do not need to submit copies of tenancy agreements, sales contracts, or other similar types of documents, with your RLE 1.

Withdrawal or amendment of an RLE 1

- G7. You can withdraw or amend your request to transfer land and/or entitlements up until the day before the transfer is due to take place, by writing to the RPA CSC. If your request is not received until after the transfer has taken place, RPA will not be able to undo the transfer.

Recovery of incorrectly allocated entitlements

- G8. You will be obliged to surrender entitlements that you have been given, bought or leased if, for example:
- the entitlements concerned should not have been allocated at all, and the transferring farmer has not kept enough entitlements that can be recovered from them; or
 - a previous owner of the entitlements has not complied with the requirement that they be used at least once in every three years (or every year before 2009 in the case of entitlements allocated from the National Reserve).
- G9. Similarly, the value of any entitlements you have bought or leased may be reduced if their value was originally set too high.
- G10. In all of the above cases, the farmer receiving the entitlements will also be required to pay back any undue payments received while the entitlements were in their possession. A farmer contemplating buying or leasing entitlements may wish to take professional advice as to how best they can protect their position in this type of situation.

Confirmation

- G11. RPA will notify both the transferor and the transferee by letter or entitlements statement if the application is successful. Only the transferor will be notified if the application is rejected.
- G12. For land changes, RPA will send you your updated RLR maps for each change.

More Information

- G13. For more details about transfers including additional conditions and restrictions and guidance on how to complete the form, you should read the RLE 1 guidance which is available from the RPA website (www.rpa.gov.uk) or from the RPA CSC. There is also a set of frequently asked questions and answers (FAQ) on the RPA website relating to entitlement transfers.

How to obtain an RLE 1

- G14. You can ask for an RLE 1 preprinted with your details from the RPA CSC. You will need a separate RLE 1 for each entitlements transfer or land change. Photocopies and faxes of RLE 1s will not be accepted.

H Aid for Energy Crops

This section explains what you need to know if you want to apply for a payment on crops grown for the production of energy such as transport fuel, heat or electricity.

- H1. This aid is paid on crops grown for the production of energy (heat, electricity or transport fuels). You must apply for this aid by completing columns C7 and C12 on the 2009 SP5, but you do not have to be applying under the SPS to qualify for the aid.
- H2. The applicant must submit this contract with the SPS application form. Similarly, we require only one delivery declaration, signed by both the applicant and the processor/collector. Either party can submit this. The delivery declarations will be sent to all applicants declaring land use codes EC1 – 8 on their application forms.
- H3. You should not confuse this aid with the grants available under the RDPE Energy Crops Scheme to establish certain perennial crops to be used in heat, combined heat and power or electricity production. You can apply for the RPDE grants in addition to Aid for Energy Crops where the eligibility requirements for both are met. For further information visit the Natural England website (www.naturalengland.org.uk).

Land eligibility

- H4. Any land is eligible for growing crops under the Aid for Energy Crop Scheme. You should deduct any uncropped areas from the total field size. If you are applying for SPS please note that this area may be less than the SPS eligible field size.

Off-farm processing

- H5. For crops which are to be processed off-farm, any agricultural raw material which is intended to be primarily used for the production of energy is eligible. Sugar beet may be grown for off-farm processing provided that any intermediate product is used in the production of energy products and that any co-product or by-product containing sugar is used in accordance with Council Regulation (EC) No 318/2006. For information on crops which can be used for on-farm processing read paragraph H21.

The economic value of the energy products obtained by processing raw materials must be higher than the total value of all other products intended for other uses and produced from the same processing operation. However, soya beans are eligible for the Aid for Energy Crops provided that any intermediate product apart from soya bean meal is used in the production of energy products.

Eligible energy use

- H6. The crops that you may grow to support an application are those grown for the production of the following energy products:
- 'Bioethanol': ethanol produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel.
 - 'Biodiesel': a methyl-ester produced from vegetable or animal oil, of diesel quality, to be used as biofuel.
 - 'Biogas': a fuel gas produced from biomass and/or from the biodegradable fraction of waste that can be purified to natural gas quality, to be used as biofuel or woodgas.
 - 'Biomethanol': methanol produced from biomass, to be used as biofuel.
 - 'Biodimethylether': dimethylether produced from biomass, to be used as biofuel.
 - 'Bio-ETBE (ethyl-tertio-butyl-ether)': ETBE produced on the basis of bioethanol. The percentage by volume of the bio-ETBE that is calculated as biofuel is 47%.
 - 'Bio-MTBE (methyl-tertio-butyl-ether)': a fuel produced on the basis of biomethanol. The percentage by volume of bio-MTBE that is calculated as biofuel is 36%.
 - 'Synthetic biofuels': synthetic hydrocarbons or mixtures of synthetic hydrocarbons which have been produced from biomass.
 - 'Biohydrogen': hydrogen produced from biomass, and/or from the biodegradable fraction of waste, to be used as biofuel.
 - 'Pure vegetable oil': oil produced from oil plants through processing, extraction or comparable procedures, crude or refined but chemically unmodified, when compatible with the type of engines involved and the corresponding emission requirements.
 - Electric or thermal energy produced from biomass.

Contracts

- H7. You must have a separate contract with a collector/first processor for each raw material. The originals of these contracts must be dated, signed by both parties and submitted with your application. For biennial, multiannual or permanent crops (where harvesting does not take place each year), a new contract will not be required each year. A contract will need to be in place from the first year of harvest until the associated crop is processed.
- H8. The contract(s) must show:
- the full names and addresses of the parties to the contract, including the grower's SBI and main holding number, and a space for RPA reference number;
 - the duration of the contract and the dates of sowing or planting, harvesting, delivery of raw material from the holding and final processing;
 - the species of crop used to provide the raw material concerned, and the area planted with each species in hectares (to two decimal places);
 - any conditions applicable to the delivery of the forecasted quantities of raw materials; and
 - an undertaking from the farmer to deliver to a collector or first processor and an undertaking from the first processor or collector ensuring that the raw materials harvested will be processed into an Energy end use.
- H9. Contracts must be received by RPA, along with the rest of your Aid for Energy Crops (and where applicable SPS) application, by 15 May deadline. If you do not submit the copy of your contract within this deadline it will result in your Energy payment being reduced or even disallowed in full. Additionally your main SPS payment may be at risk.

- H10. However, contracting parties may amend or terminate a contract after this date (or after submission if this was before 15 May) provided that the applicant informs RPA of the amendment or termination no later than 31 May. The original of the amended contract must be dated, signed by both parties and submitted with your notification. If you fail to notify RPA of such an amendment by this deadline, your Energy payment, and your SPS payment is at risk.

Quantities to be delivered

- H11. For each contract, you will be sent an *Delivery Notification* (ENC 9) form. You must use this form to declare to RPA the total quantity of raw materials harvested (by species). The form will need to be signed by both the grower and the collector/first processor and can be submitted by either party. This replaces the requirement that existed in previous years for two separate forms, from the applicant and collector/first processor.
- H12. The quantities actually delivered must at least correspond to the representative yield. Each year RPA sets the representative yield for each crop grown as a tonnage per hectare. In justified cases, RPA may accept a quantity up to 10% below the representative yield without the loss of aid applied for. Representative yield figures for energy crops will be issued later in the year.
- H13. If, in exceptional circumstances, you are unable to supply all or part of the contracted raw material, RPA may authorise the amendment or termination of the contract through the completion of an *Request for cancellation or amendment of a contract* (ENC7) form, provided there is enough evidence to justify this. Where the contract is terminated, the Aid for Energy Crops will not be paid. Where the amendment to the contract reduces the land covered by a contract, the Aid for Energy Crops will not be paid for the areas withdrawn from the contract.
- H14. Where amendment or termination of contracts has been authorised, RPA may reduce the total quantities that you are required to deliver, if it seems justified.

Payment

- H15. The payment is subject to a ceiling of 2 million hectares across the EU. If this ceiling is exceeded, the area of land for each farmer on which the €45/ha payment is made will be scaled back. The payment is also subject to modulation.
- H16. The payment can be made once the raw material has been delivered to a collector/first processor and:
- the declaration of total quantity of raw materials has been made;
 - the applicant has submitted a copy of the contract to RPA, and that it meets the requirements in paragraphs H7 – H10; and
 - the competent authority has received proof that the full security required from the collector/first processor has been lodged or where applicable they have been given approval status within their own Member State.
- H17. For biennial crops, you can apply for payment in each of the two years of cultivation, provided that:
- the raw material is delivered and the declaration made on an ENC 9 in the year in which the crop is harvested;
 - the full security is lodged in the year of harvest; and
 - the contract submitted meets all the requirements set out in paragraphs H7 – H10.

- H18. For permanent and multiannual crops, payment can be applied for in each year of cultivation, so long as:
- the raw material is delivered and the declaration made on form ENC 9 in the year in which the crop is harvested;
 - the full security is lodged in the first year of harvest; and
 - the contract submitted meets all the requirements set out in paragraphs H7 – H10.
- H19. If you do not deliver the requisite quantity of the raw material and you have not obtained permission to amend your contract, Aid for Energy Crops payments will be reduced in accordance with the penalty provisions set out in paragraph N17.

On-farm energy use

- H20. Before 2008, you could grow certain crops for 'on-farm processing' into specified end uses without the need for a contract. Since 2008, if these crops are processed 'on-farm' they also have to be used on the same holding. You are not able to process crops 'on-farm' for use elsewhere.

Crops for on-farm energy use

- H21. You can use short rotation coppice and all cereals or oilseeds that are covered by the following CN codes and grown on your land as fuel for heating your agricultural holding, or for the production on your holding of power or biofuels:
- Ex 0602 90 41;
 - 1201 00 90;
 - 1205 10 90;
 - 1205 90 00;
 - 1206 00 91; and
 - 1206 00 99
- H22. Crops grown on your land may be processed into biogas falling within CN code 2711 29 00.

Declaration

- H23. If you are applying for Aid for Energy Crops and are growing crops to process on farm for use on the holding, you must provide a declaration (in place of a contract) that you will use or directly process the raw material covered by your declaration. For biennial, multiannual or permanent crops (where harvesting does not take place each year), a new declaration will not be required each year; unless any previously submitted 'on farm' declarations do not provide the information requested below. You will need to make a declaration to cover the period from the first year of harvest until the associated crop is processed.
- H24. You must submit the declaration with your application and should contain the following information:
- The species of crop used to provide the raw material concerned, and the area planted with each species in hectares (to two decimal places).
 - The intended primary end uses for the raw material.
 - The year first harvest is expected.
 - The technical description of the processing method to be used.
 - An undertaking by the applicant to use or process directly the raw material covered by the declaration and by 31 July in the second year following harvest.

- H25. RPA must receive declarations – along with the rest of your Aid for Energy Crops and SP5 by 15 May deadline.
- H26. You may amend or terminate a declaration after this date (or after submission if this was before 15 May), provided that you inform RPA of the amendment or termination no later than 31 May. The original of the amended declaration must be dated, signed and submitted with your notification. **If you fail to notify RPA of such an amendment by this deadline, your Aid for Energy Crops and SPS payment may be reduced.**

Quantities of raw materials to be used on the holding

- H27. Applicants will be required to inform RPA using ENC 9 of the quantities of raw material that they have harvested for on farm energy use and the date the crop was harvested. The quantities to be delivered must at least correspond with the representative yields which will be set by RPA. In justified cases, RPA may accept a quantity up to 10% below the representative yield without the loss of payment. Representative yield figures will be issued later in the year.

Measurement, accounts and records

- H28. You must have all the raw material harvested weighed by an operator of a weighbridge who holds a certificate issued under the Weights and Measures Act 1985. In the case of cereals and oilseeds, where either the entire plant or the straw is used, weighing may be replaced by volumetric measurement of the raw material.
- H29. For on-farm energy use you do not have to use a weighbridge provided that you have accurate records to support the information entered on your ENC 9 (read paragraph H27). You must also keep records to allow RPA to track the processing of the product into an acceptable end use. You must keep separate accounts for the raw material used and the products and by-products resulting from its processing.

Controls

- H30. Inspections will be carried out to make sure that the raw material is used or processed on the holding in accordance with the regulations.
- H31. If you are interested in processing crops on farm as part of the Aid for Energy Crop Scheme, contact RPA for further information.

Protein Crop Premium

This section explains what you need to know if you want to apply for a payment on a protein crop of peas, field beans or sweet lupins.

11. Protein Crop Premium is a separate scheme to SPS. You must apply for the premium by completing columns C7 and C12 on the 2009 SP5, but you do not have to be applying under the SPS to qualify for the Premium.

Eligibility

12. You may use any land to apply for the premium but all crops must be sown in line with local standards. This means that the land must be prepared and the seed sown in a manner and at a seed rate that could be expected to produce a normal marketable crop. You should note that the area of a field on which you can apply for Premium may differ to the area you can use to support your SPS application (read paragraph C9).
13. Crops may not be harvested until they reach lactic ripeness. In the UK it is acceptable for proteins to be harvested at a maximum moisture content of 30% (that is, harvested dry) in order to meet this requirement.
14. Where protein crops are sown in a mixture with cereals, you must be able to prove that the protein crops are the main crops in the mixture in order to receive the Premium. As evidence of the mix, you should retain seed labels, seed invoices and sowing records. In the event of an inspection, we may ask to see this evidence in addition to making a physical assessment of the crop.
15. Protein crops are defined as:
 - peas falling within CN code 0713.10;
 - field beans falling within CN code 0713.50; and
 - sweet lupins falling within CN code ex 1209 29 50.

Payment

16. The Premium will be paid at €55.57 per hectare.
17. There is an EU Maximum Guaranteed Area (MGA) of 1.648 million hectares which, if exceeded, will lead to payments being reduced.

J Area Payment for Nuts

This section explains what you need to know if you grow nuts and want to make an application for payment on them in 2009.

J1. The Area Payment for Nuts is separate to SPS and you may apply for it using any orchard growing nuts that satisfy the criteria below. You must apply for the payment by completing columns C7 and C12 on the 2009 SP5. The area of land you use to support your application for Area Payment for Nuts can also be used to support your application for SPS.

Eligibility

J2. Eligible nuts are:

- almonds falling within CN codes 0802 11 and 0802 12;
- hazelnuts or filberts falling within CN codes 0802 21 and 0802 22;
- walnuts falling within CN codes 0802 31 and 0802 32;
- pistachios falling within CN code 0802 50; and
- locust beans falling within CN code 1212 10 10.

J3. Orchards must be a minimum plot size of 0.1 hectares and a minimum tree density (per hectare) applies as follows:

- 125 for hazelnuts;
- 50 for almonds;
- 50 for walnuts;
- 50 for pistachios; and
- 30 for locust beans.

J4. An orchard is defined as 'an unvarying and geographically continuous area which is not divided by other crops or plantations'. Isolated nut trees or a single row of nut trees planted alongside roads or other crops are not considered to be an orchard. Other trees – including chestnuts – present within an orchard will not necessarily prohibit an application for payment, provided they do not exceed 10% of the density required.

Payment

J5. The average payment will be €120.75 per hectare unless the payment ceiling (based on a National Guaranteed Area of 100 hectares for the UK) is exceeded, in which case payments will be reduced.

K Hill Farm Allowance 2010 incorporating the new uplands support strand of the ELS

A new uplands strand to the entry level Environmental Stewardship scheme (Uplands ELS) will replace the HFA in 2010. To avoid a long gap between the final HFA payment and the first payment under Uplands ELS the HFA has been extended for a further year into 2010.

Future Uplands Support

- K1. A new uplands strand to the entry level Environmental Stewardship scheme (Uplands ELS) will replace the HFA in 2010. To avoid a long gap between the final HFA payment and the first payment under Uplands ELS the HFA has been extended for a further year into 2010. Full details will be set out in the *Hill Farm Allowance explanatory booklet 2010*, which will be available from early 2009. Eligibility conditions will be the same as for HFA 2009.
- K2. Uplands ELS agreements are scheduled to start from 1 July 2010. Application packs will be available from Natural England in early 2010 to provide farmers with enough time to understand and apply for Uplands ELS.
- K3. A transitional payment will be available from 2011 for farmers with eligible SDA land still in ESAs or Countryside Stewardship schemes, providing they successfully applied for the HFA in 2010. This is because this land is generally ineligible for Uplands ELS (due to double funding rules). Other eligibility rules will apply, and the payment will be linked to the land area successfully applied for under HFA 2010. Further details will be provided next year. The uplands transitional payment will be broadly similar to the HFA and will be payable on the eligible SDA forage land on your application relating to that holding. The transitional payment will only be paid on commons when the common itself is still in an ESA or Countryside Stewardship agreement from 2011.

- K4. **If you think you may be eligible for the Uplands Transitional Payment, you must apply for HFA 2010. If you do not apply for HFA 2010 you will not be eligible for the Uplands Transitional Payment at any time in the future. The application for this payment will be made on the SPS 2010 application form.**

Details of Uplands ELS will be made available by Defra and Natural England in 2009. More information about Uplands ELS and the Uplands Transitional Payment can be found on the Defra website (www.defra.gov.uk/rural/uplands/support.htm).

All of these arrangements are subject to EU approval.

- K5. The detailed scheme rules for the HFA 2010 will be in the *Hill Farm Allowance explanatory booklet 2010*. Copies of the booklet will be sent to all existing applicants in early 2009. If you are not an existing applicant, but think that you are eligible and would like the explanatory information, please either request a copy from the RPA CSC by telephoning 0845 603 7777 or by downloading a copy from the RPA website (www.rpa.gov.uk).

In order to apply for HFA 2010 you will need to:

- Read and understand the *Hill Farm Allowance explanatory booklet 2010*, when it becomes available in early 2009;
- Submit a 2009 SP5 although it is not necessary to apply for SPS 2009 in order to apply for HFA; and
- Apply cross compliance rules across your entire holding.

- K6. The HFA is a land based scheme, with payment based on the amount of eligible Severely Disadvantaged (SDA) forage (including Moorland and Common Land) that you farm.
- K7. To apply for HFA 2010 you must complete all of the relevant sections of the 2009 SP5. You must indicate your intention to apply and the number of eligible cattle and/or sheep you intend to keep at questions E3, parts a, b and c of the form. Information on eligible cattle and sheep can be found in the *Hill Farm Allowance explanatory booklet 2010*.
- K8. In order for your forage area to count towards your payment, the land must be available to graze or take a forage cut from it for at least seven months, starting on any date between 1 January 2009 and 31 March 2009. This land must be available to you for four of those months if you are to receive payment on it, although the four months do not need to be consecutive.
- K9. When assessing your application we need to calculate your stocking density. In order to do this correctly you must list all of your available forage land in column C12 of your SP5. This includes any non-LFA or Disadvantaged Area (DA) forage that you farm, without which we will be unable to properly calculate your stocking density. If we cannot calculate your true HFA stocking density you may not qualify for payment.
- K10. **You must list each parcel, recording the land use in column C7 and eligible area in column C12. The land use codes eligible for the HFA basic payment are:**
- PP1 – Permanent Pasture
 - PP2 – Permanent Pasture in conversion
 - PP4 – Permanent Pasture on EU Agri-Environment Scheme land
 - TG1 – Temporary Grass
 - TG3 – Temporary Grass on EU Agri-Environment Scheme land
- K11. If you own the rights to graze common land and are both an HFA and SPS applicant, please complete Part CA of your 2009 SP5, as instructed in section B of this guidance, and in the *How to complete your SP5 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)*.
- K12. If you have leased rights to graze common land for HFA purposes only, make sure that you complete sections CA1 – 3, CA5 and CA 7 – 9 of the common land grazing rights section (Part CA) of your SP5.
- K13. It is important that you declare in Part CA any rights that you own or have leased for LFA and/or non-LFA common land. This is again to make sure that we correctly calculate your HFA stocking density and payment. Read section B of this guidance for more information about common land.

- K14. The HFA basic payment is increased if you meet one or both of the following requirements:
- To declare 1ha or 5% (whichever is the smaller) of your total LFA area under arable cover.
Eligible arable codes:

FL1 – flax
FV1 – horticultural crops
HM1 – hemp
OT1 – other
 - To declare 1ha or 5% (whichever is the smaller) of your total LFA area under woodland cover.
Eligible woodland codes:

FR1 – forests
FR4 – land afforested that was permanent pasture on 15 May 2003
NT3 – almonds
PC1 – permanent crops
- K15. If you declare the minimum eligible area for either woodland or arable crops, your basic HFA payment will be enhanced (increased) by 5%. If you declare the minimum eligible areas for both woodland and arable crops your basic payment will be enhanced by 10%.

If you want to declare land that is eligible for enhancements, you should declare the land use in column C7 and the area in column C12 of your field data sheets.

- K16. Cattle that are eligible for HFA belong to herds that are used for rearing calves for meat production only. Cattle that form part of a dairy herd are not eligible to be counted towards your stocking density.
- K17. You must keep cattle which you want to count towards your stocking density on your holding for a six month period, starting on any date from 1 July 2009 to 31 December 2009.
- K18. The *Hill Farm Allowance Explanatory Booklet 2010* contains details of the other requirements that your cattle must meet in order for them to count towards your stocking density.
- K19. Any female sheep are eligible to count towards the minimum HFA stocking density; however the sheep must either be 12 months of age or have given birth by the end of the sheep retention period in order to qualify.
- K20. The retention period for eligible sheep lasts for 100 days and can start on any day from 1 January 2009 to 22 September 2009.
- K21. The *Hill Farm Allowance Explanatory Booklet 2010* contains further information on eligible sheep and the conditions that you must meet for your animals to count towards the minimum stocking density.

L Special rules for hemp

The cultivation of hemp is subject to strict conditions. If you grow hemp you need to be fully aware of your legal responsibilities.

- L1. You must declare any parcels of land which are used to grow hemp for fibre or other purposes on your SP5. RPA can provide a list of the varieties of hemp that you may grow under SPS.

Home Office licence

- L2. You must obtain a licence from the Home Office if you intend to grow hemp. It is a criminal offence to grow hemp in the UK, for any purpose, without such a licence. Unless you have made separate arrangements with the Home Office, you should make an application for a licence to:

Home Office Drugs Branch (Licensing Section)
6th Floor, Peel Building
Marsham Street
London
SW1P 4DF
Telephone: 020 7035 0483
Fax: 020 7035 6161

- L3. You should apply for a Home Office licence as early as possible. Licences are not issued automatically. The Home Office will consider why and where you plan to grow hemp, and you may be asked to provide evidence that you have a contract to supply the hemp to a Home Office approved processor.

Seed labels

- L4. You must use certified seed of one of the eligible varieties. You will need to supply the original official seed labels, confirming the variety, along with your SP5. RPA will return these labels to you. When sowing takes place after 15 May, these documents must be submitted no later than 30 June.

Sampling and testing

- L5. Under EU rules, the UK must sample and test 20% of all applications which include hemp, 20% of the total area of hemp and all varieties of hemp grown. This is to make sure that the tetrahydrocannabinol (THC) content of the crop is below the level prescribed by the EU legislation. For each variety sown, you must maintain three distinct parts of each field used to support your application, each part comprising at least 4,000 plants, until at least 10 days after flowering. You must not harvest these areas until sampling has been completed or until you have received a written notification from RPA stating that sampling is not necessary.

M Payment

RPA wants to make timely and accurate payments to our customers. The information below will give you some of the key things you need to know about when and how we make payments.

- M1. The payment window for SPS 2009 runs from 1 December 2009 until 30 June 2010.
- M2. A new EU regulation means that all payments we make have to be made directly into applicants' bank accounts and we are not able to make payments by cheque. If we do not hold correct bank details, your payment will be delayed. If you refuse to provide bank details by 30 November, your claim will be invalid.
- M3. Payment can be made in either Sterling or Euros. Your SP5 will be preprinted at B1 with your choice from last year, but you may choose to change currency this year. All direct aid schemes will be paid in your chosen currency and you will not be able to change currency until you make your application in a subsequent scheme year. If you wish to receive payments in Euros, you must have a UK Euro bank account. This should be notified to us via a *Registration Form* (CREG 01) (if you have not already completed one) or an *Amendment form* (CREG 10) (if you have previously completed a CREG 01). You can get these forms from the RPA CSC or from the RPA website (www.rpa.gov.uk).
- M4. The exchange rate for SPS, Area Payment for Nuts, Aid for Energy Crops and Protein Crop Premium will be calculated on the last working day of September 2009 and will be publicised on the RPA website and notified to the farming press.

Payment pattern (progressive modification)

- M5. There is a fixed amount (the ceiling) available to make payments under SPS each year. In 2012 this whole amount will be used to fund the flat rate payment.
- M6. The flat rate area payment is being introduced over an eight year period through 'progressive modification'. This means that in each year up until 2012 a proportion of the ceiling will be used to fund the flat rate element of entitlements and the remaining proportion will be used to fund the historic element.
- M7. For 2009, 60% will be used for the flat rate element and 40% for the historic element. These proportions will continue to change over the next few years as shown in the following table:

Year	Percentage of regional ceiling used to fund the:	
	Flat rate element	Historic element
2009	60	40
2010	75	25
2011	90	10
2012	100	0

- M8. The value of entitlements which have a Sugar Reference Amount will be adjusted each year up until 2012. This adjustment takes account of the funding available in each year, some of which will be used to fund the flat rate element of all SPS entitlements and some to fund sugar reference Amounts (read table below).

Year	Total value of SPS sugar fund	Percentage of SPS sugar funding used to fund the:	
		Flat rate element	Historic element
2009	£115,361	33	67
2010	£105,376	75	25
2011	£105,376	90	10
2012	£105,376	100	0

Towards the end of each year, there will be an entitlements calculator on the RPA website which can be used to both check your entitlements and provide a guide to your likely payment amount based on the historic/flat rate split.

Modulation

- M9. Modulation is a mechanism under which direct payments are reduced. The amounts raised are used to fund the Rural Development Programmes. The Government also makes an additional contribution to the RDPE, which includes agri-environment schemes and other support for farm competitiveness and rural diversification. The UK has applied modulation to direct payments since 2001. All payments you receive under the following schemes will be subject to modulation deductions:

- SPS;
- Area Payment for Nuts;
- Protein Crop Premium; and
- Aid for Energy Crops.

- M10. Modulation is the percentage of payment which is taken to fund the RDPE. It is made up of two elements, one is fixed by the EU and the other is an additional National modulation rate decided by the Government.
- M11. Total modulation (including EU and National modulation) will be 19% for each of the years 2009-2012.
- M12. The above figure applies to England. If your land lies across a border between England and Scotland/Wales, or you have separate land in Scotland, Wales or Northern Ireland as well as in England, the additional National modulation which applies in each region will apply to the respective areas of land.
- M13. Modulation deductions will be made from your direct payments after any penalty reductions (except penalties resulting from cross compliance breaches). However, the first €5,000 of your payment is exempt from European modulation (but is not exempt from National modulation). Your payment for SPS and other direct payment schemes will take account of this exemption.

Direct payments ceiling

M14. The UK has a maximum fund value for SPS and other direct payments. If when we calculate payments we find we have breached the fund value we may have to scale back all payments. If we need to do this we will provide further information with your payment.

Financial discipline

M15. If the overall EU budget for direct aid payments is in danger of being exceeded, there is a mechanism (Financial Discipline) by which payments being made across all EU Member States are reduced. This provision is designed to protect EU taxpayers from budget increases.

If Financial Discipline were to be applied to SPS 2009 payments, the EU would be obliged to propose the level of any such reductions by 31 March 2009.

Small Payments (proposals)

M16. Payments of very small amounts to our customers can attract charges for some as well as administrative expense to RPA. Because of this, RPA is considering different ways of addressing this problem, including retaining small value amounts until a payment threshold has been reached. At this point, the total amount would be released to the customer's bank account.

N Penalties for late or incorrect applications

Many of the penalties we have to apply to applications could have been avoided by our customers. The information below will give you some of the key things you should be aware of.

N1. Penalties, reductions or exclusions may be applied if your application:

- is submitted after the deadline (midnight on 15 May 2009);
- is found to be in breach of the scheme rules; or
- fails to meet the requirements relating to cross compliance.

N2. In limited circumstances, if you submitted factually correct information or can show that you are not at fault, your application will be adjusted to reflect your actual situation and penalties will not be applied (read paragraphs N28 – N36 for more information). Otherwise, apart from cases of force majeure, exceptional circumstances or obvious error, RPA has no discretion to waive these penalties.

Late applications

N3. Except in cases of force majeure and exceptional circumstances, the amount you receive (based on the entitlements you activate that year) will be reduced by 1% for each working day after the 15 May deadline until your application is received.

N4. Late applications can be submitted only up to 25 calendar days late. Applications received after this deadline will be inadmissible; no SPS payments will be made, and entitlements will be considered unused for that year (read paragraphs F2 – F5 for more information on the usage rule). Force majeure/ exceptional circumstances cannot be accepted for late applications received after the 25 calendar day deadline.

Example

An application received on 27 May 2009 is 12 calendar days/7 working days late. Payment will be reduced by 7% of the overall amount due. (This takes account of non working days such as the weekends and a bank holiday.)

Breaches of scheme rules

You do not declare all the agricultural land on your holding

N5. You must declare all the agricultural land on your holding, whether or not it is eligible for the scheme (that is not just the land which you are using to support your SPS application). If you fail to do so, the payment you receive for activated entitlements may be reduced. If you have any doubt as to which areas you should declare, you should seek independent legal advice.

N6. If there is a difference between the area you actually declared on your application and the area you ought to have declared, reductions in payment will apply:

- difference of up to 3% – no reduction in payment;
- difference of more than 3% and up to 20% – 1% reduction;
- difference of more than 20% and up to 50% – 2% reduction; and
- difference of more than 50% – 3% reduction.

Example

The total area of agricultural land on your holding is 110 hectares. You declare 50 hectares on your SPS application. The difference is more than 50% of the total area of your holding, so your total SPS payment will be reduced by 3%.

Discrepancies in areas declared

N7. You cannot receive payment on an area greater than that stated in your application. If the area of a crop group is determined (found) to be greater than that declared on your application, the area you have declared will be used to calculate your payments. For SPS, the crop groups are:

- SPS;
- Aid for Energy Crops;
- Protein Crop Premium; and
- Area Payment for Nuts.

N8. Where the determined area is lower than the declared area, entitlements with the highest value will be attributed to the determined area first, followed by those with lower value.

N9. If there is a discrepancy between the payment entitlements activated and the area declared, payment will be calculated on the lower area.

If a farmer declares more area than payment entitlements and the area declared meets all other eligibility requirements, reductions shall not apply. If a farmer declares more area than payment entitlements; and the area declared does not meet all eligibility requirements (other than a lack of payment entitlements) any reduction applied will be calculated on the difference between the area meeting all other eligibility requirements and the amount of payment entitlements declared.

Discrepancies within crop groups

N10. **If the area determined for a crop group is less than that declared, payment will be calculated on the basis of the area determined.** This will then be further reduced by twice the difference determined if the difference between the area declared and the area determined is more than either 3% or 2 hectares, but not more than 20% of the determined area. If the difference is more than 20% of the determined area, no payment will be made for the crop group concerned.

N11. However, a small tolerance will be applied. If the difference between the total area determined and the total area declared for payment is less than or equal to 0.1 hectare for the crop group and is less than or equal to 20% of the total declared area across all crop groups, the area determined shall be set equal to the area declared. This tolerance does not apply if the difference is a repeat occurrence.

Example 1

The SPS eligible area is declared as 100 hectares but is determined to be 98 hectares. No reduction will apply since the difference is not more than 3% (of 98 hectares) or 2 hectares, but payment will be based on 98 hectares.

Example 2

The protein crops area is declared as 20 hectares but is determined to be 17 hectares, a difference of 3 hectares (17.65% of 17 hectares). Payment will be based on 17 hectares – 6 hectares (3 hectares x 2) = 11 hectares.

Example 3

The SPS eligible area is declared as 250 hectares but is determined to be 198 hectares, a difference of 52 hectares (26.26% of 198 hectares). No payment will be made.

Example 4

The SPS eligible area is declared as 250 hectares but is determined to be 198 hectares. The area declared satisfies all other eligibility requirements other than not having accompanying payment entitlements. No reductions will be applied as all the land declared is eligible land.

Example 5

The SPS eligible area is declared as 250 hectares but is determined to be 198 hectares. 50 hectares of the area declared is ineligible land and 200 hectares is eligible land, but 2 hectares of the land declared is not supported by payment entitlements. The difference is 2 hectares (1.01% of 198 hectares). No reduction will apply as the difference is less than 3%.

Discrepancies across crop groups

- N12. If the area declared on the application exceeds the overall area (all crop groups) actually determined by more than 30%, you will not receive any payment in that year under the SPS or any other schemes covered by the application (excluding the HFA).

Example

The SPS eligible area is declared as 100 hectares, of which 25 hectares is also used to as part of your application for Aid for Energy Crops. A further 3 hectares are used for the Area Payment for Nuts, making a total declared area for all aid schemes of 103 hectares.

The SPS eligible area is determined to be 52 hectares, of which 20 hectares is determined for energy crops, and 3 hectares determined for nuts, making a total determined area of 75 hectares.

The difference between the total area declared (103 hectares) and the total area determined (75 hectares) is 28 hectares, which is a 37.33% difference ($28 \div 75 \times 100$) from the area determined. As the difference exceeds 30%, no payment will be made for any of these schemes for the scheme year concerned.

- N13. If the difference is more than 50%, you will receive no payment in that year under SPS or any other schemes covered by the application (excluding HFA). Additionally, up to a maximum period of three years following the year of the over declaration, we will deduct the amount payable on the over declared area from applications made under the same schemes. Penalties for over declaration of HFA areas are explained in the *Hill Farm Allowance Explanatory Booklet 2010*.

Intentional over declaration

- N14. Where you have intentionally over declared the area of a crop group, no payment will be made in respect of that crop group in that calendar year if the over declaration is greater than 0.5% of the area determined or more than 1 hectare.

- N15. If you have over declared by more than 20% of the area determined for either SPS, Protein Crop Premium, Aid for Energy Crops or Area Payment for Nuts you will also have the same amount deducted from applications under SPS or any other schemes covered by the application (excluding the HFA) over the next three calendar years following the calendar year of the finding. The amount will be offset against applications made in those years.
- N16. A false declaration made intentionally or recklessly may also lead to criminal prosecution. If found guilty, you could face an unlimited fine or up to two years imprisonment.

Aid for Energy Crops

- N17. If you fail to deliver the correct quantity of energy crops, the payments you receive will be reduced according to the principles on area discrepancies set out above. The relevant area will be calculated by multiplying the area of land cultivated for these crops by the percentage shortfall in delivery.

Example

The total SPS eligible area is 250 hectares. The energy area declared is 8 hectares and the representative yield for the crop grown is 2.31 tonnes per hectare. This equates to a total required yield of 18.48 tonnes. A total of 12.18 tonnes is delivered which is a shortfall of 34.09%. The relevant area of 8 hectares will therefore be reduced by 34.09% that is, 2.72 hectares.

As this difference is more than 2 hectares but less than 20% of the total area determined in the crop group, aid is calculated on the basis of the area determined reduced by twice the shortfall, that is, $2.72 \times 2 = 5.44$ hectares.

Penalties, reductions or exclusions relating to cross compliance requirements

- N18. If you, or someone acting on your behalf or under your control, fail to comply with any of the cross compliance requirements your payments may be reduced. Details are given in *The Guide to Cross Compliance in England* and on the RPA website (www.rpa.gov.uk/cross-compliance).
- N19. Paragraphs E8 – E12 explain who is responsible for cross compliance where you have transferred land in or out of your business during the year.

Negligence

- N20. If you negligently fail to comply with a cross compliance requirement, the total amount of direct payments you receive in the year the breach was identified will generally be reduced by 3% for each non compliance. This can be reduced to 1% or increased to 5% depending on the extent, severity and permanence of the breach, and the number of times it is repeated. In certain circumstances, it may not be appropriate to make a reduction.
- N21. If you fail to comply with more than one requirement within the same broad area (for example, public and animal health) these failures will be treated as a single non compliance. If you fail to comply in different areas (for example, public and animal health and the environment) separate reductions will be made for each non compliance. The percentage reductions will be added together, but the maximum reduction will be 5% of the overall payment due.

- N22. Where it has been determined you failed to comply with the same requirement or standard more than once within a three year period, the reduction applied in relation to the repeated non compliance will, in respect of the first repetition, be multiplied by three, provided you were informed of the earlier non compliance and given an opportunity to remedy the breach. The reduction will be multiplied by three for subsequent failures to comply, up to a maximum of 15% of the aid originally due.
- N23. If, once the reduction has reached 15%, you fail to comply again; you will be treated as having intentionally failed to comply. The previous reduction, calculated before the 15% threshold was applied, will be multiplied by a factor of three, and the rules on intentional non compliance will also be applied.

Intentional non compliance

- N24. If you intentionally fail to comply, your overall payments will generally be reduced by 20%. This could be reduced to 15% or increased up to 100% depending on the extent, severity and permanence of the breach, and the number of times it is repeated.
- N25. For full details on the reductions which may be applied to your payments, read the Payment Reduction Matrices on the RPA website (www.rpa.gov.uk/cross-compliance).

Accumulation of reductions

- N26. Reductions will be applied in the following order:
- penalties for over declaration of area;
 - penalties for late submission;
 - penalties for failing to declare all the agricultural land on your holding;
 - modulation; and
 - reductions or exclusions for cross compliance breaches.

- N27. Each successive reduction will be based on the amount resulting from the previous reduction.

Circumstances under which penalties may not apply

Obvious error

- N28. In general the error should be easily identified from the SP5, that is, contradiction in the information supplied within another area of the application form. Mistakes that can be classified as obvious errors can be corrected without reduction at any time; provided RPA recognises that you acted in good faith, there is no risk of fraud and you have not already been notified of the error or your holding inspected. The onus is on the applicant to show that there has been an obvious error. The following types of mistake may be classified as obvious errors, but each case will be considered on its own merit:
- clerical errors such as missing information or, empty boxes where the omission is clear from the rest of the form or incorrect statistical information. These kinds of errors must be obvious to RPA from a simple examination of the application;
 - contradictions that come to light when RPA compares information in the same application, either manually or by computer. Examples of these kinds of errors include arithmetical mistakes and inconsistent information (declaring the same parcel twice in a single application or declaring the same parcel for two types of usage); and
 - anomalies involving parcel numbers or references detected when the application is cross checked against databases (for example, reversed figures (parcel number 1169 instead of 1196), mistakes in map reference numbers, or mistakes in parcel numbers as a result of a map reading error).

Please note any information in the 'farmer's own use box' will not be taken into consideration for obvious error purposes.

If an application for obvious error is allowed it is expected that you should take care not to repeat the mistake in subsequent applications. It is unlikely that the same error will be accepted in future years. RPA has no obligation to check applications for error, this responsibility remains at all times with the applicant or their agent.

Amendments

N29. You can make the following amendments to your application without incurring penalties provided RPA receives them by midnight on 31 May 2009:

- add agricultural parcels (whether or not they are accompanied by the corresponding payment entitlements); and
- show changes regarding the use or aid scheme in respect of individual parcels already included in your application.

N30. If RPA receives your amendments after 31 May and before midnight on 9 June, payments relating to the parcels in question will be reduced by 1% for each working day the amendments are late. RPA will not accept amendments received after midnight on 9 June.

N31. However, if you have already been notified of an error in your application or notified about an inspection that subsequently reveals errors, you cannot amend details for the parcels of land concerned. This includes notifications of errors detected by Natural England or the FC when cross checking your SPS data against their agreement details.

Notified errors

N32. Penalties may not be imposed in relation to an error on your application, provided you notify RPA in writing before you have been notified of the error in your application or notified about an inspection that subsequently reveals an error. It is therefore in your interest to notify RPA of any error even after the time limit for making an amendment has passed. However the area of the claim cannot be increased after 31 May. For example, if the field area is 9.5 hectares and you enter 7.5 hectares, you could be penalised for failing to declare all of your land, but if you notify RPA although you will only be paid for 7.5 hectares should a subsequent inspection take place, there will not be a penalty imposed on that parcel.

Withdrawal

N33. You can withdraw all or part of your application at any time, provided you do so before being notified of any errors in your application or notified about an inspection that subsequently reveals errors in respect of the withdrawn information. Your application to withdraw must be made in writing.

Force majeure and exceptional circumstances

N34. In limited circumstances, RPA may accept that you are prevented from meeting the scheme rules due to force majeure or exceptional circumstances. In such cases, penalties may not have to be applied. Force majeure is defined as 'unusual circumstances, outside your control, the consequences of which, in spite of all due care, could not be avoided except at the cost of excessive sacrifice on your part'. All cases will be judged on their own merit. Please note that Force Majeure/exceptional circumstances cannot be accepted for late applications received after the 25 calendar day deadline.

N35. Examples of force majeure and exceptional circumstances that may be recognised include:

- the death of the farmer;
- a long term professional incapacity of the farmer;
- a severe natural disaster affecting the holding's agricultural land;
- the accidental destruction of livestock buildings; and
- an epizootic disease affecting livestock.

N36. If you want RPA to consider an event that you think amounts to force majeure or exceptional circumstances, you must notify us in writing **within 10 working days** of your being in a position to do so. You will need to prove that the event has occurred and that it resulted in your failing to meet the scheme rules. Notifications will be looked at on a case by case basis.

Inspections

RPA has to carry out on the spot inspections in order to satisfy the EU that we are making payments to the right customers and they are keeping to the rules of the schemes. If you are selected for an inspection, our inspectors will try to inconvenience you as little as possible but you must allow our inspectors to check the land and records that they ask to see.

Inspections – working in partnership with farmers

- O1. Significant sums of money are paid out by RPA under SPS and other schemes. RPA is therefore required by EU Regulations to carry out a programme of on the spot checks to make sure that the information you provide in the SP5 is correct and that you have met all the relevant scheme rules. These checks allow RPA to make sure that the available aid is paid to you only if you are eligible and that you receive the amounts to which you are entitled.
- O2. Although RPA has overall responsibility for making sure that cross compliance inspections are carried out, on the spot checks are completed by four Competent Control Authorities: RPA, the Environment Agency, Veterinary Medicines Directorate and Animal Health. Where these Authorities discover an instance of non compliance in the course of other duties, they will report this to RPA. For further information on cross compliance inspections, read *The Guide to Cross Compliance in England*. You can find details of common cross compliance breaches on the RPA website (www.rpa.gov.uk/cross-compliance).
- O3. So that we can confirm your eligibility for payment you must allow officers of the relevant Agricultural Departments and/or the Competent Control Authorities or their duly appointed agents (and people accompanying them) access to check your land, animals, storage facilities and farm records.
- O4. RPA will undertake its on the spot checks through visits to your holding(s) and through the use of 'remote sensing' (that is the use of satellite images or aerial photographs). For land eligibility inspections, where notice can be given, it is likely to be within less than 48 hours before the inspection. For cross compliance, inspections are likely to be unannounced which means it may not be possible to give you any notice of a visit. If you refuse to allow an inspection, intentionally obstruct an inspector or do not give reasonable assistance, you may lose your payment. You could also face prosecution. You should therefore give all reasonable assistance for this purpose.
- O5. The applications RPA check in this manner are selected on the basis of risk assessment, random selection and specific targeting. 'Risk assessment' includes factors such your history and the particular characteristics of your applications, such as the types of land uses you declared. A selection based on risk assessment should not therefore be taken as meaning that RPA suspects an application to be fraudulent.
- O6. RPA plan inspections in order to minimise inconvenience to applicants. To further reduce the inconvenience, we ask that you do all you can to assist our inspector, as this may help reduce the duration of the inspection.

- O7. RPA will not tolerate threatening or abusive behaviour towards its staff, either verbally, physically or in writing and will take whatever action is necessary, including legal action, against any person who instigates such threats or abuse.
- O8. We will always contact you before we commence an inspection. We will provide a clear explanation of why we are there, the way we will carry out the inspection, and what we will need from you. We will take the necessary precautions to prevent the risk of contamination or spread of disease from one premise to another. You will be able to accompany the inspector and, after the inspection is complete, we will give you a summary of our findings. We will also give you the opportunity to put your own comments on a customer feedback form.
- O9. Each year our inspectors find that a significant number of farmers have failed to deduct ineligible areas from their applications and/or have failed to notify RPA of boundary changes. Such errors can lead to a reduction of payment made to the farmer concerned and may even lead to an increase in the number of inspections. It is in your best interest to take care when you are completing your application, to make sure it is accurate.
- O10. If you have any disabilities which you feel may make involvement in the inspection procedure difficult for you, please let the inspector know straight away and they will consider what reasonable adjustments they can make in the circumstances.

Record keeping and inspections

- O11. You are advised to retain records which may confirm that you have provided complete and accurate information in your application and that you have complied with the undertakings you have given. For record keeping requirements for cross compliance, refer to *The Guide to Cross Compliance in England*. Details of livestock record keeping requirements may be found in the respective guidance for keepers (for example, *Guidance for Keepers in England Rules for identifying sheep and goats*).
- O12. For full details of the cross compliance inspections, read the Inspection criteria and The Inspection process sections of *The Guide to Cross Compliance in England*.

P Appeals and complaints

Sometimes things go wrong; you may not be happy with the way RPA has handled your application or with the decisions we have reached. If you are not satisfied with what we have done, the information below will help you understand what you should do next

Appeals

- P1. RPA will do all that it can to help you to understand the decisions that it makes that affect your SPS application. Please write to us if you require clarification of why an adjustment has been made to your application.
- P2. If you want to contest a decision we have made in connection with your application you should first send your reasons in writing. You should set out the facts as fully as possible and quote your SBI.
- P3. We will investigate your case and write to tell you of the outcome. You should receive a response within 15 working days. Where this is not possible, we will contact you to explain why and tell you when you can expect a reply.
- P4. If we decide to stand by our original decision you can make a formal appeal under The SPS Appeal Procedure in England. We will send a guidance booklet, user guide and a *Stage 1 Appeal Form (SP 6)* when we write to you. The guidance booklet, is also available from the RPA CSC or from our website (www.rpa.gov.uk).
- P5. To make a formal appeal, you will need to complete and return the SP 6 within 60 days of receiving our decision letter. RPA's Customer Relations Unit (CRU) will consider your appeal and write to advise you of the outcome.
- P6. If you are not satisfied with their decision you may progress to Stage 2 where an Independent Appeal Panel will consider your appeal and make a recommendation to the Minister. Details of how to bring your case to the panel are in the guidance booklet.
- P7. All correspondence relating to representations and appeals should be addressed to RPA. See contact details in *How to complete your SP5 2009 application form (incorporating Area Payment for Nuts, Aid for Energy Crops, Protein Crop Premium and 2010 Hill Farm Allowance)*.

Complaints and feedback

- P8. If you have a complaint about how we handled your SPS application you should write to the RPA's CRU.
- P9. If you believe there has been maladministration of your case, you can ask your MP to pass your complaint to the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman), who is entirely independent of Government.

P10. We welcome feedback on the service we provide. If you have any suggestions as to how we can improve our service, please write to the CRU.

P11. The contact details are:

Customer Relations Unit
Rural Payments Agency
PO Box 69
Reading
RG1 3YD

E-mail: customerrelations@rpa.gsi.gov.uk

Q Freedom of information and the Data Protection Act

RPA treats the way we store and use your personal information seriously. This section explains how we meet our legal obligations.

Freedom of information

Q1. The Freedom of Information Act (FOIA) and Environmental Information Regulations (EIRs) provide a system of fully enforceable rights of access to information held by public authorities. These rights apply to all information, regardless of how old it is or who holds it. They signal a recognition of, and commitment to, the public interest in openness about government. For more information on access to information, go to the RPA website (www.rpa.gov.uk) and click on 'Access to information', or go to the website of the Information Commissioner's Office (www.informationcommissioner.gov.uk).

Data Protection Act

Q2. Defra is the data controller in respect of any personal data that you provide to RPA.

Q3. Your personal data will be protected in line with the Data Protection Act 1998. We will use the data:

- to support the application to which it relates;
- in the case of the Cattle Tracing System (CTS), to register cattle and their movements;
- for the administration of the Common Agricultural Policy (CAP), and other schemes administered by RPA;
- in relation to the production and safety of food;
- in relation to the management of land and other environmental controls;
- in relation to animal health and welfare; and
- in relation to occupational health and welfare.

Q4. When required to do so, we may pass data to other organisations. For example:

- to HM Revenue and Customs for import or export purposes;
- to local authorities for milk, health or cross compliance purposes; or
- to the Environment Agency (EA), Natural England (NE) and the Forestry Commission (FC) for cross compliance purposes.

Q5. We may also use the data we collect to produce statistics for the agricultural census. However, these statistics will not identify individuals.

In limited circumstances, RPA may be required to release information (including personal data and commercial information) under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000. In particular we are committed to releasing information on subsidies paid under CAP schemes.

- Q6. NEW EC legislation (Council Regulation (EC) No 1290/2005 and Commission Regulation (EC) No 259/2008) requires the UK to publish details of recipients of CAP subsidy payments on a single website containing:
- trading title (that is, the name in which the claim is made);
 - payments for the year broken down into SPS and related payments, and Rural Development Programme payments; and
 - local town and the first three or four digits of the recipient's postcode.
- Q7. Defra or its agents, including RPA, may use your name, address and other details to contact you in connection with occasional customer research aimed at improving the services that we provide to you.
- Q8. To obtain a copy of your personal data as held by RPA, go to www.rpa.gov.uk and click on 'Access to information', then 'Personal data'. RPA's public service guarantee on data handling, which sets out your rights in respect of the handling of your personal data, is also available online. If you do not have access to the internet, please call the CSC on 0845 603 7777.
- Q9. If you believe that any of the information we hold concerning you is wrong or out of date, please provide us with the accurate information in writing together with supporting evidence (if appropriate). Send the information to:

Access to Information Helpdesk
Rural Payments Agency
PO Box 69
Reading
Berkshire
RG1 3YD.

R Further information

You can find out more about SPS by contacting us. There are various ways to do this which are explained below

If you have any queries about SPS rules you should contact the RPA CSC, which is open from 8.30am to 5.00pm, Monday to Friday. You will be asked for your SBI when you call. If you e-mail or write, give your SBI, name of business and the scheme year relating to your query.

Customer Service Centre: 0845 603 7777

E-mail address: csc@rpa.gsi.gov.uk

Address: Rural Payments Agency
PO Box 1058
Newcastle upon Tyne
NE99 4YQ

For more information about SPS, visit the RPA website (www.rpa.gov.uk).

Defra website is (www.defra.gov.uk).

You can find the relevant EU regulations on the EU website (<http://europa.eu.int/eur-lex/en/>).

You can obtain relevant domestic legislation from the Office of Public Sector Information website (www.opsi.gov.uk) or call 0870 600 5522.

S Glossary

Here are some simple explanations of the words, abbreviations and phrases we use

Agricultural activity – The production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in Good Agricultural and Environmental Condition (GAEC).

Agricultural land – Land in the following uses must be declared on your application:

- arable land;
- permanent pasture;
- permanent crops (including permanent fruit and vegetable crops, nursery crops and vines);
- land used for grapes, tobacco, hops, agri-environment, forestry, LFAs and areas with environmental restrictions, olive oil, cotton, dried fodder, citrus for processing, tomatoes for processing and wine;
- hops; and
- land put to uses other than the above and not already declared for SPS or other direct payments.

Arable land – includes:

- land used for normal arable/combinable crops, including energy and protein crops, flax and hemp;
- land used for potatoes, sugar beet and other root crops;
- land used for forage maize and forage rape;
- land under grass for less than five years;
- land under grass and counted as Set-aside in the last five years;
- land used for fruit (including strawberries), but not top fruit;
- land used for vegetables;
- land under greenhouses or under fixed or mobile cover (unless the land has been made unsuitable for agriculture, for example by concreting) which is otherwise eligible;
- land used for multiannual crops;
- land used for cut flowers and bulbs;
- land used for turf, except for fuel; and
- fallow land maintained in GAEC.

BACS – Bankers' Automated Clearing Service – a mechanism for making electronic payments between bank accounts.

CN code – EC Combined Nomenclature code used to identify products for duty and trade statistics.

Eligible land – Any agricultural area of the holding taken up by arable land (including permanent crops), short rotation coppice and permanent pasture except:

- forests (read paragraph C24), grazed woodland (read paragraphs C25 – C30); or
- areas which are used for non agricultural activities (read paragraphs C48 – C49).

Farmer – A natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within the EU and who exercises an agricultural activity or is responsible for the land being maintained in Good Agricultural and Environmental conditions.

Forage area – The area of land on which you are claiming HFA.

Herbaceous forage – All herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the UK (whether or not they are used for grazing animals). These include lucerne, sainfoin, forage vetches and clovers, but not any of the following: kale, fodder rape or any other forage brassicas, fodder root crops, forage maize or any other cereals grown for silage or for any other form of forage.

Holding – All the production units managed by a farmer within the UK.

Ineligible land – Areas of your holding which cannot be used to activate an entitlement to payment under the SPS include:

- land being used for peat production;
- forest (including most Christmas trees); and
- land being used for non agricultural purposes (read paragraphs C48 and C49 for information on the limited non agricultural uses that are permitted).

Ineligible features – Examples include buildings, ponds, hard standing, areas of bare soil, grass banks and grass strips (unless they comprise of machinery, tramlines/turning circles). This list is not exhaustive.

Nursery crops – These are defined as areas of young woody plants grown in the open air, on soil in greenhouses or under polytunnels for subsequent transplantation and include.

- vine and root stock nurseries;
- fruit tree nurseries;
- ornamental nurseries;
- nurseries of forest trees (excluding those for the holding's own requirements grown within woodland); commercial forest-tree nurseries, whether in woodland or outside, are included in the definition, as are commercial forest-tree nurseries for the holding's own requirements grown outside woodland. Christmas trees will not usually be eligible as they are not grown for subsequent transplantation; and
- trees and bushes for planting in gardens, parks, at the roadside and on embankments, for example, hedgerow plants, rose trees and other ornamental bushes, ornamental conifers including all cases their stock and young seedlings.

Permanent crops – Non rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests. This includes nurseries and short rotation coppice (CN code ex 0602 90 41), with the exception of multiannual crops and nurseries of multiannual crops.

Permanent pasture – land that is:

- used to grow grasses or other herbaceous forage, either naturally (self-seeded) or through cultivation (sown);
- not included in the crop rotation of the holding for five years or longer; and
- not Set-aside during this five year period whether under the Arable Area Payments Scheme, the SPS or taken out of production under some agri-environment scheme options.

Personal data – Information which relates to a living individual.

Temporary grass – Land that has been continuously in grass for less than five years whether reseeded or not during that time. Temporary grass is considered arable land under the SPS.

T Abbreviations

Here are some simple explanations of the abbreviations we use

Abbreviation	Meaning
BACS	Bankers' Automated Clearing Service
CAP	Common Agricultural Policy
CPH	County Parish Holding
CREG	Customer Registration
CRU	Customer Relations Unit
CSC	Customer Service Centre
CSS	Countryside Stewardship Scheme
CTS	Cattle Tracing System
DA	Disadvantaged Area
Defra	Department for Environment, Food and Rural Affairs
EC	European Commission
EIR	Environmental Information Regulations
ELS	Entry Level Scheme
EOUT	England outside the upland SDA
EMOR	English moorland within the upland SDA
ES	Environmental Stewardship
ESA	Environmentally Sensitive Areas
ESDA	English upland SDA
EWGS	English Woodland Grant Scheme
FC	Forestry Commission
FDS	Field Data Sheet
FOIA	Freedom of Information Act
FWPS	Farm Woodland Premium Scheme
FWS	Farm Woodland Scheme
GAEC	Good Agricultural and Environmental Condition
Ha	Hectares
HFA	Hill Farm Allowance
HLS	Higher Level Scheme
IACS	Integrated Administration and Control System
LFA	Less Favoured Area
LU	Livestock Unit
MGA	Maximum Guaranteed Area
NE	Natural England
NG	National Grid
OELS	Organic Entry Level Scheme
OS	Ordnance Survey
PI	Personal Identifier

Abbreviations (continued)

PROW	Public Rights of Way
RDPE	Rural Development Programme for England previously ERDP
RLE	Rural Land Entitlement
RLR	Rural Land Register
RPA	Rural Payments Agency
SAGRIMO	Sheep and Goats (Records, Identification & Movement) Order
SBI	Single Business Identifier
SDA	Severely Disadvantaged Area
SMR	Statutory Management Requirement
SPS	Single Payment Scheme
SP5	Application form for the Single Payment in England
TFA	Total Field Area
WGS	Woodland Grant Scheme



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