



Basic Payment Facts

2017

ENGLAND



**STRUTT
& PARKER**

This briefing is a summary only of the relevant details as at the date of production.

For full information please refer to the relevant RPA guidance handbooks online at gov.uk/guidance/bps-2017

1. RPA Registration

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

The RPA is again strongly encouraging farmers to complete their claims online but they will send paper forms to those who request them and farmers who submitted their claim on paper in 2016. As well as being able to complete their claim online, farmers (or their agents) are encouraged to use the CAP Information System 'CAPIS' to amend business details, and transfer land and entitlements. Rural Land Register maps can now only be viewed online.

2. Basic Payment Entitlements

BPS entitlements can only be held by Active Farmers. (See s. 3(a) below for the definition of Active Farmer.)

The rules regarding activation of BPS entitlements state that:

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

The three English regions are Lowland, SDA (Severely Disadvantaged Area), and SDA Moorland. Each region has its own type of entitlements which can only be used to activate payments in their own region.

Entitlement values for each region will be calculated in autumn 2017. The RPA will divide the total BPS budget for each region by the number of entitlements that exist for that region. The entitlement value is added to the Greening payment (see s. 4 below) (plus a young farmer payment if applicable) to arrive at the full BPS payment rate.

The exchange rate used to convert Euros to Sterling for the 2017 BPS will be the average of the European Central Bank rates set over the month of September 2017.

A. National Reserve

The National Reserve exists to provide BPS entitlements for those who qualify as 'Young Farmers' or 'New Farmers'. See *sections 3(f) and 3(g)* below for more information on these.

B. Transferring entitlements

Where transfers of BPS entitlements are initiated online, the transfers will occur almost instantaneously. Transfers may also be initiated using the RLE1 form, in which case the transferor must ensure that the RPA receives the RLE1 before midnight on the 15th May for the transfer to be effective for the 2017 claim. The transferee will need to have confirmed in advance that they are an Active Farmer for the transfer to go ahead. All receipts will be issued online, even where a paper RLE1 was used.

3. Claiming Basic Payment

The claim deadline for the Basic Payment Scheme is 15th May each year.

A. Active Farmers

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

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

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

- › Accommodation facilities on a farm.
.....
- › Apartments or homes that are in a farmer’s private property for housing purposes.
.....
- › Part of buildings or surfaces on the holding.
.....
- › Agricultural land to third parties.
.....

However, farmers who operate any of these five non-agricultural activities may still qualify as an Active Farmer if they meet one of three “re-admission criteria”:

- That the annual amount of direct payments claimed (including Greening and any young farmer payment) represents at least 5% of the total receipts obtained from non-agricultural activities in the most recent fiscal year for which evidence is available; or
- That his/her agricultural activities are not insignificant. In this context, agricultural activity will be considered significant where receipts from agricultural activities represent at least 40% of their total receipts in the most recent

financial year. The test applies only to receipts from agricultural activities on their holding – thus income from agricultural contracting for third parties cannot be included. Income is to be assessed gross of VAT; or

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

Where re-admission applies under the first or second of these criteria, the farmer will need to send a “certification form” signed by an independent solicitor or accountant to the RPA to show how they meet the criteria. Even if a certification form was submitted with a previous claim, if the business needs to rely on re-admission criteria again in 2017, a new certification form must be completed and submitted.

B. Eligible land

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

C. Minimum claim area

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

D. Land at your disposal

Land used to activate entitlements must be at the claimant’s disposal on 15th May of the scheme year.

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

E. Dual use

Dual use applies where one farmer is claiming BPS and another farmer or land manager is claiming Environmental Stewardship, Countryside

Stewardship or Woodland Grant scheme payments on the same parcel(s) of land. Dual use is permitted for existing Environmental Stewardship and Woodland Grant Schemes. Under Countryside Stewardship, dual use is permitted except for Mid Tier agreements starting 1st January 2016. For Higher Tier agreements starting 1st January 2016, dual use is permitted, as it is for Mid Tier and Higher Tier agreements starting 1st January 2017.

Both parties must meet the scheme rules for the schemes they are under, and evidence for all dual use situations must be kept by both parties.

F. New Farmer

A “New Farmer” – also known as a “new entrant” – can apply for entitlements from the National Reserve. To qualify as a New Farmer in 2017, the farmer must be an Active Farmer, in control of the business and must be at least 18 years old. They must have started their farming activity in 2013 or later, and must not have carried out (or been in control of carrying out) any agricultural activity in the five years before that. They must provide evidence to support an application for entitlements from the National Reserve, and they must make their first successful BPS application no later than two years after the calendar year in which they started farming.

G. Young Farmer payment

A “Young Farmer” is someone who is at least 18 years old but not more than 40 years old in the year of their first BPS application (i.e. they cannot become 41 years old within that calendar year), who took control of the holding for the first time on 1st January 2010, or later. Their Basic Payment (excluding the Greening element) will be topped-up by up to an additional 25% for the first five years after they started farming or took control of the business. This top-up will apply on up to 90ha only. To qualify, a “New or Young Farmer” certificate must be completed by a solicitor or accountant to confirm they have seen documentary evidence that the claimant qualifies, and submitted to the RPA by 15th May.

H. Degressivity (capping)

If a Basic Payment is higher than €150,000 (not including Greening and Young Farmer payments) then the RPA will apply a 5% deduction to any payments above that figure.

4. Greening

The Greening payment is incorporated within the Basic Payment and is made in return for the provision of certain agricultural practices beneficial for the climate and the environment. The measures involved are in addition to the Cross Compliance obligations. Member States will use 30% of their National Envelope to fund Greening, and the RPA will calculate the Greening rate for each region in autumn 2017.

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

Penalties for non-compliance will be proportionate to the extent to which greening has been complied with, and are based on a calculation provided by the RPA. If a farmer does not meet either EFA or CD rules on three BPS claims, then in the third year they may lose the whole of their Greening payment.

Exemptions to EFA and CD:

- The eligible agricultural area included on a BPS claim is less than 10 ha; or
- Land which is registered for organic production or in conversion for organic production; or
- More than 75% of the arable land is in temporary grassland or fallow or, in the case of EFA, is used for cultivation of leguminous crops, and the remaining arable area does not exceed 30 ha; or
- More than 75% of the eligible agricultural area is permanent or temporary grassland, and the remaining arable area does not exceed 30 ha.

- For CD only, more than 50% of the arable area was not declared by the claimant on their claim in the previous year AND all of the area concerned is in a different crop to the previous year. (This relates primarily to specialist cropping arrangements.)

A. Ecological Focus Area (EFA)

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

There are five qualifying options which will count as EFAs:

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

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

EFA CONVERSION AND WEIGHTING FACTORS

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

i. Fallow land

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

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

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

ii. Buffer strips

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

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

iii. Catch and cover crops

These must be a sown mix of at least 2 different cover types – one a cereal, the other a non-cereal – which establish and grow quickly, achieve ground cover, have differing rooting depths and will utilise available nutrients. However, as an alternative, grass can be used as either catch or cover crop as long

as it was undersown in the previous crop and it is sufficiently established by the start of the catch or cover crop period.

- One hectare of catch or cover crop provides 0.30 hectares of EFA.
- Permitted crops in a sown mix are rye, barley, oats, phacelia, oilseed radish, vetch, mustard and lucerne ONLY.
- Stubble turnips and kale are not included as these are usually grazed.
- Cover crops must be planted by 1st October and retained until at least 15th January following.
- Catch crops must be planted by 31st August and be retained until at least 1st October.
- These crops will count towards the EFA obligation for the year in which grown (i.e. to count for 2017 the crops would need to be planted in autumn 2017).

iv. Nitrogen-fixing crops

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

- One hectare of nitrogen-fixing crop provides 0.70 hectares of EFA.
- There are no restrictions on pesticide applications.
- The crop must be in the ground during the inspection period (1st May – 30th June).
- In the event of a crop failure, farmers should keep as much evidence as possible to show that the relevant crops were planted, and the reasons for the failure, in case challenged by the RPA.

v. Hedges

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

- The hedge must be located on or within five metres of arable land along its longest edge, which is at the claimant's disposal. It may be separated from the arable land by a feature that is ineligible for BPS (e.g. a track).
- A hedge must be a continuous length of at least 20m; this can include gaps (including gateways) so long as each individual gap is not more than 20m. There is no limit as to how many gaps there can be.
- There is no minimum or maximum width or height for a hedge.
- A hedge can have a continuous length of less than 20m where it meets another hedge at each end (at an intersection or junction).
- Newly planted hedges can count for EFA if they are in the ground when the BPS application is made.

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

B. Crop Diversification (CD)

A farmer with arable land must:

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

The main crop must not cover more than 75% of the area, and the two main crops together must not

exceed 95% of the area. Winter and spring planted crops of the same species will qualify as different crops. Temporary grassland/forage and fallow land will qualify as arable crops. However, beware that certain brassica crops (e.g. cabbage and cauliflower) are treated as the same crop.

These two or three crops must be in place for the “inspection period”, namely 1st May to 30th June each year. If a crop has been harvested prior to 30th June, the existence of a stubble or crop residue can provide evidence of the crop concerned. In the event of a crop failure, farmers should keep as much evidence as possible to show that the relevant crops were planted, and the reasons for the failure, in case challenged by the RPA.

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

C. Permanent grassland

Permanent grassland is land which has been used to grow grasses or other herbaceous forage (that has not been included in the crop rotation) for five years or more. It can be self-seeded or sown. It will automatically be recorded as permanent grassland on the sixth SPS/BPS application on which it is recorded as grass/herbaceous forage. Herbaceous forage does not include forage maize, kale or fodder root crops, all of which are arable crops for this purpose. If the percentage of permanent grassland relative to the total area of agricultural land in England falls by more than 5% then farmers who have ploughed it may have to reinstate it. (This calculation will exclude land lost to afforestation, other than Christmas trees, short rotation coppice or trees for energy production.) Note that this

obligation is in addition to the Environmental Impact Assessment Regulations (EIA Regs), which already limit the ability to plough up permanent grassland.

D. Greening and Environmental Schemes: 'double-funding'

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

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

5. General

A. Flexibility

Flexibility is the mechanism which enables transfers of funds from Pillar 1 to Pillar 2.

Member States are permitted to transfer up to 15% of the Pillar 1 budget. In England, the transfer rate is 12%.

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

B. Financial discipline

This mechanism – designed to create a ‘crisis reserve’ – is applied on all payments over €2,000. In 2016, the deduction amounted to 1.353905%. Any funds left unspent at the end of the year are returned to farmers.

C. Accountable people

In 2016, the RPA had intended to gather details on the “accountable people” behind each BPS claimant. These are the people who make decisions about how the business is run and who share in the profits or losses of the business, i.e. those taking the financial risks. (Only people meeting both criteria are deemed to qualify.)

Accountable people include:

Sole traders

Partners

Directors

but only if they share in business profits and losses.

Major shareholders

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

Trustees and executors

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

At the time of publication, it is our understanding that the RPA have no plans to collect this information in 2017, as it focusses its resources on processing claims.

Date Diary for 2017 Basic Payment Scheme

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

Date Diary for 2017 Basic Payment Scheme

<i>April</i>	1st	The Environment Agency will make abstraction return forms available to those with winter, or all year round, abstraction licences. These need to be returned within 28 days (GAEC 2).
	1st	You must not burn heather, rough grass, bracken, gorse or vaccinium on land other than in upland areas, from this date (GAEC 6).
	16th	You must not burn heather, rough grass, bracken, gorse or vaccinium in upland areas from this date (GAEC 6).
	30th	You must have recorded the number of 'specified' livestock kept on the farm during the previous calendar year and calculated the amount of N they produced (SMR 1).
<i>May</i>	1st	You must not carry out hedge laying or coppicing from this date (GAEC 7A).
	1st	EFA nitrogen-fixing crops to be in place from this date.
	1st	Start of cropping and fallow period for crop diversification rules.
	15th	Closing date for notifying the RPA of entitlement or land transfers to take effect for the 2017 claim year.
	15th	Closing date for BPS applications (without incurring penalties).
	15th	Deadline for RPA to receive evidence for active farmer, young farmer or new farmer status.
	31st	Final date for making certain amendments to your 2017 BPS application without incurring penalties.

Date Diary for 2017 Basic Payment Scheme

<i>June</i>	9th	Final date for submitting, or amending your 2017 BPS application (penalties will be incurred).
	30th	Payment window for 2016 BPS closes.
	30th	Fallow land and nitrogen-fixing crops may be removed after this date.
	30th	End of cropping and fallow period for crop diversification rules.
<i>August</i>	1st	Start of closed period for applying high N organic manure to tillage land on shallow or sandy soils except where crops will be planted before 15th September (SMR 1).
	1st	Farmers who have been granted a derogation under GAEC 7A will be able to cut hedges from this date.
	31st	EFA catch crops must be established by this date.
<i>September</i>	1st	You can cut hedgerows and trees from this date (GAEC 7A and 7C), and cast up traditional hedgebanks (GAEC 7A).
	1st	Start of closed period for: <ul style="list-style-type: none"> - Applying manufactured N fertiliser to tillage land (SMR 1); and - Spreading high N organic manure on grassland with shallow and sandy soils (SMR 1).
	15th	Start of closed period for applying manufactured N fertiliser to grassland (SMR 1).
	1st - 30th	The exchange rate used to convert Euros to Sterling for the 2017 BPS will be the average of the European Central Bank rates set over the month of September 2017.

Date Diary for 2017 Basic Payment Scheme

<i>October</i>	1st	You may burn heather, rough grass, bracken, gorse or vaccinium on land in upland areas from this date (GAEC 6).
	1st	EFA catch crops can be removed from this date.
	1st	EFA cover crops must be established by this date.
	1st	Start of closed period for spreading high N organic manure to tillage land on soils which are not shallow or sandy (SMR 1).
	15th	Start of closed period for spreading high N organic manure to grassland on soils which are not shallow or sandy (SMR 1).
	31st	The Environment Agency will make abstraction return forms available to those with summer abstraction licences. These need to be returned within 28 days (GAEC 2).
<i>November</i>	1st	You may burn heather, rough grass, gorse or vaccinium on land other than in upland areas from this date (GAEC 6).
<i>December</i>	1st	You need to carry out your annual inventory of sheep (SMR 8).
	1st	Payment window opens for BPS 2017 claims.
	31st	End of Basic Payment scheme year.

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