



# SUBSIDIES UNDER CAP



## CORE TOPICS:

- Basic Payment Scheme and phase-out
- English Countryside Stewardship Scheme
- Rural Development Programmes in Wales

(See also *Rewilding in England & Wales: Subsidies after CAP*)

## KEY TAKEAWAYS:

### England

- The Basic Payment Scheme is now discontinued and eligible claimants from 2023 will automatically receive decreasing annual delinked payments between 2024 and 2027.
- These Direct Payments will be phased out in England by 2027 and replaced by the Environmental Land Management (“ELMs”) schemes, which provide greater opportunities for rewilding activities (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note).
- Subsidies may still be available under England’s Countryside Stewardship Scheme, which is being enhanced as part of ELMs, with the changes offering more scope for rewilding activities (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note).

### Wales

- Glastir was the primary agri-environment scheme for farmers and land managers in Wales until 2023. It has now been discontinued and is due to be replaced by the Sustainable Farming Scheme in 2025 (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note).
- The Habitat Wales scheme bridges the 2024 transition period and applications for the scheme have now closed.

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# 1. INTRODUCTION

This briefing note provides a high-level overview of the framework for farming subsidies under the legacy EU Common Agricultural Policy (“CAP”), in each case considered in the context of rewilding activities. As a general principle, it’s worth noting that the future subsidy schemes seem likely to better align with rewilding activities than is currently the case under CAP.

Although some elements of the CAP-based subsidies currently remain in place, each of the four UK national governments is now free to set its own agricultural policy to replace CAP, and changes are underway in both England and Wales (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note).

# 2. BASIC PAYMENT SCHEME (BPS)

## 2.1 Overview and basic requirements

The Basic Payment Scheme (“BPS”)<sup>1</sup> forms the basis of CAP subsidies. It’s administered by the Rural Payments Agency (“RPA”) in England and Rural Payments Wales (“RPW”) in Wales. In the 2023 scheme year, BPS payments consisted of: (i) the basic entitlement; (ii) a top-up for young farmers; and (iii) in Wales, a redistributive payment.<sup>2, 3</sup>

The top up payment for young farmers is available to those who are at least 18<sup>4</sup> and no more than 40 years old in the year of their first BPS claim. The payment can be claimed for up to five years starting from the year they submit their first successful young farmer payment application.

In Wales, the redistributive payment is made to all claimants entitled to the basic BPS payment and is paid on a rate per hectare (up to a maximum of 54 hectares).<sup>5</sup>

There are three requirements to be eligible for the BPS: the applicant must (i) be a “farmer”; (ii) have BPS entitlements

for each hectare of “eligible land” in respect of which they make their claim; and (iii) claim against at least five eligible hectares of land (subject to exemptions).

While the BPS has been phased out in England, BPS applications can still be made in Wales. Given the continuing relevance of the BPS for farmers in Wales, rewilding activities will have to be considered carefully, as they may impact on BPS eligibility.

## 2.2 England: End of BPS

In England, the government began phasing out Direct Payments made under BPS in 2021, and the 2023 scheme year was the final year of BPS in England.<sup>6</sup> This is to facilitate the transition to the new ELM schemes by 2027 (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note).

Although some claimants may continue to receive payments under BPS, no new applications are possible, therefore this briefing note does not address the topic further.<sup>7</sup> Between 2024 and 2027, a transitional ‘delinked payments’ scheme will operate (see section 2.3).

## 2.3 England: Delinked payments and reductions

To facilitate the transition from BPS to the ELM schemes, the RPA will make delinked payments each year from 2024 to 2027.<sup>8</sup> It’s not necessary to submit an application in order to receive delinked payments.

Unlike BPS payments, there’s no requirement to hold land or eligible entitlements. Instead, delinked payments will be made automatically to any successful BPS claimant in 2023, provided that they have a “reference amount”. This “reference amount” will normally be the average BPS payment in the 2020 to 2022 scheme years or can also be transferred between businesses under specified circumstances. There are other eligibility requirements which can be found in the government guidance which also provides further information about how the reference amount is calculated.<sup>9</sup>

The delinked payment amount is based on the reference amount. However, since 2021 a progressive reduction has been applied to BPS each year, and this reduction will continue with delinked payments until the phase-out is complete in 2027. This means that the value of the delinked payment each year will become a smaller and smaller proportion of the reference amount. Figure 1 illustrates the reductions for payments in 2024.

Note that cross compliance (see below for an explanation of the concept of cross-compliance in relation to Wales) is not required for delinked payments in England,<sup>10</sup> but most of the standards remain applicable to farm activities as they exist in other applicable laws.<sup>11</sup>

The government’s present intention is that, by 2028, there will be no Direct Payments made to farmers at all, unless it decides to extend the transition period.

| Payment band of reference amount | Reduction percentage applied to payment |
|----------------------------------|---|
|                                  | 2024 (delinked payments)                |
| Up to £30,000                    | 50%                                     |
| £30,000 - £50,000                | 55%                                     |
| £50,000 - £150,000               | 65%                                     |
| More than £150,000               | 70%                                     |

Figure 1: Reduction of delinked payments in 2024 compared to reference amount.<sup>12</sup>

## 2.4 Wales: Definition of “farmer”, eligible land, and other requirements

As noted above, applications for BPS can still be made in Wales, subject to meeting the following criteria:

### Farmer

In Wales, a “farmer” is a person/group of people, or a business that does at least one of the following on their holding, being classed as “agricultural activity”:<sup>13</sup>

- produces, rears or grows agricultural products – including harvesting, milking, breeding animals and keeping animals for farming purposes;
- keeps an agricultural area in a state suitable for grazing or cultivation by keeping it clear of any scrub that can’t be grazed and controlling non-native invasive weeds; or
- carries out the “minimum activity” on land which is naturally kept in a state suitable for cultivation and grazing. Broadly, minimum activity requires grazing to a minimum average annual stocking density of 0.01 to 0.05 livestock units per hectare, or control of non-native invasive weeds and scrub.

Additional requirements may apply under certain circumstances.

Note that this is a narrower definition of “farmer” than for tax purposes.

It may be the case that, where rewilding is passive (e.g., where a farmer undertakes a major rewilding project and removes their herd of sheep to make way for significant tree planting), the farmer would no longer be considered to be a “farmer” for BPS purposes. Projects that focus more closely on co-benefits and the regeneration of landscapes to support a thriving and diverse environment in combination with food production, may find that eligibility for BPS payments can continue, albeit perhaps on smaller parcels of “eligible” land.

### Eligible land

Broadly speaking, land is generally only “eligible” under the BPS if it is arable, permanent grassland or used for permanent crops.<sup>14</sup> It must also be predominately used for “agricultural activities”, as defined above.

Areas that are used for non-agricultural activities may still be eligible, provided that the land has been predominantly used for agricultural activities throughout the relevant scheme year.<sup>15</sup> The RWA has also listed the types and extent of activity that can be carried out without endangering the land’s status as eligible hectares (e.g., allowing walking, fishing and game shooting on the land where the land can still be used for agricultural purposes).<sup>16</sup>

Finally, certain non-agricultural land features will reduce the eligible agricultural area and must be declared when applying for BPS. These include manmade constructions such as buildings, hard-standings, ungrazeable tracks, water features and natural features such as, rocks, scree, (bare areas) scrub, bracken and groups of trees.<sup>17</sup>

In the context of rewilding, whether the land becomes ineligible is likely to depend on whether the rewilding results in the land falling outside the three categories of eligible land and/or no longer being used for “agricultural activities” – this will depend on the fact and degree of any rewilding activities.

### Other requirements

Farmers claiming BPS payments must also have the land at their “disposal”. Broadly, this means that an owner or tenant (under a Farming Business Tenancy) farming the land themselves could qualify, but contractors, another kind of tenant, or a person grazing the land under licence would not. In Wales, land would also remain under the owner’s disposal when they have allowed a licensee on to their land under a licence arrangement specifically for grazing, cropping or taking hay/silage over a specific and limited period of time within the year, but they retain management control.

## 2.5 Wales: Transition to the Sustainable Farming Scheme (SFS)

In Wales, BPS is also set to be phased-out and replaced by the Sustainable Farming Scheme (the “SFS”) over the coming years (see *Rewilding in England & Wales: Subsidies after CAP*).

The government’s latest SFS consultation proposed that, starting from 2025, claimants will be able to choose between the SFS or BPS until the end of the transition period in 2029. Once they have chosen to participate in the SFS, they will not be able to revert back to the BPS during this period. In addition, BPS payments will be tapered by 20% each year from 2025, eventually reaching 0% in 2029 when the transition to SFS is complete.<sup>18</sup> At the time of writing, this proposal is still under review and may change in the future.

## 2.6 Wales: Cross compliance conditions

Cross compliance is a set of rules which farmers and land managers must follow on their holding to receive their rural payments in full. Failure to comply may result in a reduction to their scheme payments.

There are two components to cross compliance: statutory management requirements (“SMRs”), which are European legal requirements of agriculture management covering the environment, food safety, public, animal and plant health and animal welfare; and standards for good agricultural environmental conditions of land (“GAECs”) which aim to protect soil against erosion, maintain soil structure and organic matter, and preserve wildlife habitats and landscape features through a minimum level of maintenance. Wales has its own detailed rules in respect of these standards.<sup>19</sup>

Cross compliance applies to all the land on a claimant’s holding (including common land and land in a rural development agreement) not just to the land declared in the BPS claim, as well as to all of the claimant’s agricultural activities.<sup>20</sup>

The claimant is responsible for ensuring that the cross compliance conditions are met throughout the entire calendar year - even, in certain circumstances, where the land is not part of their holding for the whole year.

This means a claimant may be penalised for another person's failure to comply if, for example, ownership or responsibility is transferred mid-year. The claimant is also responsible for the compliance of anyone acting for them, or under their control, on their holding, or anyone with access to the holding under the terms of an agreement, such as contractors, employees and family members.<sup>21</sup>

Scheme payments will normally be reduced for negligent non-compliance, depending on the extent, severity, reoccurrence and permanence of the non-compliance.<sup>22</sup> In Wales, physical cross compliance inspections are generally carried out unannounced, but inspectors may choose to give up to 48 hours' notice.<sup>23</sup>

## PRACTICAL EXAMPLE

**A livestock farmer wishes to rewild land on which she has grazed animals for over five years and for which she currently receives BPS payments. She doesn't live on the land nor does she tend the livestock herself. She pays a stock handler to tend the livestock. She intends to reduce the number of cattle, pigs and ponies on the land and remove internal fences, to encourage a mosaic of habitats, including thickets of young trees. The stock handler will continue to breed and sell the remaining cattle and pigs for meat. There is a public footpath running through the land that is currently protected by a fence which the farmer intends to remove.**

The first question to consider, when assessing whether the farmer will continue to be eligible for BPS payments, is whether the land itself remains eligible for BPS. Permanent grassland (land used to grow grasses or other herbaceous forage for five or more consecutive years) is eligible and according to government guidance can include areas of light scrub so long as it is suitable for grazing and forage continues to predominate. However, government guidance states that permanent grassland does not include areas of dense scrub which prevents grazing.

If the desire to increase biodiversity leads to the creation of dense scrub that cannot be grazed, there is a risk that the area eligible for BPS payments will be reduced or that the land will become ineligible.

The second question is whether the farmer continues to conduct "agricultural activity", within the definition:

- There's a risk that the farmer will be unable to claim that she continues to maintain the land in a state suitable for grazing or cultivation. The trees aren't necessarily a bar to claiming the land as grazing land if 50% of the area under the canopy is herbaceous forage or grasses and used by animals for grazing. Even so, if the reduction in grazing animals and the increasing biodiversity leads to the growth of dense scrub that cannot be grazed then it's unlikely to qualify as land in a state suitable for grazing.
- The farmer may still, however, be able to claim that she's carrying out an agricultural activity if animals continue to be bred and kept on the land for farming purposes. That is likely to be the case, because the stock handler continues to sell the cattle and pigs for meat.

The third question is whether the farmer continues to have the land at her disposal. As the stock handler is a contractor carrying out operations at the direction of the farmer, it's likely that she'll be found to have the land at her disposal.

Finally, the farmer needs to show that she's complying with the cross conditions. Amongst other considerations, the farmer will need to be mindful of GAECs relating to public rights of way. In order to meet the rules, the farmer must not disturb the surface of public rights of way. If the farmer has disturbed the surface of a cross field path or bridleway, the farmer must make it good.

## 3. RURAL DEVELOPMENT PROGRAMMES IN ENGLAND – COUNTRYSIDE STEWARDSHIP AGREEMENTS

The RPA also administers England's Countryside Stewardship ("CS") Scheme, funding environmental improvements by farmers, woodland owners and foresters. The focus of this scheme is biodiversity, and it is a voluntary scheme which replaced the Environmental Stewardship Scheme, English Woodland Grant Scheme and capital grants under the Catchment Sensitive Farming programme.<sup>24</sup>

The scheme is being updated and enhanced as part of ELMs, so please consult our *Rewilding in England and Wales: Subsidies after CAP* briefing note to understand the current position.

## 4. RURAL DEVELOPMENT PROGRAMMES IN WALES

### 4.1 Glastir

Until 2023, Glastir was the primary agri-environment scheme for farmers and land managers in Wales.<sup>25</sup> It was a voluntary scheme which generally offered five-year agreements that aimed to manage soils and improve water quality, reduce flood risk, and conserve and enhance wildlife, amongst other things.

Glastir included several types of contracts, including: (i) Glastir Advanced, which supported improvements in the environmental status of habitats, species, soils and water; (ii) Glastir Commons, which applied to those holding rights over common land and grazing the land concurrently or having established a grazing association; and (iii) Glastir Organic, which supported those meeting organic production criteria or wishing to convert to organic production.

The last Glastir scheme ran from 2014 to 2020, and most Glastir Advanced, Commons and Organic contracts were extended to December 2023.<sup>26</sup> Glastir will be replaced by the SFS which is set to start in 2025<sup>27</sup> (see the *Rewilding in England & Wales: Subsidies after CAP* briefing note). The Habitat Wales scheme (see below) has been introduced to cover the 2024 transition period.

Although some claimants may continue to receive payments under Glastir, no new applications are possible, therefore this briefing note does not address the topic further.

#### 4.2 Habitat Wales

To facilitate the transition from Glastir to SFS, a new Habitat Wales scheme was introduced and will run from 1 January 2024 until the introduction of SFS in 2025.<sup>28</sup>

The application window for Habitat Wales closed on 10 November 2023,<sup>29</sup> therefore this briefing note only provides a brief summary of the scheme.

Habitat Wales applies to land under a habitat option within Glastir Advanced, Commons and Organic contracts in 2023, as well as habitat land that was not under management in 2023 (excluding designated sites) and land managed as habitat.<sup>30</sup>

To be eligible, a claimant must: (i) be a primary producer of agricultural products (e.g. arable, beef, dairy, goats etc); (ii) have at least three hectares of eligible agricultural land registered with RPW; or (iii) be able to demonstrate over 550 standard labour hours. The claimant must also have management control of the land throughout 2024: broadly, this requires them to be an Owner Occupier, a tenant with exclusive occupation with a Farm Business Tenancy and / or a Full Agricultural Holdings Act 1986 tenancy, or 'Sole Grazier' common land registered as a field parcel with RPW.<sup>31</sup>

The scheme had a competitive application process and it targeted areas which could achieve the greatest environmental benefits.<sup>32</sup>

*Thank you to Clifford Chance LLP for their legal support in producing this briefing note.*

*This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.*

*The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of April 2024.*

## ENDNOTES

1. Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporates the EU Direct Payments legislation. This includes the two main Regulations governing Direct Payments: the Regulation establishing rules for Direct Payments to farmers under support schemes within the framework of the Common Agricultural Policy ((EU) 1307/2013) and the Regulation on the financing, management and monitoring of the Common Agricultural Policy ((EU) 1306/2013).
2. BPS rules for 2023 in England (the "England BPS 2023 rules") are available at: <https://www.gov.uk/government/publications/basic-payment-scheme-2023/bps-rules-for-2023>. Links to the various components of Welsh Government guidance for BPS in Wales are available at: <https://gov.wales/basic-payment-scheme>.
3. The 2023 Single Application Rules for BPS in Wales (the "Wales BPS 2023 rules") are available at: <https://www.gov.wales/sites/default/files/publications/2023-03/single-application-form-saf-2023-rules-booklet.pdf>. Further guidance is also available at: <https://gov.wales/basic-payment-scheme>.
4. The lower age limit is 16 in Wales for applications from farmers acting through legal persons such as limited companies.
5. Section B50 of the Wales BPS 2023 rules.
6. Government guidance on the status of BPS: <https://www.gov.uk/guidance/basic-payment-scheme>
7. BPS eligibility requirements in England are broadly similar to those in Wales (see sections 2.4 to 2.6), with some slight variations.
8. Government guidance on the delinked payments scheme: <https://www.gov.uk/guidance/delinked-payments-replacing-the-basic-payment-scheme#receiving-delinked-payments>



9. See government guidance for more information: <https://www.gov.uk/guidance/delinked-payments-replacing-the-basic-payment-scheme#transferred>
10. See 2023 government guidance on cross compliance and delinked payments: <https://webarchive.nationalarchives.gov.uk/ukgwa/20231103060408/https://www.gov.uk/government/publications/cross-compliance-2023/cross-compliance-2023#delinked-payments-replacing-bps>
11. A summary of the requirements for farmers and land managers can be found at: <https://www.gov.uk/guidance/rules-for-farmers-and-land-managers>
12. See Defra's progressive reductions calculator for more information: <https://calculate-direct-payment-reductions.defra.gov.uk/>
13. See Section B4 of the Wales BPS 2023 rules for the full details: <https://www.gov.wales/basic-payment-scheme>
14. Section B12.2 of the Wales BPS 2023 rules.
15. Section B12.2 of the Wales BPS 2023 rules.
16. Section B23 of the Wales BPS 2023 rules.
17. Section B21.2 of the Wales BPS 2023 rules.
18. Chapter 6 of the Sustainable Farming Scheme consultation document, dated 14 December 2023: [https://www.gov.wales/sites/default/files/consultations/2023-12/sustainable-farming-scheme-consultation-document\\_0.pdf](https://www.gov.wales/sites/default/files/consultations/2023-12/sustainable-farming-scheme-consultation-document_0.pdf)  
The consultation closed on 7 March 2024: <https://www.gov.wales/sustainable-farming-scheme-consultation>
19. Wales guidance on cross compliance 2024: <https://www.gov.wales/cross-compliance-2024>
20. Section F2.1 of the Wales BPS 2023 rules.
21. See Section F2 of the Wales BPS 2023 rules for more details.
22. See Section H12 of the Wales BPS 2023 rules for more details.
23. Section I.2.5 of the Wales BPS 2023 rules.
24. Links to government guidance for the various Countryside Stewardship schemes and options are available at: <https://www.gov.uk/government/collections/countryside-stewardship-get-paid-for-environmental-land-management>
25. Links to various Welsh government guidance for Glastir and other closed schemes are available at: <https://www.gov.wales/closed-2014-2020-rural-development-plan-schemes>
26. Glastir Advanced renewals: <https://www.gov.wales/glastir-advanced-renewals-additional-information-html>
27. See written statement by Minister for Rural Affairs and North Wales and Trefnydd, dated 21 July 2023: <https://www.gov.wales/written-statement-glastir-and-transition-sustainable-farming-scheme>
28. *Ibid.*
29. Habitat Wales Scheme Rules Booklet: <https://www.gov.wales/habitat-wales-scheme-rules-booklet-html#131151>
30. Habitat Wales Scheme Outline: <https://www.gov.wales/habitat-wales-scheme-outline-html>
31. Further details are available in the Habitat Wales Scheme Rules Booklet: <https://www.gov.wales/habitat-wales-scheme-rules-booklet-html>
32. See Habitat Wales Scheme Outline: <https://www.gov.wales/habitat-wales-scheme-outline-html>

## WHO'S BEHIND THIS GUIDANCE?



This note is part of a range of information produced by Rewilding Britain and The Lifescape Project to provide practical guidance to rewilders. Each is designed to help rewilding practitioners across Britain overcome common barriers in their rewilding journey, as identified through conversations with members of our Rewilding Network.

Rewilding Britain's Rewilding Network provides a central meeting point for landowners, land and project managers and local groups in Britain, offering opportunities for collaboration and allowing smaller landowners to take on larger-scale rewilding together. If you find this useful, please consider joining the Network, where those in Britain can explore these issues further with others in the same boat.



The Lifescape Project is a rewilding charity using a multi-disciplinary approach to achieve its mission of catalysing the creation, restoration and protection of wild landscapes. Lifescape's legal team is working to support rewilders in understanding how the law applies to their activities and pursuing systemic legal change where needed to support the full potential of rewilding. These notes form part of Lifescape's Rewilding Law Hub which aims to provide a legal resource centre for those wanting to manage land in accordance with rewilding principles.



### JOIN THE CONVERSATION

We'd love to hear what you've found useful in these notes and where we can help fill gaps in the guidance so that we can make sure they remain an up-to-date practical tool for rewilders.

Get in touch with us at:  
**Rewilding Britain: the Rewilding Network,**  
[www.rewildingbritain.org.uk/rewilding-network](http://www.rewildingbritain.org.uk/rewilding-network)

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