

Appendix 4: Common land and shared grazing

Purpose

This document is an Appendix to the Grant Manual for the England Woodland Creation Offer (EWCO). It provides important supplementary information relevant to any EWCO application on common land or area of shared grazing.

Definitions and important background

In the context of this document 'common land' means:

- land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006
- land to which Part 1 of that Act does not apply and which is subject to rights of common within the meaning of that Act

This is drawn from the definition of 'common land' given in schedule 5 of the Commons Act 2006.

'Shared grazing' means communal pasture where graziers have a legal entitlement to graze (for example, a pasture used jointly by tenants) where the land is not registered as common land.

In the term 'commons association', the word 'association' is used to cover landowners, sporting tenants and graziers working together in an association or group unless otherwise stated. A Forestry Commission Woodland Officer will work with you to build a suitable application, but the association will be responsible for agreeing how its members work together.

The EWCO Additional Contribution for Recreational Access is not available for applications on common land unless the applicant can provide evidence that there is not an existing right of access over the land.

If you are applying for a EWCO Grant on common land or shared grazing, you must read this Appendix together with the core EWCO Grant Manual. Where there is any inconsistency between this Appendix and the EWCO Grant Manual, this Appendix takes precedence. Where it states in this Appendix that a EWCO Agreement Holder must do something, this is a requirement (along with the requirements in the core EWCO Grant Manual) of your EWCO Agreement.

If the EWCO application will be made by the landowner who owns the whole common and has sole use and rights to the land, the common can be entered as the landowner's holding or be attached to the landowner's holding as part of a standard application. In those circumstances, the landowner must follow the guidance in Annex A of this document only.

If the EWCO application will be made by someone who does not have sole use of the land and where there will be 2 or more beneficiaries to the EWCO Agreement, the supplementary guidance in this Appendix will apply. In those circumstances, a [EWCO Common Land and Shared Grazing Supplementary](#) must be completed and an internal agreement must be established, signed by all the parties to the EWCO application, specifying the obligations placed on each person and the payments they may expect to receive.

The Forestry Commission will ask for a copy of this internal agreement to be submitted before the EWCO Agreement can commence and may, during the Agreement Period, ask to see formal evidence (such as minutes of recent meetings) that the internal agreement operates effectively.

In all cases where there are 5 or more parties benefiting from or contributing to the delivery of the EWCO Agreement, a more formal commons association must be established, with officers to manage the association.

Where there is no known landowner (for example, where ownership is recorded as 'unknown' on the commons register) you will need to discuss the circumstances with your Forestry Commission Woodland Officer. In such cases, ownership will almost always be vested with the local authority. In addition, responsibility for the management of some commons is vested in the local authority under a scheme for the regulation and management of a common made under the Commons Act 1899, including in some cases where the common has no known owner. In either of these cases, the local authority will be required to consent to the application. Where the landowner cannot be identified or contacted a full explanation will need to be provided to the Forestry Commission to progress an application.

Part-common EWCO Agreements are only permitted under exceptional circumstances, on a case-by-case basis, as agreed with the Forestry Commission. Further information is provided in the [final section](#) of this Appendix.

Before making an application

In addition to the requirements outlined in the core EWCO Grant Manual, to make an application in respect of common land or shared grazing each of the steps set out below must be completed.

Step 1: Consult stakeholders

Activities to develop awareness, understanding and agreement across these interest groups are required before a EWCO application can be made if a common has not previously been subject to an agri-environment grant agreement, or where consultation is required to bring the landowner(s), rightsholders and other stakeholders together in support of the management proposals.. The extent of public engagement required will depend upon the management change which is being considered within the EWCO application. Further guidance is given below in [Annex A](#).

Step 2: Select a representative

Once potential applicants have read the supplementary guidance in this Appendix and have decided to pursue a EWCO application, they will need to agree on the person who will make the application on their behalf. The Forestry Commission will require a letter of authority signed by all potential participants in the EWCO Agreement: landowner(s), sporting rights holders and graziers.

This person (who can be an agent) will be the main business contact for the EWCO application and any subsequent EWCO Agreement. This person will sign the EWCO Agreement on behalf of the group or association, act on behalf of the group or association, and receive the EWCO Grant payments. Throughout the remainder of this document this person will be referred to as 'the applicant'.

Step 3: Start to establish a group with an internal agreement

Establish a Commons Association or internal agreement, in line with the requirements set out above. If there is already an association in place, you can continue with it, as long as it can fulfil the minimum requirements set out in this Appendix.

If an existing Commons Association covers several commons, a separate group of members must be formed (with the support of the association) to create an internal agreement for their common where it is the subject of a EWCO application.

If help is needed to set up an association, this may be available from farmers' representative bodies, a federation of commoners, commons councils, a land or agricultural agent or surveyor, or a solicitor specialising in rural practice. They may charge for assistance; there is no grant available to support such costs through EWCO.

To establish a valid Commons Association and /or Internal Agreement

The association must effectively represent all those who have a legal and active interest in the management of the land. To ensure this, you must consult the following people when preparing the EWCO application:

- the landowner(s)
- all the active commoners or graziers, and
- people who may have a legal or active interest in managing the common or shared grazing, for example the owner of the shooting rights

Some landowners may not wish to be involved but prefer to be represented by their agents or their tenants who are permitted to graze or utilise rights. You should always consider the landowners' surplus in any negotiations.

The internal agreement must involve all the active rightsholders, but inactive rightsholders must also be considered, especially those who have the capacity to exercise their rights, as they may wish to do so during the course of the EWCO Agreement. Some rightsholders may lease their rights and this must be taken into account. Rights of common attached to land cannot be leased for a term longer than 2 years (although the lease can be renewed at the end of each term). We may ask to see evidence of any lease.

You must also contact rightsholders who do not wish to participate in the EWCO Agreement or who has a grievance. You must consider their existing or future management practices in case they put the objectives and requirements of the internal agreement and EWCO application at risk. It may be possible to address their concerns and make them a party to the internal agreement and EWCO application. Or, as they can legally exercise their rights on the common, it may be necessary to negotiate ways to fulfil their aims without risking the internal agreement and EWCO application. You must keep a record of any decisions so you can deal with any disputes that occur at a later date.

To make sure all potential participants, landowners, sporting rights holders and graziers in the EWCO agreement are consulted and briefed, you can consult the potential participants in the EWCO agreement individually, in small groups, or at a general meeting. A general meeting can also serve to brief individuals and organisations that have an interest in the land, for example Natural England (if the land or part of it is a Site of Special Scientific Interest (SSSI)), or members of the community. You can place notices in local newspapers and at access points to the common.

Where the group will have 5 or more members, you must appoint officers to manage the association – a chairman, secretary and a treasurer are essential. These must not all be from one family or enterprise (for example, they must have separate single business identifiers (SBIs)), and they must reflect the range of beneficiaries in the agreement. The written constitution must authorise these officers and the applicant to carry out certain specified business on behalf of the association, for example to open and operate a bank account (see Step 4: Open a bank account).

You must agree a formula to allocate payments to members of the association or group. This formula can make payments according to their contribution and levels of responsibility.

You must have a written constitution. Whilst any bodies or individuals providing assistance may be able to provide a draft or template constitution, you must make sure that the constitution meets the needs of the particular circumstances of the group. The constitution must:

- describe membership requirements and list the members
- list responsibilities and officers
- set out governance for decision making and meetings
- identify group commitments
- set out how the EWCO agreement payments will be paid
- describe how the multi-annual options and requirements for capital items will be complied (met) with on the common or shared grazing
- describe a management mechanism for decision making and the resolution of disputes, and
- set out how changes in membership will be dealt with

The internal agreement must make provision for increases in grazing livestock numbers by those not involved in the EWCO agreement. Where there is a maximum level of stocking set in the EWCO agreement, you must add a clause in the internal agreement to state that the graziers already involved in the EWCO agreement will, if necessary, reduce their stock numbers in order for the overall level of stocking to stay within this maximum. Negotiation of the internal agreement can provide the opportunity to agree husbandry practices that help participants work together to manage the common or shared grazing.

You must keep full records of all the meetings at which the decisions set out above were agreed.

Establishment of an effective internal agreement will be a condition of receiving a EWCO Agreement offer and a copy of the signed internal agreement, including the financial information, must be submitted to Forestry Commission before the EWCO Agreement can commence. The Forestry Commission or the RPA cannot be involved in drafting the document or in any dispute about its operation.

Compliance with the EWCO agreement will be the shared responsibility of those who are party to the internal agreement, but day to day administration will be the particular responsibility of the applicant.

No known landowner

Where there is no known landowner, and ownership is recorded as 'unknown' on the commons register, you should contact us to discuss the circumstances. Where there is no known landowner, ownership will almost always be with the local authority. In addition, responsibility for management of some commons is with the local authority under a scheme for the regulation and management of a common made under the Commons Act 1899, including in some cases where the common has no known owner. In these cases, you will need agreement for your application from the local authority. Where the landowner cannot be identified or contacted, you will need to give us a full explanation for the application to progress.

Step 4: Open a bank account

Create a bank account on behalf of the association. A bank will need to see evidence that the association has authorised the opening of an account and the signing of instructions to the bank (such as cheques), so the applicant will need to produce a record of the meeting which gave instructions for an account to be opened and operated.

Step 5: Register an SBI and check the Rural Land Register

There must be a separate Single Business Identifier (SBI) for the association (even if members of the association already have their own SBIs). The individual beneficiaries who are part of the association will also need to be registered with the [Rural Payments service](#).

You should make the application to register the commoners' or graziers' association with the Rural Payments service. You will need to check that the common is registered correctly in the Rural Payments service, liaising with the other participants to agree how to enter the land into a EWCO agreement. You will have to resolve any boundary issues with neighbouring commons and farms before you apply.

Step 6: Make and negotiate an application with Forestry Commission

Potential applicants should read the EWCO Grant Manual so that they can consider their options and begin discussions within their association at an early stage.

You must fill in the EWCO Common Land and Shared Grazing Supplementary Form and send it with your application. On this form you must be able to declare on the supplementary form that:

- the landowner(s) of the common or area of shared grazing consent to the EWCO Agreement
- the RPA customer registration (SBI) for the common or shared grazing includes the names and SBIs of all people who will benefit from or contribute to the delivery of the EWCO Agreement

You must complete these tasks and provide a signed copy of the internal agreement to us before we can offer a EWCO agreement.

Step 7: Site of Special Scientific Interest (SSSI) consent

Where the land includes an area of SSSI, the EWCO agreement offer will be subject to a formal notice and consent process.

If new members wish to join the association during the EWCO agreement period, to deliver management as part of the EWCO agreement, the association must refer the matter to Natural England, since the changes may need to be covered by a consent.

Anyone carrying out activities on an SSSI without consent may be acting in breach of the Wildlife and Countryside Act 1981.

Part-commons

Part-common EWCO agreements are only allowed under exceptional circumstances, on a case-by-case basis, as agreed with us.

Normally commons coincide with habitat and management boundaries, but exceptionally parts of a single common may be managed in different ways. In such circumstances, it may be more appropriate to progress applications representing 'part-commons'.

Part-commons agreements must satisfy all the requirements for commons agreements:

- they must cover a defined area of land with its own Rural Payments service land parcel number(s)
- the agreement area must either be visibly distinct or be bounded by a physical barrier to mark it out from the non-agreement area

- they must be subject to a separate and binding association and group internal agreement

In addition, part-commons EWCO agreements must also:

- be managed as a separate and single grazing unit, where land management practices on the remaining part of the common will not put delivery of the EWCO agreement at risk
- have an audit trail justifying splitting the common, and a clear explanation as to how the EWCO agreement works that also covers any non-participation by any rights holders will be managed

We will keep a register of all part-common agreements.

Annex A: Public engagement

The extent of public engagement required will depend upon the management change that is being considered within the EWCO Agreement and the impacts that the changes may have on features of interest on the common and on local and national stakeholders. Almost all commons have features of public interest. These include, but are not limited to:

- public access rights
- historic features
- landscape
- nature conservation

Where works are proposed that need consent from the Planning Inspectorate then applicants need to follow the principles set out in the guide called [‘A common purpose: a guide to agreeing management on common land’](#).

Where management changes do not require consent from the Planning Inspectorate, public consultation should still be undertaken. In these circumstances you are not obliged to follow the principles in ‘A common purpose’, but where there is considerable public interest in your site (particularly if there are significant numbers of visitors) then it is likely to be helpful to follow ‘A common purpose’.

Public engagement where works that need consent are not proposed should still include relevant stakeholders. The applicant should identify relevant stakeholders, contact them, supply information about the proposed scheme and what the intended outcomes will be (e.g., for biodiversity), and opportunity should be provided for stakeholders to give feedback, especially if the proposals would impact upon them. It may be helpful to prepare a summary of the scheme proposals, including maps and pictures that can be sent to stakeholders, posted on relevant websites and handed out at public meetings.

The applicant should consult:

- the owners of the land
- the commons council or association (if there is one)
- others with a legal interest, such as tenants and anyone who has an easements or other rights and covenants over the land
- all known commoners (whether they’re actively using their rights or not)
- any parish, district, city or county council in the same area as the land
- [Natural England](#)
- [English Heritage](#)
- [National Park Authority](#) (if the area you want to work on is in a National Park).
- [Area of Outstanding Natural Beauty](#) (AONB) Conservation Board Joint Advisory Committee (if the area of land you want to work on is in an AONB)

- the [Open Spaces Society](#)

The applicant may also need to talk to:

- [Wildlife Trusts](#)
- [Local Access Forums](#)
- [Campaign to Protect Rural England](#)
- [Ramblers' Association](#)
- local amenity societies, if there are any in the area where the land in the EWCO Application is located
- anyone living on the land, or on neighbouring land, who could be affected by your planned works

The applicant should hold public meetings in local venues and invite stakeholders to hear more about the proposals and comment upon them.

The applicant should keep a record of feedback and comments received about the proposals. The applicant should consider how concerns from stakeholders about the proposals could be addressed through alterations to the proposal and implement these if they do not significantly compromise the outcomes sought. The applicant should be able to demonstrate how they have adapted the scheme proposals where this is appropriate.

The following are some examples of changes to scheme proposals which could be made in response to feedback:

- agreement to limit use of existing tracks in bad weather to reduce potential damage to track surfaces, so as not to inconvenience other users
- agreement to retain certain trees (e.g., on heathland) where these are of significance to the local community
- alteration of the grazing calendar to reduce conflict with public recreation
- avoidance of operations on non-protected historic features
- provision of new or improved access points where a common is already fenced.
- provision of seating at a viewpoint
- alteration of felling proposals to retain screening of buildings, roads or industry adjacent to the common
- alteration of the location of woodland creation proposals to provide screening of buildings, roads or industry
- agreement to tie back gates when these are not required to secure livestock