

Update on HLS Rollovers on Common Land: February 2023

Many commons remain in HLS or HLS/UELS agreements and as these expire have been offered extensions. Initially extensions were for one year but in 2023 the RPA are offering five year extensions subject to the recommendation of Natural England. There is some uncertainty about how the process of Extension / Rollover works. We have therefore sought some clarity from the RPA and here share their comments to us. *This has been checked by the RPA but is not government or professional advice.*

Overall across England the RPA process has been progressing and of the approximately 7,000 HLS agreements expected to be offered an extension in 2023 approximately 5,500 have had their documentation sent out by early February. These are all HLS agreements not just commons and we do know that a significant number of commons are yet to receive a recommendation or refusal so we have sought further clarification, see below.

Please do not just sit and wait if you have not heard – stay engaged and contact the RPA

Timings:

The ambition was for all recommendations from NE to be made to the RPA by Christmas. Currently in early February there are only a few recommendations outstanding but quite a numbers of these are on commons. We know Commons are more complex and it is frustrating for Associations waiting for clarity especially when it comes last minute.

The RPA informed us their desire to have HLS extensions agreed and signed as soon as possible is because:

- if an HLS extension is not possible then the agreement holder has time to apply for Countryside Stewardship Higher Tier before the deadline on 28th April 2023.
- it is preferable to have all documentation signed before the annual HLS claim is submitted (deadline 15th May 2023).

Once you have your documentation you will usually be given 20 working days from the date of the letter to return the paperwork. If you require longer as a new internal agreement is required please just ask the RPA. They are responsive to these requests from Commons. Do not though ignore the letter as that may be read as a lack of interest.

If you haven't received your HLS extension documentation it may be for one of four reasons.

- 1) The RPA are still working through issuing extension documents starting with those that expire earliest and you have not reached the top of the queue. If you think this is the case you can email ruralpayments@defra.gov.uk and the RPA will confirm all is in order and ask for your patience.
- 2) Natural England has not yet made a recommendation to the RPA which may be for a number of reasons:

- a. Workload; Natural England are finalising their site visits and reporting to the agreement holder and RPA.
 - b. Agreeing Terms; Natural England are still in discussion with the agreement holder about any changes to the agreement- in particular the stocking calendar- to give them the confidence to make a recommendation for an extension
- 3) Natural England consider that the agreement is not suitable for an extension. Usually this is because the indicators of success have not been met and NE consider that an HLS extension is not the appropriate manner to achieve improvement of the site. The CS Higher Tier scheme is now open for applications. If you are still negotiating with NE it might be worth submitting an initial CS Application to protect your position. This needs to be before 28th April.
- 4) There is an outstanding issue with your current HLS Agreement which prevents the RPA processing the extension; e.g. land transfer or awaiting information.

If you have not heard about your expiring HLS please do not wait for someone to contact you. Please email the RPA ruralpayments@defra.gov.uk directly quoting your Agreement Number and also where appropriate contact your local Natural England team.

In a few cases Natural England may recommend a one year extension where further discussions are required but time does not allow them to be concluded before expiry of the current agreement. This is only in exceptional cases. We do not know yet what extensions will be offered in 2024.

Liability in the event of breaches / non-compliance.

A number of commons associations have been in touch with the Foundation for Common Land asking about liability in the event there is a breach during the period of the HLS extension. Contractually the five years is an extension of the original HLS agreement .

The RPA appreciate this is a different position than for CS Mirror Agreement Holders who are being issued 'new' agreements which in effect create a break between the two agreements. The RPA have though advised us that no reclaims will be made for any breaches before the start of the Rollover / Extension. Furthermore we are encouraged to here Defra overall is now adopting a more proportionate approach to reclaims and penalties so watch this space.

Clearly complying with the terms of the agreement and so avoiding breaches is the preferable approach!

**Finally if you have concerns or issues with your HLS please do not hesitate to contact the RPA. They are keen to make sure that issues are addressed sooner rather than later and appreciate some agreements, especially on commons, are particularly complex. Their ambition is to ensure as much land as possible stays under agreement.
Stay engaged!**

February 2023