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**SSSIs, HLS Rollovers, Countryside Stewardship and Commons Agreements**

*This piece provides an overview on SSSI consents for grazing on designated commons. It is not professional advice and if you have any specific queries please contact your land agent, lawyer or Natural England Advisor.*

Commons are huge reservoirs for biodiversity and priority ecological habitats. This is why over 50% of all common land nationally is designated as a Site of Special Scientific Interest (SSSI) while overall only 8% of England is a SSSI. This designation for nature means our commons are high priority for environmental schemes and this should help commoners benefit from future ELM schemes. It does though mean additional regulations on how SSSI commons can be grazed and managed. It can be tricky balancing management to ensure both nature and the culture of commoning thrive into the future but this is what we need to do.

SSSIs are governed by English domestic legislation through the Countryside and Rights of Way Act 2000 which amended the Wildlife and Countryside Act 1981 which amended the National Parks and Access to the Countryside Act 1949. There is no change in the law as a result of us leaving the EU.

If you graze on a SSSI common you require consent for any activities listed in the list of Operations Requiring Natural England Consent (ORNECs). You may know them by their previous names; Operations Likely to Damage (OLDs) and Potentially Damaging Operations (PDOs). You can check if your common is a SSSI and find the list of ORNECs on your SSSI via magic.gov.uk or ask your Natural England Advisor.

SSSI consent is required for grazing and this can limit the number of livestock you can graze to below that you have rights for on the Commons Register. In the same way planning law requires you to get consent for making changes to your house even though you own it, SSSI law requires you to have consent to graze the common rights you own. In effect a SSSI designation may constrain the use of land or common rights you own or rent.

If your common is in an HLS or CS scheme then SSSI consent will have been granted for the duration of that scheme; the consent ends when the scheme ends. With many schemes expiring what will be of interest is your ability to graze once the environmental scheme ends, particularly if you decide not to enter another scheme.

If it is a SSSI then the first step is to find out if you had a consent to graze issued before you entered an agri-environment scheme i.e. before ESA / HLS / CS. Often this was at the time the SSSI was notified. If you do not have a copy then do ask your NE Advisor for their assistance. You can also obtain it via a Freedom of Information request. You need to know how many, sheep, cattle or ponies the consent was for and how long it lasts. Early consents had no end date but more recent consents usually do.

If you have an underlying valid (extant) Consent then you will be able to graze at the level stated in the consent. If you don’t then you need to submit a Notice for Consent to graze to Natural England. Natural England has 4 months to respond and they may issue the consent, reject it or issue it with constraints. You can appeal their decision.

There have been cases that challenged Natural England’s powers to curtail economic activity on SSSIs There are two significant cases; one confirmed that Natural England do have the legal authority to limit the use of property rights to protect nature. The second concerned compensation for limitations on property rights as a result of restricted SSSI consents. In that second case financial compensation was granted by the Supreme Court due to the unusual severity of the economic impact on the claimant and the judgement made clear that case did not set a precedent for all restrictions.

The Federation of Cumbria Commoners has in the past taken legal advice from a QC who confirmed that SSSI legislation does empower Natural England to restrict grazing so as a commoner on a SSSI you cannot assume that at the end of a scheme you can return to the full number of rights on the Commons Register. As ever it is best to keep good lines of communication with your Natural England Advisor throughout an agreement. This will reduce the likelihood of disputes and help find an amicable way forward that supports the delivery of nature as part of a viable farming business. A sound and robust evidence base of the vegetation on your common will help underpin those discussions.

And finally in many cases commons do agree a new Countryside Stewardship Scheme or an HLS rollover and as part of the process Natural England will issue a further SSSI consent for the duration of that agreement at the grazing levels agreed.

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