

# Route four – private contract clause

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**This page is no longer in use as it was only applicable for 2015.**

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Private contract clauses can apply in cases of sale or lease of an entire holding or part of it. There are two types of private contract clause. They are:

- **transfer of the right to receive payment entitlements**

This type of private contract clause is targeted at farmers who do not have an automatic right to an allocation of payment entitlements through eligibility for a payment under the Single Farm Payment and / or Scottish Beef schemes in 2013.

In this type of contract clause, the buyer / lessee is allocated payment entitlements.

- **transfer of Basic Payment Scheme payment entitlements to be allocated**

This type of private contract clause is targeted at farmers who buy or lease an entire holding or part of it and would like to benefit from the historic reference (2014 payment entitlement value) of the seller or lessor.

In this type of clause, the seller / lessor is allocated the payment entitlements and then they are immediately transferred to the buyer / lessee with effect from 15 May, 2015.

## General rules

The general rules which apply to both types of private contract clause agreements are:

- both the business transferring-out the land and the business transferring-in the land must be active farmers undertaking an agricultural activity in 2015
- in the case of a transfer involving an entire holding, the transfer must take place in 2015 and the business transferring-out the holding must provide evidence that they were an active farmer in 2015 up to the date the transfer takes place
- in the case of a transfer involving part of a holding, the transfer must take place after 15 May, 2013, i.e. after the right to an allocation was established by the business transferring-out part of their holding
- both of the businesses involved in the transfer must sign the private contract clause before submission of the application for an allocation of payment entitlements
- the final date for submission of an application for an allocation of payment entitlements is 15 May, 2015
- late applications will be accepted up to 9 June, 2015 (25 calendar days after the closing date)
- a reduction of three per cent will be applied to any payment due under the Basic Payment Scheme, Greening and Young Farmer payment for each working day that the application is late beyond 15 May, 2015
- the business transferring-in land must submit a Single Application Form declaring at least three hectares of eligible land. This is to meet the minimum requirement for the Basic Payment Scheme

## Transfer of the right to receive payment entitlements

This type of private contract clause agreement can be used if:

- a business has bought or leased-in land that they will have at their disposal on 15 May, 2015
- the land was obtained from a business who was eligible for a payment under the Single Farm Payment Scheme (SFPS) and / or the Scottish Beef Scheme (SBS) in 2013

The business receiving the land can apply under a private contract clause agreement for the right to receive payment entitlements to be transferred to them.

This allows the business receiving the land to be eligible to apply for an allocation of payment entitlements in 2015, provided that they meet the active farming requirements.

The type of business that might benefit from such a clause is one which did not undertake an agricultural activity on 15 May, 2013 but has subsequently bought or leased in land from a business that has an automatic right to an entitlement allocation, based on their 2013 direct payments.

In the case of transfer of an entire holding and application of this clause, the business transferring-out an entire holding loses their right to receive payment entitlements.

#### **Specific rules:**

- the business transferring-in land must submit the application for an allocation of payment entitlements. This means that they must complete the Private Contract Clause section of the Application for Entitlements. They will also have to submit a Single Application Form 2015 claiming at least three hectares of Basic Payment Scheme eligible land
- the transfer of the holding (entire or part) must take place on or before the date on which the business transferring-in land submits their application for an allocation of payment entitlements

The number of payment entitlements to be allocated for this type of private contract clause will be based on the number of eligible hectares the business transferring-in land declares in 2015.

As it is only the right to receive payment entitlements that is covered by this type of private contract clause, the business transferring-in land does not benefit from the historic reference value of the business transferring-out.

This would be the value of the Single Farm Payment Scheme payment entitlements held on 15 May, 2014 by the business transferring-out land.

The value of payment entitlements allocated to the business transferring-in is, therefore, based on the value of Single Farm Payment Scheme entitlements they held in 2014.

If they did not hold entitlements in 2014, the initial value of their Basic Payment Scheme entitlements will be £0.00 and our system will provide a value from 2015 which will increase in equal steps to the 2019 regional flat rate payment.

## Transfer of payment entitlements

This type of clause means that a business receiving land can enter into an agreement with the seller or lessor to receive the Basic Payment Scheme payment entitlement allocation corresponding to the land being transferred to them.

The purpose of this clause is to allow the business transferring-out land to be allocated payment entitlements in order for the business transferring-in to receive them.

This allows the business transferring-in to benefit from the historic reference of the business transferring-out.

This would be the value of the Single Farm Payment Scheme payment entitlements held on May 15, 2014 by the business transferring-out land.

The type of business that might benefit from such a clause is one which has an automatic right to an allocation of payment entitlements under the Basic Payment Scheme but has transferred in additional land.

By entering into this type of contract clause, the business will be able to transfer-in a separate allocation of payment entitlements from the business transferring-out the land.

#### **Specific rules**

- the business transferring-out land must submit the application for an Allocation of Payment Entitlements. This means that they must complete a Single Application Form 2015 to establish their right to an allocation of payment entitlements via the direct payments received in 2013 route. They do not have to declare any land on the Single Application Form if they will not have land at their disposal on 15 May, 2015. However, they must be able to provide evidence that they were actively farming in 2015 up to the point where the transfer took place

- the business transferring-out the land must also complete the private contract clause section of the Application for Entitlements
- the transfer of the holding (entire or part) must take place before the business transferring-in the land submits their Single Application Form 2015

The number of payment entitlements to be allocated to the business transferring-out will be based on the number of eligible hectares they declare in 2015, plus the number of hectares transferred out under private contract clause. This calculation is necessary to establish the area the business would have held had it not been for the transfer.

The business transferring-in will receive payment entitlements on the basis of the number of eligible hectares subject to the private contract clause.

The value of the payment entitlements will be based on the value of Single Farm Payment Scheme entitlements held on 15 May, 2014 by the business transferring-out the land.

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