



Direct Payments on Common Grazings - ensuring equity for active graziers post-2013

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We hold these truths to be self-evident?

- Maintaining agricultural activity on common grazings is generally desirable and delivers many public goods
- Over time, agricultural activity on common grazings has largely been unprofitable without public support
- Payments should go to those who are actually delivering the public goods (or whatever else policy decides to pay for)
- There should be equity between all land managers – same payment for same activity on same area. If payments are at all differentiated, should be for additional costs, e.g. transaction costs on common grazings



Single Payment Scheme 2007-13

- Main source of support (c. 2/3 of area-based payments)
- Usually claimed by the individual shareholder (sheepstock clubs are an exception)
- Forage allocations have been on basis of share of rights, not according to share of claimed land, let alone of proportion of grazings actually used
- But, historically based – payment is effectively independent of forage area, as rate per ha determined by combination of reference period payments and payment period forage claim



Basic Payment 2014-20

- At present seems that claimant will be the individual shareholder (sheepstock clubs are an exception), who claimed in 2011 and activates entitlements in 2014.
- Payment rates per hectare set regionally or nationally
- Eligible forage area available to the claimant becomes very important as no historic element to 'correct' the calculation

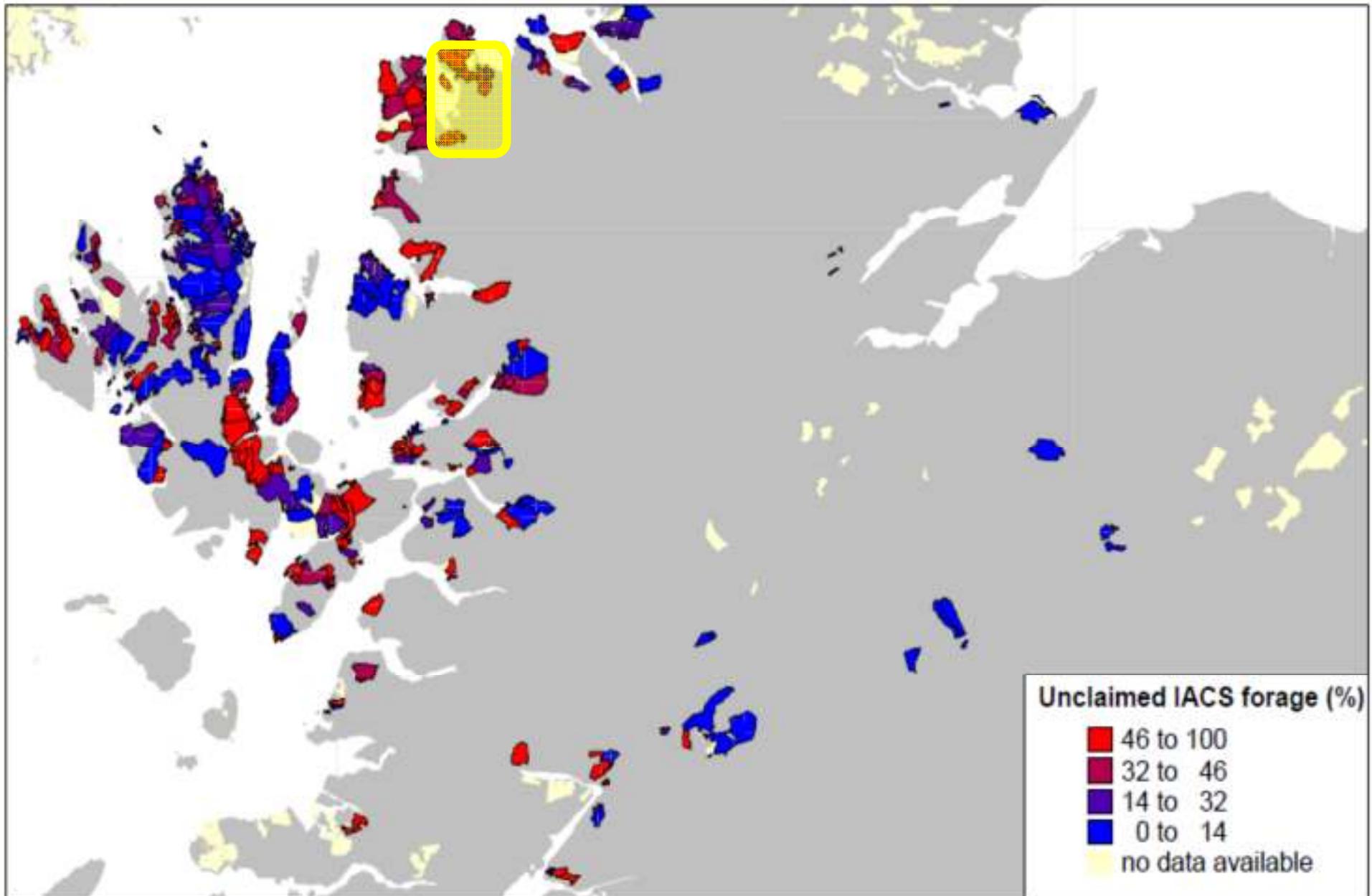


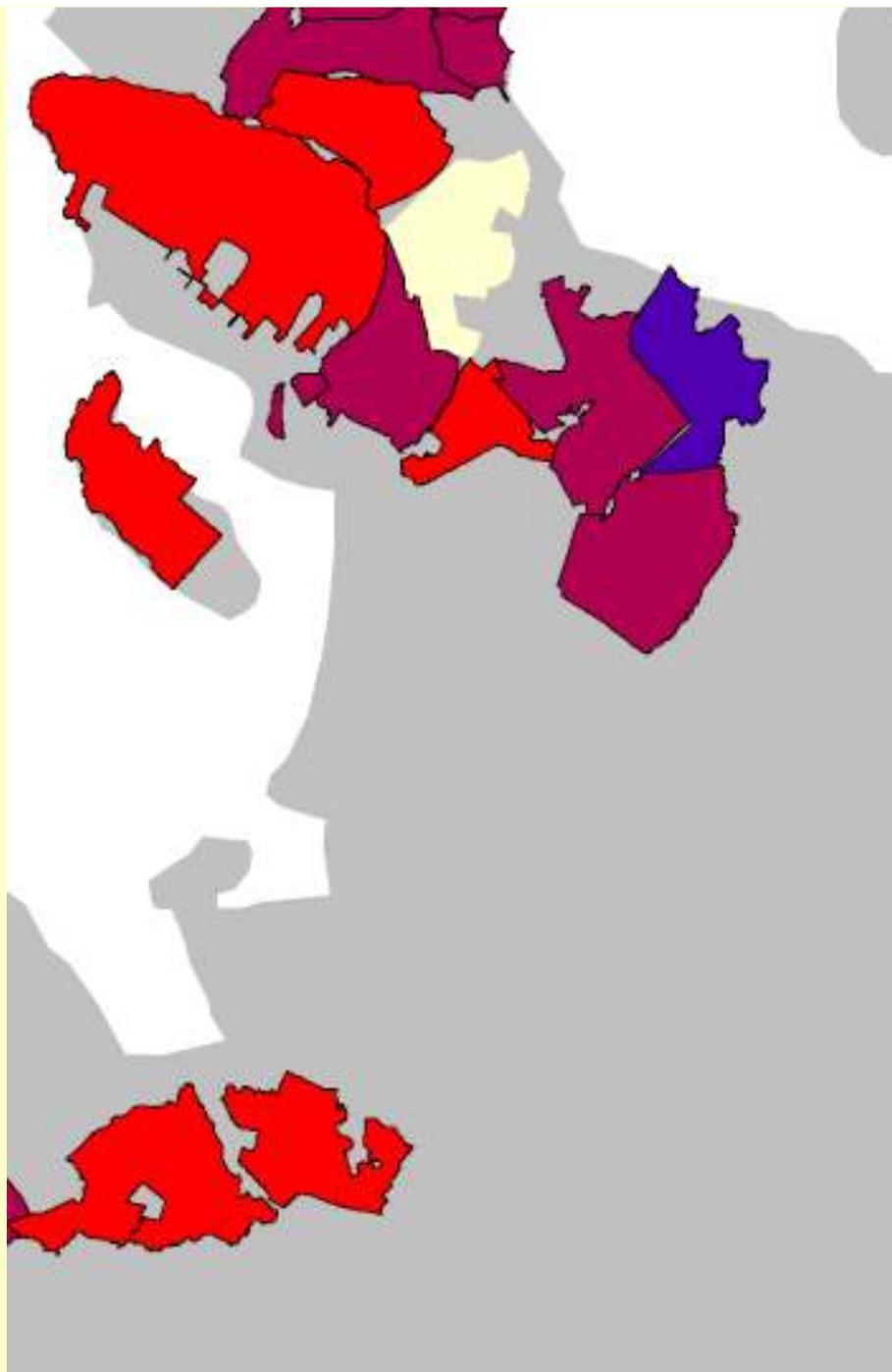
Basic Payment 2014-20 – what is the problem for common grazings?

- Assuming MAJOR issue of defining ‘active farmer’ is sorted (need to avoid freeloading by inactive claimants on the back of the active)
- Main issue is unclaimed shares
- To give equity to the active claimant, area used needs to match the area available to claim
- Problem just now for LFA payments, but ignored...
- Only 360,360 ha claimed on parcels whose total area is 537,615 ha: 33% (177,255 ha) unclaimed
- (excluding another 54,286 ha not claimed even in part and probably not in use)



Portree & Inverness areas – forage NOT claimed (SFP claim, 2009, quartiles)



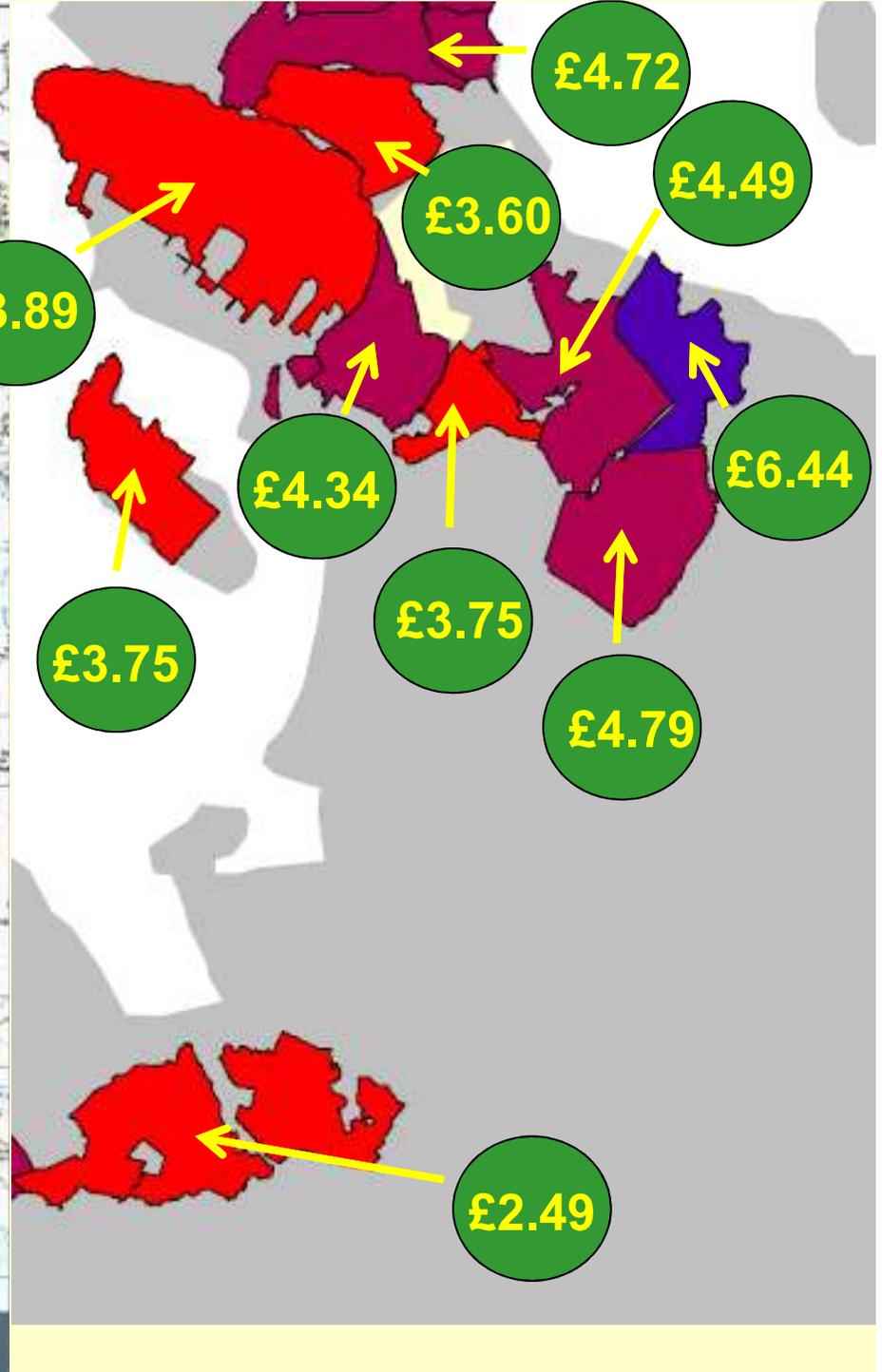


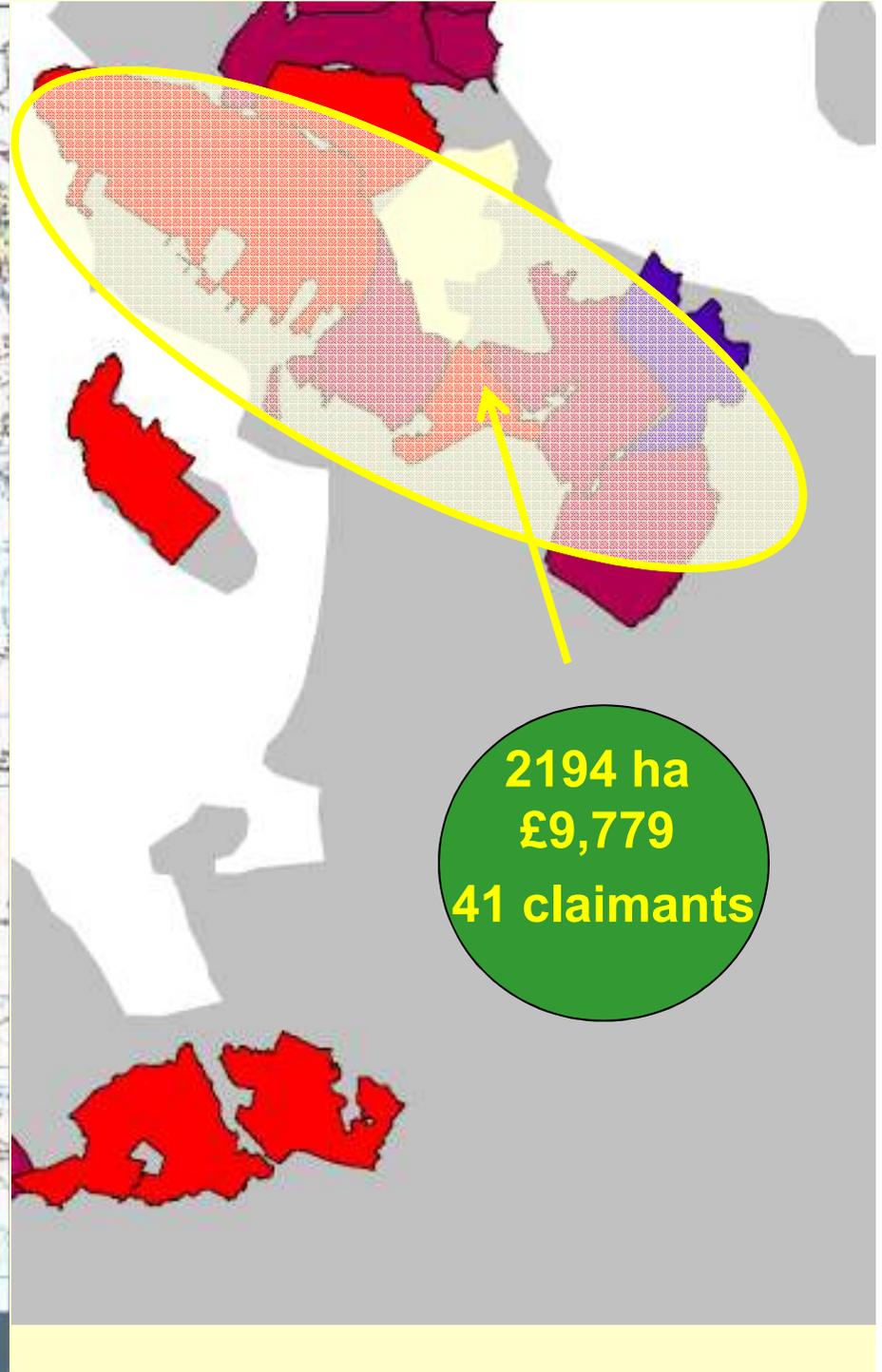
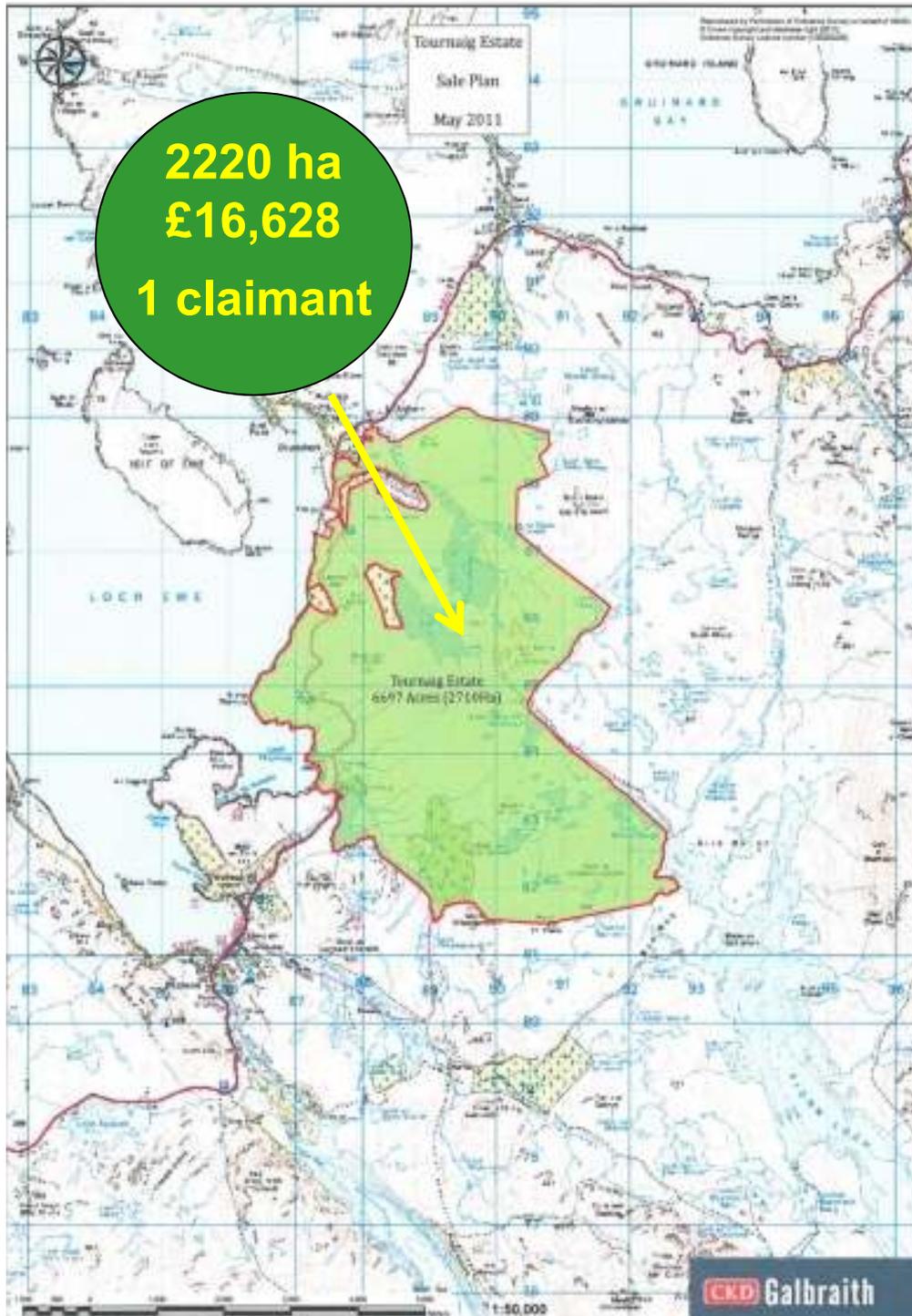


Assumptions:

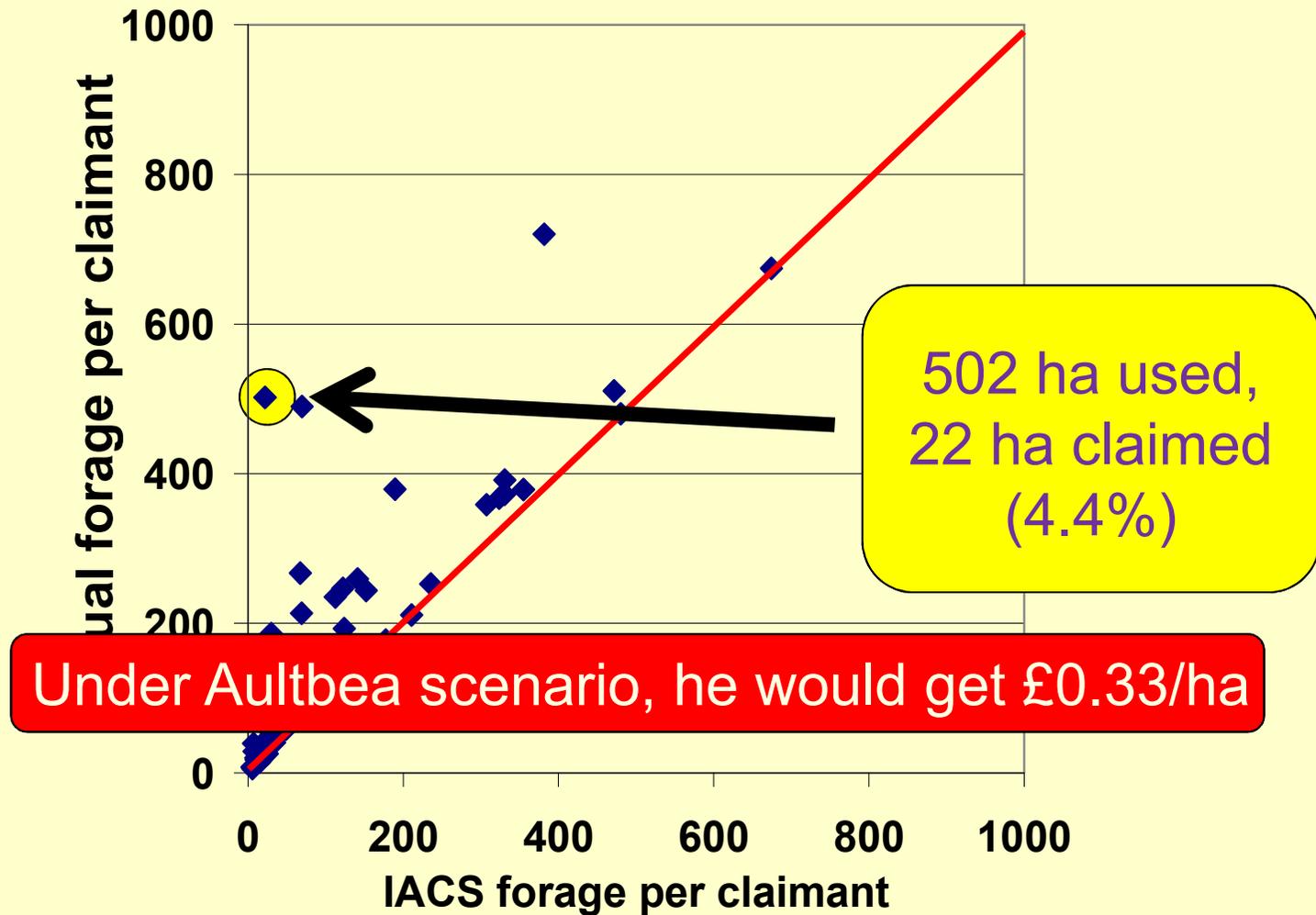
- Tournaig estate sale brochure: 2200 ha of hill – assume all eligible
- Common grazings: 2009 IACS data – net area, total claimed area, total separate businesses claiming on each grazings
- Assume all parcels kept in GAEC
- No info on individual claims, but assume carrying capacities comparable and that all claimed land in Gairloch parish (749) will attract same Basic Payment after 2014
- For illustrative purposes, assume all entitlements worth average SPS 2005 (as per National Reserve guidance) - £7.49/ha







Available versus claimable forage per claiming shareholder, Portree & Inverness areas IACS 2009



What to do in 2014?

- 2014 claim is very important – establishes both number and distribution of entitlements for the period 2014-20
- Default outcome would be inequitable in terms of reward/payment for delivery of public goods – differentiation of payment for no reason whatsoever; potential ‘losers’ are the most vulnerable and marginal (69% of common grazings claimants are in HIE Fragile Areas)
- Strong case for saying that Niedermair-Schiemann ruling in ECJ makes de facto allocation of forage to NON-claimants unlawful – claimants should be able to declare ALL the land they use



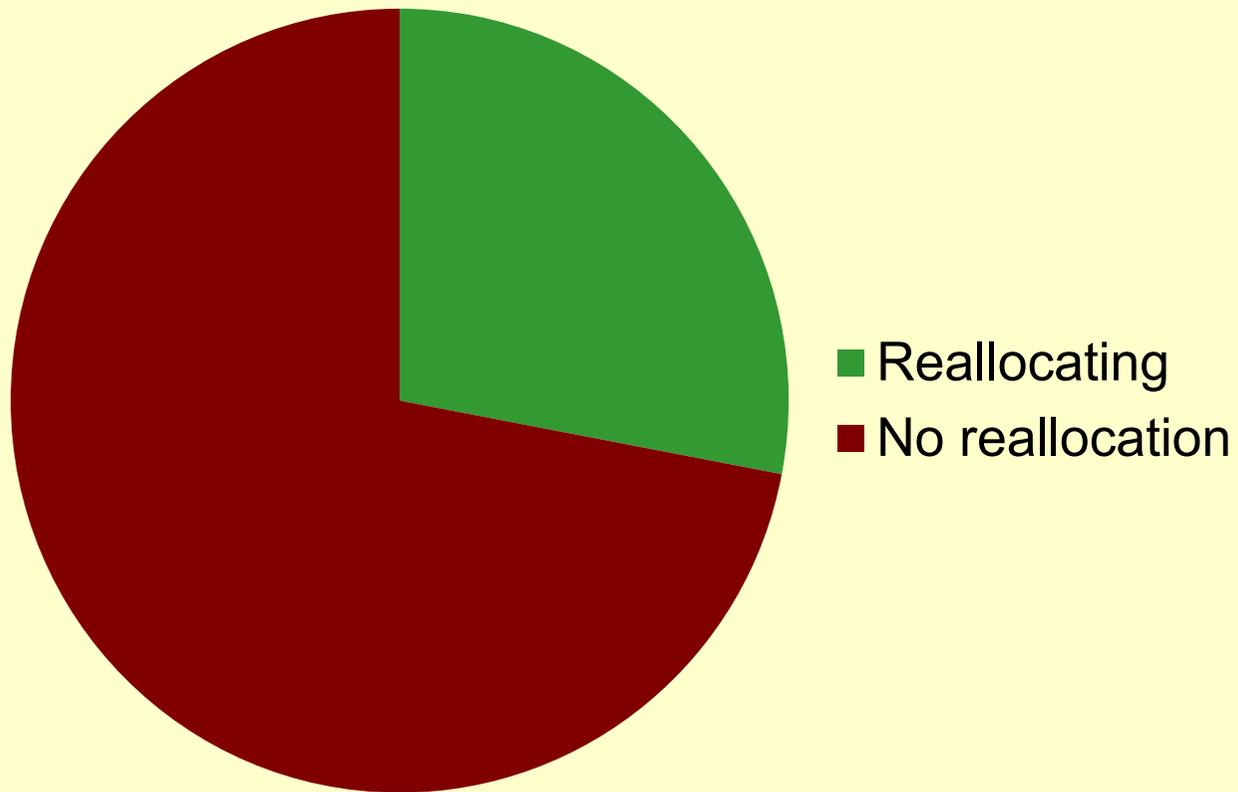
• Scottish solution must be consistent with crofting policy too

Possible solutions 1

- Could allocate all unused shares to those shareholders who claim in 2014 (and 2011?)
- **Question – would a ‘legal’ solution be consistent with crofting policy, since it fossilises support to 2014 (2011!) pattern? What about new entrants? Those who become inactive post-2014?**
- **Question – will the definition of ‘activity’ prevent freeloading on common grazings?**
- **Question – what is current reality? Are grazings committees reallocating shares on temp. basis?**



Committees reallocating forage shares annually – according to clerks, sample data



Possible solutions 2

- Committees COULD be 'active farmers' under current proposals (maintain land in GAEC through their regulatory function)
- Could make committee the ONLY eligible applicant and allocate it entitlements for entire area of grazings
- 'Irish clause' linking eligibility to establish entitlements to 2011 claim makes most committees ineligible
- **Question – would it be lawful? Probably not as it stands....**



- **Question – would it be practical or acceptable to crofters?**

Possible solutions 3

- Half-way house – ‘enabling’ solution in Scottish tradition
 - Make grazings committee eligible for national reserve
 - Committees could decide not to allow informal temporary letting of shares in 2014
 - Committee apply for entitlements on all unclaimed (unused??) shares
 - Probably (sensibly!) means changing grazings regulations to reflect an agreement on how money should be then be shared (and guidance?)
 - Need to consider implications for other area payments
- **Question – are current committees up to it? Who is helping them?**
- **Question – what about unregulated grazings? Who cares?**

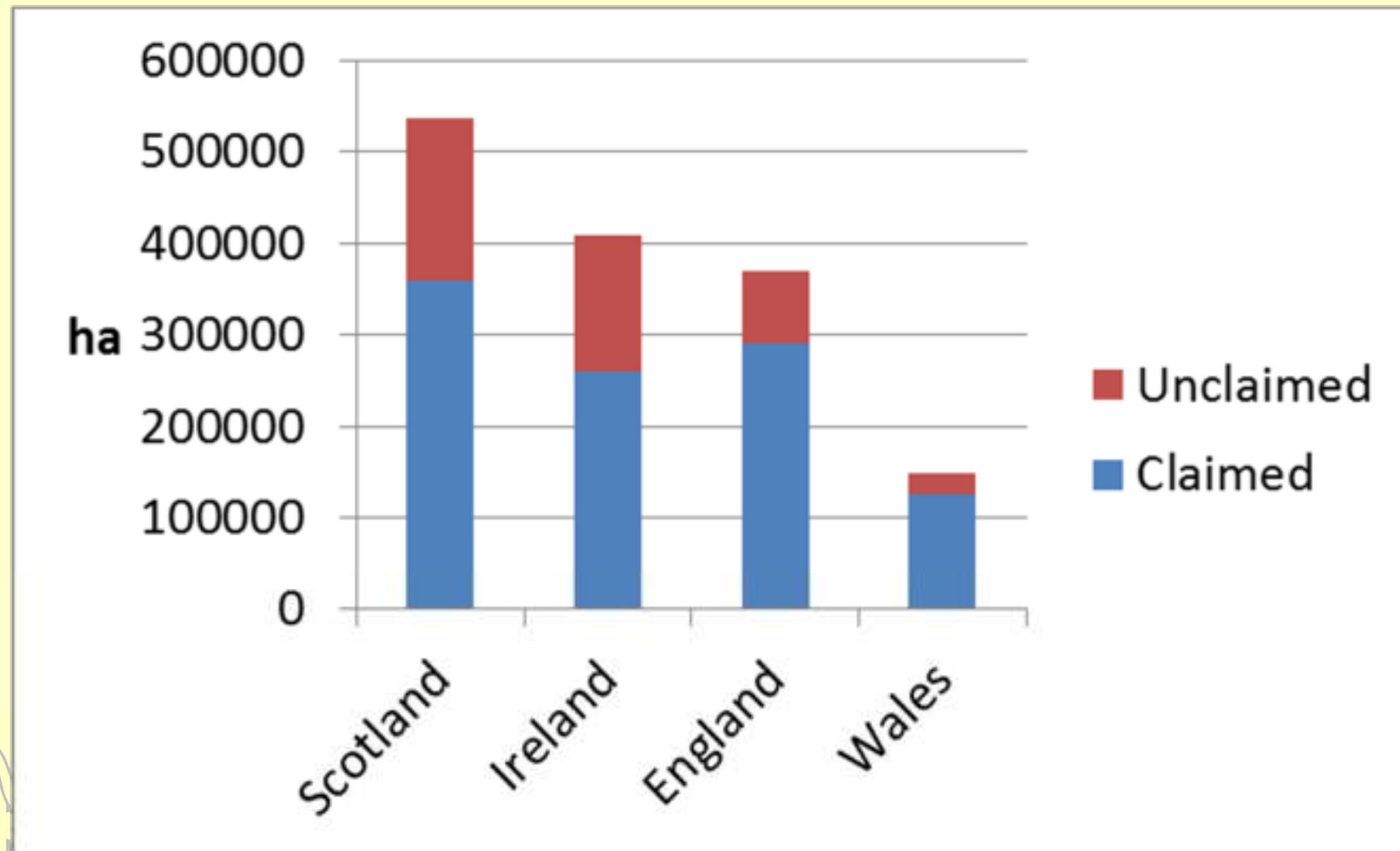


Getting a solution in place

- Policy actors need to be engaged
 - England, with no regulatory structures, has had 5 meetings of working group on this, now led by Foundation for Common Land
 - What is happening here? What is SG/Parl/crofting bodies' view?
 - Need to ensure EU Regs (e.g. on national reserve) and Scottish implementation are suitable
 - New Regs require programming approach to Basic Payment.....
- How could it be achieved.....?
 - Just making rules not enough – low capacity, 'alienation'
 - Seemingly no funds for crofting development?
 - Advisory service funding? Structural Funds? Leader?
 - Use of Technical Assistance, as in Wales for setting up commons associations?
 - Remember you want to deliver PUBLIC POLICY, not just business viability for individuals



Ireland chairs Council of Ministers in early 2013 – they have same problem, as do England and Wales



An aerial satellite-style map of a coastal region, likely in Scotland, showing a large body of water on the left and a rugged, brownish landscape on the right. Several locations are labeled: 'First Coast' at the top, 'Laide' and 'Aultbea' on the left coast, 'Loch a' Bhaid-Iuachraich' in the center, and 'Tournais' on the right coast. The text 'Loch Thurnaig' is also visible near the bottom right. Overlaid on the map is the text 'A good test for any rural policy:' in large yellow font.

A good test for any rural policy:

Does it work on common grazings?

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Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image © 2012 TerraMetrics
© 2012 Google
Image © 2012 Getmapping plc

57°48'20.68" N 5°35'10.77" W elev 40 m

Draft direct payments Regulation

- (b) "holding" means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State;
- (c) "agricultural activity" means:
 - rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes,
 - maintaining the agricultural area in a state which makes it suitable for grazing or cultivation without any particular preparatory action going beyond traditional agricultural methods and machineries, or
 - carrying out a minimum activity to be established by Member States on agricultural areas naturally kept in a state suitable for grazing or cultivation;



Niedermair-Schiemann case, ECJ, C-61/09

- 52 *First, it should be recalled that under Article 44(2) of Regulation No 1782/2003 any agricultural area of the holding is eligible for aid. Holding is defined in Article 2(b) of the regulation as all the production units managed by a farmer situated within the territory of the same Member State.*
- 53 *Article 44(3) of that regulation provides that the parcels corresponding to the eligible hectare accompanying any payment entitlement are to be at the farmer's disposal for a period of at least 10 months.*



Niedermair-Schiemann case, ECJ, C-61/09

- 54 *Thus, it must be concluded that neither Article 44(2) nor Article 44(3) of Regulation No 1782/2003 specify the nature of the legal relationship on the basis of which the area concerned is used by the farmer. Therefore, it cannot be inferred from those provisions that the parcels in question must be at the farmer's disposal pursuant to a lease or other similar transaction.*
- 55 *Under the principle of freedom of contract, the parties are therefore free to arrange the legal relationship on which use of the area in question is based. In the absence of a provision to the contrary, they are also free to provide that those parcels are made available without monetary consideration.*



Niedermair-Schiemann case, ECJ, C-61/09

- 58 *In that regard, it should be borne in mind that, as indicated in paragraph 52 of this judgment, an area is allocated to a farmer's holding where he has the power to manage that holding for the purposes of an agricultural activity.*
- 61 *With regard to the single payment scheme, the concept of management does not imply, contrary to what is maintained by the ADD in its written observations, that the farmer has unlimited power over the area in question when using it for agricultural purposes.*



Niedermair-Schiemann case, ECJ, C-61/09

- 71 *Consequently, the answer to the third question is that Article 44(2) of Regulation No 1782/2003 must be interpreted as meaning that:*
 - it is not necessary, for an agricultural area to be considered as allocated to the farmer's holding, that it be at his disposal against payment on the basis of a lease or another similar type of contract to let;
 - the allocation of an agricultural area to a holding is not precluded by the fact that the area is placed at the farmer's disposal free of charge, the farmer being obliged only to take over the contributions to a trade association, for a specific use and for a limited period of time in accordance with the objectives of nature conservation, on condition that the farmer is able to use that area with a degree of autonomy sufficient for his agricultural activities for a period of at least 10 months



Article 4

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) "farmer" means a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within the Union territory, as defined in Article 52 of the Treaty on European Union in conjunction with Articles 349 and 355 of the Treaty on the Functioning of the European Union, and who exercises an agricultural activity;
 - (b) "holding" means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State;
 - (c) "agricultural activity" means:
 - rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes,
 - maintaining the agricultural area in a state which makes it suitable for grazing or cultivation without any particular preparatory action going beyond traditional agricultural methods and machineries, or
 - carrying out a minimum activity to be established by Member States on agricultural areas naturally kept in a state suitable for grazing or cultivation;



Add words *"And on parcels of common or shared permanent pasture subject to multiple claims;"*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 55 for the purposes of:
 - (a) laying down further definitions regarding the access to support under this Regulation;
 - (b) establishing the framework within which Member States shall define the minimum activities to be carried out on areas naturally kept in a state suitable for grazing or cultivation;
 - (c) establishing the criteria to be met by farmers in order to be deemed to have respected the obligation of maintaining the agricultural area in a state suitable for grazing or cultivation as referred to in point (c) of paragraph 1;

No addition necessary



Article 9

Active farmer

1. No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, where one of the following applies:
 - (a) the annual amount of direct payments is less than 5 % of the total receipts they obtained from non-agricultural activities in the most recent fiscal year; or
 - (b) their agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and they do not carry out on those areas the minimum activity established by Member States in accordance with Article 4(1)(c).

No additions necessary (aim is not to include/exclude them as claimants altogether, but to allow/forbid them from claiming on specific parcels where others are carrying out the minimum maintenance)



3. The Commission shall be empowered to adopt delegated acts in accordance with Article 55 for the purposes of laying down:

(a) criteria to establish the amount of direct payments relevant for the purpose of paragraphs 1 and 2, in particular in the first year of allocation of payment entitlements where the value of the payment entitlements is not yet definitively established as well as for new farmers;

(b) exceptions from the rule that the receipts during the most recent fiscal year are to be taken into account where those figures are not available; and

(c) criteria to establish when a farmer's agricultural area is to be considered as mainly areas naturally kept in a state suitable for grazing or cultivation.

Add words "*or as parcels of common or shared pasture subject to multiple claims.*"



Article 23

Establishment and use of the national reserve

5. Member States may use the national reserve to:
 - (a) allocate payment entitlements to farmers in areas subject to restructuring and/or development programmes relating to a form of public intervention in order to prevent land from being abandoned and/or to compensate farmers for specific disadvantages in those areas;

Add the words "And/or to address difficulties arising from a change from historically-based to regionalised payments on parcels of common or shared pastures subject to multiple claims;"

