

In partnership with



Rural Development Programme for England

# Energy Crops Scheme Establishment Grants Handbook

3rd Edition

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This handbook and other Energy Crops Scheme guidance documents are available at <http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>. If you need any advice regarding the contents of this handbook or the ECS scheme, please contact Natural England at [ecsqueries@naturalengland.org.uk](mailto:ecsqueries@naturalengland.org.uk) or by using the contact details at Annex A.

**Your agreement is subject to requirements set out in the handbook edition that is current at the time the agreement is entered into. You should therefore check to ensure you are reading the correct edition. You should make sure that you retain the edition of the handbook relating to your agreement so that you can refer to it throughout the duration of your agreement.**

The contents of this handbook are likely to be revised during the lifetime of the Energy Crops Scheme and future agreements may be subject to a revised version. Updated copies of the handbook will be placed on the [Natural England website](#). Alternatively, you may obtain a copy from Natural England, contact details at Annex A of this handbook.

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# 1. Introduction

## 1.1 What is the Energy Crops Scheme (ECS)?

The Energy Crops Scheme provides establishment grants for approved energy crops.

## 1.2 Approved crops

- Short Rotation Coppice (Willow, Poplar, Ash, Alder, Hazel, Silver Birch, Sycamore, Sweet Chestnut and Lime). Please see the Glossary for a definition.
- Miscanthus (a tall, woody grass).

## 1.3 Funding

The ECS scheme supports the cost of establishment of Miscanthus or Short Rotation Coppice (SRC).

Payment will be made on the basis of:

- 50% of Actual costs i.e. suppliers/materials/contractors costs; and/or
- 50% of On-farm costs i.e. use of own labour and machinery, where applicable.

## 1.4 What are establishment grants?

An establishment grant is a payment designed to cover a percentage of the set up costs of establishing approved energy crops. This includes activities such as ground preparation, fencing, purchase of planting stock, planting, weed control and first year cutback.

## 1.5 The main rules

Application and claim eligibility will be assessed against the full rules which can be found in Chapters 2 to 5.

- Grant is available for holdings in England only.
- Crops must be used for heat, combined heat and power (CHP) or power generation. Own use is permitted. (see Annex B).
- Both Short Rotation Coppice and Miscanthus may be used in second generation biofuel production, i.e. advanced technologies which can use woody crops and waste for the production of transport biofuels.
- The land and the applicant must be eligible for support (see Section 2).
- You must establish at least 3 hectares with a minimum block size of 0.5 hectares. Planting may be phased over three years.
- Applications are subject to an environmental appraisal including a site visit.
- Successful applicants must enter into a 5 year agreement with Natural England.

## 1.6 Guidance for Applicants

This handbook provides information about the establishment grants for approved energy crops available under the Energy Crops Scheme. It will also help you prepare and submit an application for grant funding.

**Applicants are strongly advised not to commit themselves to any expenditure on which grant may be sought until their application has been approved by Natural England and an Offer Letter has been issued, signed by them and returned to Natural England. Any preparation work started before the grant offer is approved and offer letter returned will be ineligible for funding and the application will be rejected.**

Please read this handbook very carefully before submitting an application. You are also advised to read the following additional guidance which is available to download from the Energy Crops pages on the Natural England internet site at:

<http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>

- Growing Short Rotation Coppice.
- Planting and Growing Miscanthus.
- Forestry Commission Guideline on Short Rotation Coppice in the Landscape.
- Forestry Commission Guideline on Establishment and Management of Short Rotation Coppice.

- Biomass Energy Centre website.
- English Heritage - Biomass and the Historic Environment (<http://www.helm.org.uk/managing-and-protecting/climate-change/biomass-energy-and-the-historic-environment/>)

Guidance on [Opportunities and optimum sitings for energy crops](#) is available on the Natural England website. These maps are to be used as a tool to provide guidance to those seeking to develop energy crops. They show the potential areas for growing the crops plus the areas where this is not appropriate or care would need to be taken from an environmental point of view. The maps are only indicative and should not be regarded as definitive with respect to individual applications.

### **1.7 What are the scheme objectives?**

To increase the amount of energy crops grown in England, in appropriate locations. Energy crops are used as a substitute for fossil fuels, can contribute to a reduction in greenhouse gas emissions and help to combat climate change. The Government believes that energy crops can play an essential role in contributing to sustainable development.

### **1.8 What is its legal basis?**

The establishment grant element of the ECS operates under Articles 20(b)(i) and 26 of Council Regulation (EC) No. 1698/2005 ("the Council Regulation"). Miscanthus and Short Rotation Coppice applications are funded under Axis 1 of the Council Regulation (measure: modernisation of agricultural holdings). Natural England has the power to enter into agreements with applicants by virtue of Section 7 of the Natural Environment and Rural Communities Act 2006. Your agreement is subject to EC legal requirements – in particular those contained in the Council Regulation and in Commission Regulations 1974/2006 and 1975/2006. You will also be subject to the Rural Development (Enforcement) (England) Regulations 2007. Please contact Natural England if you require details of relevant EC and domestic legislation.

### **1.9 Where can I get further information?**

If you need any advice regarding the contents of this handbook or the ECS scheme, please contact Natural England at [ecsqueries@naturalengland.org.uk](mailto:ecsqueries@naturalengland.org.uk) or by using the office details at Annex A.

Advice concerning energy crops may also be available from trade associations (see Annex A) and independent consultants. You should consider carefully the financial implications for your business of diversifying into energy crops.

## **2. Eligibility**

### **2.1 Are you eligible?**

To be eligible, you must be the lawful occupier of the land included in the application (owner or tenant) and have responsibility for farming that land. This can include local authorities but not central government or government corporations/agencies. All joint occupiers of the land, e.g. a partnership, must sign and be bound by any agreement under the scheme.

### **2.2 Are you a tenant?**

If you are a tenant, you must make sure that you will not contravene the terms of your tenancy. You must discuss your plans with your landlord and obtain his/her permission before applying using the landlord's consent form (available at <http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>).

It is not a scheme requirement that your current tenancy has a specific number of years to run but you need to be confident that you can meet the scheme requirements for the five-year (from planting) period of your agreement. If you are unable to retain occupancy of land entered into the scheme, the new occupiers may take over the agreement. However, if the agreement is not transferred and the land does not remain in the scheme, you will be in breach of your agreement (see Section 6) and the funds you have been awarded will be subject to recovery.

Tenants on land owned by central government or government corporations/agencies are eligible for support.

### 2.3 Are you in a Convergence area?

The only EU Convergence area is Cornwall and the Isles of Scilly, and the same payment rates for energy crops apply in this area as for energy crops in non-convergence areas.

### 2.4 What is the minimum amount of land needed?

Your application must comprise a minimum of three hectares, in total. Individual plots must be no less than 0.5 hectares. There is no upper limit on the amount of eligible land that can be entered in the scheme.

### 2.5 Can you plant land in different stages?

You should include all the eligible land that you would like to enter into an agreement in one application. Within this you may phase planting under an agreed plan, for up to three years. Your agreement will cover planting in the later years and you must ensure that the land will be available. Your agreement could then run for between 5 and 8 years.

### 2.6 Is your land eligible?

Generally any land in England is eligible for entry to the scheme. There are however some areas which are not eligible. These areas will be assessed and agreed/checked at the time of the site assessment. All of these excluded areas should be shown on the application map (see Annex E).

Your land must be registered on the Rural Land Register (RLR) as you will need to enter land parcel details on your application form. Details of how to register your land on the RLR are available on the Rural Payments Agency (RPA) website at <http://rpa.defra.gov.uk/rpa/index.nsf/home>

Areas which **cannot** be planted are:

- Hard roads and tracks.
- Rivers and ponds.
- Areas of hard standing.
- Public rights of way (PRoW).
- Land within 3m (Miscanthus) and 5m (SRC) of PRoWs.
- Common land.
- Single Payment Scheme cross compliance buffers alongside field boundaries.
- Land in other schemes such as agri-environment schemes. Many of the buffers and margins listed here can be paid for under agri-environment schemes providing they will not be used regularly for vehicular movements.
- Designated land such as SSSIs, National and Local Nature Reserves, Scheduled Monuments, Registered Battlefields, Special Areas of Conservation (SACs), Special Protection Areas (SPA), World Heritage Sites and Ramsar Sites.
- Land within IDB access buffers alongside IDB ditches and rivers/streams. Check the required width with your IDB.
- Above and below utility lines such as water, gas and electricity lines. You should discuss your plans with the relevant utility companies before submitting your application. A 6m strip is likely to be necessary for SRC plantings. Any response received should be attached to your application form.

Where it might be possible but is likely to be undesirable:

- Land adjacent to a neighbour's land, particularly residential property. You are advised to consult with your neighbour prior to submitting your application. An unplanted buffer of at least 10m is likely to be necessary.
- Adjacent to woodland, to prevent shading of the crop. A 10m buffer may be needed.
- Vehicle access strips, both along the side of the crop – perhaps 3m, and for vehicle turning at the end of the crop during harvest operations – ensure you leave adequate turning space.

Each case will be treated on its own merits in discussion with the assessor.

You should also consider leaving wildlife strips adjacent to the crop, similar to rides through woodland. These provide the most valuable wildlife habitat areas, for example, adjacent to hedges.

## 2.7 Do you have an energy end-use?

You must be able to demonstrate that you have or will have an energy end-use for the crops. You can also grow energy crops for your own use, e.g. to heat your home or business, but you must be able to demonstrate that you have the capability to do so (see Annex B).

You may be required to provide evidence of the quantities of the crop purchased by the end user. Your obligation to provide this information survives the end date of your ECS agreement.

## 3. Funding

### 3.1 What are the payments?

The ECS scheme supports the cost of establishment of Miscanthus or Short Rotation Coppice. Payment will be made on the basis of:

- 50% of Actual costs i.e. suppliers/materials/contractors costs; and/or
- 50% of On-farm costs i.e. use of own labour and machinery, where applicable.

### 3.2 Actual costs

Actual costs will be incurred for the supply of materials and for specialist contract work such as planting. Receipted invoices are required as proof of this type of expenditure.

### 3.3 On-farm costs

On-farm labour and machinery costs, where by definition there are no receipts available, may be claimed. The table below gives an indication of the type of activities that may be claimed as on-farm costs.

An estimate of anticipated on-farm costs is required at application stage and these will be discussed with your NE/FC appraiser during the site visit. The type and rate of chemicals and fertiliser to be used will be agreed and included in your offer letter. A record of actual operations and chemicals used should be kept and submitted with your claim form. You should inform Natural England as soon as possible if there is likely to be any variation between the estimated and actual costs.

### Guidance regarding indicative on-farm costs is available from Natural England

Activity
Subsoiling (if applicable)
Ploughing
Rotovating
Power harrowing
Ring or Cambridge rolling
Rabbit fencing (no existing fence)
Attach rabbit fencing to existing fence
Topping in Year 2
Spraying (labour and machinery)
Fertiliser spreading (labour and machinery)

### 3.4 Can I claim Single Farm Payment (SPS) on ECS land?

Please refer to the current SPS Guidance for further information, or the RPA website at <http://rpa.defra.gov.uk/rpa/index.nsf/home>.

### 3.5 EU energy aid payment

This is no longer available for new plantings.

### 3.6 Other schemes

Providing the appropriate conditions are fulfilled, you may be able to combine the ECS with other grant schemes. However, this does not apply where you would receive payment twice for the same activity or if the objectives of the schemes conflict. It is your responsibility to check this before applying, but if in doubt

consult Natural England using the contact details at Annex A. The following specific information is available:

### **Environmental Stewardship**

Land in the ECS can count towards the area used to calculate your Entry Level Stewardship (ELS) points target and associated payment, but you may not locate any ELS options on land planted under the ECS (including and ECS paid are of open ground).

Where ECS planting (including paid areas of open ground) is on a part-field basis, ELS options may be located within the land parcel, provided there is no overlap of ELS options with ECS payable areas on the ground.

Boundaries surrounding ECS parcels may be entered into ELS boundary management options.

Higher Level Stewardship (HLS) options must not be located within land parcels covered by planting under an ECS agreement. However, boundaries surrounding ECS parcels may be entered into HLS boundary management options.

Land in the ECS is not eligible for Organic Entry Level Stewardship (OELS). Land cannot be in both ECS and OELS. It can only be in one of these schemes or the other.

### **Countryside Stewardship Scheme (CSS) and Environmentally Sensitive Areas (ESA)**

These schemes are closed to new applications. The ECS can be combined with a CSS or ESA agreement provided the land is eligible for both schemes. The planting must be compatible with the land management requirements and prescriptions.

### **Habitat Scheme**

The Habitat Scheme is closed to new applications. It is unlikely that an existing Habitat Scheme agreement can be combined with land planted under the ECS. Please consult Natural England, who will be able to determine your eligibility for ECS and its compatibility with Habitat Scheme objectives.

### **Woodland Schemes and National Forest Tender Scheme**

You cannot include the same land under the ECS as you have under the English Woodland Grant Scheme (EWGS), Woodland Grant Scheme (WGS), Farm Woodland Premium Scheme (FWPS) or the National Forest Tender Scheme. The WGS and FWPS are closed to further applications.

## **4. Applications**

### **4.1 When can I apply?**

It will take approximately three months to process applications for Miscanthus and four months for SRC applications; you should therefore time your application accordingly. **You can apply at any time during the year.** We are unable to guarantee that applications received after 30 September will be approved in time for the next planting season. **You are advised to apply well in advance** to ensure time for thorough ground preparation, which may improve yields and to allow adequate time to order your planting material.

### **4.2 Which forms do I need?**

You must complete the ECS Establishment Grants application form (available at <http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>). You must ensure that you include accurate details of the areas to be planted and non-planted areas. Only eligible land should be included in your application.

If you do not have access to the internet, you may obtain copies of all applicable forms and guidance from Natural England (see contact details at Annex A).

### 4.3 Who signs?

Generally, all parties to the agreement should sign and date all documents relating to an application. However, it may be possible for an authorised signatory to sign on your behalf. In the case of companies, any officer of a company who is generally authorised to sign on behalf of that company may sign.

If you are a partnership, one of the partners can sign but he/she must obtain written authorisation from the other partner(s) that he/she is authorised to sign. All the members of the partnership should sign the authorisation. An Agent Authorisation form is available at

<http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>

### 4.4 Do I need to provide anything else?

Your completed application form must be accompanied by the following:

- Evidence that the crop will be used to produce energy (see Annex B).
- A landlord's consent form, if appropriate.
- A supporting map of the holding which should be a current RLR map or a 1:2500 scale Ordnance Survey map (see Annex E). This will show the area to be planted and surrounding unplanted areas. The relevant unmarked RLR map can be obtained from Natural England (see Annex A).
- Written partnership authorisation, if appropriate.
- Agent authorisation form, if appropriate.
- Evidence of consultation with neighbours, utilities and other public bodies e.g. English Heritage, if appropriate.

### 4.5 Where do I send my application?

Send your completed application to Natural England, the address can be found at Annex A.

### 4.6 What happens next?

Once submitted the application will undergo initial checks to ensure that the form has been correctly completed and that all relevant documents are included. If the application passes the initial checks, you will receive an acknowledgement letter. Failure to submit all the required information may lead to your application being rejected.

If the application passes the initial checks, it will be subject to further, more detailed administrative checks. This will include a dual funding check and a check against Single Payment Scheme data to confirm that you are not receiving funding for the same purpose from more than one source. Consultations will also take place with interested parties to establish whether the proposals may have adverse environmental effects (see Environmental Appraisal and Site Visit below). Regional sustainability policies will also be considered.

The application will then pass to a local Natural England/Forestry Commission advisor who will conduct an environmental appraisal including a site visit, to discuss your application.

Once all of the checks, consultations and site visits have been completed, you should normally receive an offer letter or a rejection letter within three months of your application being submitted for Miscanthus and four months for SRC. You will need to sign and return the offer letter to Natural England within one month. The signed Offer Letter forms your legally binding agreement with Natural England (see Section 5), and will include a planting design, based on the environmental appraisal.

### 4.7 Environmental Appraisal and Site Visit

When processing your application we will decide whether your proposal will have a significant impact on the environment. In some cases, this may require an additional Environmental Impact Assessment (see below and Annex C). The appraisal will consider each plot in the application on an individual basis, and will review the impact that the planting may have.

Examples would be:

- **People** – the effect on surrounding dwellings, shading, obstruction of views, effects on road safety/visibility, machinery access etc.;

- **Biodiversity** – how planting will affect adjacent habitats, and whether planting can be undertaken to assist if not improve biodiversity;
- **Historic Environment** – presence of Listed Buildings, archaeological sites, features and landscapes, as well as the effects on the setting of Scheduled Monuments, Registered Parkland, Historic Battlefields and Conservation Areas;
- **Farm Vehicle Access** – we will consider this in terms of the planting and harvesting of the crop;
- **Soil** – suitability as a growing medium, review of previous cropping history;
- **Recreation** – we will consider two main areas: rights of way within the field parcels and adjacent land uses;
- **Land Use and Landscape** – impact of proposed plantings on surrounding landscape and land use;
- **Water/Drainage** – we will consider the impacts on water resources and water quality.
- **Flood plain** -- Will the planting affect flood water flow? Will flooding affect establishment, growth and harvest of the crop?

This list is not exhaustive.

#### **4.8 Environmental Impact Assessment**

##### ***Short Rotation Coppice***

Applications for the planting of SRC are subject to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999. These Regulations require anyone carrying out a project involving afforestation above certain thresholds to obtain consent from the Forestry Commission before work can proceed. Further information can be found at Annex C. The Forestry Commission (FC) administer public registers for new planting of short rotation coppice and decide whether an Environmental Impact Assessment (EIA) is required; this includes areas greater than 5ha anywhere and greater than 2 ha within National Parks. The FC will discuss the planting design during the site visit and agree the proportion and location of open ground. After consultation, the FC will make a recommendation to approve or reject the application to Natural England.

##### ***Miscanthus***

Applications for the planting of *Miscanthus* may be subject to the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006. These Regulations protect uncultivated land and semi-natural areas from being damaged by agricultural work, which would include the planting of *Miscanthus*. Hence, such plantings on uncultivated land or semi-natural areas will be interpreted under the Regulations as increasing the productivity for agriculture and will need to be assessed by Natural England for the likelihood of significant environmental effects. Further information can be obtained from the EIA Unit, Natural England, First Floor, Temple Quay House, 2 The Square, Bristol BS1 6EB, freephone 0800 028 2140 or at <http://www.naturalengland.org.uk/ourwork/regulation/eia/default.aspx> .

#### **4.9 Can I withdraw my application?**

You can withdraw your application at any time before you sign and return the Offer Letter. Please contact Natural England straight away if you decide to withdraw.

### **5. The Agreement**

#### **5.1 When will my agreement start?**

Your agreement with Natural England will start once you have signed and returned your Offer Letter. **Any preparation work started before the grant offer is approved and offer letter returned will be ineligible for funding and the application will be rejected.**

#### **5.2 How long is the agreement?**

Your agreement will normally run for five years but may be extended further if you have included phased planting.

#### **5.3 What management requirements must I meet?**

You will have to meet certain minimum environmental standards (see Annex D). You must plant and manage your energy crops in accordance with the terms of your agreement including any special

conditions and the relevant best practice guidance which is available to download from the Energy Crops pages on the Natural England website at:

<http://www.naturalengland.org.uk/ourwork/farming/funding/ecs/default.aspx>

- Growing Short Rotation Coppice
- Planting and Growing Miscanthus
- Forestry Commission Guideline on Short Rotation Coppice in the Landscape
- Forestry Commission Guideline on Establishment and Management of Short Rotation Coppice

The SPS cross compliance requirement not to cultivate land within 2 metres of the centre of a hedgerow or watercourse (and within 1 metre of the top of the bank of the watercourse) applies to all ECS plantings.

#### **5.4 Planting material**

Using the correct planting material is very important. There is advice in the best practice guidance. You should not use reclaimed (farm-saved) material for replanting SRC unless you have the consent of the breeder (EC Regulation No. 2100/94). For plant health reasons, Miscanthus rhizomes should only come from European or other Mediterranean countries.

#### **5.5 When do I claim the grant?**

When we have received your signed agreement, we will send you a claim invite letter and claim form. You may submit a claim when planting has occurred, and in any case need to submit the claim by 15 May in the year following planting. Operations necessary in the second year to establish a successful crop, such as weed control, may also be eligible for grant – please consult your Natural England assessor for further information. Any second year costs incurred need to be claimed for in the second year.

Natural England would expect the applicant to arrange for partial or complete replanting by the supplier should an insufficient establishment take place. You are required to make every effort to establish the crop. If you have persistent problems establishing the crop, please contact Natural England, details at Annex A. Natural England anticipates establishment of approximately 80% of crop coverage at the end of 5 years.

#### **5.6 How is the grant paid?**

Payment is by direct credit (BACS). If you already receive grant and subsidy payments from Natural England by direct credit then your payments under this Scheme will be made by this method. If not, please contact the RPA Customer Registration Section on 0845 6037777 and they will arrange for a form to be sent. Payments are credited direct to your bank account and you will receive a note from the RPA advising you that payment has been made.

#### **5.7 What records should I keep?**

You must retain all records relating to your application and agreement for 6 years from the date of the final payment of grant.

#### **5.8 Can I change my agreement?**

You are required to fulfil your obligations for the full term of your agreement, but there are some circumstances where it may be possible to change aspects of your agreement (see Section 6).

**You must contact Natural England immediately if you wish to change your agreement, have difficulties complying with it or do not intend to proceed with it. You may be subject to recovery action and/or penalties if you have received a payment.**

It is not possible to add land to an existing agreement. You must submit another application so that the suitability of the land can be assessed.

#### **5.9 What if I let, sell or transfer the land?**

If the agreement has expired, the land is not subject to scheme conditions.

If the land is still under agreement, you should tell potential occupiers about the scheme conditions well in advance. The new occupier may apply to have the agreement transferred to them and receive any subsequent payments. However, the **transferred land must be a minimum of 3 hectares** and they must apply within 3 months of assuming occupancy. If this is not the case, you will be in breach of your agreement. If the agreement is not transferred and the land does not remain in the scheme, you will be in breach of your agreement (see Section 6).

Should you transfer only part of the land subject to an agreement, you must ensure that the **remaining land is a minimum of 3 hectares**. If this is not the case, you will be in breach of your agreement (see Section 6).

If there is to be a change of occupancy, you must tell Natural England as soon as possible and, at the latest, within 3 months of that change.

**You may be liable for some aspects of the original agreement even after land has transferred to a new occupier. If you intend to transfer land, you should seek guidance from Natural England who may suggest that you obtain legal advice.**

#### **5.10 Scheme compliance inspections**

You must allow access at any reasonable time to authorised Natural England, RPA, DECC, Defra and Forestry Commission staff or their agents to inspect your land. You may be required to accompany the inspector and to produce any relevant records. Inspections may be unannounced or at short notice.

If you refuse access for inspections, your claim will be rejected. You will be in breach of your agreement and any monies paid will be reclaimed with interest and penalties.

## **6. Non-compliance**

### **6.1 What if I can't meet my agreement?**

You must contact Natural England immediately.

We recognise that there may be abnormal or unforeseeable circumstances outside your control, that you could not avoid by reasonable action, which may prevent compliance with an agreement. These are known as force majeure circumstances (see below).

### **6.2 What is force majeure?**

Where a breach is due to circumstances beyond your control that could not have been avoided by reasonable action, the Secretary of State has discretion not to take enforcement action to recover or withhold payments. **In order for 'force majeure' to be taken into account, you must have notified your Natural England office of the 'force majeure' event in writing within 10 working days of you, or your representative, being in a position to do so.** Please note that these categories are very narrow and cover only the most exceptional circumstances.

**If you have any concerns about the establishment of the crop at any time after planting, you should contact the ECS team (see contact details at Annex A).**

Financial or commercial considerations are not considered to be force majeure for the purposes of this scheme.

Examples of 'force majeure' are:

- death of the agreement holder;
- long-term incapacity of the agreement holder;
- expropriation through compulsory purchase of a large part of the land provided this could not be anticipated when the agreement was signed;
- severe natural disaster gravely affecting the land;
- accidental destruction of livestock buildings on the land;

- an epizootic disease (such as foot and mouth disease) affecting part or all the agreement holder's livestock.

If it is agreed that force majeure applies, penalties may not be imposed.

### 6.3 What are the penalties for non-compliance?

The system of penalties for non-compliance with the terms of your agreement is based on the requirements of EC Commission Regulation No. 1975/2006, Article 16. **Power to withhold payments, recover part or all of payments already made, and to terminate the agreement are included.** In the event of recovery of payments, interest will be levied for the period between payment and reimbursement.

#### Area-based breaches

Where the claimed area is higher than the found area, and for cases where ineligible areas have been included in the claimed amounts, all payments and calculations will be based on the eligible and found amount, with the following penalties applied to the total of grant in any year:

Discrepancy amount	Recovery and Penalty to be applied
Less than or equal to 3% of the found amount.	Payment to be reduced or recovered to the found amount. No additional penalty to apply.
More than 3% of the found amount.	Payment to be reduced or recovered to the found amount. An additional penalty equal to the discrepancy must be applied, but to a maximum of the remaining sums paid plus 10% of the sums paid or payable.
<b>However, no additional penalty shall be applied if the beneficiary can demonstrate that they are not at fault for the inclusion of the ineligible area. ie pay back the recovery amount, but no penalty to be applied.</b>	

#### Scheme breaches

Where breaches are found in relation to scheme prescriptions, such as the area or length of a buffer required, or a failure to manage the land in accordance with other prescriptions, the penalty regime above will be applied where possible.

Natural England will consider each case individually where it is not possible to ascribe a value for which the above penalties could be calculated, or where it is not clear how the penalty should be applied. In all cases, the penalty applied will be based on the extent, severity, and permanence of the breach and will result in a proportionate outcome.

### 6.4 False statements

Where agreement holders are found to have made false declarations through serious negligence, they will be disqualified from applying for the ECS and possibly other schemes in the calendar year in question. Where it is found that a false declaration has been made intentionally, the disqualification period will extend to the following calendar year. Natural England can take enforcement action if there has been a false statement.

**The making of a false statement constitutes a criminal offence and any resultant prosecution could lead to imprisonment, the imposition of a fine or both.**

## 7. General

### 7.1 Can I Appeal?

If you are unhappy with the decisions that we have taken in respect of your application or agreement, you should write to the Customer Service Team Manager at your Natural England office, who will ensure that your case is properly investigated and advise you of the procedure to be followed.

Where the issue cannot be resolved within the team that originally handled your case, the Customer Service manager will ask a senior manager, who has not been involved in your agreement, to review your case. The adviser will consider any points you have raised and report to the Customer Service Team manager with their view on the steps proposed to resolve the dispute.

If you remain dissatisfied with the decision of the senior manager, you can have the matter referred to an independent person of body, nominated by use, for further consideration.

## **7.2 How do I make a complaint?**

If you are unhappy about the way a member of staff has dealt with you, or with the level of service you have received, you are very welcome to use our complaints procedure, details of which are available below, or via our website: [www.naturalengland.org.uk](http://www.naturalengland.org.uk).

### ***Our complaints procedure:***

#### **Step 1**

Contact the Customer Service Team using the online Feedback facility at: [www.naturalengland.org.uk/feedback/default.aspx](http://www.naturalengland.org.uk/feedback/default.aspx) or email them at: [customer.feedback@naturalengland.org.uk](mailto:customer.feedback@naturalengland.org.uk) They will respond to you.

#### **Step 2**

If you are not satisfied with our initial reply, please email the Customer Service Team again and they will escalate the complaint to the appropriate Team Manager.

#### **Step 3**

If you are still not satisfied with the outcome, please email the team again and they will direct the complaint to the appropriate Director.

If you do not wish to use our online **Feedback** facility to register your complaint, you can:

- email the **Customer Service Team**;
- contact the person who provided the service to you, by whatever method is most convenient; or
- contact the Customer Service Team at:  
Natural England  
Mail Hub Block B  
Whittington Road  
Worcester  
WR5 2LQ

### ***Our commitment to you***

We will investigate your complaint thoroughly and fairly.

If we are at fault, we will try to put things right as quickly as possible. If not, we will give you a full explanation.

If we cannot resolve your problem on the spot, we will acknowledge receipt of the complaint within five working days. The acknowledgement will say who is dealing with the complaint and when you can expect a reply.

We will then write and tell you the outcome of our investigation within 20 working days. Difficult complaints sometimes take a little longer to sort out. If so, we will keep you informed of what is happening.

From time to time we will follow up with you to check if the way in which we handled your complaint was appropriate. We appreciate you may not always be happy with the outcome but it is important for us to monitor how our processes are working.

**...and if you are still not satisfied**

If you still feel that we have not resolved the issue satisfactorily, you can ask any Member of Parliament to refer complaints about administrative actions by us to the

Parliamentary and Health Service Ombudsman

Address: Millbank Tower, Millbank, London SW1P 4QP

Helpline: 0345 015 4033 Website: <http://www.ombudsman.org.uk/>

Fax: 020 7217 4000 E-mail: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

**7.3 Our service standards**

Our service standards set out the minimum level of service you can expect from us. Details are available on a separate leaflet which can be obtained from our website or our Enquiry Service.

**7.4 What information will be made public?**

The data controller is Natural England, Foundry House, 3 Millsands, Riverside Exchange, Sheffield, S3 8NH.

Your information will be stored and processed in accordance with the Data Protection Act 1998. This Act gives you, as an individual, the right to know what data we hold on you, how we use it, with whom we share it and for it to be accurate.

We will use the data for administering and analysing applications, agreements and claims under the Energy Crops Scheme. We will circulate and discuss it, in confidence, with those persons or organisations helping us to assess and monitor applications, agreements and claims.

Some information will be shared with other grant distribution bodies and Government Departments to enable them to detect fraudulent applications/agreements/claims and to co-ordinate the processing of complementary applications/agreements/claims. To do this we may have to discuss applications/agreements/claims with third parties or disclose information about funding decisions.

Participation in the Energy Crops Scheme involves the expenditure of public money and is therefore a matter of public interest. We make information about Energy Crops Scheme applications, agreements and claims publicly available, in line with European Regulations, for example, on a website such as [www.magic.defra.gov.uk](http://www.magic.defra.gov.uk). Details disclosed may include but are not limited to, your name, the name and address of your farm or business, postal town/parish, first part of your postcode, grid references, the total area under agreement, the payments you receive, the location of parcels, details of the environmental features and management options they contain and details of inspections by Defra or its agents. On request, copies of individual applications and agreements will be made available.

We, or our appointed agents, may use the name, address and other details to contact you in connection with customer research aimed at improving the services that we provide to you.

We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.

## Annex A: Contacts

<b>Energy Crops Scheme</b>	<b>Department of Energy and Climate Change</b>
<b>Natural England</b>	3 Whitehall Place
<a href="http://www.naturalengland.org.uk">www.naturalengland.org.uk</a>	London
Natural England	SW1A 2HH
Block B, Government Buildings	Enquiries: 0300 060 4000
Whittington Road	Email: <a href="mailto:correspondence@decc.gsi.gov.uk">correspondence@decc.gsi.gov.uk</a>
Worcester	
WR5 2LQ	<b>Industry bodies</b>
T 0300 060 1624/0300 060 1413	<b>Country Land &amp; Business Association</b>
Email: <a href="mailto:ecsqueries@naturalengland.org.uk">ecsqueries@naturalengland.org.uk</a>	Rural Economy Team
	16 Belgrave Square
<b>Forestry Commission</b>	London
<a href="http://www.forestry.gov.uk">www.forestry.gov.uk</a>	SW1X 8PQ
National Office for England	T 020 7235 0511
620 Bristol Business Park	F 020 7235 4696
Coldharbour Lane	Email: <a href="mailto:mail@cla.org.uk">mail@cla.org.uk</a>
Bristol	
BS16 1EJ	<b>Biomass Energy Centre information enquiry service</b>
Enquiries: 0845 3673787	Biomass Energy Centre
Email: <a href="mailto:enquiries@forestry.gsi.gov.uk">enquiries@forestry.gsi.gov.uk</a>	Alice Holt Lodge
	Farnham
<b>National Farmers Union</b>	Surrey
<a href="http://www.nfu.online.com">www.nfu.online.com</a>	GU10 4LH
Agriculture House	T 01420 526197
Stoneleigh Park	F 01420 23450
Stoneleigh	Email: <a href="mailto:Biomass.Centre@forestry.gsi.gov.uk">Biomass.Centre@forestry.gsi.gov.uk</a>
Warwickshire	
CV8 2TZ	<b>Renewable Energy Association</b>
T 024 76858500	<a href="http://www.r-e-a.net">www.r-e-a.net</a>
F 024 76858501	2nd Floor
	25 Eccleston Place
<b>Forestry and Timber Association</b>	Victoria
<a href="http://www.forestryandtimber.org">www.forestryandtimber.org</a>	London
5 Dublin Street Lane South	SW1W 9NF
Edinburgh	T 020 7925 3570
EH1 3PX	F 020 7925 2715
T 0131 538 7111	Email: <a href="mailto:info@r-e-a.net">info@r-e-a.net</a>
F 0131 538 7222	
Email: <a href="mailto:info@forestryandtimber.org">info@forestryandtimber.org</a>	

## Annex B: Energy end-use

You must be able to demonstrate that you have or will have an energy end-use for the crops. This could be electricity generation, combined heat and power (CHP) or heat. You can also grow energy crops for your own use e.g. to heat your home or business. Natural England will consider each application on an individual basis to ensure that the end use is within a reasonable distance of the crops, including method of transport and other carbon impacts.

## Evidence of end-use

Suitable evidence of an energy end-use includes:

- a contract with the end-user(s) showing how much fuel they expect to receive from you and for how long;
- a letter of intent from the end-user(s) (see below);
- proof that you have access to your own burning equipment for own use (e.g. receipts, photographs, independent references);
- planning permission to install suitable equipment for own use.

## Letter of intent

One form of evidence that you have an energy end-use is an original letter of intent from an end-user. The letter should be on the end-user's headed notepaper and should be signed by an authorised signatory. If you have multiple end users, there should be a letter from each one.

The letter should include:

- the volume and frequency of fuel deliveries they expect from you,
- the dates on which supply is expected to start and end.

You may be required to provide evidence of the quantities of the crop purchased by the end user. Your obligation to provide this information survives the end date of your ECS Agreement.

## Annex C: Environmental Impact Assessment

### Short Rotation Coppice

Applications for the planting of SRC are subject to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999. These Regulations require anyone carrying out a project involving afforestation above certain thresholds (see below) to obtain consent from the Forestry Commission before work can proceed. Further information can be obtained from the Forestry Commission (see Annex A).

Land type	Threshold
National Nature Reserve	No threshold
Site of Special Scientific Interest	No threshold
The Broads	No threshold
World Heritage Site	No threshold
Scheduled Monuments	No threshold
Special Areas of Conservation (designated or identified as a candidate)	No threshold
A site classified or proposed as a Special Protection Area	No threshold
National Park	2 hectares
Area of Outstanding Natural Beauty	2 hectares
Other land	5 hectares

### Miscanthus

Applications for the planting of Miscanthus may be subject to the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006. These Regulations require any project to bring uncultivated land and semi-natural areas into intensive agricultural use to be assessed by Natural England for the likelihood of significant environmental effects. Further information can be obtained from the EIA Unit, Natural England, First Floor, Temple Quay House, 2 The Square, Bristol BS1 6EB, freephone 0800 028 2140 or at <http://www.naturalengland.org.uk/ourwork/regulation/eia/default.aspx> .

The EIA Regulations came into force on 10 October 2006. The Regulations protect uncultivated land and semi-natural areas (UL/SNA) from being damaged by agricultural work, which will include Miscanthus planting. The Regulations apply to two different types of project, of which only "Projects which increase the productivity for agriculture of UL/SNA" will normally be relevant in this situation:

- The types of land covered will either (i) not have been cultivated (physically or chemically) in the last 15 years; or (ii) support a large proportion of native plant species which have colonized from the wild or been sown using species collected from the wild.
- The types of work (or 'projects') covered will include any work aimed at increasing the productivity of land for agriculture. For instance, it may include increased levels of fertiliser or soil improvers; sowing seed; physically cultivating soil (e.g. by ploughing, tine harrowing, rotovating); draining land; or clearing existing vegetation either physically or using herbicides.

Clearly, the preparation of UL/SNA for Miscanthus planting will involve one or more of the above activities and the Regulations will apply. However, there is a threshold level and projects will normally only be subject to an EIA if the UL/SNA directly affected is two hectares or more in area. Plantings which equal or exceed the threshold may not proceed without permission from Natural England and the applicant must make a screening application prior to any preparatory work taking place. Natural England has 35 days to assess the application and inform the applicant of its screening decision. If the planting is unlikely to have a significant effect on the environment, it will be allowed to proceed. However, if Natural England consider it is likely to have a significant effect, it may not proceed without consent.

A full guidance note can be obtained from the EIA Unit at Bristol (contact details above).

## Annex D: Minimum Environmental Standards

You must comply with UK and EC legislation in relation to the environment.

The legislation includes, but is not limited to, the following:

- Forestry Act 1967
- Ancient Monuments and Archaeological Areas Act 1979
- Wildlife and Countryside Act 1981
- Control of Pesticides Regulations 1986
- Heather and Grass etc. (Burning) Regulations 1986
- Water Resources Act 1991
- Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991
- (as amended 1997)
- Clean Air Act 1993
- Crops Residues (Burning) Regulations 1993
- Conservation (Natural Habitats etc.) Regulations 1994
- Ancient Monuments (Class Consents) Order 1994
- Plant Protection Products Regulations 1995
- Hedgerow Regulations 1997
- Groundwater Regulations 1998
- Action Programme for Nitrate Vulnerable Zones (England and Wales)
- Regulations 1998
- Countryside and Rights of Way Act 2000

Visit <http://www.legislation.gov.uk/browse> to see how to obtain copies of this legislation.

You must follow the Code of Good Agricultural Practice – Protecting our water, soil and air – a code of good agricultural practice for farmers, growers and land managers which is available at <http://www.defra.gov.uk/publications/2011/06/16/pb13558-cogap/>

The CoGAP is available in hard copy, free of charge, from The Stationery Office, PO Box 29, Norwich, NR3 1GN (ISBN 9780112432845) or <http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&Action=Book&ProductID=9780112432845&From=SearchResults> .

## Annex E: Guidance on the provision of an ECS application map

**Full guidance is available to download from the Natural England website with the ECS Application Form.**

The guidance is designed to help applicants complete their Energy Crops Scheme application. For further advice please contact Natural England, details at Annex A.

**Good quality, clearly marked map/s are recommended to support your application. You can use a copy of your current Rural Land Register (RLR) map or an up to date Ordnance Survey (OS) map.** We will use it to assess your proposals and measure the area on which we will pay you grant.

### Glossary

#### **AONB**

Area of Outstanding Natural Beauty

#### **Application**

An application for grant made in accordance with the scheme rules.

#### **Breach (of agreement)**

Not abiding by the conditions of an agreement or the scheme rules, or making a false or misleading declaration.

#### **Common land**

The term “common land” derives from the fact that certain people held rights of common over the land. The different types of rights of common signified different entitlements to the product of the soil of the common. Common land is defined in Section 22 of the Commons Registration Act 1965 as (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods; (b) waste land of a manor not subject to rights of common. It does not include a town or village green or any land which forms part of a highway but otherwise, “land” does include land covered with water.

#### **DECC**

Department of Energy and Climate Change

#### **Defra**

Department for Environment, Food and Rural Affairs.

#### **ECS**

Energy Crops Scheme.

#### **Environmental Appraisal**

A comprehensive physical assessment of the proposed planting land and surrounding area, consulting statutory and non-statutory bodies as appropriate.

#### **Environmental Impact Assessment (EIA)**

The formal procedure whereby a designated ‘competent authority’ determines the likelihood of significant environmental impact of a proposal. There may be a requirement for the proposer to provide supporting information, contained in an Environmental Statement, before the competent authority comes to a final decision.

#### **Environmental Stewardship (ES)**

An agri-environment scheme which provides funding to farmers and other land managers in England who deliver effective environmental management of their land. The Schemes are administered by Natural England. Environmental Stewardship currently has three elements:

**Entry Level Stewardship (ELS)**, open to all farmers and landowners, simple and effective land management.

**Organic Entry Level Stewardship (OELS)**: organic strand of ELS, open to all farmers not receiving Organic Farming Scheme (OFS) aid.

**Higher Level Stewardship (HLS)**, targeted environmental management, capital work plans.

## **EU**

European Union.

## **Holding**

All the production units managed by a producer situated within the same Member State's territory.

## **IACS**

Integrated Administration and Control System. A system of control to combat fraud in land and livestock schemes.

## **Miscanthus**

Woody, perennial, rhizomatous grasses. Once established the crop can be harvested annually for at least 15 years.

## **Owner**

The overall owner of the land as freeholder who may be the landlord or the person who gives you permission to use the land or buildings.

## **Rural Development Programme for England 2007 - 2013 (RDPE)**

A programme that aims to safeguard and enhance the rural environment, improve the competitiveness of the agricultural sector and foster competitive and sustainable rural businesses and thriving rural communities. The framework for the programme is set out in the EU Rural Development Regulation, which forms the 2nd pillar of the Common Agricultural Policy.

## **RLR**

Rural Land Register

## **RPA**

Rural Payments Agency

## **Rural Development Regulation**

Council Regulation (EC) No. 1698/2005.

## **SPS**

Single Payment Scheme

## **Short Rotation Coppice (SRC)**

Densely planted, high-yielding varieties of either willow or poplar, harvested on a 2–5 year cycle for up to 30 years. Other species are coppiced under a 15 year rotation depending on species.

## **Tenant**

A person whose right of occupation derives from:

- a) An agreement which has effect under Section 2 of the Agricultural Holdings Act 1986 as an agreement for the letting of land on a tenancy from year to year;
- b) A tenancy agreement falling within Section 1 of the Agricultural Tenancies Act 1995; or
- c) A contract for a tenancy for a fixed term of years.



**Natural England is here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.**

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