Research Summary for Project RPA/001/14: Assessing the Mechanisms for Compensating Land Managers

Overview

Risk & Policy Analysts (RPA) in association with Royal HaskoningDHV and Allathan Associates was commissioned by the Scottish Government to investigate the options for compensating land managers who implement natural flood management (NFM) measures on their land. NFM refers to techniques that restore or use the natural processes within a catchment to reduce flood risk through slowing the flow of flood water, retaining water in the floodplain or providing protection against tidal surges. The Flood Risk Management (Scotland) Act 2009 (the FRM Act) promotes the use of NFM.

The study had five objectives:

1. To assess appropriate financial mechanisms, such as sale and lease back or land burdens, for local authorities to compensate land managers for flood risk management (FRM) purposes;

2. To write up case studies of occasions when a local authority or other public body such as Scottish Water or Scottish Natural Heritage has used financial mechanisms to compensate a land manager (not necessarily for FRM purposes);

3. To investigate the state aid, taxation, single farm payment and other financial or legal consequences for land managers who opt to receive these payments;

4. To make recommendations for how a local authority should determine a payment rate; and

5. To write guidance (to complement the NFM handbook) on how local authorities might best use these options to compensate land managers.

The approach to the study

The study focused on identifying and assessing mechanisms for compensating land managers, with a mechanism defined as an agreement or arrangement (between the public body and the land manager, OR the public body, land manager and a broker) which enables the implementation of an NFM measure. Whilst the mechanism may involve a monetary payment, it could alternatively be advice, or payment in-kind e.g. replacement feed for a destroyed batch. An NFM measure is defined as the action undertaken to decrease the flood risk. Different types of measure may have different impacts for land management.

This study covered four key areas:

- Researching and assessing the viability of mechanisms;
- Identifying the legal and financial consequences of these mechanisms;
- Developing some case studies to illustrate the way the mechanisms are used; and
- Making recommendations on how a local authority should determine a payment rate.

A total of 61 individual types of compensation mechanism were identified from a review of documents and reports. Each mechanism was assessed against a range of categories including:

- Source of funding;
- Timescale over which funds would be available;
- Who would be responsible for applying for funding and for managing the mechanism;
- Risks and restrictions;
- Benefits and disadvantages; and
- Examples of use.

Once identified the individual mechanisms were grouped to facilitate the assessment. Table 1 shows the mechanism groupings that were used in the study. It is acknowledged that there is considerable variation within some of these groups. For example, capital payments require upfront funding, whilst annual payments need an ongoing funding source.

Table 1: Mechanism grouping developed for this study
• Land purchase/sale • Land purchase/sale and leaseback • Land lease to public body • Servitude, wayleaves • Capital and annual payments (including grants) - EU, Government, Lottery, Agencies • Capital and annual payments (including grants) - Trusts, Local initiatives (non-Government) • Economic instruments (fiscal, permits, service payments, auctions) • Advice and technical support
Notes: The term 'wayleave' is not legally recognised in Scotland, but is currently used (and was referred to by attendees at the workshop for this study)

Once grouped, a mechanism was assessed to determine whether it was likely to be feasible. This assessment covered:

- Extent of support needed to set-up, implement, and run and maintain the mechanism;
- Convenience in terms of administration and payment type/frequency;
- Responsibility for setting up, running/managing/maintaining the mechanism;
- Scale at which the mechanism can be applied (single measure/farm; multiple measure/farm);
- Extent of financial commitment needed from public body;
- Potential to combine mechanism with other grants and initiatives;
- Effectiveness in ensuring the measure is implemented as intended, and over time;
- Flexibility in terms of ability of the mechanism to be adapted to the changing requirements of the public body or land manager;
- Time needed to set up the mechanism;
- Land use types to which the mechanism may be relevant (by land use capability and type of business income);
- Recipient of the funds (land owner, land manager, tenant) and number of recipients (single agreements only or potential for multiple agreements);
- Compatibility with existing land management plans;
- Legal responsibilities relating to land use, maintenance and risks (including contingent liabilities);
- Implications for change to legal occupier of land and inheritance;
- Financial implications related to land being taken out of productive use; and

- Potential consequences relating to state aid.

Key findings

The key findings of the study are:

- For the majority of the mechanisms, the onus is likely to be on the public body (or broker) to identify the potential mechanisms and lead the negotiation process;
- Most mechanisms require negotiations at the beginning;
- The majority of mechanisms will require the land manager to consider the mechanism against their farm business plans;
- Where a mechanism does not place responsibility for land management with the public body, there may be a need to monitor the way the land is managed to ensure that the NFM measure is implemented as intended;
- Where a mechanism places the land in the public body's ownership, there may be fixed equipment obligations (buildings, fencing, electrical equipment) where this land is leased;
- Some of the mechanisms could have state aid implications for land managers. Although state aid rules are complex, any funding provided to a business from a state source could potentially be classed as state aid; and
- There is the potential for some mechanisms to compete with or invalidate other subsidies/payments that a land manager may receive. For example, payment for a particular type of land management could detrimentally affect a land manager's ability to claim the basic payment scheme (BPS).

Assisting public bodies

To help public bodies identify the most appropriate mechanisms the study proposes a five step approach to working towards an agreement with a land manager. These are:

- Step 1: identifying key skills (by public body);
- Step 2: background research (by public body OR public body and broker);
- Step 3: discussions (between land manager and public body OR broker);
- Step 4: determining which type of mechanism is most appropriate; and
- Step 5: final determination of mechanism and payment rate.

The study provides guidance that takes a public body through each of these steps. A series of case studies was also developed to help illustrate how the mechanisms have worked in practice, and the type of issues that need to be considered. The case studies highlighted several recurring tactics and/or skills that appear to contribute to the success of a project and can be used with a number of compensation mechanisms. These include:

1. There needs to be a **good relationship between the seller and buyer** (i.e. the two parties to the agreement); this can be improved through the use of an ethical broker or a trusted intermediary.
2. **Good agricultural knowledge** is needed to be able to understand how the NFM measures might impact the land manager's business, and also to determine a payment which is acceptable to both parties to the agreement.
3. **Engagement activities** such as workshops and information leaflets/letters early on in a project can be useful in getting participants interested in schemes without making them feel pressurised into agreeing to anything straight away.

4. **Demonstrations** help land managers to understand how the measures work and what the direct benefits will be.
5. Where productive farms are being approached, it is vital to **bear in mind that the farm is a business and that viability is important**. The right mechanism will be dependent upon each land manager's individual circumstances and the type of land available, since land is a valuable asset.

Recommendations and policy implications

The FRM Act aims to decrease the costs of flooding, primarily through more sustainable management of flood risk. This could include the use of NFM measures such as flood storage areas, planting woodlands and changing management practices.

Part 4, Section 56 of the FRM Act enables local authorities to make payments as compensation for income lost as a result of agreements or arrangements relating to the management of land for flood risk reduction (i.e. management of land in a way that assists with the retention of flood water or slowing the flow of flood water). A survey by the James Hutton Institute (2012) indicated that local authorities are unsure of how best to compensate and engage with land managers. Disproportionate compensation and unsuccessful engagement has the potential to dis-incentivise additional land managers from implementing NFM. Consequently, there is an identified need for guidance on the types of compensation mechanisms which are available to local authorities, how these mechanisms could be put into practice, and who else may need to be involved (for example, the District Valuer Services or an independent land agent).

This study assesses the suitability and implications of a range of mechanisms which could be used by public bodies to compensate land managers for implementing NFM measures on their land. The technical report provides information on the approach taken, the evidence gathered and the results of the assessment. The separate guidance document for public bodies is intended to assist local authorities with the process of negotiating with land managers when implementing NFM measures. The aim is to help local authorities whenever possible to find an affordable solution that still allows the land to be used by the land manager. As a result, the outcomes of the research should help public bodies to implement Part 4, Section 56 of the FRM Act by addressing concerns raised by the survey of local authorities. In addition, use of the guidance should better enable public bodies to negotiate appropriate levels of compensation and improve communications with land managers, potentially encouraging uptake of NFM by land managers.

Report outputs

- Technical report
- Guidance that forms an Annex to the SEPA Handbook

References

James Hutton Institute (2012): Natural flood management and local authorities in Scotland, Final Report, published 25th October 2012. Accessed at: http://www.crew.ac.uk/sites/www.crew.ac.uk/files/publications/Final%20NFM%20LA%20survey.pdf on 15th December 2014.