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# Consultation on the Protection of Common Land in England (The Commons Act 2006)

**January 2007**

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# Contents

## Foreword

The Commons Act, which received Royal Assent in July 2006, will protect our common land for current and future generations. Common land is central to our national heritage and we value it for agriculture, recreation, nature conservation, landscape, for its place in local communities, and for its historical and archaeological significance.

The new Commons Act creates modern, flexible laws that will ensure that we are looking after the interests of wildlife and the countryside as well as commoners, landowners, and the public who get so much enjoyment from our common land. The implementation of the Act is now beginning and will be rolled out over a number of years.

This consultation aims to achieve better protection for common land by making proposals for reforming the consents system for works and fencing on commons and ensuring that existing protections are applied consistently. It will also reinforce existing protections against abuse, encroachment and unauthorised development.

We hope you will join the debate and contribute your views whatever your interest in common land. The comments you make will help us to shape our final proposals.

**Barry Gardiner MP**

**Minister for Biodiversity,**
**Landscape and Rural Affairs**
**Defra**

## Executive Summary

About 3% of the land area of England is common land. About half of this is in our National Parks and a further third in designated Areas of Outstanding Natural Beauty. Over half of commons in England are designated as Sites of Special Scientific Interest (SSSI), but many are in poor condition. Defra has a target of bringing 95% of SSSIs into favourable condition by 2010 and is committed to achieving this.

Many commons form vital parts of the local economy by maintaining a living for commoners who use the areas to graze their stock; providing employment and generating income for sporting uses; providing an attractive backdrop to some of our most beautiful and popular tourist areas; and by preserving examples of the country's heritage, with internationally important archaeological sites and historic landscapes. Commons receive hundreds of thousands of visitors each year.

Individual commoners who still exercise their rights are maintaining a tradition that has been in existence for hundreds of years. This is particularly important in upland areas where commons form a vital element in the local agricultural economy.

Through the Commons Act 2006, the Government aims to safeguard the future diversity and variety of common land in England by simplifying the complex legislation that has previously protected it and enabling those with an interest in the land to better understand the context of their role. This consultation relates to England only; the Commons Act also applies to Wales, but regulations under the Act applying to Wales will be made separately by the National Assembly for Wales. You can obtain a copy of the Act and Explanatory Notes to the Act at http://www.opsi.gov.uk/acts/acts2006a.htm.

In implementing this part of the Act, we aim to achieve:

- a system for consenting to works on commons that safeguards the future diversity and variety of common land in England
- clarified procedures for those who need to apply for consent
- clear understanding of the enforcement procedures for unlawful works
- a review of functions carried out by the Secretary of State in connection with commons protection to decide whether to repeal these functions, or delegate them to another body

It is on these issues and on others which include the question of charging for costs incurred in delivering the service and general exemptions from the consenting regime, that we are seeking views.

We are seeking your views on the principles by which we will draft regulations to help us achieve the outcomes listed above. Once you have put your views forward, and we have considered them, we will draft suitable secondary legislation to bring regulations into force.

*(Please note that whilst Defra currently administers common land casework options to delegate the functions to another delivery body are currently being considered. We have used "Defra" where the Act refers to the "appropriate national authority" to make it clear who is carrying out the action, but bear in mind that this may be delegated to an alternative delivery body.)*

## Chapter 1 : Works on common land

### Section 1(a) Consent for works on common land

Under section 38 of the Act, consent is needed for any restricted works on registered common land. Restricted works are those which prevent or impede access to or over the land. This can include erecting fencing, constructing buildings, digging ditches, but also resurfacing of land with tarmac and similar materials.

This section looks at the way in which the consenting regime might work and our thoughts on how the application process might work.

### Section 1(b) Exemptions for certain types of consent

During the course of the Bill views were expressed that certain minor, temporary or urgent works should be excluded from the scope of the consent regime.

We want to ensure common land is properly protected, but the level of that protection must be proportionate to the scale, type and purpose of any works proposed. We do not want to hinder day to day management and we want to reduce the burden of regulation. Your views are invited on the approach we propose taking here, and on whether our proposals achieve the right balance.

### Section 1(c) Enforcement against unlawful works

The Act has introduced a power for "any person" concerned about unlawful works on commons to which section 38 applies to take action through the Courts. Previously, this power was limited, primarily to local authorities, owners and commoners. The land generally must be registered under the Commons Registration Act 1965.

We do not need to develop regulations but we plan to provide clear guidance on enforcement, and seek your views as to the form and content of that guidance.

## Section 1(d) Schemes of Regulation

This section explains the changes we have made in the Act with regard to the consent procedures for applying for works that are covered by a Scheme of Regulation made under the Commons Act 1899. The aim is to achieve greater clarity.

We are also interested in views on how the best use can be made in future of the power to make such Schemes, which has been modernised in the Act. We invite views on how any new Regulations for making Schemes should be framed.

## Chapter 2 : Exchanges of common land and greens

The existing regime for moving the status of common land or village green to another piece of land (section 147 of the Inclosure Act 1845) is archaic and complex. The Act provides for the repeal of section 147 and its replacement with a modernised regime, providing for a proper balance between the private and public interests in the land. This includes taking account of the interests of common rights holders, local inhabitants and the wider public interest, including in particular nature conservation, the conservation of the landscape, and the protection of public access rights and historic features.

## Chapter 3 : Other Secretary of State functions

Over many years numerous local or personal Acts have conferred functions on the Secretary of State, or on bodies such as the Inclosure Commissioners whose functions are now exercised by the Secretary of State. These include approving stint rates on a small number of commons and appointing conservators on a similarly small number of commons. These functions are now rarely, if ever, used and it no longer appears appropriate for Government to be involved in what are essentially local decision-making processes.

We are reviewing these functions with a view to possibly repealing them. Your views are invited on this. We would also be grateful to hear of any other local or personal Acts in which the Secretary of State (or his predecessors) may still have a function that you feel we should review.

## Chapter 4: Charging

Defra currently operates a number of common-land consenting regimes, and this will continue under the Act. With the exception of a recently introduced charge for applications made under section 147 of the Inclosure Act 1845 for an exchange, Defra has never charged applicants for these services.

However, Government policy is to recover the full costs of any services that provided unless there are strong reasons for not doing so. We are looking at a range of options for charging for consenting functions. Your views are invited on the options listed in the document.

## How to respond

This consultation is being undertaken by Defra in respect of the protection of common land in England.

The Government has already engaged with key interested groups and will continue to do so as part of this consultation. It aims to give individuals and groups the opportunity to comment on the recommendations. Defra will consider all information to arrive at an appropriate consenting regime and to simplify the current administrative burden.

Your comments should be sent to:

**Laura Francis**

**Common Land and Greens (Protection)**

**Department for Environment, Food and Rural Affairs**

**Zone 1/14, Temple Quay House**

**2 The Square**

**Temple Quay**

**Bristol BS1 6EB**

**Tel: 0117 372 8973**

**Fax: 0117 372 8534**

**email: *commons.villagegreens@defra.gsi.gov.uk***

This consultation will commence on 15 January 2007 and any responses should be returned to the Department by 9 April 2007. Any secondary legislation required to implement the protection provisions of the Act will be implemented from 1 October 2007. Defra will ensure that guidance on the new procedures is issued 12 weeks in advance of any resulting changes.

Consultation documents are available on the Defra website at www.defra.gov.uk/corporate/consult/naturalenvironment.htm In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource centre, Lower Ground Floor, Ergon House, 17 Smith Square, London, SW1P 3JR. The information they contain may also be published in a summary of responses.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information regulations.

The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

A summary of responses will also be made available on Defra's website.

This consultation has been prepared in line with Government's code of practice on consultation which requires that we:

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;
- be clear about what the proposals are, who may be affected, what questions are being asked and the timescale for responses;
- ensure that consultation is clear, concise and widely accessible;
- give feedback regarding the responses received and how the consultation process influenced the policy;
- monitor the department's effectiveness at consultation, including through the use of a designated consultation co-ordinator;
- ensure the consultation follows better regulation practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you have any comments or complaints about the consultation process, as opposed to the issues in the consultation paper, please address them to:

Marjorie Addo, Defra Consultation Co-ordinator, Area 7b Nobel House
17 Smith Square, LONDON SW1P 3JR
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# Chapter 1: Works on common land

## 1.1 Background

At present, any works on common land in England are usually unlawful unless people obtain consent from the Secretary of State under section 194 of the Law of Property Act 1925 ("section 194"; "the 1925 Act"). Consent is needed for any fencing, buildings or works that prevent or impede access to land that was subject to rights of common on 1 January 1926. This is the case regardless of whether or not the land is registered as common land under the Commons Registration Act 1965 ("the 1965 Act"). Applications to Defra are normally determined by an official acting on behalf of the Secretary of State, except where particularly sensitive or controversial cases warrant ministerial consideration.

There are special arrangements for applying for consent in London, on commons owned by the National Trust, and on certain other commons, such as those which are governed by their own scheme or local Act. This has created uncertainty about the procedures that apply in any particular case.

Limited guidance and confusing legislation mean that people wanting to carry out works on common land are not always clear about what they need to do, or how their application will be determined. The Commons Act 2006 has been passed to address some of these issues.

We now need to consider how to introduce the changes the Act facilitates for works on common land. In this consultation we will be seeking views on how we can create greater certainty about the processes involved in applying for consent and develop a more flexible application process including introducing a new exemption provision for certain works.

## 1.2 What would an improved consent regime do?

Our objectives are:-

- to safeguard common land for current and future generations to use and enjoy;
- To ensure that the open and unenclosed nature of our commons is properly protected, whilst permitting works that are necessary for the proper management of the land.
- To increase the number of SSSIs in commons in favourable condition by 2010

We propose to achieve these by:-

- Establishing clear processes for obtaining consent for works on common land
- Publishing the criteria against which applications will be assessed;

- Exempting some minor works from the requirement to obtain consent
- Enabling any person to take enforcement action against unlawful works;
- Enabling conditions to be imposed on a consent for works;
- Requiring consent for any new mineral workings.

This will enable those proposing to carry out works to make an accurate assessment of whether or not they need consent and, where consent is needed, of the best application route to follow. Those carrying out works will no longer have to research the historic common rights position, which should save time and money in the pre-application stages.

# Section 1 A . Consent regime

### 1.3 Works – an opportunity for a new consenting regime

In future when people need to obtain consent for works there will be:

- Clear guidance for applicants on procedures and service standards;
- An easy to use process that does not place an undue administrative burden on applicants, those with views on the proposals, or Government;
- Clear criteria for the use of public inquiries, hearings and site visits;
- Decisions based on the merits of the proposed works, giving proper regard to the criteria set out in section 39 of the Act;
- Consultation arrangements, timescales, and other processes that are proportionate in scale to the type of works proposed and level of interest generated;
- An appropriate balance between the need for timely decisions, and the need to give proper consideration to the interests of all parties;
- Due regard to any parallel requirements under procedures being followed under other legislation, such as planning permission or Environmental Impact Assessments;
- A clear charging structure for applications.

***Q1: Do you agree with this assessment of the most important features? Are there any that you would add, change, or remove?***

### 1.4 Why will people still need to apply for consent to carry out restricted works?

Under section 38 of the Commons Act 2006 ("The Act"), which will replace section 194, consent will generally be needed from Defra for any restricted works on registered common land. Restricted works are those which prevent or impede access. This is to ensure that the open and unenclosed nature of our common land is properly protected for current and future generations to enjoy. Some works may be appropriate if they improve the common, but owners, rights holders, and the public (who have a right of access to all common land) should have the opportunity to express their views on a proposal in all but the most minor cases.

Restricted works might include putting up fencing, constructing buildings, or digging ditches. It may also include laying new tarmac surfaces (and other new surfaces of similar materials) such as access ways and car parks.

### 1.5 What land is covered by section 38?

Section 38 will apply to: -

- all registered common land in England and Wales;
- unregistered land subject to a Provisional Order Confirmation Act under the Commons Act 1876, or a scheme under the Metropolitan Commons Act 1866 or Commons Act 1899;
- unregistered land in the New Forest subject to rights of common.

Commons in London Boroughs are subject to their own special arrangements and, in practice consent to works would normally be sought under other provisions.

Section 38 will not apply: -

- to certain works carried out under other enactments;
- where works authorised under an 1866 or 1899 Act scheme do not need Defra consent;
- to works for the installation of electronic communications apparatus.

Schedule 4 of the Act, when commenced will apply the new section 38 procedures to other legislation which enables applications for works on commons in the ownership of London Boroughs and the National Trust. This again will make the processes clearer and simpler for applicants.

### 1.6 What criteria will be looked at to reach a decision?

Section 39 of the Act sets out the criteria the Secretary of State must have regard to when assessing an application. These are:

(a) the interests of persons having rights in relation to, or occupying the land (and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;
(c) the public interest, which is defined as including the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic interest;
(d) any other matter considered relevant.

These criteria need to be viewed in the light of the overriding objective of maintaining or improving the common, and ensuring that our stock of common land is not diminished. Evidence gathered to accompany an application should show how, bearing in mind the section 39 criteria, the works in question will deliver that maintenance or improvement.

If the works would not, on balance, improve or maintain the common, or would be inconsistent with the normal use of the common (for example, building a supermarket) it is unlikely that consent would be given. In these cases, another mechanism exists for enabling works: sections 16 and 17 of the Act allow for another piece of land to be given by the applicant in exchange for the land on which works are required. (More details on section 16/17 and other processes for exchanging land are given in Chapter 2).

The decision on whether to apply for consent for works or to offer land in exchange for common land rests with the applicant; but guidance, such as the table at Annex A, will aim to assist prospective applicants in their deliberations.

### 1.7 What kind of process will achieve these objectives?

We envisage that the following process, which is summarised in the flowchart at the end of this chapter, will achieve these objectives:

### 1.8 Pre-application phase – Informal consultation and consideration of options

It is in the interests of applicants, and other interested parties, for extensive informal consultation to take place before a set of proposals is formalised in an application. This gives an opportunity for differences to be aired and early solutions found. It increases the possibility for proposals to be shaped and owned by a wide range of interested parties, and for a high level of consensus to be reached.

Anyone proposing to carry out works on common land should read and follow the principles set out in the multi-agency Code of Practice “A Common Purpose: A guide to agreeing management on common land” available from http://www.naturalengland.org.uk/pubs/publication/PDF/CommonPurpose.pdf. The Code is particularly helpful to people considering management options for a common, but the principles put forward can also be useful, if proportionately applied, to other kinds of application.

The main principles include:

- A general presumption for open, inclusive communication;
- Stakeholder identification and engagement;
- Identification, and full consideration, of options;
- Early planning, research and information gathering.

Only then can the following questions be properly answered:-

- Are the fencing or works necessary? Are they desirable or are there better alternatives available?
- If the answer is yes to either or both of these questions, what kind of fencing/works are needed/desirable?

Prospective applicants should consider the potential impact of their proposal on all those with an interest in the common. They should also consider whether what they are proposing is the best solution for the objective they are seeking to achieve. For example, there are a number of ways in which scrub encroachment can be addressed (such as grazing, burning, cutting), so a clear identification of aims, followed by a full consideration of the possible methods for achieving those aims is the appropriate starting point – rather than starting from a pre-conceived notion that a particular method (e.g. fencing) is the only way forward. The aims and perspective of other stakeholders in the common should be identified and properly considered as a central part of this process.

There will be occasions where applicants will need to consider whether an **Environmental Impact Assessment** (EIA) is appropriate to assess the likely effect of the work proposed on the common on the environment surrounding it. Further information on EIAs can be found at: http://www.defra.gov.uk/farm/environment/land-use/eia/index.htm. Projects above statutory thresholds need to make a screening application to Natural England. Applicants should seek clarification from Natural England at this very early stage whether a project needs to be screened.

### 1.9 Application phase – Making and determining an application

(a) Formal Consultation

We will require applicants to prepare their application, and submit it to Defra, on or before the date on which they advertise it. They will need to advertise their proposal on site and in the main local newspaper, and send a copy of the advertisement to key stakeholders.

Anyone will be entitled to comment on applications. We envisage that there should be a minimum of a clear 21 working day objection period from the appearance of the advertisement on site and in the paper for people to approach Defra with their support, objections and/or representations. This, in our view, gives sufficient time for interested parties to make their views known, and does not delay the application process. It also reflects our current practice on section 194 applications.

***Q2: Do you agree that 21 working days is the right length of time?***

(b) Process for determining an application

Defra will manage an exchange of correspondence between the applicant and respondents and will expect the applicant to address any objections. This will normally conclude no later than the point at which respondents have written to us for a second time, reacting to initial clarifications from the applicant, and we have the applicant's comments on these letters. Defra will aim to inform applicants as soon as possible whether it is in a position to take a decision on the application based on the written evidence or whether an inquiry, hearing or site visit will be necessary. All applications will be subject to the same rigorous examination, whichever process is followed in determining them.

Where there are no (or few) objections, and the issues are relatively straightforward, an early decision is likely to be possible. Where more evidence is needed to make a decision, three options are available:

- site visit – where outstanding queries can be resolved by a visit to the area by an independent inspector who may wish the applicant or some objectors to attend
- hearing – where the outstanding issues can be resolved by an informal meeting between interested parties facilitated by an independent inspector
- public local inquiry – where the issues are complex or finely balanced, contentious or raise issues that have wider than local significance. This is a meeting, open to the public and facilitated by an independent inspector, normally lasting between 1 and 2 days. The inspector considers the evidence and makes a recommendation to Defra.

A hearing process could provide a cheaper and more informal option than a full inquiry. A hearing could be concluded within a day and, in some cases, be an effective and quick alternative to an inquiry, whilst still allowing for a proper consideration of the merits of the case. We are exploring the scope for making greater use of this option. There may also be occasions where an inquiry or hearing is not considered necessary or proportionate to the case in hand, but where a site visit report would assist Defra in making its decision.

For all scenarios, we propose to set out in guidance the time limits that Defra, applicants and correspondents should adhere to during the application process.

***Q3. Do you think that the proposed consent process achieves the right balance between allowing interested parties to make their views known, whilst not unduly prolonging the application?***

## 1.10 Incomplete or incorrect applications

The expectation is that applications will be complete in all respects when they are submitted; clear guidance will ensure that there is no reason for them not to be. Where an application is incomplete, incorrect, or where further points of clarification are needed, one of two approaches will be taken:

1) If the application is seriously deficient, the papers will be returned to the applicant, asking that they be returned only when the application is in an acceptable form.

2) If the application is deficient only in minor respects, the papers will be retained pending receipt of the missing information.

In either of the above cases, the application start date will be the date on which ALL the information needed is received by Defra.

## 1.11 Fast-track applications

We have given careful consideration to views expressed during the Parliamentary stages of the Bill that there might be some merit in introducing a specific 'fast-track' procedure for certain types of applications.

It remains our view that there is no necessity for this, given that our proposals already provide for:

(i) Procedures that are proportionate to the application in hand;

(ii) Clear guidance to assist applicants through the process

(iii) Certain minor works to be exempt from the controls – see Chapter 1, Section B on Exemptions.

The application process is designed to provide the right level of protection with the least administrative burden – it is difficult to see which part of the process might be removed to create a 'fast-track' procedure without compromising the integrity of the consenting regime.

## 1.12 Urgent Works

We accept that situations may arise where urgent works need to be constructed because of a genuine emergency or an exceptional situation which could not have been foreseen. Where urgent works are not already foreseen by existing statutory provisions, they might be captured by a statutory exemptions made by means of the section 43 exemption process – see Chapter 1, Section B on Exemptions. If an exemption does not automatically provide for a work to be carried out without consent, the Act provides that consent can be given once works have commenced or

completed. In such a case Defra would have regard to the circumstances of the emergency when considering whether to give consent.

### 1.13 Modifications and Conditions

The Act has introduced a power to impose modifications and conditions on a consent. We might choose to impose conditions following comments from local stakeholders on the original works proposed. For example, this could enable conditions to be imposed relating to the provision of extra gates as access points in fencing.

There is also a power to vary or revoke a modification or condition in response to an application to do so. In each case, it will be for Defra to form a judgment on the most appropriate approach to dealing with such applications, depending on the significance of the change proposed. We would wish to limit the period during which we will consider any requests for changes to keep uncertainty to a minimum for all parties. This might range from a very small change that can be approved without consultation, to a more significant one where those who commented on the original application are given the opportunity to express their views. In some cases the changes proposed may alter the original proposal so significantly that the only solution is for a fresh application to be made. In order to balance the need for allowing time to make requests for modifications with a need to ensure that the person carrying out the work can do so without the rules changing half-way through the work, we need to establish a deadline that allows sufficient time to react before finally concluding that a work is approved.

***Q4: We propose to set a time limit of six weeks from granting consent for an application requesting a variation to that consent to be made, but would welcome your views on this.***

**Case Study 1: Example of good engagement with stakeholders prior to application**

The Department received an application for the installation of cattle grids and associated fencing and gates to enable the re-introduction of grazing on a nationally important site designated as an Area of Outstanding Natural Beauty and as a Site of Special Scientific Interest. Grazing had ceased due to the danger posed to cattle by traffic on nearby roads, and over the years scrub had begun to encroach on the site to such an extent that the condition of the SSSI had been assessed as 'unfavourable/declining'.

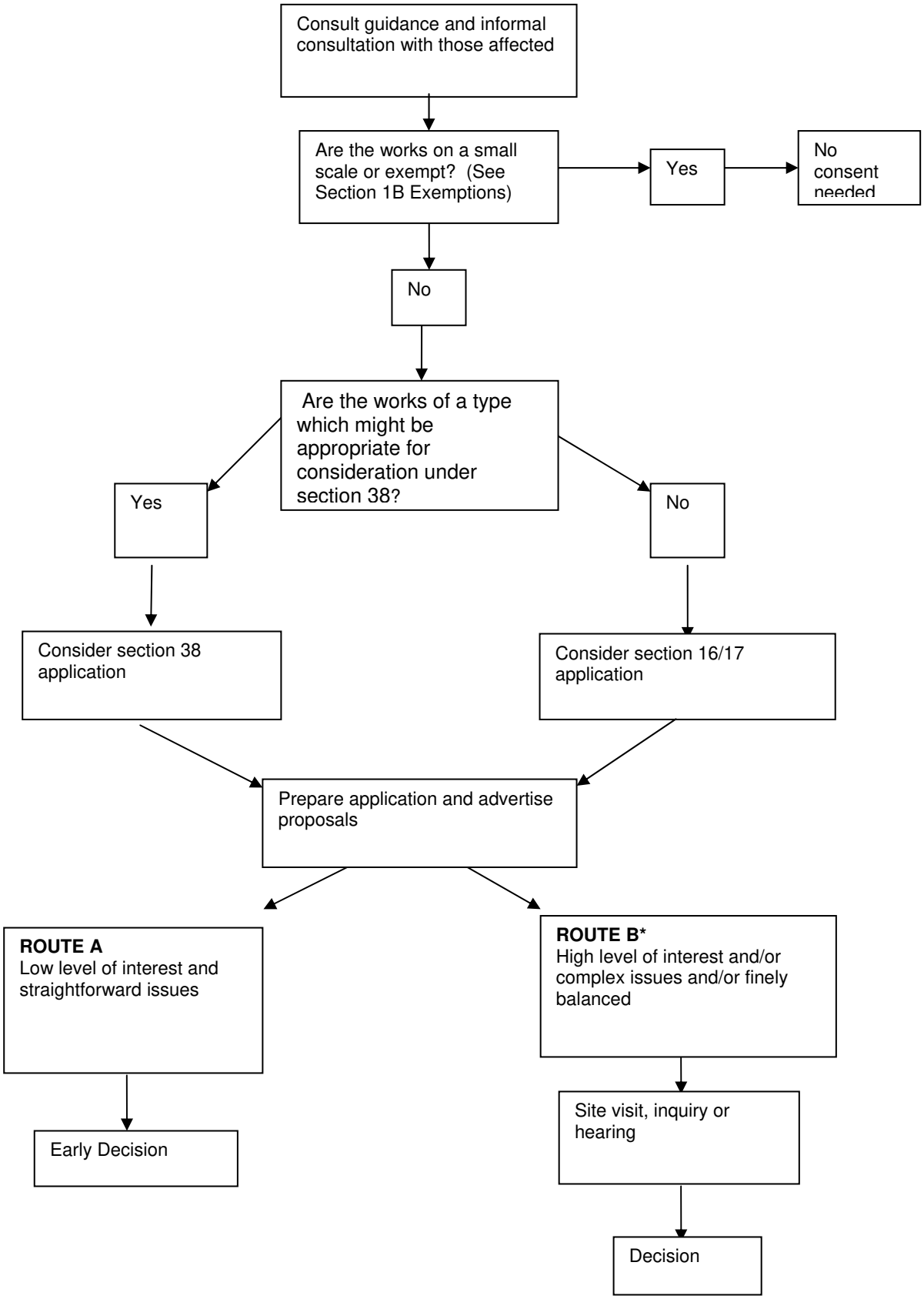
The applicants had carefully considered all alternatives to grazing, such as abandonment, mowing, burning and manual clearance – but grazing was considered by expert advisers to be the best management tool. The applicants had considered alternative means of enabling grazing, such as full-time tending by a stockman, tethering and temporary fencing – but there was no effective alternative to the use of cattle grids, gates and permanent fencing. Full public access would be maintained by the provision of gates in the fencing.

Whilst there was a small amount of local opposition to the application, the Department weighed up all the evidence and accepted the applicant's contention that without the re-introduction of grazing the common would eventually revert entirely to scrub land and would cease to be accessible to the public.

The case illustrates the benefits of early research, good communication with stakeholders, and a full consideration of options **before** an application is formulated – all of which are encouraged by the proposed new process. Sufficient evidence had been put forward to support the application and as a result, consent was granted quickly without the need for an inquiry.

Good applications will include evidence that all interests in the land, including nature conservation, public access, and the landscape have been properly considered. This will maximise the possibility of shaping a proposal with a high degree of consensus.

**COMMONS ACT 2006 – PROPOSALS FOR WORKS ON COMMON LAND**




* ALL S16/17 APPLICATIONS WILL FOLLOW ROUTE B.

# Section 1B. Exemptions

### 1.14 Introduction:

In Section 1A we described the process for applying for consent to carry out restricted works on Commons.

The Act allows government to regulate when it considers it is necessary to protect commons. We recognise there may be some categories of works for which consent will be given under the current regime because they will result in improved management of the common, are of public benefit, are relatively minor and do not significantly impinge on the open and unenclosed nature of the common. We are considering whether we could exempt such works from requiring consent. We are asking for your views on the categories of works which would benefit from not having to undergo the consent procedures.

Following consultation, where we conclude that there are categories of works which should be exempt, an Order will be drafted identifying these works and specifying the criteria for exemptions. We consider that any works meeting those criteria will be acceptable on common land. In the careful use of exemptions, we must aim to strike the right balance between ensuring proper management and protection of commons, with avoiding unnecessary regulatory interference.

### 1.15 Which works can go ahead without consent?

One of the first considerations for prospective applicants is whether the work they are proposing does prevent or impede access. If there is no impediment to access, for example erecting a small information board for visitors, then the work falls outside the scope of the restricted works described in section 38 and no consent is needed anyway. We recognise that whether works fall in or out of the scope of s38 may be a difficult judgement to make and therefore propose to list in our guidance those works which we consider to be of such a small scale as to not prevent or impede access. This will not be an exhaustive list and the courts may be required, in some cases, to determine whether works are so small as to not impede access. The list will be included with our published guidance and will be refined over time. We have included a list below which shows the type of works which in our view should be listed as falling outside of section 38. We are looking for your views on whether you agree these works do not need consent.

There are also situations where we propose that those who work and manage the land should be allowed to undertake certain restricted works which are necessary for successful management of the common without the need for consent. Section 43 of the Act allows us to make an Order to exempt certain defined activities.

Consent is NOT needed for any works to repair or maintain existing lawful works within the terms of an existing consent, where there is no increase in the extent of the impediment. Other small works which do not impede access

or are on such a small scale that there is no impediment to access, also fall outside of the scope of Section 38.

The table below details some of the works that we consider are outside the scope of section 38:

| **Works that do not impede access or are so small that there is no impediment to access** |
|---|
| New gates and stiles in existing boundaries |
| Erecting small signs and notice boards |
| Resurfacing existing lawfully constructed footpaths. Creating or widening unsurfaced footpaths |
| Setting out areas for sports and games, where these are in keeping with the character and use of the land, but excluding any permanent construction |
| Placing seats, which are in keeping with the character and use of the land |
| One-off temporary fencing for very short periods of time, e.g. temporary pens for separating sheep from lambs, and lug-tagging during a gather or drift (no more than 200 sq m enclosed) |
| Feeding troughs (proportionate to the number of animals that need to be fed) |
| Scrapes for grouse or lapwing |
| Larsen traps or crow traps |
| Dredging and clearing ponds or other bodies of water |
| Planting and protecting trees and shrubs (but not for forestry purposes) |
| Burning |
| Management of vegetation by mechanical means |
| Protecting or renovating turf |

***Q5: Can you think of any circumstances where the above works would in fact be caught by section 38 of the Act?***

***Q6: Are there other works you are aware of that should also be described as outside section 38?***

## 1.16 What does the Act say about exempting works?

Works that prevent or restrict access are restricted works and would normally require consent.

However, there will still be occasions where it may be appropriate for restricted works to be undertaken without the need for a consent. Our records show that there are certain types of works where consent is usually given - for example, temporary fencing to help facilitate the reintroduction of grazing.

Whilst we think it may be appropriate to exempt certain restricted works from the need for consent, anyone undertaking works may be required to show that they come within the terms of the exemption. If they are unable to do so they run the risk of enforcement action being taken against them. (see Section 1C).

The Secretary of State may not make an order that specified works on common land are exempt from the requirement for consent unless he is satisfied that the specified works are necessary or expedient for any of the following purposes -

(a) use of the land by members of the public for the purposes of open-air recreation pursuant to any right of access;
(b) the exercise of rights of common;
(c) nature conservation;
(d) the protection of archaeological remains or features of historic interest;
(e) the use of the land for sporting or recreational purposes.

The Order will need to specify who can carry out works without consent, what those works can be and on what common land they can be carried out. We propose that the Order will define the following terms set out in the Act which limit the people, works and land for which exemptions can be considered:

| | |
|---|---|
| *"Person of a specified description"* | Land owners, or any other person with the written consent of landowners; those with common rights; or the local authority where the owner of the common is not known; and, for specific types of work, other non-departmental public bodies |
| *"Works of a specified description"* | Specific types of works within certain limitations either in terms of scale or length of time they may be present |
| *"Any land"* | All common land on which consent for works would normally be required |

Following consultation, the Secretary of State will decide if there are any specified works which it is appropriate to include in the Order because he is satisfied that it is necessary and expedient to do so.

### 1.17 What works could be exempted?

As with the process for obtaining consent, we always recommend that anyone proposing to carry out works on common land should read and follow the principles set out in the multi-agency Code of Practice ***"A Common Purpose: A guide to agreeing management on common land"***. Anyone thinking about carrying out works should also read the Defra guidance we will develop to check whether the work is considered so small that it falls out side the scope of needing section 38 consent or is exempted by the Order. We also consider it is worthwhile consulting locally so that people know the reasons for the work and understand that it is actually permissible without consent. We also propose that the person carrying out the work posts a notice on site explaining what is being done and why and sends a copy of the notice to Defra who can register activities. The register would be open for people to enquire whether the work had been properly registered as exempt.

The table below shows the works we suggest are strong candidates for inclusion in the Order. These are all examples of temporary fencing erected for nature conservation purposes. In each case, it can be assumed, if the works are of the type included within the table, it is because we consider them to be necessary and expedient.

| **Specified works** | **Specified person** |
|---|---|
| Fencing which is part of a management plan or agreement governing the common; for example part of an Agri-environment scheme; or a managed SSSI. The management plan will stipulate how exempted works may relate to other works on the common.<br>It must provide access and be removed once the conservation objective has been achieved. We propose to balance the time for which fencing is permitted against the total area of the common occupied.<br>For example :<br>20% of the common for 25% of the year,<br>10% of the common for 50% of the year,<br>5% of the common continuously up to a maximum of 5 years. | Land owner; or any other person with the written consent of landowners; those with rights of common |
| Fencing erected to keep stock out of a sensitive part of the common (e.g. to enable re-seeding). Fencing to be no more than 500m in length or 500 sq m in area, proper provision to be made for public access, and the fence to be removed within 3 months. | Land owner; or any other person with the written consent of landowners; those with rights of common |

| Specified works | Specified person |
|---|---|
| Fencing enclosures of no more than 20 sq m to address a short term need, to be removed when the need is passed (max 6 months), and covering no more than 1% of the total area of a common. | Land owner; or any other person with the written consent of landowners; those with rights of common, Natural England |

We have included these works as our experience in dealing with cases over a number of years shows that we invariably give consent to applications for nature conservation fencing falling into these limits. An example of this would be an application supported by a Wildlife Trust to introduce seasonal grazing to protect and restore habitats.

Bearing in mind the legal conditions imposed on the Secretary of State when taking a decision to make an order, such as the test of necessity and expediency, and the five purposes listed above in section 1.16, we would welcome responses to the following questions:

**Q7: Do you consider that these are works which should be exempt?**

**Q8: Should the exemption for fencing for nature conservation purposes be restricted to use for grazing to restore the common?**

**Q9: Do you agree that the time limits we have suggested are appropriate?**

**Q10: Do you agree that registering exempt works with Defra will assist in controlling minor works on commons to avoid a number of minor works when added together exceeding the threshold for exemption?**

### 1.18 Are there other works that could be considered for exemption?

There are other works which we feel may also be worthy of consideration for exemption but we would welcome further input from consultees in order to inform any final decision. In the table below we have identified several examples and indicated some advantages and disadvantages in including these works in the exemption order.

| Specified works | Specified person |
|---|---|
| Prevention of unauthorised vehicular access to common to assist in the use of land by the public for open air recreation or in the exercising of rights of common. Erecting stones, bollards or other suitable obstacle, these can be no more than 200 metres in length.<br><br>**Pros:** The goal of the exemption is to protect common land in a discreet way from potential damage, and other common users from interruption and interference caused by unauthorised vehicular access. The works would be exempt if the conditions identified are met. Such small scale works would protect the interests of lawful users of the land, without application costs being a disincentive to taking desirable, proportionate action.<br><br>**Cons:** Possible problems in showing that obstacles have been erected with the exclusive goal of preventing unauthorised access. May interfere with access by other legitimate users, such as disabled or horse riders (particularly if the obstacle is continuous, such as low railings). | Land owner; or any other person with the written consent of landowners; |
| Temporary fencing, erected for safety reasons, to assist in the use of land by the public for open air recreation or in the exercising of rights of common, where the maximum area enclosed at any one time does not exceed 5% of the total area of the common for a maximum of 6 months<br><br>**Pros:** Where fencing is needed to protect public safety, going through the consenting procedure seems a disproportionate burden and potential delay. Threshold ensures minimal relative impact on common.<br><br>**Cons:** Defining exactly what is meant by 'safety reasons' could be tricky and may give rise to abuse. There might be a 'cumulative effect' whereby this exemption permitting enclosure of 5% combined with enclosure through other exemptions leads to significant portions of common land being enclosed. | Land owner; any other person with the written consent of landowners; those with rights of common |
| Temporary works, of up to 6 months, to assist in the use of land by the public for open air recreation or in the exercising of rights of common required following an emergency event to enable site protection, restoration, or public safety and welfare.<br><br>**Pros:** Creates a situation whereby works required in an emergency are lawful, rather than being considered unlawful pending processing of an application for works. | Land owner, or any other person with the written consent of landowners; those with rights of common |

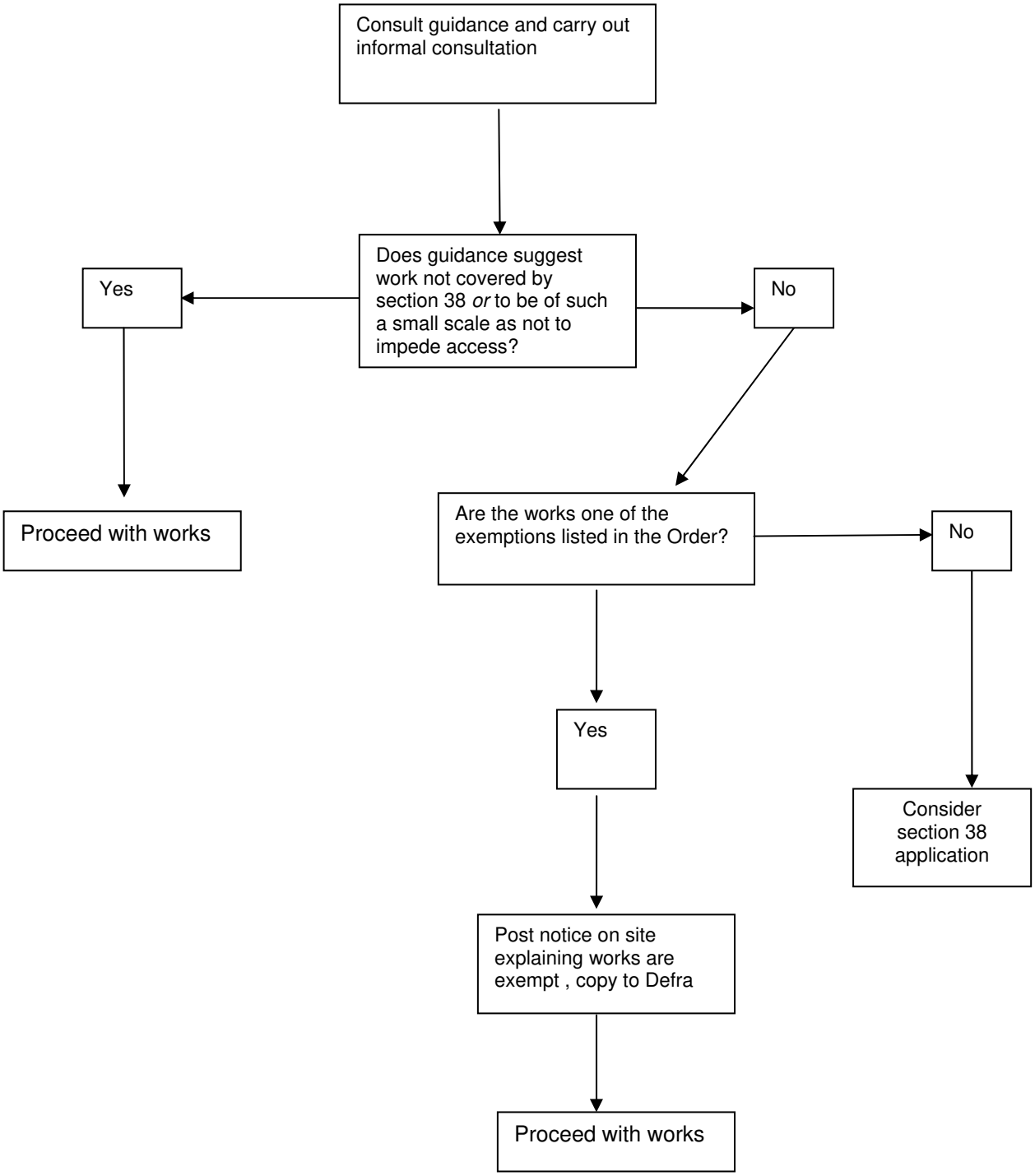
| Specified works | Specified person |
|---|---|
| May encourage owners and managing bodies to take effective, prompt lawful action following emergency, so preventing further damage or risk to public safety.<br><br>**Cons:** Defining exactly what is meant by 'emergency' could be tricky and may give rise to abuse. | |
| Temporary fencing to assist the exercise of rights of common for less than a week, to enable routine livestock operations. Enclosure to be no more than 500 m in perimeter.<br><br>**Pros:** These works are of a very short-term nature and would invariably receive consent. Creating a standing exemption would remove a regulatory burden on the individual and on the administrator. Farmers could undertake routine works with confidence that they are not acting unlawfully.<br><br>**Cons:** Risk of successive use of exemption leading to prolonged enclosure / use of fencing. | Land owner; any other person with the written consent of landowners; those with rights of common |
| To protect archaeological remains or features of historic interest up to a maximum individual enclosure of 100 sq m with a maximum of 5 enclosures on a common<br><br>**Pros:** facilitates rapid protection of remains or features in cases where consent would more likely than not be given. Although works may have been there a long time, they may only just have been discovered, and so need urgent protection.<br><br>**Cons:** Definition of what constituted archaeological remains or features of historic interest would have to be carefully constructed to ensure the exemption was being correctly used. Public interest may be served better in some cases by permitting access to some features rather than by preventing access. | Land owner; any other person with the written consent of landowners; those with rights of common, English Heritage |
| To assist in using the land for sporting or recreation: shooting butts, of no more than 20 sq m per construction, up to a maximum of 1% of the total area of the common.<br><br>**Pros:** Consent would normally always be given in these cases; an exemption reduces the regulatory burden. Shooting butts are part of the landscape of upland sporting estates.<br><br>**Cons:** Difficulty for users of commons to assess whether the 1% rule has been respected. | Land owner; any other person with the written consent of landowners; |

We have included these categories as works we should consider for exemption, as many of the more straightforward queries we receive about consent concern works which could fall into these categories. For example we were contacted by a stakeholder to enquire whether consent was needed to erect barriers to keep the public off common land which had caught fire during summer 2006. There was a danger of further fire and damage to the common, but the current regime requires consent to be sought for such fencing. This is a case which we would hope to be exempt in the future, rather than the stakeholder having to seek consent to works that are necessary for public safety.

***Q11: Do you agree that these works are appropriate for exemption?***

***Q12: Do you wish to suggest other categories of works for consideration or refinements to the above suggested categories?***

## COMMONS ACT 2006 – EXEMPTIONS FROM WORKS ON COMMON LAND



**Case Study 2: Temporary fencing for nature conservation**

Often works are necessary for nature conservation purposes. An interesting case involves herb-rich valley mire which is the only site in England and Wales for the threatened (Red Data Book) Irish Ladies-tresses.

There is a need to erect three tiny temporary enclosures, from June to September in three years, to protect the area to allow the plant to recover and flower and also to extract DNA from it to see how it is related to the Ladies-tresses on the eastern seaboard of the USA. The commoners are in agreement. The location is in mire, with no access attractions, although a warden's presence is being offered to help explain the reasoning. At present to protect this plant, the owner of the common would need to apply for consent to undertake works on the common. This would be subject to the usual process for determining a case under Section 194 of the Law of Property Act.

Photo: Dr Richard Gulliver, Copyright reserved

In future, this is a case which we propose would be exempt under section 43 of the Act.

The works are being carried out for nature conservation (s43(4)(c)); and providing they are below the specified scale; are being carried out by a person of a specified description on specified land; they should be exempt from needing consent.

# Section 1C. Enforcement against unlawful works

## 1.19 Background

The existing arrangements for enforcing against unlawful works are set out primarily in section 194(2) of the 1925 Act. This enables local authorities, common owners, and any other persons with a legal interest in the land, such as commoners, to take action through the courts for unlawfully constructed works to be removed, and for the land to be restored. This situation may arise where works are constructed without consent, or where the terms of a consent are breached in some way. Since 1 October 2006, under a transitional provision in the Act, any person can now take enforcement action under section 194(2) in respect of works carried out on or after 28 June 2005.

It is vital that our improved arrangements for protecting common land, and for bringing consistency and certainty to the consent regime, are backed up by appropriate enforcement provisions.

The main difficulties with the current system are:

(i) Uncertainty. Section 194 applies only to land that was subject to rights of common in 1926. It is increasingly difficult to establish the legal position with regard to rights over land in 1926. This uncertainty may well be a significant disincentive to taking action to challenge works which, without consent, might be unlawful.

(ii) Power to challenge. The power to take action is limited to local authorities, common owners and others with a legal interest in the land, such as commoners. This is restrictive, particularly as members of the public now have rights of access over all registered common land.

(iii) Readiness to challenge. Local authorities may be reluctant to take action against unlawful encroachments because:

- they are uncertain about the provisions;
- they view such matters as competing with other priorities;
- duality of powers can result in neither district nor county council taking the responsibility;
- they have different interests in the land compared with the owners and commoners, even though public interest issues such as conservation, recreation and landscape may be involved;
- a conflict of interest exists (e.g. where the development is by, or promoted or supported by, the local authority, or where there is a related planning application).

### 1.20 How can we improve enforcement?

The existing arrangements have been strengthened in the Act. The problems identified above have been addressed by the Act in the following way:

(i) Uncertainty. Section 38 applies to all registered common land, and to certain other categories that are clearly specified in the Act. This will bring a welcome certainty to the process, and should remove a disincentive to those with enforcement powers to take action against unlawful works.

(ii) Power to challenge. We have extended to **any person** the power to take action. This power includes any person with a right of access to common land, and extends to corporate bodies.

(iii) Readiness to challenge. We will be publishing guidance on the way in which the new provisions will operate. This will be in the form of a Circular to raise awareness in local authorities. We are also considering the need for guidance to others with enforcement powers on their rights and the processes involved.

We have not imposed a duty on local authorities to take enforcement action, as it is right for them to continue to have discretion in these matters and to decide where their own local priorities lie, but clear guidance will ensure that they are fully aware of their responsibilities with regard to common land. In addition, Local Access Forums will have a new role in advising local authorities in their areas on the best way of prioritising their enforcement powers, in order to help safeguard and promote freedom of access over common land.

### 1.21 Mediation

We are aware that litigation can be costly and that this may prevent some people from taking enforcement action against unlawful works. As always, we would encourage people to try to resolve the issue informally in the first instance or by using mediation. If people proceed to court action they will usually need to show that they have attempted to resolve the matter informally.

### 1.22 Transitional provision

On 1 October 2006 the enforcement power under the existing legislation was extended to allow any person to take enforcement action against works carried out on or after 28 June 2005. This will be superseded when the new legislation on works comes into force.

### 1.23 Key questions

We envisage that guidance on the enforcing regime issued either centrally or by drawing attention to other relevant sources, will cover:

(a) what is involved in taking an action through the courts – giving clear and specific guidance for owners, commoners, local authorities, corporate bodies and individuals;

(b) what actions are open to the court;

(c) the central role of local authorities in ensuring that commons are properly protected;

(d) the new role of Local Access Forums in advising local authorities on their enforcing powers with regard to the protection of public access rights.

***Q13: Are there any other key areas that you consider should be covered? What specific issues should be included within this framework?***

***Q14: Can you provide any examples of good or bad enforcement practice that may help to inform our guidance in this area?***

# Section 1D. Schemes of regulation

## Works Under Existing Schemes

### 1.24 Background

The Commons Act 1899 enables local and National Park authorities to make schemes for the regulation and management of common land. Schemes must be substantially in a form prescribed by the Secretary of State. The current model scheme is set out in Regulations made in 1982 (see annex B). A scheme vests the management of the common in the authority, and confers a public right of access over (generally) all of the common. A scheme may also make provision for byelaws to be made to prevent nuisances and preserve order.

### 1.25 Categories of Works

Individual schemes may vary, but the provision for works, **in the current model scheme**, can be classified in three main categories:

**A. Works that DO NOT need Secretary of State consent**:

**Works for the protection and improvement of the common**:

- Drainage, raising, levelling or other works

**Works for the prevention of accidents:**

- Fencing any quarry, pit, pond, stream or other like place

**To preserve the turf, shrubs, trees, plants and grass:**

- Fencing portions for short periods (to rest the land)
- Planting trees and shrubs (for shelter or ornament)
- Placing seats on the common
- Lighting the common

**Otherwise improve the common as a place for exercise and recreation**

Including:

- Setting apart for games any portion (or portions) of the common
- Forming grounds for cricket, football, tennis, bowls and other similar games
- Temporarily enclosing such grounds with any open fence

**B. Works that DO need Secretary of State consent and the consent of the owner:**

- Shelters, pavilions, drinking fountains, other buildings (in Defra's view, 'other buildings' must be construed as a class with 'shelters, pavilions and drinking fountains', and such buildings must be compatible with the use of the common for recreation and public enjoyment.)
- Temporarily setting apart and fencing areas for parking

### C. Works that are PROHIBITED by the Scheme or excluded from its scope:

This category includes all works that are not permitted either with or without consent — within the terms of the Scheme. Typically, these might include:

- Permanent fencing
- Permanent car parking
- Village hall

### 1.26 What problems does this give rise to?

There is often considerable uncertainty over the correct procedure (if any) for submitting an application for consent to works on a scheme common, and in particular, whether an application should be made for consent under the scheme or under section 194. This uncertainty is often made worse where there is some question over which of the above three categories (or none) the proposed works fall into.

In practice, Defra follows the same procedures and applies the same criteria whichever application route is followed. It may also be the case that Category C works — even though prohibited by a scheme — may be undertaken if the authority first pursues an amendment to the scheme so as to exclude the land on which the works are to be constructed, followed by an application to the Secretary of State under section 194. However, in Defra's view, this approach is undesirable, because the scheme will cease to apply to the land excluded from the scheme, leading to different management regimes for different parts of the common.

### 1.27 How will things change?

The measures for schemes in the Act reflect our objective of achieving a clear and consistent consenting regime, whilst preserving the basic management principles provided by schemes.

Under provisions to be implemented through the Act, there will remain some variation depending on the wording of particular schemes. The general position will be: Category A works will, as now, be able to be carried out without the consent of the Secretary of State. Category B and C works will only be possible with the consent of the Secretary of State, under the section 38 provisions, and the owner of the common. This will in effect leave the position with regard to Category B works unchanged. Category C works will be brought within the consent regime for the first time, which reflects the current practical realities explained above. In addition, we consider that it should now be possible for a managing authority to make a case for Category C works, if it chooses, provided such an application can be weighed by the Secretary of State in the usual way in the light of all the views put to him.

### 1.28 What about the rights of owners and commoners?

The Act preserves the position of the owners of commons subject to schemes of management, and those with rights of common over them.

As now, no specific consent is required from the owners or commoners for Category A works. This reflects the fact that the interests of the owners and commoners are taken into account in determining whether or not to make a scheme in the first place (to the extent that the owner, or a sufficient proportion of commoners, may veto a scheme before it is made), so they should be fully aware of the works that can subsequently be carried out without any requirement to obtain further specific consent.

Category B works will, as now, require the consent of the owner of the common, as well as the Secretary of State except in the very few Schemes subject to old regulations.

Category C works will now be possible on land subject to a scheme of management, for the first time, but **only** if the consent of the Secretary of State is obtained. In addition, such works will **only** be possible if the consent of the owner of the land is also obtained.

***Q15: Where an owner cannot be traced or raises no objection within a set period, regulations may be used to deem consent has been given. We suggest that period should be six weeks and would welcome views on this.***

### 1.29 New Schemes

Schemes of management still have a valuable role to play in the future management and protection of common land.

District councils, including unitary authorities, and National Park authorities, will remain able to make new schemes. We have taken the opportunity in the Act to update the powers to make schemes, so that any future schemes will be more flexible, as well as better reflecting the principles of the new Part 3 consent regime.

Before the changes are introduced, councils will continue to be able to make schemes under the existing Commons (Schemes) Regulations 1982 — although they may well choose to delay making any new schemes until new regulations have been made.

### 1.30 What will the new Schemes look like?

The Act seeks to ensure that new schemes can meet the present day management needs of commons.

**Five steps have been taken to update the arrangements for new schemes. These are summarised as follows:**

1. The Act widens the power for a district council or National Park authority to make a scheme to cover any form of management in the public interest. 'Public interest' is inclusively defined in terms consistent with the definition used elsewhere in the Act. The new power is more positive and conservation-friendly than the old one, which was rooted in the Victorian concept of taming nature for public recreation by, for example, levelling and drainage.

2. The detailed procedural requirements for making schemes, which were in sections 1(3) and 2 of the 1899 Act, will be replaced with new procedures, under new regulation-making powers. We envisage that these procedures will be based closely on the existing ones. But we also want to take the opportunity to consult on whether any improvements would be desirable. Any new arrangements will address the confusing current situation in which part of the procedures is set out on the face of the Act, and part is prescribed in regulations.

3. We also propose to clarify, in regulations, the extent to which there can be departures from the precise form of a prescribed scheme. We think that an updated approach is required, but still founded in the sound principle contained in the Commons Act 1899 that schemes must follow a prescribed model. We also envisage that the new prescribed scheme should offer more flexibility for management options than the current one.

4. Section 9 of the 1899 Act makes clear that a new scheme may be made to replace an existing scheme. We do not think that there have ever been powers to revoke a scheme other than where it is replaced by a new one, and this position will therefore remain unchanged.

5. Section 10 of the 1899 Act is amended to confer a direct and up-to-date power for the council to make byelaws on scheme land. At present this power is exercised indirectly, through the making of the scheme, and is rather unclear. In future, this power may be exercised either at the same time the scheme is made, or after it is made, regardless of the content of the scheme. Proposed byelaws will be subject to confirmation by the Secretary of State (as now) to ensure that they are appropriate and reasonable.

Section 2 of the 1899 Act confers an effective power of veto over the making of a new scheme (or an amendment to an existing scheme), which may be exercised by the owner of the common, or by persons representing at least one-third in value of the interests in the common affected by the scheme. If one or other, or both, interests do not want a new or amended scheme to go ahead, it cannot. This safeguard will remain in place.

### 1.31 Comments invited

Any future schemes that are made **must** be made in the public interest, supporting nature conservation, conservation of the landscape, protection of public rights of access, or the protection of archaeological remains and features of historic interest.

Schemes **may** also contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section 7 of the Commons Act 1876, namely:

(i) Securing free access to particular points of view (in practice, model schemes have always conferred on the local inhabitants a right of access to the whole of the scheme lands);

(ii) Preserving particular trees or objects of historical interest;

(iii) Where there is no recreation ground, reserving a privilege of playing games or enjoying other suitable forms of recreation, taking care to cause the least possible injury to the persons interested in the common;

(iv) Setting out carriage roads, bridle paths, and footpaths; and

(v) Any other specified thing, which may be thought equitable and expedient, having regard to the benefit of the neighbourhood.

***Q16: Given this statutory framework, we would welcome your views on the nature, shape and purpose that any future schemes should have. In what way should a future model scheme vary from the present model?***

A new power allows us to make regulations to prescribe the procedure a council should follow in making and approving a scheme. We propose that these regulations will follow the basic principles currently contained in section 2 of the 1899 Act, requiring the following steps:

(i) Three months' notice must be given of the draft scheme, and copies made available for inspection (regulations currently specify how notice must be given, including in two editions of a local newspaper);
(ii) Objections or comments may be made during the three month period;
(iii) At end of three months, authority must consider representations;
(iv) An officer of authority may (but need not) be appointed to hold inquiry into representations;
(v) The authority may confirm draft scheme with or without modifications, whereupon the scheme has effect.
(vi) Councils will send a copy of any new scheme to the Secretary of State, so that Defra may continue to maintain a record of land subject to schemes

But a scheme may not be confirmed if at any time a veto is exercised as previously described.

***Q17: We propose to follow a similar approach in future, but would welcome views on any way in which this process could be improved.***

***Q18: Do you think 3 months is an appropriate length of time for an objection period?***

We have also taken a power in the Act to prescribe alternative schemes to the Model Scheme prescribed in the 1982 regulations (see annex B.) We can consider prescribing one general scheme to cover most situations, as now; or, a series of model schemes more tailored to specific situations.

***Q19: We would welcome views on:-***

- ***What features should be included in the prescribed model scheme?***
- ***Whether there is merit in having a number of different models schemes?***
- ***What situations do you suggest tailored schemes should cover?***

**Case Study 3: Uncertainty about the coverage of Schemes of Regulation**

A local authority applied to the Department for consent under a Scheme of Regulation to lay out an area for permanent car parking on land which was governed by the Scheme.

The Department took the view that the Scheme only allowed for consent to be sought for temporary parking facilities. Defra considered that the works could not be lawfully carried out unless the Scheme was amended (either by taking the land concerned out of the Scheme, or by amending the articles of the scheme so that it permitted such works). The applicant argued that the Scheme did allow for the Secretary of State to consent to such works, and asked that the Department decide the application.

The outcome, in this case, was that the applicant eventually withdrew the application (although it would still have been open to the applicant to take steps to amend the scheme in order to provide for the works). But the uncertainty about the provisions of the scheme had meant lengthy and complex exchanges of correspondence stretching to more than a 12 month period. This situation shows the delays and uncertainty which can often arise around, essentially, the processes to be followed (rather than on issues of principle).

The difficulties often experienced in interpreting Schemes leads to uncertainty as to:
- whether or not works can be done at all;
- whether, when and how a scheme can or should be amended; and
- whether any application should be made under the terms of the scheme or under section 194.

In future, where a Scheme does not expressly allow for works to be carried out without Secretary of State consent, it will **always** be possible for an application for consent to be made to the Defra under section 38 of the Act, enabling a clear and consistent approach to considering the merits of proposed works.

# Chapter 2: De-Registration and exchange applications

## 2.1 Background

Currently, the most frequently used provision to remove common land or green status is section 147 of the Inclosure Act 1845 ("section 147"). This provision was designed before the 1925 Law of Property Act, at a time when proving title to land was a very complex process. Although this provision may be used in relation to any type of land, it is almost solely used today to exchange common land or green for other land, so that the land given in exchange is substituted for the former common land or green. Such applications are generally made when the intended use of the common land or green is inconsistent with its status as common or green, where an application under section 194 of the Law of Property Act 1925 would be inappropriate and unlikely to succeed. The Secretary of State is required to confirm orders of exchange made under section 147. In deciding whether to confirm an order, he must be satisfied that the proposed exchange would be beneficial to the owners of the respective parcels of land and its terms are just and reasonable. The main problems with the current system are:

- Section 147 was designed in the mid-nineteenth century for a different purpose from that for which it is used today;
- Whilst the Department has developed the practice of considering the broader public interest under the "just and reasonable" criterion, this requirement does not appear on the face of the 1845 Act;
- The procedure is tantamount to a legal conveyance, and can be unnecessarily complicated for all involved;
- Due to its complexities, the application process from beginning to end can often take a very long time.

Sections 16 and 17 of the Act provide a replacement mechanism for the exchange of registered common land and greens – and the Act repeals section 147 of the 1845 Act.

## 2.2 How do the new sections 16 and 17 work?

Section 16 enables the owner of land registered as common land or green to apply to the Secretary of State for the land, or part of it, to be released from registration. If this 'release land' is more than 200 square metres in area, an application must be made at the same time to register 'replacement land' as common land or green in its place. If the release land is smaller than 200 square metres, a proposal for replacement land may be included, but need not. Any replacement land must not be land already registered as common or green. If someone other than the owner of the replacement land makes the application, the owner of that land must join in the application.

Section 17 requires the Secretary of State, if he grants an application, to make a 'release order' which directs the commons registration authority to remove the release land from the register. Where appropriate, replacement land would be registered – together with any rights of common that were previously exercisable over the release land. Any rights of common or recreational rights exercisable over the release land would generally transfer to the replacement land. If certain other provisions, such as a public right of access under section 193 of the Law of Property Act 1925, applied to the release land these would normally cease to apply to the release land and would instead transfer to the replacement land. However, section 17 also enables provision for special circumstances where it would be inappropriate for recreational rights that apply over an existing green, or specific statutory provisions that apply on an existing common, automatically to transfer to any replacement land.

Decisions will be made on a case-by-case basis, and in determining an application the Secretary of State must have regard to:

- The interests of those having rights over the release land (or occupying it) and, in particular, to those who exercise rights over it;
- The interests of the neighbourhood;
- The public interest (including the public interest in nature conservation; the conservation of the landscape; the protection of public rights of access; and the protection of archaeological remains and features of historic interest);
- Any other matter considered to be relevant.

***Q20: We would welcome views on any particular matters to which you think the Secretary of State should have regard. It will assist if any suggestions made can be supported with reasons.***

## 2.3 What do we want from the new consent regime?

We envisage that the new regime will broadly follow the principles of the proposed new section 38 regime, outlined in Chapter 1 of this consultation paper. It will demonstrate the following features:

- A simpler process;

- Clear guidance provided to applicants;

- Clear criteria for the use of public inquiries, hearings and site visits;

- Proper balance between the applicant's desire for a speedy decision, and the need to give proper consideration to the interests of other parties;

- Due regard to any parallel requirements under procedures being followed under other legislation, such as planning permission;

- A clear focus on the impact of the proposed exchange on the common and the rights holders, providing for a proper balance between the private and public interests in the land.

And in particular:

- There will be an assumption, even where the offer of replacement land is not mandatory, that replacement land is given in exchange for the common land or green.

***Q21: Do you agree with this assessment of the most important features? Are there any that you would add, change or remove?***

## 2.4 What kind of process will achieve these objectives?

Again, we envisage a three-stage application process with broadly similar functions to that described in Chapter 1 for the new section 38 regime. That is:

## 2.5 Pre-application phase – informal consultation and consideration of options

It is important that those considering an application under section 16 first consider whether what they are proposing to do is the best solution for the objective they are seeking to meet. It is in the interests of applicants, and other interested parties, for extensive informal consultation to take place before a set of proposals is formalised in an application.

If a section 16 application is pursued, it must include a proposal for the registration of replacement land unless the area of the release land is 200 square metres or less when such a proposal will be desirable but not mandatory. In the latter case, where the applicant believes that there are exceptional circumstances why replacement land should not be provided, or such land is not available, an explanation should be given (and evidence provided where possible).

## 2.6 Application phase – making and determining an application

As with applications made under section 38, applicants will be required to advertise their proposals locally, and to send copies of the advertisement to key stakeholders. A 21 working day consultation period will be allowed, and anyone wishing to comment on an application will be able to respond to Defra within that period.

***Q22: Does your experience show that 21 working days is the right length of time?***

On receipt of a complete application Defra will commence consideration of the application in accordance with the criteria contained in subsections (6), (7) and (8) of section 16.

Where the release land is less than 200 square metres in area, there will be no automatic exemption from the requirement to provide replacement land. In such a case the Secretary of State will have particular regard to whether the absence of replacement land would be damaging to the public interest. We do not expect applications with no provision for replacement land to succeed unless there are special circumstances. Such circumstances could be where the application is in the public interest **and** there is no practicable possibility of securing replacement land. For example, an applicant might wish to provide disabled access facilities to a community building abutting a village green which is surrounded by houses – where it would be impossible to add further land to the green, and where replacement land elsewhere would be of little relevance.

***Q23: In your view, in what circumstances do you consider the power not to require replacement land might be exercised?***

**2.7 Site inspection** - It will be difficult to assess the merits of the release land and any proposed replacement land solely from a desk-based consideration of the application papers and any representations made to Defra. Equally, in an exceptional case where no replacement land was offered, it will be important that Defra is able to confirm the likely impact on the common caused by the potential loss of the application land. It is also important that the areas and boundaries of the lands concerned, as specified in the application and accompanying map, are verified as correct because an order, if made, would act to exchange the status of those areas. Consequently, unless the application is to be considered at a public local inquiry, we propose that a site visit is undertaken in every case.

***Q24: Do you agree that a site visit will be necessary for every application, or can you envisage circumstances in which a visit would not be necessary?***

**2.8** As with section 38 cases, a **public local inquiry** may be appropriate where the issues are complex, finely balanced, contentious, or raise issues that have wider than local significance.

Again, as with section 38 cases, a **hearing** may be an alternative to a public local inquiry in some cases. An inquiry or hearing would involve an accompanied site visit.

***Q25: As well as welcoming your views on the specific questions raised above in this chapter, we would also welcome views on whether the general process described above is suited to an application under section 16.***

## 2.9 Section 17 – the order-making stage

As stated previously, an order made by the Secretary of State will generally extinguish any common or recreational rights over the release land and transfer them to the replacement land. However, subsection 7 of section 17 allows for situations where it would be inappropriate for existing recreational rights or relevant provisions to transfer to the replacement land. Whilst we can foresee circumstances in which the relevant provisions listed in subsection 8 might not lend themselves to being transferred to the replacement land (for example, where an Order of Limitations made under section 193 of the Law of Property Act 1925 restricted public access to a particular part of the common containing the release land), we envisage that the non-transfer of **recreational rights** would be an extremely rare occurrence.

***Q26: We would welcome views on particular circumstances in which it might be appropriate not to transfer recreational rights.***

## 2.10 Section 17 – subsequent action by the Commons Registration Authority

Subsection (3) allows the Department to make regulations specifying what actions a commons registration authority must take on receiving an order under this section, and subsection (10) allows for regulations to make provision for the publication of an order made under the section. Whilst we envisage such regulations imposing the minimum possible burden on registration authorities, we intend to require registration authorities to make the necessary amendments to their registers of common land or greens within a short time of an order being made. We also envisage placing a copy of the confirmed order on the Defra website.

***Q27: We would welcome views from commons registration authorities, and others, on the scope of such regulations.***

**Case Study 4: Example of failure to gain local consensus**

A charity submitted an application for an exchange of land under section 147 of the Inclosure Act 1845 in order to regularise the use of an area of common land which was being used as a car park. The area of common land extended to 10 hectares, and the land being offered in exchange extended to 15 hectares. The applicants owned all the land involved.

The common land was crossed by public rights of way. The exchange land comprised two parcels of land and was adjacent to the common land – although the two parcels were bisected by a motorway.

Objectors raised a number of issues about public access to the proposed exchange land, and about the impact on the public rights of way (which are not, in fact, affected by orders of exchange). There followed a protracted exchange of correspondence between the applicant and objectors, which had to be administered by Defra. Whilst the applicants were able to reassure the objectors on a number of matters, there remained points of disagreement. Ultimately, Defra took the view that the application, as amended during the course of correspondence, fulfilled the requirements of section 147 and an Order of Exchange was made. However, the application was with Defra for over two years before the Order was made, largely due to the protracted exchanges between applicant and objectors.

Under the proposed new section 16 application process, the applicants would have consulted widely with interested parties, and addressed possible objections before advertising their proposals and submitting an application to Defra. In some instances, applicants might have decided to amend their proposed application in order to address objections. Our proposed new process should reduce the time needed to consider objections, and should ensure a more predictable outcome once an application is submitted.

# Chapter 3: Amendment Or Repeal Of Various Secretary Of State Functions

## 3.1 Introduction

Section 55 of the Act confers a power to amend or repeal provisions of local or personal Acts, and Provisional Order Confirmation Acts, where they confer functions on the Secretary of State in relation to common land, or require consultation of, or the consent of, the Secretary of State in respect of activities relating to common land. It is arguable that some of these functions or requirements, which may have been enacted many years ago, are no longer relevant to current-day needs and so no longer warrant the involvement of the Secretary of State. In the case of consultation or consent requirements, they are also an unnecessary burden on the person required to consult or apply for consent. Section 55 enables the Acts to be amended so that a function can be removed or transferred to another person, or body, and a requirement for the consultation or consent of the Secretary of State can be repealed or converted into a requirement for the consultation or consent of some other person. An order under this section will be subject to the affirmative resolution procedure, which is to say that the order must be approved by both Houses of Parliament before coming into force.

## 3.2 Background and Proposals

Over many years some local or personal Acts have conferred functions on the Secretary of State (and his predecessors, such as the Inclosure Commissioners). Examples include requirements in provisional orders made under the Inclosure Acts 1845 -1882 for bodies of commons conservators to obtain annual approval of the amount of stint rates which they may levy on commoners, and the disposal of land by commons conservators. Many of these functions are now rarely, if ever, exercised.

Whilst at the time it may have been appropriate to involve government in local decision-making processes, government has increasingly been withdrawing from such functions – taking the view that decisions affecting a locality are best taken locally, in this case by those responsible for managing the common in question. Consequently, we intend to review these functions with a view to possibly repealing some of them where appropriate.

However, given the local nature of the enactments, the rarity with which some applications are made to the Secretary of State, and that around 37,000 local and personal Acts have been made in the last 450 years, it is difficult to be sure that we are aware of all relevant functions. It must be stressed that we do not intend to take action on all 37,000 enactments. We intend to focus only on those that impose functions on the Secretary of State in relation to common land, but to do that we need feedback from the public.

***Q28: If you are aware of any local or personal Acts which confer a function on the Secretary of State, or on a body such as the Inclosure Commissioners whose functions are now exercised by the Secretary of State, we would be pleased to hear from you. Your views would also be welcomed on the appropriateness of repealing the Secretary of State's functions in any of those enactments.***

Our initial priorities will be to consider the Secretary of State's role in approving stint rates under the Inclosure Acts 1845-1882, and various functions associated with the duties of, and the appointment of persons to, certain bodies of commons conservators.

### 3.3 Stint rates levied under the Inclosure Acts 1845-1882

Background

Stint rates are charges that are levied on those exercising their rights to graze livestock on certain areas of common land. Under section 121 of the Inclosure Act 1845, the Inclosure Commissioners (whose powers are now vested in the Secretary of State) were empowered, on application by persons representing at least two thirds of the interests in the land, to make awards regulating such "stinted pasture". Stint rates are intended to cover expenditure on improvements to the common connected with the exercise of stint rights (fencing, cattle grids, levelling, drainage etc). Although there were thousands of Inclosure Acts made in the nineteenth century, only a handful included the requirement for the (now) Secretary of State to approve stint rates. Five bodies of conservators (Abbotside, West Tilbury, Ashdown Forest, Crosby Garret, and Sodbury) currently apply to the Secretary of State for approval on a regular basis, and a further three bodies of conservators (East Stainmore, Winton Kaber, and Matterdale) no longer levy annual rates, but are required to seek approval in the event that they do.

Considerations

For each application, the Secretary of State is required to decide whether the proposed rate appears reasonable. This decision is based upon a consideration of the reasons provided for the rate and of the previous year's accounts of the conservators of the common. Given the small number of commons affected, it is questionable whether the Secretary of State should continue to play a role in these matters or, indeed, is qualified to do so. In particular, issues have arisen in the past about the quality of accounting on the part of the commons conservators. Since the previous year's accounts are used as the basis for approving a stint rate, their veracity should be a material consideration in determining the rate. It is arguable that Defra is not an appropriate body to be examining the accounts of a small sample of commons conservators.

It is a fact that, in recent years at least, the Secretary of State has had no cause to refuse consent to a proposed increase in stint rates.

Boards of conservators are generally elected or appointed to represent the interests in the management of the common (e.g. by the commoners, the landowner and the parish council). The conservators are well placed to decide whether stint rates are appropriate and affordable in relation to the needs of the common – indeed, they are far better placed to do so than the Secretary of State. If conservators set a stint rate which is unreasonable, the commoners may well decline to re-appoint their representatives at the next election.

Risks

It is assumed that the approval of stint rates was originally included in the relevant enactments in order to protect stint rate payers. Arguably the Secretary of State's role also includes some element of protection of the common.

An unjustifiable increase in these rates could result in some rights holders abandoning grazing or surrendering their rights under section 13 of the Act. The consequent reduction in income available to the conservators for maintenance purposes could jeopardise the future use of the common for grazing or public recreation.

However, we have received no evidence from commons where stint rates are set without the Secretary of State's approval to suggest that the lack of Secretary of State involvement causes particular problems on those commons.

Conclusion

We have no evidence to inform us whether the role of the Secretary of State is necessary to protect stint rate payers. We wish to use evidence gathered during this consultation process in order to decide whether the Secretary of State's role is useful. With the existing lack of evidence of any value being added by his role, we are currently minded, subject to further consultation with the affected parties, to repeal this function in each of the eight enactments in question. Consequently, on each of the commons affected, the conservators would be free to set stint rates without any requirement for approval of the rates by another person.

***Q29: We would welcome your views on whether the Secretary of State's current involvement in the approval of stint rates adds any value to the process. If you believe that it does add value, please let us know what that is.***

### 3.4 Commons conservators

Background

Conservators are vested with powers of protection, control and management in respect of certain commons. These powers are specified in relevant local Acts.

Some of the current powers include:

- the sale, lease, exchange or disposition of certain lands specified in the relevant local Act;
- the disposal of parts of the land and use of the proceeds to purchase other lands, as long as there is no detrimental effect to the use and enjoyment by the public of the land;
- the exchange of lands for the purposes of adjusting, defining or improving the boundaries of the land.

Considerations

The individual Acts are quite explicit in their direction of the duties of the conservators, but there are some matters which must be referred to the Secretary of State for consent. These might include:

- consents for the sale, exchange or letting of areas that are not registered as common land or village green (for example, the Malvern Hills Conservators);
- issues relating to certain types of expenditure by certain bodies;
- the appointment of, or approval of the appointment of, some individual conservators and trustees (for example, on Wimbledon and Putney Commons, Hitchin Cow Common, and Walmore Common).

However, in many cases the legislation concerned is over 100 years old and it is difficult to see why these commons should still require any special central government involvement in their day to day management. It also seems unlikely that Secretary of State involvement in these issues adds anything to the role already played by the conservators.

Risks

It is assumed that the Secretary of State's role in fulfilling the functions mentioned above was originally intended to ensure that there was an independent authority which was able to ensure propriety and transparency.

But there are many other commons managed by conservators where the Secretary of State has no role in appointing or approving conservators or trustees, or in approving or consenting to certain land transactions or certain types of expenditure, and we have no evidence to suggest that the lack of such a role on these commons results in problems for the management of the commons.

However, in relation to appointments to boards of conservators and trustees, there is a risk that the effective management of the body may be impaired if the body is reduced in number.

Conclusion

We have no evidence to inform us whether the Secretary of State's involvement in the managing bodies of certain commons provides any real benefit to those commons. As with stint rates discussed above, we wish to use this consultation exercise to gather evidence to help us decide whether the Secretary of State's continued involvement is useful.

However, in these days of localised decision-making and accountability, we believe that sufficient controls and safeguards exist to allow the Secretary of State to withdraw from these functions. Consequently, subject to the responses received to this consultation, and further consultation with the parties involved, we are currently minded to repeal these functions of the Secretary of State.

***Q30: We would welcome your views on whether the Secretary of State's current involvement in these processes adds any value to them. If you believe that it does add value, please let us know what that is.***

# Chapter 4: Introduction Of Charges For Applications For Secretary Of State Consent

## 4.1 Introduction

Applications for consent to carry out works and to exchange land are currently processed and determined by officials acting for the Secretary of State for Environment, Food and Rural Affairs. At present, applications for consent for works are not charged for, whilst applications to exchange land are charged a nominal fee of £370 which does not cover the full costs of processing and evaluating these applications. The Act introduces the power to charge fees for these applications at Section 24(2)(d) and Section 40 (2)(e).

## 4.2 Background

The broad aim of the Government is that the full costs of services provided should be recovered from service users. For example we expect to be charged for the service provided to us when we apply for a passport. Defra's charging strategy has been designed to enable consistent, coherent, transparent and predictable charging for regulatory services across the department. Defra usually aims to recover the full costs associated with the provision of a service, and has issued a "Statement of intent" on charging which states that full cost recovery is normally appropriate where:

> " *i) A service aims to prevent harm that might otherwise be caused by the actions or non-actions of a discrete group or*
>
> *ii) The service mitigates a risk created by a discrete group or*
>
> *iii) A discrete group is the sole beneficiary*
>
> *There will be instances where none of the above apply, or only apply in part. In such circumstances ministers may agree that the taxpayer should pay for all or part of a service. The extent of any taxpayer funding will depend on the public interest involved and the nature and circumstances of the service being provided. Each service will be considered on its merits."*

## 4.3 How does this apply to the new consenting regime?

We have looked at the statement of intent when considering whether charges should be made for applications for work or exchange of common land. These applications are part of the regulatory process which helps to ensure that the open and unenclosed nature of our commons is properly protected. As a result, most applications made will fall into category (i) at para 4.2 above and will be candidates for consideration of full cost recovery. Some

applications will deliver a clear conservation benefit to the common and therefore ministers may consider that the public purse should pay some or all of the costs of delivering the service where this is in the public interest.

In this consultation we wish to explore a number of options for charging ranging from making no charge, through subsidising the service and full cost recovery. The services where charging could be considered are:

- Applications under Section 38 of the Act: consent to works;
- Applications under Sections 16 and 17 of the Act: deregistration and exchange.

Advantages of charging for services:

- The costs of regulating works on commons and exchanges of common land are borne by the users of the regulating services rather than the taxpayer;
- The costs are fully considered by applicants before starting the process leading to fewer speculative or inadequate applications.

Risks of charging for services

- People may be deterred from carrying out works on commons because of the costs of securing consent, resulting in the land not being properly managed and the condition of the common deteriorating;
- People may accept an initial fee, but if their application results in a costly public local inquiry may not be prepared to pay those costs and abandon the works project.

### 4.4 Current costs

We have established the full costs of delivering our current services and have calculated an average unit cost for each type of application. The unit cost is calculated by comparing Defra's administrative costs with the number of cases received in a particular category. Running costs are determined annually through a Memorandum Trading Account which reflects the full costs of running a government service including such items as staffing costs, accommodation, IT and training. At present the full costs are:

| Type of case | Numbers of cases | Total admin costs | Unit cost |
|---|---|---|---|
| Consent for works | 32 | £51,768.81 | £1,617.78 |
| Exchanges of common land | 11 | £60,002.55 | £5,454.78 |

We estimate administrative costs will reduce by approximately 10% by following the new procedures described in Section 1A.

| Type of case | Numbers of cases | Total admin costs | Unit cost |
|---|---|---|---|
| Consent for works | 28* | £40,000 | £1,428 |
| Exchanges of common land | 11 | £54000 | £4,909 |

* Some cases expected to meet exemption criteria

### 4.5 Options

**Option 1 –** Do not impose further charges

The only charge being made at present is for exchanges of land and at £370, this amounts to less than 10% of the full costs of an application. Applications for consent to carry out works are processed and assessed free of charge. The total annual costs for processing applications currently run to £112,000

| Advantages | Risks |
|---|---|
| With applications being either low cost or free, compliance is encouraged as there is virtually no cost in complying with regulation.<br><br>Small works can comply without the costs being disproportionate to the costs of the work. | This would result in the general tax payer subsidising all users of the service, and would be inconsistent with the Government's normal approach to cost recovery. |

**Option 2 –** To charge a standard administration fee for each type of application, based on an average of all applications. Where the application is for a clear conservation benefit to the common, a 50% subsidy by government to be considered

Applications to exchange and deregister common land are not considered to benefit the common and we do not propose to subsidise these applications. Some applications for consent for works lead to the achievement of a clear conservation benefit for the common. From a sample of applications received in a year, approximately 40% of applications are for works of conservation benefit. Under this option, government would subsidise 50% of the actual costs of providing consent for these works.

A typical case where we a subsidy might be appropriate would be an application to re-establish grazing to address scrub encroachment on a site of special scientific interest classed as in unfavourable condition.

| Advantages | Risks |
|---|---|
| A high proportion of the department's costs are met<br><br>Conservation projects can proceed without incurring high costs that might be prohibitive | Potentially controversial judgements would have to be made about the 'conservation' value of works being undertaken<br><br>Those with sufficient resources will be able to proceed when those with limited resources may not, therefore creating a disadvantage in gaining consent to small but complex projects |

**Option 3 –** To charge a standard administration fee for each type of application, based on an average of all applications.

Each type of application would attract its own flat-rate administration fee which would be based on average costs for that type of application. The fee would be payable at the point when an application is first presented for processing and evaluation. In addition, the actual costs of site visits or public inquiries would be invoiced once these had been carried out. It is likely that both these tasks would be carried out on behalf of the department by suitably qualified bodies.

| Advantages | Risks |
|---|---|
| 100% of the department's costs are met<br><br>Public funds can be used for other Government objectives | Costs could prohibit valuable works going ahead<br><br>Those with sufficient resources will be able to proceed whilst those with limited resources may not, therefore potentially blocking access to consent for some people |

**Option 4 –** To charge a standard administration fee for evaluating the information supplied with the application. Where it is necessary to undertake a site visit or a public local inquiry before a decision can be made, a further fee will be charged for those additional costs.

All Section 16/17 & Section 38 applications would attract a standard fee for the processing and evaluation of the application based on the evidence supplied by the applicant. Some applications will be decided on this evidence alone; where further evidence is necessary, either with a site visit or a public local inquiry, the applicant will pay a second stage administration fee before the application is processed further and the costs of the site visit/public local inquiry. Officials will write to applicants advising them if the case needs to go to public local inquiry, and the further fee that will be payable if they wish to proceed.

| Advantages | Risks |
|---|---|
| Those whose applications could be processed on written evidence would pay the costs of that stage of the process only<br><br>Applicants with uncontroversial projects would not be subsidising those with only rather than an average cost of all applications. | Those cases which are complex may be abandoned if the applicant considers that costs have become prohibitive. This would again cause detriment to the common as works of benefit do not proceed.<br><br>Those with sufficient resources will be able to proceed when those with limited resources may not, therefore creating a disadvantage in gaining consent to small but complex projects |

**Likely costs to the applicant for options:**

| Application type | Option 1 | Option 2 | | Option 3 | Option 4 | | |
|---|---|---|---|---|---|---|---|
| | | | | | Stage 1 | | Stage 2 |
| | | NC* | C** | | NC* | C** | |
| S38 sufficient info to determine application | £0 | £1400 | £700 | £1400 | £500 | £250 | £0 |
| S38 site visit needed | £0 | £1400 | £700 | £1400*** | £500 | £250 | £500*** |
| S38 public local inquiry needed | £0 | £1400 | £700 | £1400**** | £500 | £250 | £3000**** |
| S16/17 site visit needed | £370 | £4900 | N/A | £4900*** | £500 | N/A | £500*** |
| S16/17 public local inquiry needed | £370 | £4900 | N/A | £4900**** | £500 | N/A | £6000**** |

* NC = non conservation applications
** C = conservation applications
*** in addition the costs of the site visit may be invoiced
**** in addition the costs of a public local inquiry may be invoiced

In this consultation we are seeking your views on the various options we have identified. You may also wish to consider the information in the Partial Regulatory Impact Assessment at Appendix D.

***Q31: We would appreciate your views on:***

***- whether imposing charges on applications is likely to discourage people from engaging with the consent process,***

***- whether the cost of making an application should fall to the user or whether it is considered to be securing a public good that merits payment by the general taxpayer,***

***- the feasibility and desirability of charging in a staged approach.***

***Q32: We would welcome views from Small Businesses on how they would tackle the pre-application administration and their comments on the estimate of likely costs.***

***Q33: We would be interested to receive further comments/information on possible competition impacts from stakeholders through the consultation process.***

**Annex A: Guidance on application options for those proposing to carry out works on common land, where their proposals are neither small scale nor exempt from the need to obtain consent**

| **A. Works for the management and improvement of the common**<br><br>**BEST OPTION: SECTION 38** | **B. Works that would not be consistent with the traditional use of the common, and which do not protect or maintain the common**<br><br>**BEST OPTION: SECTION 16/17 EXCHANGE** |
|---|---|
| | |
| **Broad Category:**<br>**Works which are consistent with the continued use of the land as common land** | **Broad Category:**<br>**Works which are of purely private benefit, and which would be to the detriment of the common** |
| | |
| **General Guide:**<br>**(a) New construction of (or alteration/extension of existing lawful) fences, buildings, ditches, trenches, embankments, access roads, tracks, or other works to the benefit (or negligible disbenefit) of the common.**<br><br>**(b) Maintenance of, alteration or extension to, any *unlawful* works, to the benefit (or negligible disbenefit) of the common.**<br><br>**NB In the case of (b), consent should be sought for the unlawful works in their entirety, including any changes proposed.** | **General Guide:**<br>**(a) New construction of (or alteration/extension of existing lawful) fences, buildings, ditches, trenches, embankments, access roads, tracks, or other works for purely private benefit.**<br><br>**(b) Maintenance of, alteration or extension to, any *unlawful* works, for purely private benefit.**<br><br>**NB In the case of (b), the release land should include the entire area of any existing and proposed unlawful works.** |
| | |
| | |
| **DETAIL:** | **DETAIL:** |
| **(a) Fencing** | **(a) Fencing** |
| *(i) Permanent, temporary or movable fencing for conservation or other purposes connected with the continued use of the land as common land* | *(i) Fencing of any scale or type by any person for purely private benefit*<br><br>*Examples might include:* |

| | |
|---|---|
| *<u>Examples might include</u>:*<br>Boundary fencing for conservation or management purposes<br>Fencing as part of an agricultural management scheme<br>Animal health and welfare<br>Hefting and re-hefting of sheep<br>Public safety<br>Woodland management scheme<br>Improvement of an SSSI | Extension of a private garden or dwelling house |
| | |
| *(ii) Other types of fencing in conjunction with a legitimate use of the common*<br><br>*<u>Examples might include</u>*:<br>Around visitors' car park<br>Temporary site compound, where land will be restored<br>Cricket pitch<br>Play area/playground<br>Golf greens<br>Storage facilities for cricket club | *(ii) Fencing that fails to provide an appropriate level of access to any lawful user* |
| | |
| **(b) Buildings and other structures** | **(b) Buildings and other structures** |
| *(i) Replacement (or extension or construction) of small buildings/structures that are consistent with continued sporting, recreational (or other legitimate) uses of the land*<br><br>*<u>Examples might include:</u>*<br><br>Golf clubhouse<br>Cricket pavilion<br>Canoe clubs<br>Other sports clubs<br>Storage sheds for maintenance equipment<br>Greenkeepers' huts<br>Visitor centre | *(i) Construction, extension (or replacement) of buildings/structures that are – or are not - consistent with continued sporting, recreational (or other legitimate) uses of the land*<br><br>*<u>Examples might include</u>*:<br><br>Golf clubhouse<br>Cricket pavilion<br>Canoe clubs<br>Other sports clubs<br>Storage sheds for maintenance equipment<br>Greenkeepers' huts<br>Visitor centre |

| | |
|---|---|
| | Buildings for other purposes |
| | |
| *(ii) Construction, extension (or replacement) of buildings/structures in connection with new uses of the common or adjoining land that could be said to benefit the common (or have only negligible disbenefit which is compensated for by other factors)*<br><br>*<u>Examples might include</u>*:<br>Children's play areas<br>Sports surfaces<br>Skateboard park<br>Small bus shelter<br>Landscaping schemes/enhancement works<br>Footpaths<br>Topograph<br>War memorial | *(ii) Construction, extension (or replacement) of buildings/structures in connection with new uses of the common or adjoining land that do not benefit the common*<br><br>*<u>Examples might include:</u>*<br>Leisure centre<br>Supermarket<br>Large scale wind farms or mining works<br>Highway construction works<br>Private house<br>Hotel<br>Airport<br>Burial ground |
| | |
| **(c) Ditches, trenches and embankments** | **(c) Ditches, trenches and embankments** |
| *(i) Any ditches, trenches and embankments for the conservation and management of the land, or for its protection against unlawful encroachment* | *(i) Ditches, trenches and embankments for private benefit* |
| | |
| **(d) Resurfacing works** | **(d) Resurfacing works** |
| *(i) New construction of hard-surfaced areas, or alteration/extension of existing lawful ones, to the benefit (or negligible disbenefit) of the common.*<br><br>*(ii) Any works carried out to an existing unlawful surface, to the benefit (or negligible disbenefit) of the common.*<br>*NB In these circumstances, consent should be sought for the unlawful works in their entirety, including any changes proposed.*<br><br>*<u>Examples might include:</u>*<br>Visitors' car park (whether temporary or permanent), where use is connected with use of the common for recreation | *(i) New construction of hard-surfaced areas, or alteration/extension of existing lawful ones, for purely private benefit.*<br><br>*(ii) Any works carried out to an existing unlawful surface, for purely private benefit.*<br>*NB In these circumstances, consent should be sought for the unlawful works in their entirety, including any changes proposed.*<br><br>*<u>Examples might include:</u>*<br>Car parks on the common for private use (e.g. by private sports clubs and schools), where use has no connection with legitimate uses of the common for recreation |

| | |
|---|---|
| Access tracks and footpaths which facilitate legitimate (e.g. recreational) uses | Private access roads, and access roads to new developments |
| | |
| **(e) Other** | **(e) Other** |
| | *(i) Fixing an earlier mistake*<br><br>*<u>Examples might include:</u>*<br>Land with a building on was wrongly registered<br>Common land was built on before it came to light that it was common land<br>Re-adjusting the boundaries of a property |

## Annex B: Current Model Scheme

This is the current model form of scheme of management, prescribed in the Schedule to the Commons (Schemes) Regulations 1982 (SI 1982/209)

### Form I

### Form of Scheme

**1.** The piece of land with ponds, streams, paths and roads thereon, commonly known as .. .. .. .. , situate in the (parish) (community) of .. .. .. .. in the County of .. .. .. .. and hereinafter referred to as "the common", as shown on a plan sealed by, and deposited at the offices of the .. .. .. .. District Council of .. .. .. .. hereinafter called "the Council" and thereon coloured green, being a common within the meaning of the Commons Act 1899, shall henceforth be regulated by this Scheme, and the management thereof shall be vested in the Council.

**2.** The Council may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the common, and may, for the prevention of accidents, fence any quarry, pit, pond, stream or other like place on the common, and shall preserve the turf, shrubs, trees, plants and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament and may place seats upon and light the common, and otherwise improve the common as a place for exercise and recreation. Save as hereinafter provided, the Council shall do nothing that may otherwise vary or alter the natural features or aspects of the common or interfere with free access to any part thereof, and shall not erect upon the common any shelter, pavilion, drinking fountain or other building without the consent of the person or persons entitled to the soil of the common and of the Secretary of State (for the [Environment, Transport and the Regions])(for Wales). The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquires as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.

**3.** The Council shall maintain the common free from all encroachments and shall not permit any trespass on or partial enclosure thereof or of any part thereof.

**4.** The inhabitants of the neighbourhood shall have a right of free access to every part of the common and a privilege of playing games and of enjoying other kinds of recreation thereon, subject to any byelaws made by the Council under this Scheme.

**5.** The [here insert description of any particular trees or objects of historical, scientific or antiquarian interest] are, so far as possible, to be conserved by the Council.

**6.** The Council may set apart for games any portion or portions of the common as it may consider expedient and may form grounds thereon for cricket, football, tennis, bowls and other similar games, and may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon; but such grounds shall not be so numerous or extensive as to affect prejudicially the enjoyment of the common as an open space or the lawful exercise of any right of common, and shall not be so near to any dwelling-house or road as to create a nuisance or be an annoyance to the inhabitants of the house or to persons using the road.

**7.** The Council may, with the consent of the person or persons entitled to the soil of the common, and of the Secretary of State, temporarily set apart and fence such portion or portions of the common as it may consider expedient for the parking of motor and other vehicles, and may make such charges for the use of such part as it may deem necessary and reasonable: provided that any area so set apart shall not be so near to any dwelling-house as to create a nuisance or be an annoyance to the inhabitants of the house. The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.

**8.** The Council may, for the prevention of nuisances and the preservation of order on the common, and subject to the provisions of section 10 of the Commons Act 1899, make, revoke or alter byelaws for any of the following purposes, namely--

(a) prohibiting any person without lawful authority from digging or taking turf, sods, gravel, sand, clay or other substance on or from the common, and from cutting, felling or injuring any gorse, heather, timber, or other tree, shrub, brushwood or other plant growing on the common;

(b) regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling and taking trees or underwood on or from the common in exercise of any right of common or other right over the common;

(c) prohibiting the removal or displacement of seats, shelters, pavilions drinking fountains, fences, notice-boards, or any works erected or maintained by the Council on the common;

(d) prohibiting any person without lawful authority from killing, molesting or intentionally disturbing any animal, bird or fish or engaging in hunting, shooting or fishing or the setting of traps or nets or the laying of snares;

(e) prohibiting the driving, drawing or placing upon the common or any part thereof without lawful authority of any motor vehicle, motor cycle, carriage, cart, caravan, truck or other vehicle (including any aircraft), except in the case of accident or other sufficient cause;

(f) prohibiting--

(i) the flying of any model aircraft driven by the combustion of petrol vapour or other combustible substances;

(ii) the taking off or (except in the case of accident or other sufficient cause) landing of any glider or any other aircraft;

(iii) the flying of any glider or aircraft in such a manner as to be likely to cause undue interference with the enjoyment of the common by persons lawfully on it;

(g) prohibiting or, in the case of a fair lawfully held, regulating the placing on the common of any show, exhibition, swing, roundabout or other like think;

(h) regulation games to be played and other means of recreation to be exercised on the common;

(i) regulating assemblies of persons on the common;

(j) regulating the use of any portion of the common temporarily enclosed or set apart under this Scheme for any purpose;

(k) prohibiting or regulating the riding, driving, exercising or breaking in of horses without lawful authority on any part of the common;

(l) prohibiting any person without lawful authority from turning out or permitting to remain on the common any cattle, sheep or other animals;

(m) prohibiting any person from bathing in any pond or stream on the common, save in accordance with the byelaws;

(n) prohibiting camping or the lighting of any fire;

(o) prohibiting or regulation any act or thing which may injure or disfigure the common, or interfere with the use thereof by the public for the purposes of exercise and recreation;

(p) authorising any officer of the Council, after due warning, to remove from the common any vehicle or animal drawn, driven or place, or any structure erected or placed thereon in contravention of this Scheme or of any byelaw made under this Scheme;

(q) prohibiting any person on the common from selling or offering or exposing for sale or letting to hire or offering or exposing for letting to hire, any commodity or article, unless in pursuance of an agreement with the Council or otherwise in the exercise of any lawful right or privilege;

(r) prohibiting the fixing of bills, placards or notices on trees, fences, erections or notice boards on the common;

(s) prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any byelaw made thereunder.

**9.** Copies of all byelaws made under this Scheme shall be displayed on notice boards placed on such parts of the common as the Council think fit.

**10.** Nothing in this Scheme or any byelaw made under it shall prejudice or affect any right of the person entitled as Lord of the Manor or otherwise to the soil of the common, or of any person claiming under him, which is lawfully exercisable in, over, under or on the soil or surface of the common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any right of the commoners in or over the common, or the lawful use of any highway or thoroughfare on the common, or affect any power or obligation to repair any such highway or thoroughfare.

**11.** Printed copies of this Scheme shall be available for sale at the offices of the Council for such reasonable price as the Council may determine.

**NOTES**

**Amendment**

Para 2: words "Environment, Transport and the Regions" in square brackets substituted by virtue of SI 1997/2971, art 6.

Date in force: 26 January 1998: see SI 1997/2971, art 1(2).

**Modification**

Para 1 modified, in relation to a National Park authority in Wales, by the National Park Authorities (Wales) Order 1995, SI 1995/2803, art 18, Sch 5, para 11.
Para 1 modified, in relation to a National Park authority in England, by the National Park Authorities (England) Order 1996, SI 1996/1243, art 18, Sch 5, para 8.
Modified, in relation to land within the New Forest National Park, to have effect as if references to the Council were references to the New Forest National Park Authority, by the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421, art 16, Sch 3, Pt 2, para 7(b).

## Annex C: Summary Of Consultation Questions

The full list of questions, including where they can be found in the document, is summarised below.

### Chapter 1: Works on common land

### Section 1A: Consent regime

Q1: Do you agree with this assessment of the most important features? Are there any that you would add, change, or remove? (Page 10).

Q2: Do you agree that 21 working days is the right length of time? (Page 14).

Q3. Do you think that the proposed consent process achieves the right balance between allowing interested parties to make their views known, whilst not unduly prolonging the application? (Page 14).

Q4: We propose to set a time limit of six weeks from granting consent for an application requesting a variation to that consent to be made, but would welcome your views on this. (Page 16).

### Section 1B: Exemptions:

Q5: Can you think of any circumstances where the above works would in fact be caught by section 38 of the Act? (Page 20).

Q6: Are there other works you are aware of that should also be described as outside section 38? (Page 20).

Q7 : Do you consider that these are works which should be exempt? (Page 23).

Q8 : Should the exemption for fencing for nature conservation purposes be restricted to use for grazing to restore the common? (Page 23).

Q9: Do you agree that the time limits we have suggested are appropriate? (Page 23).

Q10: Do you agree that registering exempt works with Defra will assist in controlling minor works on commons to avoid a number of minor works when added together exceeding the threshold for exemption? (Page 23).

Q11: Do you agree that these works are appropriate for exemption? (Page 26).

Q12: Do you wish to suggest other categories of works for consideration or refinements to the above suggested categories? (Page 26).

**Section 1C: Enforcement against unlawful works**

Q13: Are there any other key areas that you consider should be covered? What specific issues should be included within this framework? (Page 31).

Q14: Can you provide any examples of good or bad enforcement practice that may help to inform our guidance in this area? (Page 31).

**Section 1D: Schemes of regulation**

Q15: Where an owner cannot be traced or raises no objection within a set period, regulations may be used to deem consent has been given. We suggest that period should be six weeks and would welcome views on this. (Page 34).

Q16: Given this statutory framework, we would welcome your views on the nature, shape and purpose that any future schemes should have. In what way should a future model scheme vary from the present model? (Page 36).

Q17: We propose to follow a similar approach in future, but would welcome views on any way in which this process could be improved. (Page 37).

Q18: Do you think 3 months is an appropriate length of time for an objection period? (Page 37).

Q19: We would welcome views on:-

- What features should be included in the prescribed model scheme?
- Whether there is merit in having a number of different models schemes?
- What situations do you suggest tailored schemes should cover? (Page 37).

**Chapter 2: De-registration and exchange**

Q20: We would welcome views on any particular matters to which you think the Secretary of State should have regard. It will assist if any suggestions made can be supported with reasons. (Page 40).

Q21: Do you agree with this assessment of the most important features? Are there any that you would add, change or remove? (Page 41).

Q22: Does your experience show that 21 working days is the right length of time? (Page 41).

Q23: In your view, in what circumstances do you consider the power not to require replacement land might be exercised? (Page 42).

Q24: Do you agree that a site visit will be necessary for every application, or can you envisage circumstances in which a visit would not be necessary? (Page 42).

Q25: As well as welcoming your views on the specific questions raised above in this chapter, we would also welcome views on whether the general process described above is suited to an application under section 16. (Page 42).

Q26: We would welcome views on particular circumstances in which it might be appropriate not to transfer recreational rights. (Page 43).

Q27: We would welcome views from commons registration authorities, and others, on the scope of such regulations. (Page 43).

**Chapter 3: Other Secretary of State functions**

Q28: If you are aware of any local or personal Acts which confer a function on the Secretary of State, or on a body such as the Inclosure Commissioners whose functions are now exercised by the Secretary of State, we would be pleased to hear from you. Your views would also be welcomed on the appropriateness of repealing the Secretary of State's functions in any of those enactments. (Page 46).

Q29: We would welcome your views on whether the Secretary of State's current involvement in the approval of stint rates adds any value to the process. If you believe that it does add value, please let us know what that is. (Page 47).

Q30: We would welcome your views on whether the Secretary of State's current involvement in these processes adds any value to them. If you believe that it does add value, please let us know what that is. (Page 49).

**Chapter 4: Charging**

Q31: We would appreciate your views on:
- whether imposing charges on applications is likely to discourage people from engaging with the consent process,
- whether the cost of making an application should fall to the user or whether it is considered to be securing a public good that merits payment by the general taxpayer,
- the feasibility and desirability of charging in a staged approach. (Page 55).

Q32: We would welcome views from Small Businesses on how they would tackle the pre-application administration and their comments on the estimate of likely costs. (Page 56).

Q33: We would be interested to receive further comments/information on possible competition impacts from stakeholders through the consultation process. (Page 56).

**Annex D**

# Partial Regulatory Impact Assessment for

# The Protection of Common Land Regulations 2007

## January 2007

# PARTIAL REGULATORY IMPACT ASSESSMENT

## 1. Title of Proposal:

The Protection of Common Land Regulations 2007
Works on Common Land Exemption Order 2007
The Protection of Common Land (Fees) Regulations 2007

## 2. Purpose and intended effect

### Objective:

- To implement Sections 16, 17, 38 to 44 and 50 & 54 of The Commons Act 2006 to ensure common land in England is protected for future generations.
- To introduce charges for applications for consent to works carried out on common land in England.

The introduction of new regulations to protect commons contributes to Defra's Strategic Outcome:

- Protecting the countryside and natural resource protection.

In protecting common land through a system which encourages good land management, we contribute to Defra's PSA target of bringing 95% of all Sites of Special Scientific Interest into a favourable condition by 2010.

This Regulatory Impact Assessment (RIA) assesses the impact of certain measures introduced in The Act. It should be read alongside the Act and the accompanying Explanatory Notes.

### Background:

The Act received Royal Assent in July 2006. In summary, the Act:

- Promotes the development of accurate registers of common land and town or village greens. Registers provide conclusive evidence of the status of common land and greens, so that the special status of the land can be identified and protected.
- Prohibits severance of common rights, preventing commoners from selling, leasing or letting their rights away from the property to which rights are attached
- Clarifies the consents system for works and fencing on commons and ensures that existing statutory protections are applied consistently. Reinforces existing protections against abuse, encroachment and unauthorised development.

- Introduces a provision for the Secretary of State to charge for all services provided for in connection with approval of applications for works on common land.

Defra will consult on each of these areas. This first stage is concerned with the consents system for works and the introduction of fees for applications for consent for works.

**Rationale for Government Intervention:**

Common land is valued for agriculture, recreation, nature conservation, landscape and for its historical and archaeological significance. Government wants to ensure that the open and unenclosed nature of our common land is properly protected for current and future generations to enjoy. Some works may be appropriate if they improve the common, but we believe owners, common rights holders, and the public (who have a right of access to all common land) should have the opportunity to express their views on a proposal in all but the most minor cases.

Defra wishes to consult on ways to enact this range of the Act's provisions to deliver a system which safeguards common land in England yet is simple for stakeholders to comply with without placing an undue regulatory burden on them. We are also consulting on the principle of charging fees to those who apply for consents to undertake work on commons for the processing and evaluation of their application, to comply with Defra's financial objective of recovering costs associated with the provision of a service.

There are several different strands to this consultation and in order to preserve clarity in the Regulatory Impact Assessment, each strand is discussed separately and corresponds to the Chapters in the consultation document:

**Chapter 1 : Works on common land**

This has 4 sections relating to works being carried out on common land.

**Section 1A : A new consenting regime**

Under section 38 of the Act consent is generally needed for restricted works on registered common land. Restricted works are those which prevent or impede access to or over the land, or resurfacing of land with tarmac and similar materials. The new process is designed to achieve a quicker outcome for applicants from the point of application to the issue of a decision.

**Section 1B : Exemptions for certain types of consent**

We are considering whether there are some works which would benefit from exemption from the scope of the consent regime permissible under section 43 of the Act. Such works might be minor, temporary or urgent.

It is essential that common land is properly protected, but the level of that protection must be proportionate to the scale, type and purpose of any works proposed. Our proposals for exemptions seek to provide a sensible level of protection whilst permitting legitimate day to day management practice.

**Section 1C: Enforcement against unlawful works**
Section 41 of the Act ensures that any person who is concerned about unlawful works on a common will be able to take action through the Courts. Previously, this power was limited, primarily to local authorities, owners and commoners. We plan to provide clear guidance on the enforcing regime, and seek views as to the form and content of that guidance through consulting with stakeholders who have an interest in enforcement such as Local Authorities.

**Section 1D : Schemes of Regulation**
This section explains the changes we have made through section 42 & 50 of the Act with regard to the consent procedures for applying for works that are covered by a Scheme of Regulation made under the Commons Act 1899. We are also interested in how best use can be made in future of the power to make such Schemes, which has been modernised in the Act.

**Chapter 2 : Exchanges of common land and greens**
Section 16 of the Act enables the owner of land registered as common land or green to apply for the land, or part of it, to be released from registration. If this 'release land' is more than 200 square metres in area, an application must be made at the same time to register 'replacement land' as common land or green in its place.

If a section 16 application to release land is granted, section 17 requires a 'release order' to be made which can then be used, where appropriate, to register the replacement land together with any rights of common that were previously exercisable over the release land.

**Chapter 3 : Other Secretary of State functions**
Over many years numerous local or personal Acts have conferred functions on the Secretary of State, including the approval of stint rates and the appointment of conservators on a small number of commons. These functions are now rarely, if ever, used – and it no longer appears appropriate for Government to be involved in what are essentially local decision-making processes. Section 54 of the Act introduces the power to repeal these.

**Chapter 4: Charging**
Defra currently operates a number of common-land consenting regimes, and this will continue under the Act. With the exception of a recently-introduced charge for one type of application, Defra has never charged applicants for these services. The applications for which a charge is made are those to exchange common land for other land which will become Section 16 applications under the new consenting regime. Section 24(2)(d) and 40 (e)

introduce the ability to charge for such applications. The broad aim of the Government is that the full costs of services provided should be recovered from service users. Defra usually aims to recover the full costs associated with providing its service, and we are consulting on options for cost recovery.

**3. Consultation:**

Within government:

Defra has worked with Cabinet Office, HM Treasury, Department for Communities and Local Government, Department for Constitutional Affairs and DTI's Small Business Service in developing this consultation paper.

Public consultation:

Some key stakeholders have been involved in discussion groups to look at the viability of proposals for secondary legislation. In September 2006 Defra ran a workshop at the 6th National Seminar on Common Land and Town and Village Greens. Stakeholders attending included farmers, commoners, parish councils, wildlife trusts, local authorities and conservation bodies.

Defra chairs the National Stakeholder Group on Common Land, whose members include Natural England, the Open Spaces Society, National Farmers Union, National Sheep Association, Country Land and Business Association and commoners council representatives. This last met in December 2006 and is due to meet again in June 2007

Defra is now offering the opportunity to comment to a wide audience through full public consultation.

## Chapters 1 & 2 : Works & Exchanges on common land

### Chapter 1, Sections 1A, 1B, 1C, Consent to works, exemption from consent and enforcement and Chapter 2 Exchanges of Common Land and Greens

(This discusses the impact of introducing new regulations to improve the procedures for obtaining consent to works on common land and exchanges of common land and greens and the impact of making certain work exempt from controls on works.)

**4. Options:**

**Option 1: Do Nothing**

Maintain the current consenting regime, which requires most works on commons to have consent and exchanges of common land and greens to be approved by the Secretary of State. Specified people can take

enforcement action against unlawful works. These are the landowners, commoners and local authorities.

The current consent and exchange processes require applicants to:

- Fully consider the options open to them
- Advertise the proposals locally
- Present an application package to Defra for consent to carry out works or seek an exchange of land

**Option 2:**

Introduce a new 3 stage consenting regime where the applicant:

- Fully considers the options open to them through improved guidance which, in the case of works, includes whether the works needing to be carried out are exempt from the consent regime
- Communicates plans to all interested parties to try to reach a local consensus and advertises the proposals locally
- Presents an application to Defra for consent to carry out works or an exchange of land with supporting documentation e.g. maps, commons register sheet and a copy of the local advert.

Defra will ensure that clear guidance on the new procedures is developed which is in Plain English and matches the needs of our stakeholder base. We will develop this in consultation with stakeholders.

(The Act enables certain minor works to be exempted from the need to apply to the SoS for consent. This would mean that providing the proposals met certain criteria, people would not be subject to regulation. Section 1B outlines the range of exemptions Defra is consulting on.)

The Act now provides that “any person” may take enforcement action against unlawful works. So anyone who is concerned about such works on commons, not simply landowners, commoners and local authorities, may take action. We will introduce guidance to help those who wish to take enforcement action.

## 5. Costs and Benefits

### Sectors and groups affected

Any changes to the legislation on protecting England’s common land will affect many groups with an interest in the land. These include farmers, those with rights of common, private individuals, and local authorities. These groups will be required to follow new procedures which give more certainty and clarity to the protection regime and in some cases will mean the works are exempt from the controls.

## Benefits

### Option 1

Economic

People are familiar with the current process and advertise their proposals before making an application. After making an application, the process is managed by Defra thus saving applicants the administrative time that would otherwise be involved in dealing with representations.

Environmental

Works needed to enable sustainable management of common land can only proceed with consent from the Secretary of State. Specified people may take enforcement action for the removal of unlawful works, however the effectiveness of enforcement depends on:

- how those able to enforce prioritise against their other objectives
- uncertainty about the land to which the protection applies

Exchanges of common land can only proceed with the issue of an Order by the Secretary of State ensuring that no exchange results in a less favourable overall position for the common.

Social

The public interest is protected as neither works nor exchanges can proceed without consent. In deciding whether to give consent to works the Secretary of State must consider the "benefit to the neighbourhood" and the "private interests in the land". The benefit of the neighbourhood is defined as the health, comfort and convenience of the inhabitants of any populated places where the land is situated and the enjoyment of the common as an open space. "Private interests" are defined as including the advantage of those interested in the common, i.e. landowners and those with rights of common. In deciding whether to make an order to exchange the Secretary of State must be satisfied that the proposed exchange would be beneficial to the owners of the respective parcels of land, and that its terms are just and reasonable. This latter consideration includes taking account of the views of the local people and the impact on the common. As many commons are in rural areas, any effects on rural communities are taken into consideration.

### Option 2

Economic

The applicant will be able to tap in to clear guidance which will direct them to the best route for their application and encourage early consultation with interested parties. This should lead to fewer objections

and a faster application process. In the case of works, the guidance will include whether or not the works proposed need consent, as introducing exemptions removes the regulatory burden on people wishing to carry out certain works on a common. Some will save the administrative costs of making an application which are approximately £1000 for each application.

Where an application is required, people will undertake informal consultation and advertise their proposals. As with the current system, after making an application the process is managed by Defra thus saving applicants the administrative time that would otherwise be involved in dealing with representations. Most applications will be decided without the need for further evidence gathering or input from the applicant.

Environmental

The new procedures should ensure it becomes much clearer when consent is necessary, and when some works for the benefit of the common will be exempt. Under the new regime, any person may take enforcement action for the removal of unlawful works. This should increase the likelihood of appropriate action being taken. There will be greater certainty about the land to which the protections apply, and interested individuals considering action will be equipped with clear guidance to lead them through the process.

Exchanges of common land would only proceed with the issue of an Order by the Secretary of State, ensuring that no exchange results in less favourable overall position for the common.

Social

The public interest is protected as most works cannot proceed without consent. The new system will achieve an appropriate level of protection for common land which recognises the value of the open and unenclosed nature of many commons. Exemptions may be appropriate for certain categories or classes of works thus making the process easier for those wishing to carry them out. Greater enforcement could improve public access to the common for public recreation.

**Costs**

**Option 1**

Economic

There can be considerable delay in obtaining consent under the current regime. This can be disastrous for urgent works or where large projects are held up by several series of objections. The costs in complying with the information obligation under the current works consent regime are £40.4k and for exchanges are £13k. We have used Standard Cost

Methodology (See Annex E for financial information) to estimate likely costs for applicants.

Environmental

There is no scope for any minor works to be exempt from the consent regime and this means that urgent works often have to wait whilst the consent process takes its course. With exchanges, the criteria are not clear and do not take explicit account of the environmental impact on the common. These matters can have a detrimental effect on the environment on the common. Confusion over the current process may also lead to people deciding not to undertake projects and so the common is less well managed.

Social

People are unclear as to when consent is needed and this can lead to unlawful works appearing on commons, restricting access to the land for public recreation. With unclear criteria for exchanges, an exchange could have a disproportionate effect on rural communities who habitually use existing common land.

**Option 2**

Economic

Applicants will need to be committed to the early stages of the process and to closely follow guidance to ensure they carry out good informal consultation. The costs in complying with the information obligation under the new works consent regime are £33.7k and under the new exchange regime are £11.9k. We have used Standard Cost Methodology (See Annex E for financial information) to estimate likely costs for applicants.

Environmental

There should be no environmental costs providing guidance is followed.

Social

There should be no social costs providing guidance is followed.

**Preferred Option:**

The Act has introduced a number of opportunities to improve the consents regime for works and exchanges. It clarifies the legal position for consents and offers up the opportunity for less regulation within the works consenting regime. It also provides wider enforcement powers.

We therefore consider Option 2 provides us with the best opportunity to improve management and protection of commons.

## 6. Small Firm's Impact Test

Many small to medium sized enterprises carry out works or exchange common land. These include farmers and other land managers. During our workshop at the 6th National Seminar, SMEs made it clear that they wanted explicit guidance to lead them through the process and clarity on what was considered exempt. Our preferred option 2 would see them supported with clear and accessible guidance which we would consult them on. We would aim that the guidance would be sufficient to avoid SMEs needing to seek costly legal advice in most cases. Early informal consultation is bound to involve SMEs in some administrative costs, however, these should be balanced by needing to invest less time in responding to formal objections if issues of conflict have already been resolved. These costs are difficult to quantify, as each case will provoke a different response from the public, and we have used Standard Cost Methodology (See Annex E for financial information) to estimate comparative costs. The widening of the ability to take enforcement action will have no impact on costs to businesses.

The case studies in the consultation document illustrate the costs SMEs may incur through the application process:

**Case Study 1 (See pg 17)**

This was an application for consent to install cattle grids and fencing on common land, which in future would be considered under section 38 of The Act. The application was made by a group of commons conservators.

**Case Study 2 (See pg 28)**

This was an application for temporary fencing which may now be considered under section 43 of The Act and could be exempt. The application was made by a conservation body.

**Case Study 4 (See pg 44)**

This was an application for an exchange of common land, which in future would be considered under section 16 of The Act. The application was made by a charity which owned all of the land concerned.

| | Admin costs under current regime | Admin costs under s38 consents procedure (s16 applies to Case Study 4) |
|---|---|---|
| Case study 1<br><br>Well researched project with local consensus | £1050 | £965 |
| Case study 2 Small nature conservation enclosures | £1050 | £85 |
| Case study 4<br><br>Well researched project with local consensus | £1117 | £1037 |

## 7. Competition Assessment:

The Competition Assessment Filter has been applied to the proposals for the new regime for consent to works. Implementation of either option would impact upon a large number of different markets, all of which are already subject to regulatory controls that may, in themselves, inhibit competition to some extent. Applications for consents come from micro businesses through to corporate concerns, and the investment in time and resources in making an application is significantly higher for micro businesses compared with corporate concerns. However, we do not anticipate that implementation of any of the options will result in any significant further restriction in competition in any particular market.

| The Competition Filter | **Answer Yes/No** |
|---|---|
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | No |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | No |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | Yes |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of firms? | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products? | No |

### 8. Chapter 1D : Schemes of Regulation

Some commons are subject to Schemes of Management which allow certain works to be undertaken without Secretary of State consent. A model form of Scheme is currently prescribed in regulations. We are asking for views on the current model and the possible future use of Schemes in this consultation to inform our policy development. There is no increased regulatory burden proposed at this stage and a Regulatory Impact Assessment has not been undertaken.

## Chapter 3 : Other Secretary of State functions

9. This is a proposal to cease the regulatory burden imposed by the Secretary of State carrying out these functions. We are looking at 2 areas:

- We receive on average 2 applications a year for the approval of stint rates;
- We receive on average 2 applications a year for the appointment of commons conservators or consent to the disposal of land held by conservators.

Under our proposals such applications would no longer be necessary and we estimate savings of £2000 total between these applications in Defra's administrative costs per annum. Applicants are likely to save a similar amount in their admin costs to make these applications. A detailed regulatory impact assessment has not been completed in these circumstances

## Chapter 4: Charging for applications for consent

### 10. Background:

In order to meet its financial objective, Defra needs to consider a range of proposals for setting charges for applications for consent for works on common land to recover some or all of the costs of delivering the service.

An assessment of the administrative costs of delivering the current services during the 2005/2006 financial year showed full costs as being. These are the costs that Defra should be charging its applicants at present.

| Type of case | Numbers of cases | Total admin costs | Cost per case |
|---|---|---|---|
| S194 | 32 | £51,768.81 | £1,617.78 |
| S147 | 11 | £60,002.55 | £5,454.78 |

With new procedures we anticipate a few Works cases falling under the exemption outlined in Section 1C of Chapter 1. Different procedures will mean that the administrative process carried out by Defra will decrease and the costs should be lower than they would have been under the old regime. For example, if the applicant engages in early consultation he should lessen the chance of negative responses to his advertised proposals which will lessen the administrative costs on Defra in dealing with the responses. We estimate the average costs per application are likely to be:

| | Cases received | Total estimated admin costs | Cost per case |
|---|---|---|---|
| S38 | 28 | £40000 | £1,428 |
| S16/17 | 11 | £54000 | £,4909 |

### 11. Options

4 options have been identified at this stage;

**Option 1: Do nothing, continue to charge for Section 16 applications only**

The level of fees charged currently (£370) recovers about 5% of the cost of processing an application. Government policy is that the processing of such applications should not be provided at the expense of the general tax payer; it should be paid for by those that require the service, unless there are public interest reasons for the public purse to bear the cost. This option would not be consistent with the Government's objective of cost recovery.

**Option 2: Charge a standard administration fee for each type of application, based on an average of all applications. Where the application is for a clear conservation benefit to the common, a 50% subsidy by government to be considered**

Applications to exchange and deregister common land are not considered to benefit the common and we do not propose to subsidise these applications. Some applications for consent for works lead to the achievement of a clear conservation benefit for the common. From a sample of applications received in a year, approximately 40% of applications are for works of conservation benefit. We are proposing that government should subsidise 50% of the actual costs of providing consent for these works. This will lessen the financial burden on conservation bodies who are considering undertaking works that help deliver outcomes which support Defra objectives and Government PSA targets.

**Option 3: Charge a standard administration fee for each type of application based on average costs**

Each type of application would attract its own flat-rate administration fee which would reflect average costs for that type of application. The fee will be payable at the point when the application is submitted to the department. It is likely that both these tasks would be carried out on behalf of the department by suitably qualified bodies.

This approach has the advantage of covering 100% of the department's costs, whilst keeping accounting costs to a minimum. The disadvantage is that applicants with straightforward applications would pay the same fee as those applicants with large or complex applications.

**Option 4 – To charge a standard administration fee for evaluating the initial application. Where it is necessary to undertake a site visit or a public inquiry before a decision can be made, a further fee will be charged for those additional costs.**

All applications would attract a standard fee for the processing and evaluation of the application based on the evidence supplied by the applicant. The fee will be payable at the point when the application is submitted to the department. Some applications will be decided on this evidence alone; where further evidence is necessary, either from a site visit, hearing or a public inquiry, the applicant will pay a second stage administration fee before the application is processed further for the administration costs associated with the site visit, hearing or public inquiry.

As in Options 2 & 3, in addition, the actual costs of site visits or public inquiries would be invoiced once these had been carried out. It is likely

that both these tasks would be carried out on behalf of the department by suitably qualified bodies.

| Application type | Option 1 | Option 2 | | Option 3 | Option 4 | | |
|---|---|---|---|---|---|---|---|
| | | | | | Stage 1 | | Stage 2 |
| | | NC* | C** | | NC* | C** | |
| S38 sufficient info to determine application | £0 | £1400 | £700 | £1400 | £500 | £250 | £0 |
| S38 site visit needed | £0 | £1400 | £700 | £1400*** | £500 | £250 | £500*** |
| S38 public local inquiry needed | £0 | £1400 | £700 | £1400**** | £500 | £250 | £3000**** |
| S16/17 site visit needed | £370 | £4900 | N/A | £4900*** | £500 | N/A | £500*** |
| S16/17 public local inquiry needed | £370 | £4900 | N/A | £4900**** | £500 | N/A | £6000**** |

* NC = non conservation applications
** C = conservation applications
*** in addition the costs of the site visit may be invoiced
**** in addition the costs of a public local inquiry may be invoiced

## 12. Benefits and Costs

### Sectors and groups affected

Any changes to the legislation on protecting England's common land will affect many groups with an interest in the land. These include farmers, those with rights of common, private individuals, local authorities, non-departmental government bodies, developers.

### Benefits:

### Option 1:

No additional benefits to government would arise from following the existing legislation; applicants would benefit from having a subsidised service. The risk of works with potential benefits to the common not being carried out is

diminished as those wishing to execute the works would not be discouraged by the cost of making an application for consent.

**Option 2:**

The benefits of partial cost recovery would be:

- Most of the services provided are paid for by the users, which is fairer than having the costs paid by the general taxpayer
- There would be additional funds available to further other Government objectives
- With the fees suggested, customers are likely to limit speculative applications
- Conservation applicants should be able to afford to proceed if costs are subsidised. Stakeholders have indicated that costs may be prohibitive to some applicants

**Option 3:**

The benefits of full cost recovery would be:

- Services provided are fully paid for by the users
- There would be additional funds available to further other Government objectives
- With the fees proposed, customers are likely to limit speculative applications.

**Option 4:**

The same benefits as option 3 plus:

- Those people whose applications could be processed from the information submitted at the end of stage 2 would benefit from not having an average cost of a site visit/public inquiry included in their fee. This will benefit those undertaking small scale projects and the charges are likely to be more proportionate to the work undertaken.

**Costs**

**Option 1:**

Applicants would incur no additional costs. Defra will not meet the Government objective of achieving full cost recovery, effectively subsidising a largely commercial sector and individuals where there is no economic rationale to do so. The cost to taxpayers would be approximately £110,000 per year.

**Option 2**

Applicants would incur a fee depending on the nature of their application.

Defra will not meet the Government objective of achieving full cost recovery. The taxpayer would be subsidising by approximately £8000 per year.

**Option 3:**

Applicants would incur a fee based on the average costs of all applications.

**Option 4:**

Applicants would pay a fee for the initial processing and evaluation of their application and would only pay a further fee. If it was necessary for their application to proceed to a site visit, hearing or public inquiry.

## 13. Small Firm's Impact Test

Firms which have an interest in common land include a significant portion of small to medium sized enterprises (SMEs). At the 6th National Seminar many stakeholders including SMEs expressed concern at the level of fee that would be payable if full cost recovery was introduced. They said that they envisaged some works going ahead without consent because people would not be able to afford the fees proposed.

There may be increases in the costs or new costs for all businesses. Many applications which were previously processed free of charge, will become subject to a fee. The effect of full cost recovery may be of great significance to SMEs. Of particular concern are firms with low turnovers and few assets who may suffer disproportionately when compared with larger corporate organisations that can more easily absorb the costs. .

The table below gives some illustration of the financial effect of the options on different customers:

**Case Study 1 (See pg 17)**
This was an application for consent to install cattle grids and fencing on common land, which would in future be considered under section 38 of The Act. The application was made by a group of commons conservators and would be decided without the need for an inquiry.

**Case Study 2 (See pg 28)**
This was an application for temporary fencing which may now be considered under section 43 of the Act, and no application for consent would be needed under the new regime. The application was made by a conservation body.

**Case Study 4 (See pg 44)**
This was an application for an exchange of common land, which would in future be considered under section 16 of the Act. The application was made by a large charitable body.

| | Option 1 | Option 2 | Option 3 | |
|---|---|---|---|---|
| | | | Stage 1 fee | Stage 2 fee |
| **Case study 1** | Nil | £1400 | £500 | Nil |
| **Case study 2** | Nil | Nil | Nil | Nil |
| **Case study 4** | £370 | £4900 | £500 | £6000 |

## 14. Competition Assessment

Implementation of options 2, 3 & 4 would impact upon a large number of different markets, all of which are already subject to regulatory controls that may, in themselves, inhibit competition to some extent. Applications for consents come from micro businesses through to corporate concerns and paying a fee could have a disproportionate financial impact on micro businesses compared with corporate concerns. However, we do not anticipate that implementation of any of the proposed options will result in any significant further restriction in competition in any particular market.

Although some proposed fees are relatively large, it should be possible – in most cases – for businesses to pass on the increased costs to consumers of their end product, or to absorb them themselves. There may be some markets, particularly where profit-margins are currently low, where demand is insufficiently robust for consumers to pay increased prices. If this is the case then there is a chance that some markets will not remain commercially viable.

| The Competition Filter | **Answer Yes/No** |
|---|---|
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | No |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | No |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | Yes |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of firms? | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products? | No |

## 15. Enforcement, sanctions and monitoring

Once the new regulations are introduced, action against unlawful work on commons can be taken by any person. The Act does not impose a duty to enforce on any parties, but we expect Local Authorities to take a role in carrying out some of this action. Defra will support enforcers by producing comprehensive guidance. Those who decide against applying for consent because they consider the costs of an application too high, run the risk of enforcement action being taken against them.

## 16. Implementation and delivery plan

The results of the consultation will be shared with stakeholders through a press announcement and publication on the Defra website. The new regulations will come into force on 1 October 2007 when all applications for consent for works or exchanges of common land will be processed using the new procedures. Full guidance on the new procedures to be followed will be issued to stakeholders and published on the Defra website at least 12 weeks before this. Defra currently administers common land casework for England, but options for the transfer of all of its current common land functions to another delivery body are currently being considered.

## 17. Post-implementation review

After the new consent regime has been running for a period of a year stakeholders' views will be canvassed to judge the effectiveness of the new system. This will be done through the National Common Land Stakeholders Group.

## 18. Summary and recommendation

(To be completed following consultation)

| Summary costs and benefits table | | |
|---|---|---|
| **Option** | **Total benefit per annum: economic, environmental, social** | **Total cost per annum: - economic, environmental, social - policy and administrative** |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 etc. | | |

## 19. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

**Signed ……**

**Date**

**Barry Gardiner MP,**

**Parliamentary Under-Secretary (Commons)**

**Department for Environment, Food and Rural Affairs**

Contact point for enquiries and comments:
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## Annex E: Financial Information

Summary Memorandum Trading Account for Current Services
Financial Year 2005/2006

| **Applications for Consent for Works – Conservation benefit** | |
|---|---|
| Salaries and Allowances | 11520 |
| ERNIC | 890 |
| Superannuation costs | 1595 |
| Accommodation Overhead | 1728 |
| General Overhead | 3126 |
| Travel & Subsistence | 246 |
| Defra Agency Charges | 50 |
| Notional Insurance | 21 |
| All Other Non-Pay Costs | 496 |
| | |
| **Full Admin costs of delivering service** | **19672** |

| **Applications for Consent for Works – No conservation benefit** | |
|---|---|
| Salaries and Allowances | 18795 |
| ERNIC | 1452 |
| Superannuation costs | 2603 |
| Accommodation Overhead | 2820 |
| General Overhead | 5100 |
| Travel & Subsistence | 402 |
| Defra Agency Charges | 81 |
| Notional Insurance | 34 |
| All Other Non-Pay Costs | 809 |
| | |
| **Full Admin costs of delivering service** | **32096** |

| **Applications to exchange common land** | |
|---|---|
| Salaries and Allowances | 35333 |
| ERNIC | 2726 |
| Superannuation costs | 4889 |
| Accommodation Overhead | 5300 |
| General Overhead | 9607 |
| Travel & Subsistence | 648 |
| Defra Agency Charges | 131 |
| Notional Insurance | 64 |
| All Other Non-Pay Costs | 1305 |
| | |
| **Full Admin costs of delivering service** | **60003** |

**Standard Cost Methodology**

This is a system for calculating the value of the time that businesses and individuals invest in supplying information to conform with regulation. This will include time spent reading guidance, completing application forms and dealing with queries on applications.

| **Applications for consent to works - Current system**<br><br>**Costs to the public in complying with information obligation** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 150.0 | 1.0 | 21.10 | 3165.00 |
| Establishing Common Land status of land | 50.0 | 1.0 | 21.10 | 1055.00 |
| Making telephone call to clarify guidance | 50.0 | 0.5 | 21.10 | 527.50 |
| Carrying out informal local consultation | 50.0 | 3.0 | 21.10 | 3165.00 |
| Completing application | 32.0 | 2.0 | 21.10 | 1350.40 |
| Advertising in local paper* | 32.0 | 1.0 | 21.10 | 675.20 |
| Responding to representations | 32.0 | 2.0 | 21.10 | 1350.40 |
| Responding to queries on applications | 17.0 | 0.5 | 21.10 | 179.35 |
| Attending public inquiry | 4.0 | 8.0 | 21.10 | 675.20 |
| *Cost of advert | 32.0 | N/A | £800 per advert | 25600.00 |
| **Full costs of complying with regulation** | | | | **£37743.05** |

| **Applications for consent to works - Current system**<br><br>**Costs to an individual applicant** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 32.0 | 1.0 | 21.10 | 675.20 |
| Establishing Common Land status of land | 32.0 | 1.0 | 21.10 | 675.20 |
| Making telephone call to clarify guidance | 32.0 | 0.5 | 21.10 | 337.60 |
| Carrying out informal local consultation | 32.0 | 3.0 | 21.10 | 2025.60 |
| Completing application | 32.0 | 2.0 | 21.10 | 1350.40 |
| Advertising in local paper* | 32.0 | 1.0 | 21.10 | 675.20 |
| Responding to representations | 32.0 | 2.0 | 21.10 | 1350.40 |
| Responding to queries on applications | 17.0 | 0.5 | 21.10 | 179.35 |
| Attending public inquiry | 4.0 | 8.0 | 21.10 | 675.20 |
| *Cost of advert | 32.0 | N/A | £800 per advert | 25600.00 |
| **Full costs of complying with regulation** | | | | **£33544.15** |

Average cost per application £1048

| **Applications for consent to works - New system**<br><br>**Costs to the public in complying with information obligation** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 150.0 | 1.0 | 21.10 | 3165.00 |
| Carrying out informal local consultation | 50.0 | 3.0 | 21.10 | 3165.00 |
| Completing application | 28.0 | 2.0 | 21.10 | 1181.60 |
| Advertising in local paper | 28.0 | 1.0 | 21.10 | 590.80 |
| Responding to queries on applications | 5.0 | 0.5 | 21.10 | 52.75 |
| Attending hearing/site visit | 2.0 | 2.0 | 21.10 | 84.40 |
| Attending public inquiry | 2.0 | 8.0 | 21.10 | 337.60 |
| *Cost of advert | 28.0 | N/A | £800 per advert | 22400.00 |
| **Full costs of complying with information obligation** | | | | **£30977.15** |

| **Applications for consent to works - New system**<br><br>**Costs to individual applicants** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 28.0 | 1.0 | 21.10 | 590.80 |
| Carrying out informal local consultation | 28.0 | 3.0 | 21.10 | 1772.40 |
| Completing application | 28.0 | 2.0 | 21.10 | 1181.60 |
| Advertising in local paper | 28.0 | 1.0 | 21.10 | 590.80 |
| Responding to queries on applications | 5.0 | 0.5 | 21.10 | 52.75 |
| Attending hearing/site visit | 2.0 | 2.0 | 21.10 | 84.40 |
| Attending public inquiry | 2.0 | 8.0 | 21.10 | 337.60 |
| *Cost of advert | 28.0 | N/A | £800 per advert | 22400.00 |
| **Full costs of complying with information obligation** | | | | **£27010.35** |

Average cost per application £965

| **Applications for consent to exchange common land - Current system**<br><br>**Costs to the public in complying with information obligation** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 25.0 | 1.5 | 21.10 | 791.25 |
| Making telephone call to clarify guidance | 15.0 | 0.5 | 21.10 | 158.25 |
| Carrying out informal local consultation | 15.0 | 3.0 | 21.10 | 949.50 |
| Completing application | 11.0 | 2.0 | 21.10 | 464.20 |
| Advertising in local paper* | 11.0 | 1.0 | 21.10 | 232.10 |
| Responding to representations | 11.0 | 3.0 | 21.10 | 696.30 |
| Responding to queries on applications | 8.0 | 0.5 | 21.10 | 84.40 |
| Attending hearing/site visit | 8.0 | 2.0 | 21.10 | 337.60 |
| Attending Public Local Inquiry | 3.0 | 8.0 | 21.10 | 506.40 |
| *Cost of advert | 11.0 | N/A | £800 per advert | 8800.00 |
| **Full costs of complying with regulation** | | | | **£13020.00** |

| **Applications for consent to exchange common land - Current system**<br><br>**Costs to individual applicants** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 11.0 | 1.5 | 21.10 | 348.15 |
| Making telephone call to clarify guidance | 11.0 | 0.5 | 21.10 | 116.05 |
| Carrying out informal local consultation | 11.0 | 3.0 | 21.10 | 696.30 |
| Completing application | 11.0 | 2.0 | 21.10 | 464.20 |
| Advertising in local paper* | 11.0 | 1.0 | 21.10 | 232.10 |
| Responding to representations | 11.0 | 3.0 | 21.10 | 696.30 |
| Responding to queries on applications | 8.0 | 0.5 | 21.10 | 84.40 |
| Attending hearing/site visit | 8.0 | 2.0 | 21.10 | 337.60 |
| Attending Public Local Inquiry | 3.0 | 8.0 | 21.10 | 506.40 |
| *Cost of advert | 11.0 | N/A | £800 per advert | 8800.00 |
| **Full costs of complying with regulation** | | | | **£12281.50** |

Average cost per application £1116.50

| **Applications for consent to exchange common land - New system**<br><br>**Costs to the public in complying with information obligation** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 25.0 | 1.0 | 21.10 | 527.50 |
| Carrying out informal local consultation | 15.0 | 3.0 | 21.10 | 949.50 |
| Completing application | 11.0 | 2.0 | 21.10 | 464.20 |
| Advertising in local paper | 11.0 | 1.0 | 21.10 | 232.10 |
| Responding to representations | 5.0 | 2.0 | 21.10 | 211.00 |
| Responding to queries on applications | 3.0 | 0.5 | 21.10 | 31.65 |
| Attending hearing/site visit | 9.0 | 2.0 | 21.10 | 379.80 |
| Attending public inquiry | 2.0 | 8.0 | 21.10 | 337.60 |
| *Cost of advert | 11.0 | N/A | £800 per advert | 8800.00 |
| **Full costs of complying with regulation** | | | | **11933.35** |

| **Applications for consent to exchange common land - Current system**<br><br>**Costs to the public in complying with information obligation** | | | | |
|---|---|---|---|---|
| | No of people | Hours spent | Cost per hour inc overheads | Cost of activity |
| Reading guidance | 11.0 | 1.0 | 21.10 | 232.10 |
| Carrying out informal local consultation | 11.0 | 3.0 | 21.10 | 696.30 |
| Completing application | 11.0 | 2.0 | 21.10 | 464.20 |
| Advertising in local paper* | 11.0 | 1.0 | 21.10 | 232.10 |
| Responding to representations | 5.0 | 3.0 | 21.10 | 316.50 |
| Responding to queries on applications | 3.0 | 0.5 | 21.10 | 31.65 |
| Attending hearing/site visit | 9.0 | 2.0 | 21.10 | 379.80 |
| Attending Public Local Inquiry | 2.0 | 8.0 | 21.10 | 337.60 |
| *Cost of advert | 11.0 | N/A | £800 per advert | 8800.00 |
| **Full costs of complying with regulation** | | | | **£11490.25** |

Average costs per application £1037