EXPLANATORY MEMORANDUM TO

THE DEREGISTRATION AND EXCHANGE OF COMMON LAND AND GREENS (PROCEDURE) (ENGLAND) REGULATIONS 2007

2007 No. 2589

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations describe the procedures to be followed by persons making applications to the Secretary of State for Environment, Food and Rural Affairs to deregister or exchange common land in England under section 16 of the Commons Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Sections 16 and 17 of the Commons Act 2006, which are to come into force on 1st October 2007, make provision enabling the owner of any land registered as common land or a town or village green ("the release land") to apply to the appropriate national authority (defined in section 61(1) as the Secretary of State, in relation to England) for an order for the release land to be deregistered. In all cases where the release land exceeds 200 square metres in area, the application must include a proposal for other land ("the replacement land") to be registered as common land or a green in exchange for the release land. If the release land is smaller than 200 square metres, a proposal for replacement land may (but need not) be included — but the appropriate national authority must pay particular regard to the extent to which the omission of any proposal for replacement land is prejudicial to the interests specified in subsection (6)(a)–(c).

4.2 Sections 16 and 17 were enacted in place of section 147 of the Inclosure Act 1845, which is repealed by the 2006 Act. Section 147 gave the Secretary of State (as the successor to the functions originally conferred upon the Inclosure Commissioners) power to confirm orders for the exchange of land. Originally designed for use at a time when proving title to lands was more difficult than it is today, an order under section 147 exchanged titles to lands as well as exchanging any other legal encumbrances. In recent years, the only use which has been made of this power has been to exchange common land or a town or village green for other land, so that the land given in exchange is substituted for the former common land or green.

4.3 Sections 16 and 17 of the 2006 Act differ from section 147 in that an order under the 2006 Act will only change the status of land as registered common land or green, and will have no effect on title to the land.

4.4 These Regulations prescribe the procedure to be followed in relation to applications under sections 16 and 17.

4.5 Where an application is granted, section 17(1) and (2) provides that the appropriate national authority must make an order directing the commons registration authority for the area in which the land is situated to make appropriate amendments to its register of common land or town or village greens. A separate instrument, the Commons (Deregistration and Exchange Orders) (Interim Arrangements) (England) Regulations 2007, will make provision about the steps to be taken by a commons registration authority on receipt of such an order.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Sections 16 and 17 of the 2006 Act provide a more modern and appropriate mechanism for deregistering common land or a town or village green, than section 147 of the Inclosure Act 1845, which they replace.

7.2 Focussing primarily on how the parties to the exchange will benefit, section 147 does not enable proper account to be taken of the public interest in an application – i.e. the effect of the exchange on the common or green. Section 147 is also, effectively, a conveyancing process, for which Departmental officials are not qualified.

7.3 The Commons Act 2006 repeals section 147 and enables the deregistration of common land or town or village green, and where appropriate, the registration of other land in its place, without exchanging titles to the lands. This measure enables an application for exchange to be considered under a modern regime, which provides for a proper balance between those who are involved in the exchange and those who are affected by it. This includes taking account of the interests of common rights holders, the neighbourhood (i.e. local inhabitants) and the wider public interest, including in particular nature conservation, the conservation of the landscape, and the protection of public access rights.

7.4 These regulations prescribe procedures for applications under the new provision (section 16 of the 2006 Act). Applicants will be expected to undertake wide, but proportionate, public consultation before submitting an application to the Secretary of State.

7.5 Formal public consultation was undertaken with a wide range of stakeholders. There was a high degree of support for government to introduce a consenting regime which placed a much greater emphasis on the protection of commons and greens.

7.6 Regulation 3 makes provision enabling the Secretary of State to appoint a person to exercise any or all of his functions in relation to applications. The Secretary of State intends, from 1st October 2007, to appoint the Planning Inspectorate to process and determine applications on his behalf, whilst reserving the right to determine applications personally in particular cases.

7.7 The Act contains the power to charge for applications and the Regulations include provision for a charge for this purpose. Under the previous legislation a nominal charge of £370 (plus around £1,000 valuation fee) was made for applications to exchange land, so whilst charging for these applications is not a new burden, the new charges will be an increased burden.

7.8 The financial objective will be full cost recovery and the fee will be £4900. This is based on the unit cost to the Department under the current (section 147) regime being in the region of £5,400, with such costs under the new regime being reduced by approximately £500 due to the improvements incorporated in the new application process.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is an improved consenting regime which will be easier for people to use and which will result in improved outcomes for rural communities.

9. Contact

Elaine Kendall at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8883 or e-mail: Elaine.kendall@defra.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment for:

The Works on Common Land, etc. (Procedure) (England) Regulations 2007

The Deregistration and Exchanges of Common Land (Procedure) (England) Regulations 2007

The Works on Common Land (Exemptions) (England) Order 2007

July 2007

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal:

The Works on Common Land, etc. (Procedure) (England) Regulations 2007
The Deregistration and Exchanges of Common Land (Procedure) (England) Regulations 2007
The Works on Common Land (Exemptions) (England) Order 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 and to increase charges for deregistrations of common land.

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 in time. 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 has consulted 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 also consulted on the principle of charging fees for the processing and evaluation of applications for consents to undertake work on, or exchange common land. This complies with Defra's financial objective of recovering costs associated with the provision of a service.

We consulted on the implementation of several different strands of the Act and in order to preserve clarity in the Regulatory Impact Assessment, each strand is discussed separately and corresponds with the Chapters in the January 2007consultation document:

Chapter 1 : Works 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, which is 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 : Deregistration and exchange 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. Sections 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 have consulted 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 these proposals.

Public consultation:

Defra offered the opportunity to comment on the proposals to a wide audience through a web based public consultation. Hard copies were sent to a wide range of stakeholders with an interest in common land.

Some key stakeholders were involved in pre-consultation discussions both in groups and individually. 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 group requested a Focus Group during the consultation and a successful and collaborative meeting was held followed by further correspondence to help clarify some of the finer detail of the recommendations. The group will continue to review guidance and help sheets before the regulations come into force.

There were a total of 96 responses to the consultation from a wide range of stakeholders. A summary of the responses to the consultation and conclusions drawn can be found at: www.defra.gov.uk/corporate/consult/naturalenvironment.htm

Chapters 1 & 2 : Works & Deregistrations on common land

Chapter 1, Sections 1A, 1B, 1C, Consent to works, exemption from consent and enforcement and Chapter 2 Deregistration of common land and greens

This looked at the impact of introducing new regulations to improve the procedures for obtaining consent to works on common land and deregistrations of common land and greens and the impact of making certain work exempt from controls on works.

4. Options:

Option 1: Do Nothing

This would mean that Section 38 of the Act would not be implemented in England and the current consenting regime would continue. This, requires all works on commons to have consent from the Secretary of State.

No consultees suggested that the current system of consents should be maintained.

Option 2:

Defra proposed to 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.

All consultees supported the proposal to introduce a new consenting regime with general agreement with our suggestions of its features. They thought that the system allowed for the interests of stakeholders to be considered objectively and expressed a desire for guidance to bring greater clarity and detail to the process. It was emphasised that informal consultation should be encouraged from the outset of any proposals for change on a common.

The majority of stakeholders welcomed the opportunity for Defra to introduce an Exemption Order to allow certain prescribed works to go ahead without the need for Secretary of State's consent. They also welcomed guidance on those activities that are works but are so minor they are not considered to impede access to the common.

There was a range of views on exactly which activities should be exempt and further clarification on the finer detail of these was sought from the National Common Land Stakeholder group. There were a number of concerns that there might be an increase in unlawful works on commons with people claiming works were exempt. We recognise the need to balance possible abuse of the system against the desire of a majority of stakeholders for proportionate regulation.

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.

Disability Proofing

The proposals to change procedures for consent to works and deregistration of common land do not impact negatively on people with disabilities.

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

Deregistrations 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 deregistrations 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.

Deregistrations 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 deregistrations 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 works often have to wait whilst the consent process takes its course. With deregistrations, 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 deregistrations, 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.

Recommendation:

Regulations will be introduced to commence the new consent procedures for works and deregistrations of common land from 1 October 2007.

The proposal to introduce some exemptions was welcomed however, there was a range of views on which works activities should be exempt from consent. The National Common Land Stakeholder Group has assisted in refining the list of activities to be exempted. To address concerns that people might claim works were exempt when they are not we propose to introduce a requirement in regulations for those erecting works to notify the Secretary of State and to post a notice on site declaring why their works are exempt.

The Exemption Order will begin with a few simple exemptions and will be reviewed after 3 years to see how effectively it is working. Other activities may emerge during this time that would benefit from consideration. Future Orders can be made if necessary.

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 recommendations will 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 are likely to incur through the application process:

Case Study 1

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
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

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 new procedures**
Case study 1 Well researched project with local consensus	£1050	£965
Case study 2 Small nature conservation enclosures	£1050	£85
Case study 4 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 sought views on the current model and the possible future use of Schemes in this consultation to inform our policy development. We received very few comments and have decided not to look at introducing new procedures for schemes until we understand more fully the roles of commons councils which we will be consulting on later this year. The Exemption Order will also make it simpler for some small projects which might previously have been included in a Scheme.

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.

Very few comments were received from consultees on either of these functions. No-one considered that the Secretary of State should continue to perform these functions. We recommend that 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 and deregistrations of 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 £112,000. 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
works	32	£51,768.81	£1,617.78
deregistrations	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
works	28	£40000	£1,428
deregistrations	11	£54000	£,4909

11. Options

4 options were identified.

Option 1: Do nothing, continue to charge for exchange applications only

Some of those responding said that there should not be charges for consent applications. A majority of those responding expressed concerns that the cost of an application might deter people from making applications and that could result in desirable works not being carried out or unlawful works being erected.

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

Many people acknowledged that charges were likely to be introduced and suggested that there could possibly be concessions for applications for consent for works that would benefit the common.

Applications to exchange and deregister common land are not considered to benefit the common. 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. This proposal would subsidise 50% of the actual costs of providing consent for these works and would 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

A few consultees felt this would cause less confusion than paying for applications in stages. Some felt that higher fees across the board might make applicants carry out fuller consultation before making an application. One consultee felt fees should be as high as possible to stop frivolous applications.

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.

There was some support for this with applicants with straightforward applications not incurring the same costs as those whose complex applications went to public inquiry. One person suggested that the costs of the public inquiry should be awarded against objectors if they had insisted the application went to public inquiry.

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.

Disability proofing

The proposals on whether to charge fees for applications do not impact negatively on people with disabilities.

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 1 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.

Recommendation:

The consultation has not produced any evidence that full cost recovery should not be sought for applications for deregistration of common land. These applications are largely for private or corporate gain and it is appropriate that the users of the service should pay for it. We therefore propose to seek full cost recovery for these applications. The Act does not provide for a staged fee for applications for deregistration so we intend to charge a flat fee based on estimated unit cost of an exchange application which will be £4900.

For applications for consent to works on commons, we considered the significant new financial burden for all users of the service and we are concerned that many SMEs and in particular farmers, will have difficulty in meeting these costs. We rely on these SMEs which include some charitable bodies to manage our common land. The works that they carry out help to deliver conservation benefits which will contribute, for example, to the PSA target of returning 95% of SSSIs to a favourable condition by 2010. Neither would we wish to stifle works that assist farmers in keeping grazing stock on the common with under-grazing on upland commons a particular issue at present. We therefore propose that we do not charge for applications for consent to works and that the costs of providing this service is borne by the public purse.

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

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
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
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**	**Option 4**	**Preferred option**
Case study 1	Nil	£1400	£1400	£500	Nil
Case study 2	Nil	Nil	Nil	Nil	Nil
Case study 4 (would need site visit)	£370	£4900	£4900	£500 Stage 1 £500 Stage 2	£4900
Exchange appl going to public inquiry	£370	£4900	£4900	£500 Stage 1 £6000 Stage 2	£4900

14. Competition Assessment

The recommended option will impact on 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 recommended option 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 an information bulletin 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 deregistrations 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 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 whose members represent a wide range of interests.

18. Summary and recommendation

Summary costs and benefits table		
Option	**Total benefit per annum: economic, environmental, social**	**Total cost per annum: - economic, environmental, social - policy and administrative**
1.Consents Do nothing	People are familiar with the current process. After their application is made, the process is managed by Defra saving applicants the administrative time that would otherwise be involved in dealing with representations. The public interest is protected as neither works nor deregistrations can proceed without consent. As many commons are in rural areas, any effects on rural communities of granting consent are taken into consideration.	Any delay in obtaining consent under the current regime can be disastrous for urgent works or where large projects are held up by several series of objections. There is no scope for minor works to be exempt and this means urgent works wait whilst the consent process takes its course. Confusion over the process may lead to people deciding not to undertake projects and so the common is less well managed or unlawful works appear The costs in complying with the information obligation under the current consent regimes totals £53.4k
2. Consents	Applicants will have 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. Introducing exemptions removes some of the regulatory burden. Some will save the administrative costs of making an application which are approximately £1000 for each application. The public interest is protected as most works cannot proceed without consent and no exchange results in less favourable overall position for the common. Improved enforcement	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. There should be no environmental costs providing guidance is followed. There should be no social costs providing guidance is followed. The costs in complying with the information obligation under the new consent regimes total £45.6k

	could improve public access to the common for public recreation.	
1. Charges Do nothing	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.	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 £110k per year.
2. Charges	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	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 £8k per year.
3. Charges	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.	Applicants would incur a fee based on the average costs of all applications
4. Charges	Similar benefits as option 3 with those applications which could be processed from the information submitted at the end of stage 1 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	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. The taxpayer would be subsidising by approximately £14k per year

RECOMMENDATIONS

Works & Deregistrations on common land

The proposed introduction of a new consenting regime has received strong support from stakeholders. Most stakeholders welcome the introduction of some exemptions and we will be introducing a small number of these which will be reviewed within three years to evaluate their effectiveness. We do not intend to introduce new Schemes of regulation at this stage but will review again when we have a firmed view of the role of commons councils. The costs in complying with the information obligation are estimated to be reduced by £8k.

Other Secretary of State functions

From the limited responses received during the consultation, we have concluded that the Secretary of State adds no value to the process of approving stint rates and appointing conservators. We will contact the stakeholders concerned but we are minded to withdraw from both processes.

Charging for applications for consent

It is government policy that Departments should charge for the costs of the services they provide. We propose to introduce full cost recovery for all applications for consent to deregister or exchange land. We do not propose to introduce charges for applications for works on commons as we consider the risks outweigh the benefits.

The costs of doing this are largely unquantifiable with a risk that people may be discouraged from making applications.

Total benefit per annum: economic, environmental, social	***Total cost per annum: - economic, environmental, social***
The costs of regulating deregistrations of common land are borne by the users of the services rather than the taxpayer. The saving to the public purse should be approx £60k. Works will proceed on commons uninhibited by the costs of making an application	*The public purse would subsidise the service by £50k*

19. Declaration and publication

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

Signed …….Jeff Rooker…….

Date 3rd September 2007

Jeff Rooker

Minister of State

Department for Environment, Food and Rural Affairs

Contact point for enquiries and comments:

Email: commons.villagegreens@defra.gsi.gov.uk Tel: 0117 372 8973

Annex A: 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 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 **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 **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 **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 **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 **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 **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 **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 **Costs to individual applicants 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