EXPLANATORY MEMORANDUM TO

THE COMMONS COUNCILS (STANDARD CONSTITUTION) (ENGLAND) REGULATIONS 2010

2010 No. [Draft]

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. Purpose of the instrument

2.1 Part 2 of the Commons Act 2006 provides for the management of common land by statutory commons councils established (in each case) by order. A 'standard constitution', which is set out in the Schedule to this instrument, is to apply to all such commons councils and contains terms as to their constitution and administration.

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

3.1 None.

4. Legislative Context

4.1 Part 2 of the Commons Act 2006 ('Part 2' of 'the Act') enables the management of registered common land, or of a registered town or village green that is subject to rights of common, by a commons council established for that purpose by order. Part 2 makes provision for the establishment of commons councils, their status and constitution, and their functions, together with supplementary provisions. Part 2 was brought into force on 20 January 2010[1].

4.2 Under section 29(1) of the Act, the Secretary of State (being the 'appropriate national authority' in relation to England[2]) must make regulations prescribing standard terms as to the constitution and administration of commons councils (*i.e*. the 'standard constitution').

4.3 The Schedule to these draft Regulations sets out this standard constitution for all commons councils as may subsequently be established by orders made under section 26 of the Act.

4.4 The terms of the standard constitution will apply to all commons councils, save to the extent that the establishment order for any commons council provides otherwise or makes any provision that is inconsistent with the standard constitution[3].

4.5 To enable better understanding of the relationship between the standard constitution and an establishment order, two model establishment orders have been prepared to illustrate the forms which such an order might take. The model orders are annexed to this memorandum.

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[1] The Commons Act 2006 (Commencement No. 5) (England) Order 2010 (SI 2010/61).
[2] See section 61(1) of the Act.
[3] Section 29(2) and (5) of the Act.

4.6 Defra and Natural England are currently in discussions with groups representing commoners[4] and others about the establishment of commons councils for several areas of common land in England. An establishment order may be made only if the Secretary of State "is satisfied that there is substantial support for the making of the order."[5] If the Secretary of State is satisfied that there is substantial support in relation to any area of common land, it is expected that the first establishment order may be made late in 2010, or in 2011.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 However, the instrument will have no practical effect until a commons council has been established, by a subsequent establishment order, and will then apply only in relation to any such council.

6. European Convention on Human Rights

6.1 The Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

> "In my view the provisions of the Commons Councils (Standard Constitution) (England) Regulations 2010 are compatible with the Convention rights."

7. Policy background

7.1 At present there is a lack of effective mechanisms for managing agriculture on common land. Decline in traditional infrastructures governing agriculture on commons has led to some commoners exercising their rights independently of each other, leading to deterioration of the resource base and, in some cases, to over-grazing and consequent damage to the soil and vegetation.

7.2 The *Common Land Policy Statement 2002* set out the Government's plans for addressing the declining condition of commons. A Stakeholder Working Group was convened to convert those plans into detailed proposals which were published in a consultation on the *Agricultural Use and Management of Common Land* (2003). Those proposals are now, with modifications, adopted in Part 2 of the Act. This instrument, and the opportunity to establish commons councils, is expected to be chiefly of interest to those with interests in common land or the management of common land, such as landowners, commoners and commoners' associations, Natural England, other conservation bodies, and local authorities (particularly parish councils), and organisations representing such persons (such as the Federation of Cumbria Commoners and the Moorland Association).

7.3 The Impact Assessment accompanying these Regulations presents three options: (1) to continue to rely on present mechanisms and voluntary associations to manage commons; (2) to commence Part 2 of the 2006 Act and make regulations, but without any guidance or assistance from Government; (3) the same as option 2 but with guidance and assistance from Government in setting up councils. The present mechanisms are considered ineffective and commencing Part 2 alongside these Regulations, without further assistance, would see few commons councils being

[4] A commoner is a person who is entitled to exercise rights of common over common land.
[5] Section 27(4) of the Act.

established. Government's preferred option (option 3) is to provide guidance to councils and support during the setting-up process. In doing this it is estimated that some 29 smaller councils and 10 umbrella councils will be established over a 20-year period.

7.4 Part 2 is enabling, rather than compulsory; local interests can decide whether or not they wish to apply to have a commons council established for their area. This instrument prescribes the standard framework for all such individual commons councils that are subsequently established.

7.5 Any individual establishment order made under section 26 of the Act may make additional (or diverging) provision for the constitution and operation of the council that it is creating (*e.g.* as to membership of that council, voting rights, the procedure for making standing orders, or powers to charge fees to commoners). Commoners, landowners and other interested parties may apply to the Secretary of State to set up a commons council and will be expected to show that there is substantial support for it. Commons councils may be set up for an individual common or for a small group of neighbouring commons. Councils could also be set up to cover extensive areas of common land (*e.g.* within a National Park) and these are informally known as 'umbrella' councils. The two model establishment orders (annexed) relate to these two different types of council: the West Barsetshire Commons Council Establishment Order (covering a small number of fictional contiguous commons) and the Barset National Park Commons Council Establishment Order (covering all the commons in a fictional National Park) .

The standard constitution

7.6 The standard constitution provides that the members of a commons council will be appointed or elected by the commoners, the owners of commons and any other persons specified in the establishment order[6]. The establishment order may specify, in addition, any other person, or class of person, who can become members[7]. Members of a council will be able to elect someone from among their number to an office within the council (*e.g.* chairperson)[8]. The decisions of a council will be taken at meetings by a majority of those members present[9]. Councils may appoint committees or individual members to carry out any of their functions[10]. Where the vacancies within a council's membership exceed one-third of the total number of members it can continue to act only in order to elect, appoint or co-opt new members to fill those vacancies[11].

7.7 The chairperson, secretary or treasurer must be appointed at the first meeting of the council after its establishment. The term of office must not exceed four years, but members can be re-elected, reappointed or re-co-opted to serve another term in office[12].

7.8 Under section 32(2)(c) and (3) of the Act, councils may charge fees, for example in connection with the exercise of rights of common, but the decision of a council to impose such fees must be taken by a two-thirds majority of the members present[13].

[6] Paragraphs 2 and 3 of the Schedule.
[7] Paragraph 3(1)(c) and 3(2)(c) of the Schedule.
[8] Paragraph 11 of the Schedule.
[9] Paragraph 9 of the Schedule.
[10] Paragraph 13 of the Schedule.
[11] Paragraph 18 of the Schedule.
[12] Paragraphs 7 and 11 of the Schedule.
[13] Paragraph 19 of the Schedule.

7.9 The meetings of a council must be open to the public, and the agenda and minutes of meetings must also be made available to the public by publishing them on a website and by providing a copy on request. The public may be excluded from a meeting by resolution for any item on the agenda on the basis that the matter is confidential or otherwise prejudicial to the public interest. This equally applies to making available the agenda and minutes of meetings with regard to such items[14].

7.10 Councils must keep proper accounts of all financial income and outgoings. The level of scrutiny required is intended to be proportionate to the amount of income generated by each council. Where the gross annual income of a council exceeds £10,000 in a financial year, the accounts for that year must be independently examined by a person the council believes to have the requisite ability and experience. Where a council's income exceeds £250,000 in a financial year, the independent examiner must be a member of one of the bodies listed in section 43(3B) of the Charities Act 1993.[15]

8. Consultation outcome

8.1 Defra consulted on the terms of the proposed standard constitution, and of the model establishment orders, on 8 September 2008. The consultation remained open until 28 November 2008. There were 49 written responses to the consultation, including 17 from commoners' groups or associations, 8 from landowners or land-owning interests, and 14 from local or National Park authorities. There was no strong weight of opinion behind major changes in policy.

8.2 No major changes to policy proposals were carried out following consultation, although a number of minor modifications have been made to detail, in response to comments. For example commons councils can decide what details should be recorded in their live register and the establishment order can confer a broad discretion to include additional information thought necessary. The draft Impact Assessment published as part of the consultation has not been substantially modified. There were widely differing views in consultation responses on Defra's assessment of costs and benefits, but none provided strong evidence to depart from it. A consultation summary has been published and can be found at: www.defra.gov.uk/rural/protected/commonland/councils.htm.

9. Guidance

9.1 Technical guidance on the establishment of commons councils has been published by Defra and can be found at: www.defra.gov.uk/rural/protected/commonland/councils.htm. This guidance is targeted at those persons and organisations who have resolved to establish a commons council, but require advice on building a case to apply to the Secretary of State.

9.2 Natural England is preparing additional guidance to provide assistance to persons and organisations who wish to promote better management for their common, but are unsure whether a commons council would be the appropriate vehicle, and who wish to find out more about commons councils, as well as alternative management options. Natural England expects to publish the guidance in April 2010.

[14] Paragraph 14 and 15 of the Schedule.
[15] Paragraphs 23 to 25 of the Schedule.

10. Impact

10.1 This instrument has no direct impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is annexed to this memorandum, which considers the impact of the subsequent establishment of commons councils under Part 2.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that commons councils are only set up where there is evidence of sufficient support for them from, principally, those comprised in small farming or landowning businesses. Two sets of guidance will be provided comprising technical guidance on setting up councils and information aimed at those interested in becoming councils. Practical advice and support will be provided by Natural England in setting up prospective councils.

12. Monitoring & review

12.1 Natural England will be monitoring the uptake and success of commons councils. The policy will be reviewed as part of the post-legislative scrutiny of the Act, which it is proposed to undertake in two years' time (*i.e*. 2011, five years following royal assent). A review specific to Part 2 will be undertaken in 2013.

13. Contact

13.1 Grant McPhee at the Department for Environment, Food and Rural Affairs, Tel: 0207 238 6326 or email: grant.mcphee@defra.gsi.gov.uk, can answer any queries regarding the instrument.

Defra
February 2010

Summary: Intervention & Options

Department /Agency:	Title:	
Defra	**Impact Assessment of Commons Councils**	
Stage: Final	**Version:** 2	**Date: 15 January 2010**
Related Publications: Commons Bill RIA (see www.defra.gov.uk/rural/documents/protected/common-land/bill-ria.pdf)		

Available to view or download at:

http://www.defra.gov.uk/rural/protected/commonland/councils.htm

Contact for enquiries: Grant McPhee **Telephone:** 020 7238 6326

What is the problem under consideration? Why is government intervention necessary?

At present there is a lack of effective mechanisms for managing agriculture on common land. Decline in traditional infrastructures governing the agriculture on commons has led to many commoners exercising their rights independently of each other, leading to deterioration of the resource base and, in some cases, to over-grazing and consequent damage to the soil and vegetation. The Commons Act 2006 enables statutory commons councils to be set up, to encourage improved local management of commons. The legislation is not compulsory — local interests can decide whether or not to use the powers.

What are the policy objectives and the intended effects?

The commencement of Part 2 of the Act and introduction of regulations for the standard constitution of commons councils will allow commoners, landowners and other interested parties to set up a local, democratic management structure where there is substantial support for doing so. The objective of these measures is to ensure that commons councils offer an effective mechanism for improving the agricultural management of commons, by putting in place detailed arrangements for their establishment and operation that take into account the variation in local circumstances on commons.

What policy options have been considered? Please justify any preferred option.

Option 1: To continue to rely on present powers and existing governing bodies including voluntary associations; Option 2: Providing legislative tools (commencement of Part 2 and regulations for the standard constitution of commons councils) to enable establishment of statutory commons councils; Option 3: Providing legislative tools and full guidance/further support for the establishment of statutory commons councils. Option 3 is the preferred option despite not being the lowest cost option as it is forseen that the maximisation of commons councils establishment and associated benefits justifies this.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed in 2011 as part of the post-legislative scrutiny of the Commons Act 2006. A review that is specific to this intervention will be done from 2013–2015.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Huw Irranca-Davies

..... Date: 3 February 2010

Summary: Analysis & Evidence

Policy Option: Option 3	Description: Providing legislative tools and full guidance/ further support for the establishment of statutory commons councils.

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 2.2m	20
Average Annual Cost (excluding one-off)	
£ 0.37m	

Description and scale of **key monetised costs** by 'main affected groups' The total present value of one-off establishment costs† to commoners forming umbrella and smaller councils is £1,115,563 and for government £55,626. PV one-off facilitation costs for government for both smaller and umbrella councils is £994,843. Both values are based on the projected number of councils that will form.

Total Cost (PV) **£ 7.1m**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£	
Average Annual Benefit (excluding one-off)	
£	

Description and scale of **key monetised benefits** by 'main affected groups' All benefits are non-monetised, see below.

Total Benefit (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' For commoners, landowners, other legal interests: improved mechanism for commons management, ability to attract funding, entry into agri-environment schemes, better regulation of stock/animal husbandry practices. For public: larger area of improved landscape and habitat management/SSSIs in favourable condition.

Key Assumptions/Sensitivities/Risks 29 smaller councils (covering an area of 2,000ha) and 10 umbrella councils (covering an area of 10,000ha) form over a period of 20 years; potential area of common land most suitable for commons council formation is 239,413 hectares based on assessment of where they will be most useful to commoners.

Price Base Year 2010	Time Period Years 20	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ –7.1m**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2010	
Which organisation(s) will enforce the policy?			Local interests	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **£105-£263**	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 6,739 Decrease of £ 0 **Net Impact** **£** 6,739

Key: **Annual costs and benefits:** **(Net) Present**

Summary: Analysis & Evidence

Policy Option: Option 2	Description: Introduce legislative powers to establish commons councils

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 0.98m	20
Average Annual Cost (excluding one-off)	
£ 0.26m	

Description and scale of **key monetised costs** by 'main affected groups' The total present value of one-off establishment costs to commoners forming umbrella and smaller councils is £925,043 based on the projected number of councils that will form. This consists of lower council formation and higher costs of establishment compared to Option 3.

Total Cost (PV) **£ 4.4m**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£	
Average Annual Benefit (excluding one-off)	
£	

Description and scale of **key monetised benefits** by 'main affected groups' All benefits are non-monetised, see below.

Total Benefit (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' Similar to option 3 above, but approx. 50,000ha less coverage. Operational effectiveness of councils also expected to be greater under option 3 (with guidance).

Key Assumptions/Sensitivities/Risks 22 smaller councils (each covering an area of 2,000ha) and 7 umbrella councils (each covering an area of 10,000ha) form over a period of 20 years; potential area of common land most suitable for commons council formation is 239,413 hectares based on assessment of where they will be most useful to commoners.

Price Base Year 2010	Time Period Years 20	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ –4.4m**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2010	
Which organisation(s) will enforce the policy?			Local interests	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **£105-£263**	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ £11,314 Decrease of £ 0 **Net Impact** **£** £11,314

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Analysis and Evidence of the Establishment and Operation of Commons Councils

1. Proposal

1.1 At present there is a lack of effective mechanisms for managing agricultural activity on common land. The result has been poor management of agricultural activity on many commons leading to deterioration of the resource base and, in some cases, to over-grazing and consequent damage to the soil and vegetation.

1.2 This measure, which brings Part 2 of the Commons Act 2006 ('the Act') into force, will implement powers to establish statutory commons councils on any land that is registered as common land, or as town or village green and that is also subject to rights of common. Commons councils will provide a key tool in helping to improve the environmental and agricultural management of commons. In implementing these provisions our objective is to ensure that commons councils will be able to (a) operate effectively and (b) address local management needs at the same time as achieving wider environmental and public benefits.

1.3 In implementing Part 2 of the Act, Government must prescribe, by regulations, standard terms for the constitution and administration of councils (the 'standard constitution')[1]. Each council will then be set up by an individual establishment order which will provide for its further detailed arrangements. The terms in the standard constitution will apply to all commons councils, unless disapplied or replaced in an establishment order. The Secretary of State must be satisfied that substantial support exists at the local level before making an establishment order.

1.4 This proposal applies to England only.

2. Purpose and intended effect of measures

(i) Objectives

2.1 Two potential sets of objectives must be addressed by the legislation: those of Government (Defra and Natural England) and those of local communities of commoners, landowners and other legal interests in the common.

2.2 We are using the provisions under Part 2 of the Commons Act 2006 to help ensure more common land is sustainably managed, that is:

- Commons remain largely open, unenclosed and uncultivated
- More SSSIs on commons are brought into favourable condition
- Environmental Stewardship funding arrangements are easier to agree
- Common rights remain largely attached to local holdings

Action is taken against unlawful and damaging agricultural activities on commons.

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† Footnote to *Summary: Analysis and Evidence* for Policy Option 3: The present value of one-off costs has been calculated as councils are assumed to form at an even rate over the 20 year period. Therefore, discounting the future on-off costs is seen as appropriate.

[1] The Commons Councils (Standard Constitution) (England) Regulations 2010. At the date this impact assessment was published, the Regulations had been laid in draft before both Houses of Parliament, and had not been made.

2.3 The secondary regulations need to ensure that commons councils can be tailored to the variation in local circumstances on commons. The functions conferred on an individual council through the establishment order that sets it up will reflect its particular management needs.

(ii) Background

2.4 Part 2 of the Act gives powers to establish statutory commons councils to manage the agricultural activities, vegetation and rights of common on common land in England and Wales. The current proposal relates to its implementation in England only.

2.5 Some commons have been damaged as a result of the decline in traditional infra-structures governing agriculture on common land and this has led to many commoners exercising their rights independently of each other. As a result, poorly managed or over-grazing on upland commons and under-grazing on lowland commons has affected the biodiversity and landscape on many commons. The Commons Act 2006 enables statutory commons councils to be set up, to encourage improved local management of commons.

2.6 In bringing this part of the Act into force, further consideration is being given to the process for establishing commons councils in practice, and ensuring they will be able to operate effectively. This impact assessment forms part of a package which sets out how statutory commons councils will work, the costs and benefits of their establishment and operation, and the standard terms for the constitution and administration of councils.

2.7 A regulatory impact assessment (RIA) was prepared to accompany the Commons Bill through its parliamentary stages (see www.defra.gov.uk/rural/protected/commonland/about-act.htm). Component D of this RIA focused on the establishment and operation of commons councils, referred to then as statutory commons associations. This impact assessment should be considered as supplementary to the original RIA. It provides an updated analysis of the costs and benefits associated with the establishment of commons council based on the developing proposals.

3. Options

3.1 The three options identified below are based on the range to which Government engages with commoners and other local interests to provide tools for the agricultural management of commons.

- **Policy Option 1 — Do Nothing**

To continue to rely on present powers and existing governing bodies, including voluntary associations, in order to manage the agriculture, vegetation and common rights on common land.

- **Policy Option 2 — Introduce legislative powers to establish commons councils**

Providing legislative tools to enable the establishment of statutory commons councils. This would involve the commencement of Part 2 of the Act and introduction of secondary regulations for the standard constitution of commons councils.

- **Policy Option 3 — Introduce legislative powers to establish commons councils and provide full guidance/further support**

Providing legislative tools and full guidance and further support for the establishment of statutory commons councils. This is the option adopted for implementation. It builds on option 2 above, by providing full guidance to assist potential councils in developing their

proposals, including a step-by-step guide to the issues that must be considered[2]. Models are provided[3] to show how the measures might look in an establishment order. Additionally, some Government resource will be made available to help with the establishment of commons councils. Such resources could be focused on providing facilitation and advice and support for the local interests in the common rather than direct funding.

4. The key changes compared to existing legislation

4.1 Many voluntary associations already exist on commons, but are often set up by certain groups that do not include all the interests in the common. Statutory commons councils will be formed only where there is substantial local support to do so and where all interests in the common have been considered. This is a key difference between a voluntary commoners' association and a commons council. It is important to note that a voluntary commoners' association could still exist alongside a commons council.

4.2 A commons council, as opposed to a voluntary association, will be given statutory powers to make rules, by majority voting, which are binding on everyone who uses the common. The rules may relate to agricultural activities and managing vegetation on the common and the exercise of commoners' rights. Voluntary associations and commons where no governing body exists cannot enforce rules on a common. For example, by making binding rules a commons council will be able to ensure that everyone using the common complies with the requirements of Environmental Stewardship agreements.

4.3 Many commons currently experience difficulty in reaching agreement on entry into agri-environment schemes. Commons councils will provide a structure to facilitate this process and ensure compliance with the terms of the agreement.

5. Comparison of the costs and benefits of the proposed options

5.1 It should be noted that a time horizon of 20 years has been used in this impact assessment. This period has been adopted because statutory commons councils are intended to be established for a substantial period of time, and to achieve results over the long term. Moreover, we plan to establish commons councils at a steady pace, so that we cannot achieve our target number overnight. If we adopted a ten year horizon, even the first councils would be only five or six years into an HLS agreement before year ten was reached. Therefore, it is felt that twenty years is appropriate to demonstrate a realistic timetable in which results can be delivered.

(i) Introduction

5.2 Any person may ask the Secretary of State to set up a commons council, although it is most likely that such a request will come from a commoner, landowner or representative body of the interests in the common. As such, any requests are likely to represent the local manage-

[2] See the technical guidance available from the Defra website: www.defra.gov.uk/rural/protected/commonland/councils.htm.

[3] See the West Barsetshire Commons Council Establishment Order (covering a small number of fictional contiguous commons), and the Barset National Park Commons Council Establishment Order (covering all the commons in a fictional National Park), available from the Defra website: www.defra.gov.uk/rural/protected/commonland/councils.htm.

ment issues and concerns on the common, however, it will also be important to consider how these meet with national objectives for the management of common land. Some public funding may be provided to help establish a commons council where the achievement of wider benefits can be demonstrated, for example to help increase biodiversity. The level of facilitation and other support provided by Government will influence the costs and benefits of implementing the proposed options.

5.3 The key factors that will influence the costs of establishing a commons council include the size of the common and the number of rights holders, which can easily be quantified. However, the quantification of benefits depends on the environmental outcomes associated with the formation of a commons council, which are less easy to determine. Another factor which greatly influences the costs and benefits of creating a commons council is whether or not there is an existing management structure in place. For example, a voluntary commoners' association may be able to agree a suitable arrangement for the commons council more easily through having an existing structure in place, however, all the legal interests in the common would still need to be involved in the decision to set up a council.

5.4 A net benefit is most likely to result where the establishment of a commons council results in the creation of binding rules that cannot be put in place with a voluntary association, for example, to help ensure compliance with an agri-environment agreement.

5.5 The creation of a commons council will incur costs for its establishment and operation, including administration. It is difficult to estimate or provide a standardised cost for the establishment of a commons council due to the potential variability in their size and structure and the number of people with a legal interest in individual commons. However, estimates have been prepared based on existing models of management bodies, and costs for the individual steps involved in setting one up.

(ii) Estimated number of councils that might form

5.6. The following is an estimate of the number of commons councils that might be set up over a period of 20 years. The main driving force for commons council formation is likely to be improved ability to enter into an agri-environment agreement. Such schemes are particularly likely to be targeted at commons notified as SSSI. According to Natural England approximately 211,329 hectares of common land in England is wholly or partly SSSI out of a total of 370,900 hectares of common land in England; equivalent to around 57%.

5.7 Much of this land is already under some form of agri-environment agreement (Environmental Stewardship, Environmentally Sensitive Areas, Countryside Stewardship Scheme, or Sheep Wildlife Enhancement Scheme). However, approximately 85.42% of SSSI common land is under 'classic scheme' agreements (Environmentally Sensitive Areas and Countryside Stewardship Schemes) that will expire in the period up to 2014. Table 1 shows the amount of common land that is wholly or partly SSSI that will expire from such an agreement over the next 7 years. Table 2 shows the cumulative effect of the expiry of these classic scheme agreements.

5.8 It is assumed that commons councils are most likely to be established on common land that is wholly or partly SSSI. Where existing classic scheme agreements expire, commoners and other interested parties may be more inclined to establish a commons council to facilitate entry into an Environmental Stewardship agreement, particularly Higher Level Stewardship. However, even where an Environmental Stewardship agreement is in place there may still be demand for setting up a commons council, given the ability of councils to make rules that are binding on all those using the common, and hence to enforce the terms of the agreement. Agreements under Environmental Stewardship will already involve some form of internal

agreement between those participating, in order to establish consensus across the common. This could take the form of a voluntary association, but will not have the statutory powers of a council.

Table 1

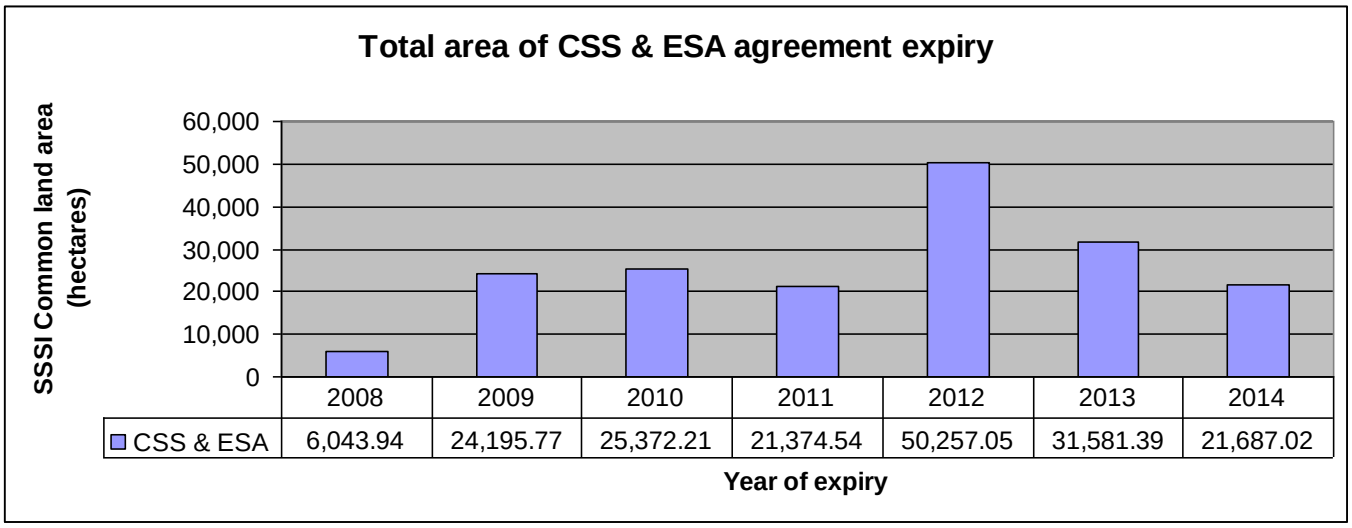
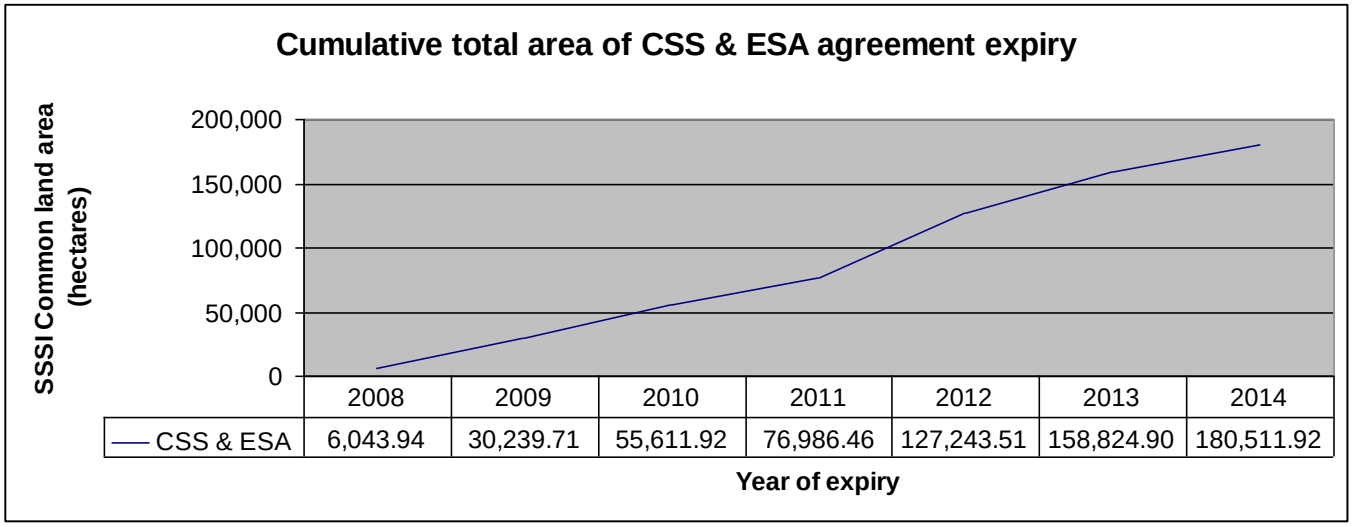
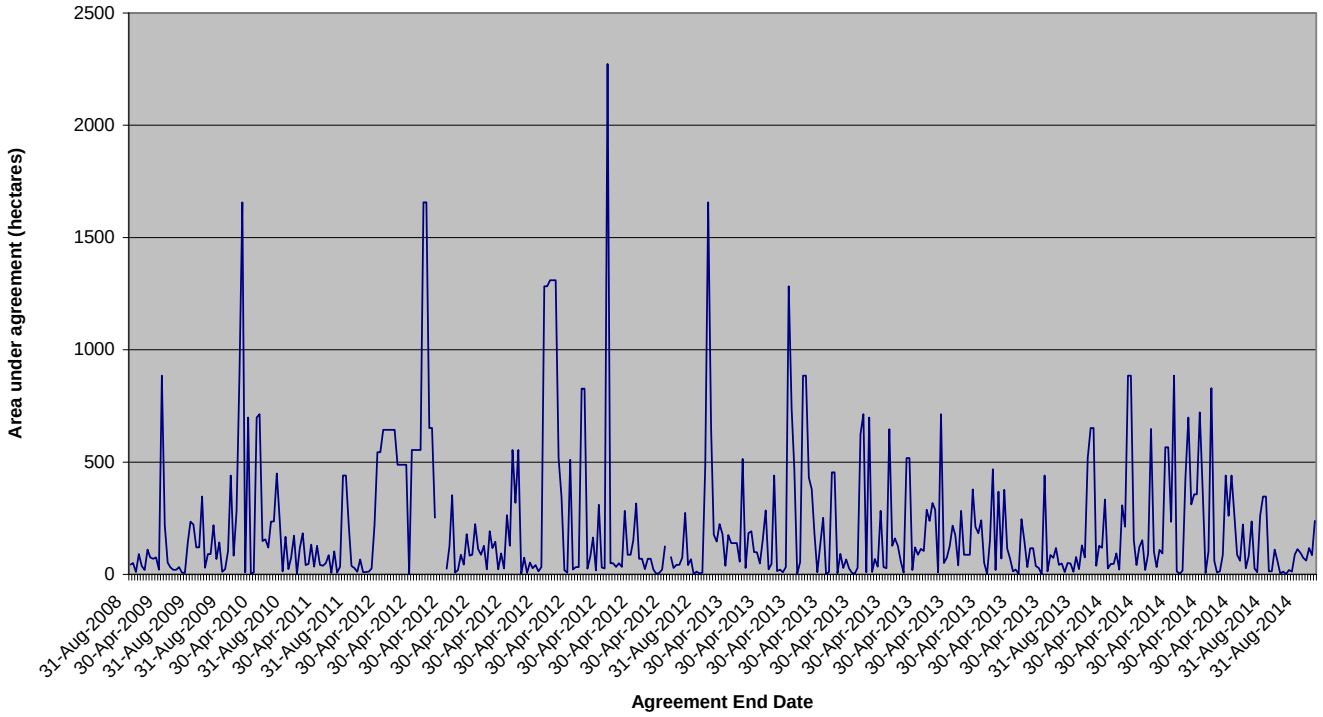


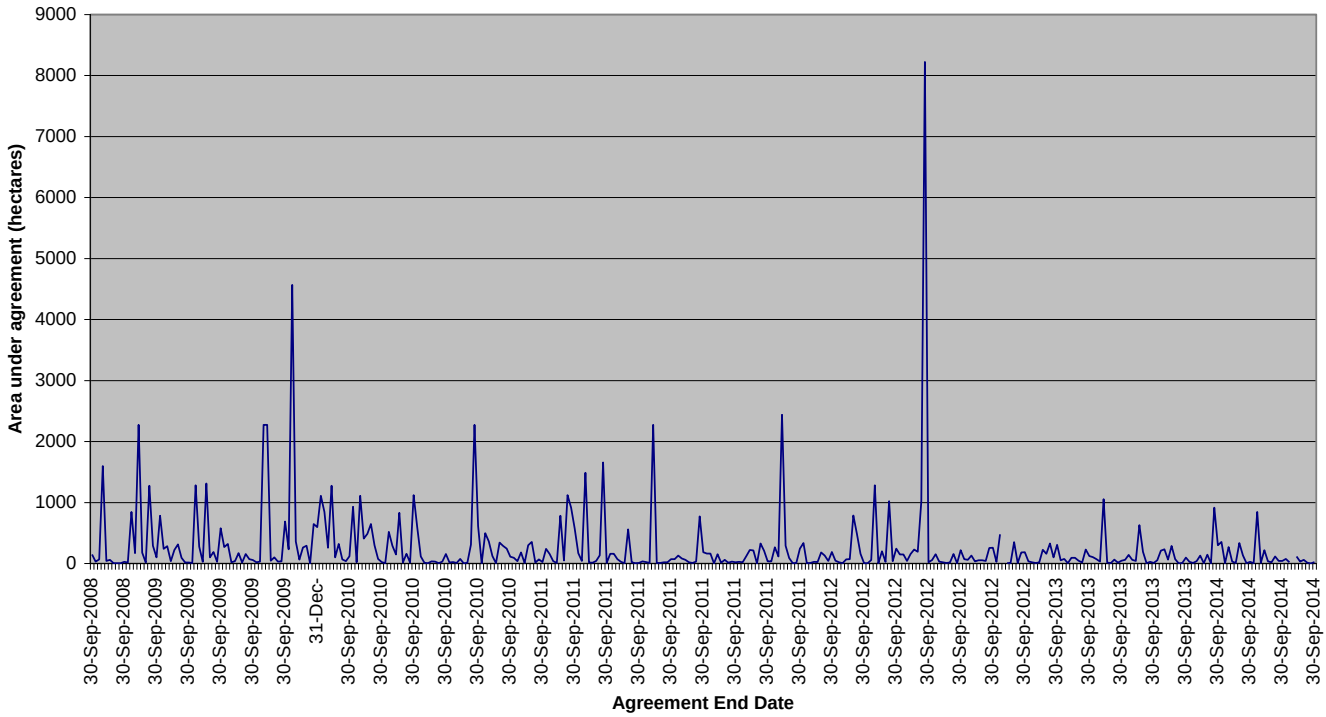
Table 2



Expiry of Environmental Sensitive Areas agreements



Expiry of Countryside Stewardship Scheme Agreements



5.9 While demand for the formation of commons councils is expected to be greatest on the 211,329 hectares of common land that are wholly or partly notified as SSSI, there is still expected to be some interest in establishing councils on non-SSSI commons to help with improved local management. The remaining area of common land that is not wholly or partly

notified as SSSI is 159,570 hectares. Of this, around 88% by area or 140,421 hectares is likely to be subject to rights of common and therefore may be suitable for agricultural management. In many cases, where there is an interest in improving the agricultural management of such land, new or existing voluntary arrangements may be considered sufficient for doing so. A council is likely to be established only where the statutory powers, in particular rule-making and the ability to raise money and access funds, offer additional benefits. It is therefore estimated that there could be interest in setting up a council on around 20% of this land area or 28,084 hectares. This would increase the total potential area to 239,413 hectares.

5.10 The key assumptions made are that a small commons council would cover a single common or small grouping of commons. The area falling under it might therefore comprise up to around 5,000 or 6,000 hectares, but an average size of 2,000 hectares is assumed. Umbrella councils would span a much larger area, and an average of 10,000 hectares is used for the purpose of these estimates.

5.11 The assumptions made above suggest that the potential area of 239,413 hectares could, for example, be covered by 15 large umbrella commons councils (*i.e*. covering *ca*. 150,000 ha) plus 44 smaller commons councils (*ca*. 89,000 ha). The split of umbrella versus smaller commons councils that might actually be formed is variable and any combination is possible. However, it is assumed that it is likely to be easier to reach agreement on a smaller commons council than an umbrella body involving a much larger number of potential constituents and interests.

5.12 Taking into account risk assessment and critical mass considerations, realistically only a half to two thirds of this potential is expected to be realised. The provision of guidance and further support from Government may help to overcome reluctance to commons council formation and increase the number set up where there is local support for doing so. It is therefore assumed that the more optimistic scenario of two-thirds of the potential being realised would apply in the case of option 3. This could therefore result in the establishment of 10 umbrella commons councils and 29 smaller councils over a 20 year period. Without the provision of additional guidance and support it is assumed that the less optimistic scenario of a half of this potential being realised would apply. This might equate to 7 umbrella councils and 22 smaller councils. These figures have been used to determine the likely costs associated with implementation of the policy options.

(iii) Benefits of establishing a commons council

5.13 As mentioned earlier, the benefits to commoners and to the public can be difficult to quantify in terms of economic performance. The previous RIA (see paragraph 2.7 above) attempts to provide some detail on this. This impact assessment provides an up-to-date analysis of these benefits. Benefits have not been monetised due to a lack of available evidence, however it is expected that the principal benefits, particularly the public goods provided by agri-environment schemes, will be substantially greater than costs. Work has been commissioned to address this gap through primary research to value the non-market benefits of Environmental Stewardship. This is expected to report in early 2010.

5.14 The accrual of benefits will be affected by the level of support and guidance provided by Natural England and Defra in helping to establish a commons council. This specifically relates to development of the establishment order and the rules and functions conferred on the commons council and the scope of its management powers. Under option 3 more benefits would be accrued compared to option 2, as commons councils would be formed over a larger area of commons. Greater guidance from Defra and Natural England could help to deliver more

environmental benefits and any facilitation and Government funding will be directed towards public gain.

Economic

5.15 The main economic benefits that are expected to arise from the establishment of commons councils are those relating to the use of the council's statutory powers. This includes the ability of councils to enter into agreements, to raise money and access funds, and also to making binding rules relating to the management of the common. It is important to note that where there is an effective existing management body, a commons council may not necessarily provide any more reliable means by which graziers could effectively control, regulate or influence communal stock management or husbandry practices, animal numbers or feeding practices. It was recognised in a recent case study analysis commissioned by Natural England (August 2007) that a commons council might be of far greater significance on commons without an existing association or agri-environment agreement.

For commoners

5.16 In economic terms, rights holders are likely to benefit from adopting a more sustainable management regime and hence through the receipt of agri-environment scheme payments that they may otherwise have not received. Applications for common land entry into Environmental Stewardship must cover the whole area of the common. Commons councils will make it easier for commoners and landowners to reach agreement on how to comply with the terms and on how to distribute payments, thus facilitating entry into agreements such as Higher Level Stewardship (HLS).

5.17 The payments for Environmental Stewardship are based on income forgone and the costs associated with scheme prescriptions. The payment rate for Entry Level Stewardship is £8/ha on large moorland parcels and £30/ha for all other land, but for HLS is entirely dependent on the negotiations between Natural England and the commoner/farmer and may therefore vary depending on the terms of the agreement.

5.18 The RIA which accompanied the Commons Bill notes the difficulty in quantifying the economic benefits accrued from improved management. This is because management could be achieved in several different ways, for example through reduced encroachment, more scrub clearance or better policing of misuse by the public.

5.19 The case study analysis conducted by Natural England on the practicalities associated with the formation of a commons council also noted the following key benefits:

- A commons council could potentially offer a stronger voice for negotiations, in particular, in respect of agri-environment agreements.
- Legal recognition by Government and other external agencies.
- Statutory powers to enforce agreed rules.
- Powers to purchase or long-term lease grazing rights should there be a need to do so.
- Potential to attract additional funding and raise money to allow for improvement management, *e.g*. through an annual membership fee.
- Ability to liaise with official bodies/organisations in a more unified manner.
- Potential to pool resources to aid management of the common, *e.g*. machinery, facilities and volunteers.
- Longer term security.

Environmental

5.20 The key environmental benefits from the entry of common land into more sustainable management schemes relate to the public benefits associated with improvements in the environmental quality of the commons. A number of the environmental benefits will be similar to those that may be achieved by a voluntary association. However, over and above this, the increased co-ordination and unique binding rules associated with commons councils will help with the following:

- Improving biodiversity and resource protection.
- Increasing the number and area of SSSIs in favourable or recovering condition.
- Enhancing the ability for local interests to carry out environmental improvements where this is deemed necessary.

5.21 The early adoption of commons councils will help Government achieve its target to bring 95% of SSSIs by area into favourable or recovering condition (target condition) by 2010, while the ongoing formation of councils will help to maintain the condition of sites in the future. At present, only 18% of common land is in favourable condition (87% is in target condition which represents favourable and recovering condition). On upland SSSI commons, better agricultural management will help reduce over-grazing and improve drainage. On lowland SSSI commons, a key issue councils will be able to help with is scrub control.

Social

5.22 The social benefits resulting from the formation of a commons councils are more evident at the local level, for example through improved relations between graziers, better administration of the common, better accountability of commoners and other legal interests. However, there are also potential benefits for the wider public, such as improved animal welfare resulting from agreed husbandry practices and greater ease of access to open countryside due to better vegetation management, and the protection of habitats, wildlife and archaeological sites.

5.23 The aggregate of these social benefits is a contribution to the future of upland farming and the communities it supports, together with the protection of a national asset that has high value for its cultural, amenity and recreation opportunities.

Summary

5.24 The table below provides a summary of the non-monetised benefits associated with the establishment of commons councils. These benefits would be greater under option 3 than option 2, as it is estimated that an additional 3 umbrella councils and 7 smaller councils would be established (translating to a approx. 50,000 ha of additional land being brought into improved agricultural management). Additionally, the provision of guidance under option 3 should assist in maximising the suitability and effectiveness of proposed arrangements for the structure, functions and operation of potential councils in order meet objectives for, and local circumstances on, the common.

Benefit	Impact / significance
More sustainable management	Improve nature conservation value of 110,000 ha (option 2) to 160,000 ha (option 3) of commons. Maintenance of landscape in areas of high conservation value (mainly National Parks and Areas of Outstanding Natural Beauty) through enhancement of vegetation cover, and retention of landscape features such as the open aspect of commons

	that lend these areas their special character. **High significance**. Maximised under option 3 – greater land area under agricultural management.
More sustainable habitats	SSSIs in favourable condition. Improved habitats for wildlife (fauna and flora) through protection against over-grazing, and scrub and bracken encroachment. **High significance.** Maximised under option 3 – greater land area under agricultural management.
Improved management structure for commoners	Openness of administration, powers for collective decision-making and enforcement. Obstruction therefore less likely to be encountered. Whole system of commoning more sustainable in the long term. **High significance.** Maximised under option 3 – increased operational effectiveness of councils.
Ability to negotiate, and enter, into binding agreements	Establishment of more agri-environment agreements. **High significance**
Improved co-ordination and communications	Management structure provides a single point of contact for all communications concerning the agricultural management of the commons. **Moderate significance**
Ability to attract funding	Structure and powers in place to apply for grants and other sources of funding. **Moderate significance**
Socio-economic benefits	Additional jobs, or existing jobs secured for the longer term, through extra work in managing commons brought under improved management. Protection and preservation of cultural links between common land and grazing rights. **Moderate significance**
Improved regulation of stock and animal husbandry practices	Improved animal welfare and stock quality. **Low significance**
Public health and safety	Tighter control over entire male animals. **Low significance**
Water quality	Better management should lead to reduced run-off and erosion. **Low significance**

(vi) Costs of establishing and operating a commons council

5.25 The RIA for the Commons Bill recognised the difficulty of estimating the costs of establishing and operating commons councils due to the many potential variations in structure and role that could emerge. The estimates in the RIA drew on interviews conducted in five case study areas across England and Wales (Dartmoor, Ceredigion, Brecon Beacons, Cumbria, Surrey). It also considered, in particular, two different management structures that already exist:

a. Dartmoor Commoners' Council (DCC) formed under the Dartmoor Commons Act 1985. An estimate was made of the cost of setting up the council, and figures were also obtained on the actual costs of running the council. These were used as an indicative guide for the kind of costs (establishment and operational) that might arise from an umbrella-type commons council.
b. Area of Outstanding Natural Beauty (AONB) Conservation Boards, in particular, the Cotswold and Chilterns AONB. Estimates of the annual running costs were made, again, to consider the likely costs of operating a large commons council.

5.26 Further work has since been undertaken to consider a wider range of examples and potential costs, in particular, to consider in more detail the likely costs of setting up and running

a smaller council. This includes a limited assessment of the costs associated with setting up a council as part of the case study analysis undertaken by Natural England. Information has also been drawn from the costs associated with setting up a typical HLS agreement and a more detailed analysis of the minimum steps a potential council would need to take in order to work up proposals for submission to the Secretary of State. Finally, on the operational costs for a council, the previous research has been compared with data relating to the Federation of Cumbrian Commoners.

Costs of establishing a council

Costs for local interests

Option 2

5.27 It was concluded from the earlier research that the typical costs of establishing an umbrella-type commons council would be in the region of £130,000, and for a smaller-scale commons council around £40,000.

5.28 The DCC is perhaps the closest current model to an umbrella-type council, and hence offers a good basis for analysing the likely costs. The original assessment suggested a total set-up cost of £175,000 with the component elements of this as follows:

Component	**Cost**
Administration staff time/duties	£50,000
Publicity, advertising, consultation	£25,000
Senior officer time	£50,000
Ranger/access management costs	£20,000
Legal advice (could be much higher, as County solicitor was used)	£30,000
Total	£175,000

5.29 This figure was modified downwards to take account of the fact that DCC was the first council of its kind to be established on a legal basis, and that this was done by a local Act of Parliament, rather than through secondary legislation.

5.30 In comparison to the DDC experience, the proposals for a commons council under the Commons Act 2006 will be developed in accordance with the legal framework provided by Part 2 and the terms specified in the regulations for the standard constitution of all commons councils. Additionally, under Part 2, some of the work will be carried out by other bodies, for example Defra will be responsible for drafting the establishment order itself (see 5.51–5.52 for costs arising for Government).

5.31 It is also assumed that the costs of employing a ranger and managing access have been deducted from the £175,000 figure since access is outside the scope of the functions that may be undertaken by a commons council under the 2006 Act (whereas the Dartmoor Commons Act 1985 confers a statutory right of access to the Dartmoor commons). Moreover, the highest cost component is officer time and, in some cases (especially the larger commoners' associations), the structure will already be in place. However, the work is still being done by someone and therefore must be included. It is to be expected that much of the cost of managing public access has already been provided for, so need not be a function of CA.

5.32 Therefore, based on the above points, it is felt that it is reasonable to assume a 25% reduction in the costs associated with commons council formation, resulting in a cost of approximately £130,000 for an umbrella council.

5.33 The estimates provided in the RIA for a smaller-scale commons council have been reviewed on the basis of further available data. As part of Natural England's case study analysis, attempts were made to explore the likely costs of setting up commons councils, but it was concluded that these would vary considerably depending on a number of factors, namely:

- the stage of evolution of management on the common;
- whether an existing constitution or internal agreement already exists; and
- the complexity of the commons to be covered by a council.

Costs suggested by the stakeholders involved ranged by a factor of ten from £2,000–£3,000 up to £20,000–£30,000. These figures were based, in particular, on experience of setting up internal agreements necessary to participate in HLS or other agri-environment schemes.

5.34 The costs of entering into such an agreement on common land provide a useful reference point for the costs involved in setting up a council for a smaller grouping of commons, since this will involve commoners and landowners working together to reach agreement on the terms, and in some cases, setting up a voluntary commoners' association in order to do so. Further discussion with the stakeholders involved in the case studies, in particular, with land agents, indicated that the cost of setting-up an HLS agreement involving significant professional advice could be between £5,000 and £15,000.

5.35 This is a good basis for considering the potential costs of establishing a council since a number of the procedures involved in setting it up will be similar. However, a commons council will need to go through a number of additional steps, such as deciding on the representation and voting structure and detailed operational arrangements for the council, that would not be required by a smaller grouping of commoners established solely for the purpose of entering into an agreement.

5.36 Table 3 (based on data supplied by Natural England, 2007) provides a breakdown of the anticipated costs for the local interests in the common, and for Government, in going through the proposed minimum steps for establishing a commons council.

5.37 These figures are based on the scenario of a commons council similar in size to that proposed in the model establishment order for West Barsetshire[4], comprising an area of three commons totalling 5,000 hectares in size, with 15 active grazing commoners, 3 owners and 25 non-active commoners. It is also assumed that there is an existing voluntary association in operation, since, in the case of a smaller proposed council, it is considered more likely that there will be some form of management infrastructure already operating on the common. If there is no such body in place the time taken to develop the proposals can be expected to take longer and cost more.

5.38 The costs set out in the table are the professional fees that would result from the local interests employing a land agent to undertake the tasks necessary to complete those stages for which commoners, owners and other interested parties would be expected to take the lead. At each stage there would still need to be involvement from all of these direct interests in the common, for example, in attending meetings and responding to the draft proposals — this involvement has not been included in the costs. Further, in many cases, it may be possible for

[4] See the West Barsetshire Commons Council Establishment Order (covering a small number of fictional contiguous commons), available from the Defra website: www.defra.gov.uk/rural/protected/commonland/councils.htm.

the local interests to directly lead on some aspects of this work themselves, for example, by forming a working group to develop the draft proposals, rather than paying the professional fees of a land agent.

5.39 In conclusion, the costs to the local interests of option 2 are estimated to be £130,000 for an 'umbrella' council and £15,740 for a smaller council.

5.40 With respect to the administrative costs section on the summary page of this impact assessment (see above pages 2 and 3), it is not practical to distinguish the paperwork that would be entirely incremental following the intervention and that which would have occurred despite the intervention. There is no empirical evidence to indicate what these costs might be, hence for operational reasons we have assumed that for Option 2 the paper based administration cost will represent 3% of overall administration cost for both umbrella and smaller councils.

5.41 Assuming administration costs continue to represent approximately 30% of the overall cost of umbrella council formation as in the DCC and also that this reduction holds for smaller councils. This will result in an overall administration cost of approximately £39,000 for umbrella councils and £4,722 for smaller councils. Therefore, taking 3% as a representative number for the paperwork component of this, we get a value of £1,170 for each umbrella council and £142 for each smaller councils.

5.42 This gives an overall administrative cost, in accordance with the requirements for use in the administrative costs section on the summary page of this impact assessment, of:

(1,170 × 7 = 8,190) + (142 × 22 = 3,124) = **£11,314** for Option 2.

Option 3

5.43 Under the adopted option (option 3), full guidance and support is provided for the establishment of commons councils. This comprises guidance to assist potential councils in developing their proposals, including a step-by-step guide to the areas that must be considered. Additionally, models are provided to show how the measures might look in an establishment order.

5.44 Table 3 includes estimates of the proposed savings in time, and hence cost, of providing such guidance. It is anticipated that these savings would be gained at certain key stages during the process where guidance would most assist in the decision-making process and reduce the time taken to agree and draft the proposals for submission to the Secretary of State, namely:

- preparation of the expression of interest,
- preparation and circulation of draft proposals,
- addressing concerns raised and revising proposals,
- concluding proposed structure and arrangements.

5.45 It is estimated that guidance could achieve a 25% reduction in the number of hours spent by the land agent on each of these four steps in the process, resulting in a saving of £2,200 overall. As well as helping to reduce the amount of time spent in formulating the proposals, the provision of guidance could also assist the local interests in managing more steps in the process themselves. This would reduce the up-front professional costs incurred, although would still represent a cost to commoners, landowners and others in terms of time spent in developing the proposals. If a similar reduction was to be achieved for an umbrella council of between 10% and 20%, let us say for ease of calculation 15% of the total costs, the saving achieved would be £19,500.

5.46 In addition to the provision of guidance, it is anticipated that some public funds may be available to help with the establishment of commons councils. This could take the form of facilitation and support from Government, such as negotiating agreement between different interests, or assistance in drawing up the draft proposals for the constitution of a council. As this would represent a transfer of the costs from commons councils to Government, it will not affect the costs of implementing option 3 overall. Additionally, since such funding would be limited, it is likely to be directed towards those circumstances that will directly address Government priorities and be of greatest public benefit, and therefore would not apply to every proposed commons council.

5.47 Taking into account the proposed savings from the provision of guidance, the cost to the local interests of option 3 for an 'umbrella' council would be £110,500 and the cost for a smaller council would be £13,540.

5.48 With respect to the administrative costs section on the summary page of this impact assessment (see pages 2 and 3 above), it is not practical to distinguish the paperwork that would be entirely incremental following the intervention and that which would have occurred despite the intervention. There is no empirical evidence to indicate what these costs might be, hence for operational reasons we have assumed that for Option 3 the paper based administration cost will represent 1.5% of overall administration cost for both umbrella and smaller councils. The reason that this is a lower figure relates to the fact that the councils can draw on Government support for help with their paperwork.

5.49 Assuming administration costs continue to represent approximately 30% of the overall cost of umbrella council formation as in the DCC and also that this reduction holds for smaller councils. This will result in an overall administration cost of approximately £33,150 for umbrella councils and £4,062 for smaller councils. Therefore, taking 1.5% as a representative number for the paperwork component of this, we get a value of £497 for umbrella councils and £61 for smaller councils.

5.50 This gives an overall administrative cost, in accordance with the requirements for use in the administrative costs section on the summary page of:

$(497 \times 10 = 4{,}970) + (61 \times 29 = 1{,}769)$ = **£6,739** for Option 3.

Costs to Government

5.51 The main costs falling to Government will arise from the time taken to draft each individual establishment order and follow the procedural requirements specified in section 27 of the Act.

5.52 The expected resource requirements for this work are set out in table 3 in relation to a smaller commons council. The legal work of drafting the establishment order is estimated to be £918, with a further cost of £34 for the officer time required in preparing and processing notification of the order, therefore the average cost overall is £952. Figures are not included for the parliamentary processes involved in making the final establishment order. As a similar percentage the costs to Government of establishing an umbrella council are expected to be in the region of £7,800.

Facilitation and Guidance

Option 3 only

5.53 The cost to Defra of drafting the guidance has been calculated as £5,000 (see Annex 1). This has been included as it represents an opportunity cost of staff time.

5.54 Natural England will incur costs in the facilitating the establishment of commons councils. These have been calculated in the following way:

Smaller Commons Council (<5,000 ha)
(Based on experience, and estimates previously made, for both Minchinhampton and Bodmin)

- Staff Costs Year 1 (no anticipated commitment beyond): £4,176[5]
- Plus Contract (legal advisor/land agent, meetings, publicity, searches, venues *etc*.): £20,000

Total cost per smaller commons council = £24,176

Larger Commons Council (>50,000 ha)

- Staff Costs per year over 2 years: £7,017[6]
- Plus Contract costs (legal advisor/land agent, meetings, publicity, searches, venues *etc*.) per year over 2 years: £25,000

Total cost per larger commons council = £32,017 × 2 years = £64,034

Public inquiries

5.55 The cost of any public inquiries into a proposal to set up a council will also fall to the Secretary of State, however, these costs will not arise in relation to every potential council, only if there is unresolved controversy over the proposals and it is unclear whether the level of support is sufficient in order to set one up. The guidance sets out the circumstances in which an inquiry may be held, and it is estimated that this could amount to around 15% of potential councils.

5.56 The estimated costs per inquiry have been calculated on the basis of responsibility for running such inquiries being delivered by the Planning Inspectorate, as suggested in the guidance. An average commons council inquiry lasting two days, would also require one day of preparation and four days for reporting, hence seven days of an Inspector's time, plus travel and subsistence costs. This would amount to £4,810 per inquiry.

Table 3: Costs associated with the proposed minimum steps involved in establishing a smaller commons council

	Lead body	**Costs for local interests**		**Costs for Government**		**Deduction for guidance**
		Land agent time (hours)	Returning officer time (hours)	Lawyer time (hours)	Officer time (hours)	(hours)
Gauging support						
1. Preparation of an expression of interest	Local interests	4				–1
2. Exploratory meeting of those actively involved with the common and interested in setting up a council	Local interests	4				

[5] Sourced from Natural England. Based on one and half weeks Manager/Principal Specialist, one week support, two weeks Lead Advisor, plus 20% overheads (T/S, accommodation etc)
[6] Sourced from Natural England. Based on three weeks Manager/Principal Specialist, one week support, three weeks Lead Advisor, plus 20% overheads

3. Research those with a legal interest	Local interests	16				
4. Contact key individuals to gauge support and identify concerns	Local interests	35				
Developing proposal for submission to Secretary of State						
5. Preparation and circulation of draft proposals	Local interests	35				–9
6. Open meeting for all interested parties	Local interests	8				
7. Address concerns raised at meeting through revising the proposals	Local interests	28				–7
8. Finalise proposed structure and arrangements	Local interests/Defra	20		8		–5
Preparation of establishment order						
9. Draft establishment order	Defra			15		
10. Publish draft order and invite representations	Defra				2	
11. Incorporate representations from the consultation as appropriate and finalise order	Defra/Local interests	4		4		
Formation of council						
12. Preparing and finalising list of those eligible to vote for, or become, a member (based on step 3 above)	Returning officer		12			
13. Arranging and advertising first meeting of the council and inviting nominations	Returning officer		4			

14. Holding an election of members	Returning officer		4			
15. Council established	Handover to new council members					
Total number of hours		154	20	27	2	–22
Cost per hour		£100	£17	£34	£17	£100
Total cost		£15,400	£340	£918	£34	–£2,200
		£15,740		**£952**		

Costs of operating a council

Costs for local interests

5.57 The cost estimates of operating a council in the Commons Bill RIA were £40,000 per annum for a large commons council and £10,000 for a smaller council.

5.58 The costs for an umbrella council are based on the operating costs of the DCC which are around £45,000 to £50,000 per annum. These are not dissimilar to estimates of the costs of operating statutory AONB Conservation Boards, for example, annual running costs in the Cotswolds and Chilterns were identified as being in a range of between £50,000 to £70,000 for each AONB.

5.59 Information has subsequently been obtained on the running costs of the Federation of Cumbria Commoners in 2007. Costs of £8,285 were incurred for the employment of an administrator, office costs, travel, conferences and AGM, accountancy and production of newsletters. It does not include additional expenses of a recurring nature, such as indemnity insurance, professional expertise and costs associated with developing and maintaining a live register. Further administrative work is also carried out on a voluntary basis. An estimated 88 days worked by the administrator of the Yorkshire Commoners' Federation in 2005 also provides an indication of the amount of administrative work that might be required by a council. This estimate includes work required to arrange the Federation's quarterly meetings, AGM, other visits and meetings with commoners and paperwork but does not include all aspects of the Federation's administration, which suggests that the number of paid hours required could easily be higher. A commons council might also employ a reeve or reeves to carry out active management of the common at further cost.

5.60 For a smaller commons council the RIA recognised that although a localised council would cost less to operate, there will still be a number of key running costs, such as the employment of an administrative person. However, office and rental arrangements may be more informal. For example, further breakdown suggests that, based on the employment of a part-time secretary with some land agent input, the employment and insurance costs of a smaller council could be in the region of £4,500. This would comprise £3,000 for the employment of an administrator, £500 for land agent's advice, and £1,000 for public liability and employer's liability insurance. Therefore, an estimate of £10,000 per annum would seem reasonable, taking into account the possibility of additional staff hours and advice and other direct and administrative costs associated with meetings and publicity.

5.61 A commons council will need to ensure it is able to sustain itself in the longer term. It is not proposed that continuing grant funding would be provided by Government, however, the Act includes ancillary powers to enable commons councils to raise money for their ongoing opera-

tion and to access funds. Section 7.2 of the guidance details the options available to a commons council for meeting its costs.

Establishment and operational costs for commoners

5.62 It will ultimately be for each council to decide how best to manage its finances. A council may be successful in attracting grant funding. Where a council is set-up to enter into an agri-environment agreement, a commons supplement may also be available to help cover the costs associated with some of the work undertaken by the council, in terms of entering into, and managing, the agreement.

5.63 The following estimates assume no such funding, and therefore, that all the money required is raised solely through the levying of fees from subscriptions paid by commoners. Subscriptions from other interests in the common are not considered here.

5.64 The operating costs estimated above assume sufficient funding for the employment of staff, however, under existing voluntary arrangements many office-holders and ordinary members give their unpaid time, farm facilities, expertise and experience to the work of the association. It will be for a commons council to decide on the level of contributions to any such work, but this could also significantly reduce the amount of money required through the levying of fees and thus help to reduce the cost per commoner.

5.65 Taking the assumptions used in the Commons Bill RIA, the following costs are calculated on the basis of a local commons council having around 38 commoners, while an umbrella council has some 380 commoner constituents. It may be decided to impose a flat-rate per commoner in this way, or alternatively, levies could be charged in accordance with common rights or per livestock unit.

Establishment costs per commoner (one-off)

Option 2 (legislation only)

- For a smaller council, the cost per commoner would be £414
- For an umbrella council, the cost per commoner would be £342

Option 3 (with full guidance and support)

- For a smaller council, the cost per commoner would be £356
- For an ‘umbrella’ council, the cost per commoner would be £294

Operating costs per commoner (per annum)

- For a smaller council, the cost per commoner would be £263
- For an ‘umbrella’ council, the cost per commoner would be £105

Other costs

5.66 Part 2 of the Act provides powers for the Secretary of State to wind-up a council in certain circumstances where it is failing to operate effectively. It can only be wound up by following the same process as that for setting up a council to ensure there is adequate consultation with local interests and substantial support for doing so. Given the estimate of 10 umbrella councils and 29 smaller councils forming under option 3 over a period of 20 years, it is expected that these powers will be used only rarely and therefore the overall costs to Defra will be very low.

Summary

5.67 The tables below summarise the anticipated national costs of implementing options 2 and 3. As these costs are provided for councils forming over a period of 20 years, the operational costs have been calculated on the basis of an average of 10 years per council (assuming that the formation of councils is evenly spread over the 20 years).

Summary of national costs of option 2

Size of council	Cost	Local interests	Government
(22) Smaller councils	Establishment	£346,280	£20,944
	Operational	£2,200,000	N/A
(7) Shadow councils	Establishment	£910,000	£54,600
	Operational	£2,800,000	N/A
Total of 4 cases	Public inquiries		£19,240
Total over 20 years		£6,256,280	£94,784
Average per year		£312,814	£4,739

Summary of national costs of option 3

Size of council	Cost	Local interests	Government
(29) Smaller councils	Establishment	£392,660	£27,608
	Operational	£2,900,000	N/A
(10) Shadow councils	Establishment	£1,118,000	£78,000
	Operational	£4,000,000	N/A
Total of 6 cases	Public inquiries		£28,860
Total over 20 years		£8,410,660	£134,468
Average per year		£420,533	£6,723

5.68 In addition to these quantified costs, a number of further non-monetised costs have been identified:

Cost	Impact /significance
Costs of legal advice and court action	Need for legal advice and advocacy associated with transgressors on a common. **Moderate significance**
Commoners having to actively police themselves	Potential for conflict between commoners. **Moderate significance**
Liability	Commons council could be held liable in some situations. **Low significance** (councils likely to take out insurance to safeguard against such costs)

6. Risk Assessment

6.1 The following risks are associated with the proposals:

- Commons councils fail to form due to a lack of incentives or perceived benefits. There are, however, no targets for the number of councils that should be formed. Government

only expects councils being set up where there is a clear benefit from doing so that will outweigh the costs of establishment and operation.

- Commoners may be reluctant to stand in judgement of their peers, thus undermining the power that commons councils can exercise.
- Those who currently work without payment in existing informal associations may want payment for dealing with the more formal requirements of a council.

7. Specific Impact Tests

Legal Aid

7.1 Part 2 enables commons councils to make rules relating to their functions, which are binding on all those using the common. Any breaches of rules will be enforceable by seeking a county court order. Alternatively, a criminal offence can be attached to some rules, for which proceedings may be taken in the magistrates' court.

7.2 Although the penalties for individuals found liable for breaching such rules could lead to custodial sentences, and therefore introduce a financial impact on legal aid, it is likely that this impact would be extremely small, as explained below.

7.3 We would not expect proceedings to be taken more than once every year. This is based on the example of the Dartmoor Commoners' Council, which has taken two legal actions in just over twenty years of having the same power (as the power to take action has proved to be a deterrent in itself). Extrapolated from this it is assumed that each large umbrella council formed will take legal action on, at most, two occasions during a twenty year period. Furthermore, we would make clear in guidance that criminal penalties should only be attached to a limited number of rules. This will be enforced through the requirement in the Act that the Secretary of State approves rules with criminal penalties attached. Guidance will also make clear the avenues to be pursued to first seek compliance with the rules, prior to any consideration of court action.

7.4 Even if court proceedings were taken, we would not expect the legal aid bill to be significant. The overall average legal aid cost (taking into account all fee types) of a magistrates court defence is £539. People may be able to receive legal aid to defend prosecutions in the magistrates' courts. However, they must satisfy the interests of justice test and means test. In the former test, an individual may receive legal aid if upon conviction he or she could suffer loss of livelihood or a custodial sanction. In the latter test, and after first satisfying the interests of justice test, an individual may receive legal aid if his or her income is below a certain threshold. It is estimated that 50 per cent of the population of England and Wales could satisfy the means test.

7.5 We would expect the frequency of proceedings to continue to the Crown Court to be extremely low — perhaps only once in every 20 years. Such cases would only arise in the event of the non-payment of fines. The overall average cost of a legal aid defence in the Crown Court is approximately £6,500. Therefore, the legal aid cost would be £6,500 over a 20 year period.

Carbon Impact Assessment

7.6 Commons councils will have no significant effect on carbon emissions, as the functions under Part 2 are generally administrative in nature. There may be some small effects at the margins, but the overall impact is unlikely to change significantly. Councils will help promote

improved management of commons, which may in turn help preserve moorland commons as important media for carbon sequestration: however, the cause and effect are insufficiently connected to be quantifiable.

Other Environmental Issues

7.7 Commons councils will facilitate the improved management of common land, which will indirectly deliver improvements in terms of landscapes, water quality and water resources, flood management, habitats and wildlife, and climate change mitigation on many of these commons. For example, they will help to achieve the Government's target of 95% of Sites of Special Scientific Interest (SSSIs) in favourable or recovering condition by 2010, by enabling commons to be more easily entered into agri-environment scheme agreements and thereby improving the condition of that land. Commons councils will have no direct implications in relation to waste management or noise pollution.

Health Impact Assessment

7.8 Commons councils will not directly impact on health or well being and will not result in health inequalities.

Race/Disability/Gender

7.9 There are no limitations on meeting the requirements of the commons council provisions on the grounds of race, disability or gender. Commons councils will not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the regulations.

Human Rights

7.10 Part 2 has been developed so as to conform with the Human Rights Act 1998. Commons councils will usually be public authorities within the meaning of the Human Rights Act 1998, and will therefore be subject to the duty not to act in a way which is incompatible with the Convention on Human Rights.

7.11 Part 2 includes provisions which engage Article 1 of the First Protocol to the Convention (right to property), since it gives commons councils powers to control the use of common land and the exercise of rights of common (including through rules with criminal penalties attached and to charge a fee to commoners, landowners etc.). We consider that these powers are in the public interest and are proportionate. Councils will help ensure that agricultural activities are managed in a sustainable manner, and it is in the public interest to enable them to achieve this purpose. Furthermore, we intend that the Secretary of State approves any draft rules proposed by a council, to ensure they are compliant with Human Rights legislation.

Rural Proofing

7.12 The significant majority of common land, and therefore the land over which commons councils might be formed, are located in rural areas. The effect of implementation is therefore skewed so as to have a disproportionate impact in rural areas, but the impact is expected to be positive and beneficial.

Sustainable Development

7.13 The introduction of commons councils is concerned with the sustainable agricultural management of common land and providing a mechanism to help the continuation of communal practices in the long term. This proposal is therefore in line with Sustainable Development principles.

Impact on small firms

7.14 The impact of Part 2 on small firms was considered in the Commons Bill RIA. The proposals will impact on some small firms that hold rights of common. It is expected that these will virtually all be small farming businesses engaged in the grazing of livestock, in particular, upland livestock farmers. In relation to the current proposal to implement option 3, the costs and benefits for small firms will therefore be no different from, or very similar to, those for individual commoners. Costs will arise from the payment of subscriptions and participation in the commons council as estimated in section 5.62 above. This may be based on the proportion of grazing rights held, or a payment per interest in the common, and will therefore vary from council to council.

7.15 Where a commons council assists with entry into an agri-environment agreement, the business will receive payment based on income forgone for improved management of the land. It is unlikely that a commons council would enter into such a scheme if it considered that the costs would be greater than the payments made, and therefore it is difficult to envisage any situation whereby a farming business would make significant losses from this, and in fact, they would be more likely to experience positive financial impacts.

Competition

7.16 To determine whether a proposal will have a significant impact on competition, the following four questions must be addressed in the competition assessment. The creation of commons councils will, in effect, limit the agricultural management of that common to the council, but this is not a consequence of the implementation of Part 2, or of the Act (as rights of common already limit this) and so is not within the scope of the competition assessment.

A. Directly limit the number or range of suppliers?
This is likely to be the case if the proposal involves:

- the award of exclusive rights to supply, or
- procurement from a single supplier or restricted group of suppliers, or
- the creation of a form of licensing scheme, or
- a fixed limit (quota) on the number of suppliers.

Conclusion: no effect as impact not relevant.

B. Indirectly limit the number or range of suppliers?
This is likely to be the case if the proposal significantly raises the costs:

- of new suppliers relative to existing suppliers,
- of some existing suppliers relative to others, or
- of entering or exiting an affected market.

Conclusion: no effect as impact not relevant.

C. Limit the ability of suppliers to compete?
This is likely to be the case if the proposal:

- controls or substantially influences
  - the price(s) a supplier may charge
  - the characteristics of the product(s) supplied, for example by setting minimum quality standards
- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or
- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

Conclusion: no effect as impact not relevant.

D. Reduce suppliers' incentives to compete vigorously?
This may be the case where a proposal:

- exempts suppliers from general competition law,
- introduces or amends intellectual property regime,
- requires or encourages the exchange between suppliers, or publication, of information on prices, costs, sales or outputs, or
- increases the costs to customers of switching between suppliers.

Conclusion: no effect as impact not relevant.

Overall impact: none.

8. Review

This policy will be reviewed in 2011 as part of the post-legislative scrutiny of the enabling legislation, the Commons Act 2006. A review that is specific to this intervention will be done in 2013. It is hoped that this latter review will fill the evidence gaps within this impact assessment, most notably those relating to the benefits of commons council formation.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.
Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Annex 1

Direct Staff Inputs: (£'s)		***Grade 7***	***SEO***	***HEO***	**TOTAL**
PAY	**(note 1)**	68,300	34,300	31,573	
SALARY COST		68,300	34,300	31,573	
GENERAL OVERHEAD		2,558	2,558	2,558	
SHARED SERVICES	**(note 1b**	3,100	3,100	3,100	
ACCOMMODATION COSTS	**(note 2)**	4,000	4,000	4,000	
TOTAL DIRECT STAFF COST		77,958	43,958	41,231	
TIME INPUT (HOURS)		10	35	30	
ACTUAL DIRECT STAFF COSTS	**(note 3)**	503	993	799	**2295**

Indirect Staff Costs: (£'s)		***SCS Band 2***	***Grade 5***	***Grade 6***
PAY	**(note 1)**	139,423	101,686	84,611
SALARY COST		139,423	101,686	84,611
GENERAL OVERHEAD		2,558	2,558	2,558
SHARED SERVICES	**(note 1b**)	3,100	3,100	3,100
ACCOMMODATION COSTS	**(note 2)**	4,000	4,000	4,000
TOTAL INDIRECT STAFF COST		149,081	111,344	94,269
TIME INPUT		3	5	10

(HOURS)					
ACTUAL INDIRECT STAFF COSTS	**(note 4)**	289	360	609	**1258**
Non-Pay Running Costs: (£'s)					
TRAVEL & SUBSISTENCE				444	
TRAINING					
STATIONERY, etc.				1000	**1,444**
Capital Costs: (£'s)					
DEPRECIATION	**(note 5)**				
INTEREST ON CAPITAL & INSURANCE	**(note 6)**				
Notional Insurance : (£'s)	**(note 7)**				**5**
TOTAL FULL COST					**5002**

DRAFT STATUTORY INSTRUMENTS

2010 No.

COMMONS, ENGLAND

The West Barsetshire Commons Council Establishment Order 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*1st July 2010*

The Secretary of State, has published a draft of this Order in the County of Barset and invited representations about it in accordance with section 27(2) of the Commons Act 2006(**a**).

Having regard to the representations made in accordance with section 27(4)(a) of that Act, and, in accordance with section 27(5) of that Act, having particular regard to representations received from persons of a kind there specified, the Secretary of State is satisfied that there is substantial support for the making of this Order.

In exercise of the powers conferred by sections 26, 29(3) and (4), 30, 31(1) to (4) and 59(1) of that Act, the Secretary of State makes the following Order.

Title and commencement

1. This Order may be cited as the West Barsetshire Commons Council Establishment Order 2010 and comes into force on 1st July 2010.

Interpretation

2. In this Order—

(a) "the 2006 Act" means the Commons Act 2006;

(b) "active grazier" means—

(i) in relation to the appointment of the first members of the Council, a commoner who the officer appointed under paragraph 1 of the Schedule determines has grazed animals upon one of the Commons in the period of 12 months immediately preceding the date of coming into force of this Order;

(ii) in relation to subsequent appointments, a commoner who is registered under article 8(2)(a) in the register kept by the Council pursuant to article 8;

(c) "the appointed day" means 1st October 2010;

(d) "commoner" has the meaning it is given in the Standard Constitution;

(**a**) 2006 c.26; section 61(1) defines the "appropriate national authority" as the Secretary of State, in relation to England.

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(e) "the Commons" means the areas referred to in article 3;

(f) "the Council" means the West Barsetshire Commons Council established by article 3;

(g) "the Standard Constitution" means the constitution which, by virtue of section 29(2) of the 2006 Act, applies to the Council (subject to contrary or inconsistent provision in an order under section 26 of that Act(**a**)), being the constitution set out in the Schedule to the Commons Councils (Standard Constitution) (England) Regulations 2010(**b**).

Establishment of the Council

3. With effect from the appointed day a commons council, to be known as the West Barsetshire Commons Council, is established for the areas of registered common land known as Allington Common, Framley Common and Hogglestock Common and registered in the register of common land kept by Barset County Council as register units CL16, CL17 and CL18.

Membership of the Council

4.—(1) The Council is to consist of not less than 10 and not more than 12 members, of whom—

(a) three are to be elected by the active graziers on Allington Common from among themselves;

(b) two are to be elected by the active graziers on Framley Common from among themselves;

(c) one is to be elected by active graziers on Hogglestock Common from among themselves;

(d) one is to be elected by the commoners who are not active graziers from among themselves;

(e) two are to be elected by the owners of the Commons to represent their interests;

(f) one is to be appointed by Plumstead Episcopi parish council; and

(g) up to two may be co-opted by the Council.

(2) Elections and appointments of members of the Council under sub-paragraphs (a) to (f) of paragraph (1) are first to be held and made before the appointed day and thereafter between 1st July and 30th September every third year.

(3) Each member so elected or appointed is to hold office (unless the member resigns or dies or paragraph (4) applies)—

(a) in the case of the first election or appointment, from the appointed day until 30th September 2013; and

(b) thereafter, for three years from the 1st October next following their election or appointment.

(4) A person elected as a member of the Council pursuant to any of sub-paragraphs (a) to (d) of paragraph (1) ceases to be a member of the Council if at any time during the period of membership that person ceases to fall within the description of persons mentioned in the relevant sub-paragraph.

(5) The Schedule makes further provision about the election and appointment of members.

Functions of the Council

5. The Council has the following functions—

(a) making rules relating to—

(i) agricultural activities, the management of vegetation and the exercise of rights of common on the Commons; and

(ii) the leasing and licensing of rights of common;

(**a**) See section 29(5) of the Commons Act 2006.
(**b**) S.I. 2010/XXXX.

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(b) maintaining a register of the grazing of animals on each of the Commons in accordance with article 8;

(c) maintaining and securing fences or other boundaries on land forming part of the Commons or between the Commons and adjoining land (including the enforcement of any obligation upon another person to fence against the Commons);

(d) removing unauthorised fences or other encroachments upon the Commons;

(e) removing animals unlawfully permitted to graze on the Commons;

(f) managing vegetation on the Commons; and

(g) managing the exercise of rights of common on the Commons.

Rules: further provision

6. Rules under article 5(a)(i) may in particular include provision—

(a) limiting periods when animals may be turned out onto the Commons;

(b) limiting the number of animals which may be turned out onto the Commons during a specified period (for example, by restricting each commoner with rights to graze animals from exercising more than a specified proportion of those rights during the specified period);

(c) restricting or prohibiting the turning out of entire animals;

(d) about measures to be taken to control disease among animals on the Commons, including temporary prohibition of the grazing of animals on the Commons;

(e) about the supplementary feeding of animals on the Commons;

(f) about standards of husbandry to be followed by persons keeping animals on the Commons; and

(g) requiring, from any person to be entered in the register maintained in accordance with article 8, the information described in that article.

Procedure for making, amending or revoking rules

7.—(1) Rules to be made under article 5(a), or any amendments to such rules (other than an amendment consisting solely of the revocation of one or more rules), must be confirmed by the Secretary of State before coming into force.

(2) At least one month before it applies to the Secretary of State for confirmation of the proposed rules, the Council must—

(a) publish notice of its intention to apply for confirmation—

(i) in one or more local newspapers circulating in the area of West Barsetshire, and

(ii) together with a copy of the proposed rules, on a website;

(b) give notice in writing of its intention to such persons (if any) as it considers represent the interests of commoners;

(c) deposit a copy of the proposed rules with—

(i) the proper officer of Barset County Council,

(ii) the proper officer of West Barsetshire District Council, and

(iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972(**a**) and make it available for inspection and the making of copies in accordance with section

(**a**) 1972 c.70. Section 225 contains amendments not relevant to its application to article 7. Section 228 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46. There are other amendments to section 228 which are not relevant to its application to the authorities referred to in article 7(2)(c).

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228 of that Act, in each case until such time as the proposed rules in question are either confirmed or confirmation of them is refused; and

(d) send a copy of the proposed rules to—

(i) every commoner whose name and address appears in the register maintained in accordance with article 8; and

(ii) every person known to the Council to be an owner of land forming part of the Commons.

(3) The Council must on an application made to it provide to any person a copy of the rules (before or after confirmation), on payment of a charge of such amount as the Council may reasonably determine.

(4) If any written representations are served on the Council before it applies for confirmation of the rules, the Council must send a copy of the representations to the Secretary of State with the application for confirmation, and the Secretary of State must take account of any such representations in deciding whether to confirm the rules.

(5) The Secretary of State may confirm, or refuse to confirm, any rules submitted under this article for confirmation, but reasons must be given to the Council if the Secretary of State refuses to confirm them.

(6) Upon confirming any rules, the Secretary of State may fix the date on which the rules are to come into operation, and if no date is so fixed the rules shall come into operation one month after the date of their confirmation.

(7) When rules have been confirmed by the Secretary of State, the Council must, at least 14 days before the rules come into operation—

(a) publish notice of their confirmation, together with a copy of the rules, on a website;

(b) deposit a copy with—

(i) the proper officer of Barset County Council,

(ii) the proper officer of West Barsetshire District Council, and

(iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972 and make it available for inspection and the making of copies in accordance with section 228 of that Act, in each case for as long as those rules remain in force; and

(c) give notice in writing to—

(i) such persons (if any) as it considers represent the interests of commoners;

(ii) every commoner whose name and address appears in the register maintained in accordance with article 8; and

(iii) every person known to the Council to be an owner of land forming part of the Commons,

of both the confirmation of the rules and the date on which they come into force.

(8) Where the Council is acting solely to revoke any rules made under article 5(a), not less than 14 days before the revocation comes into effect the Council must—

(a) give notice in writing of the revocation, and the date on which it comes into effect, to—

(i) the Secretary of State;

(ii) the proper officer of Barset County Council;

(iii) the proper officer of West Barsetshire District Council;

(iv) the chairman of each parish council and parish meeting within the area of the Commons;

(v) such persons (if any) as it considers represent the interests of commoners;

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(vi) every commoner whose name and address appears in the register maintained in accordance with article 8; and

(vii) every person known to the Council to be an owner of land forming part of the Commons; and

(b) publish notice of the revocation, together with a copy of the rules, on a website.

Register to be maintained by Council

8.—(1) The Council is to prepare before 1st April 2011, and thereafter to keep, a register containing the following information—

(a) the name and address of each commoner who at any time exercises a right of common to graze animals on any area forming part of the Commons;

(b) the name and address of each person who at any time exercises any other right to graze animals on any area forming part of the Commons;

(c) the name and address of any other person who is a commoner and who applies to be entered in the register, together with a description of that person's right of common and an explanation of that person's entitlement to exercise that right;

(d) as respects each person falling within paragraph (a) or (b) above—

(i) a description of that person's right of common, or other right, to graze animals and an explanation of that person's entitlement to exercise that right;

(ii) on which area forming part of the Commons that person grazes animals;

(iii) the number, types and breeds of animals which for the time being that person grazes on that area;

(iv) the period during which such grazing takes place; and

(v) the mark, tag or other method by which the ownership of those animals may be identified; and

(e) such other information as the Council thinks fit,

(but not including information as to any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered).

(2) Any person who—

(a) has lawfully grazed an animal or animals on any part of the Commons in the preceding 12 months, or

(b) proposes to exercise a right to graze animals on any part of the Commons,

may apply to the secretary of the Council to be entered in the register, giving such information as is reasonably required.

(3) Any person who is entered in the register may, if—

(a) that person is no longer grazing animals on the common, or

(b) there is any other change in the relevant information recorded in the register,

apply to the secretary of the Council for the entry in the register to be amended or removed.

(4) Any member of the public may, on application to the secretary of the Council, make an appointment to inspect the register without charge.

(5) Any person objecting to any information recorded in the register, or to the omission of any information from the register, may complain in writing to the secretary of the Council, and the Council must consider the complaint and give the person notice of its decision in writing.

Appointment of reeves

9.—(1) The Council may appoint such persons as it thinks necessary to act as reeves for the purposes of—

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(a) enforcing or securing compliance with rules made by the Council; and

(b) carrying out any activities on the Commons (such as managing vegetation, or removing animals turned out on to the Commons without lawful authority) in pursuance of the functions of the Council.

(2) Any reeve acting pursuant to an appointment under this article must carry a warrant issued by the Council as to that appointment and produce it if required.

Decisions requiring special majority

10.—(1) A decision by the Council on any of the matters specified in paragraph (2) must be made at a meeting of the Council and approved in a vote by a majority of at least two-thirds of the members present.

(2) Those matters are—

(a) making, amending or revoking any rules;

(b) making, amending or revoking any standing orders;

(c) entering into any agreement under which the Council undertakes any obligation as to the manner in which it is to exercise any of its functions;

(d) co-opting any person as a member of the Council.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

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THE SCHEDULE

Articles 2 and 4(5)

ELECTION AND APPOINTMENT OF MEMBERS

Election and appointment of first members of the Council

1. The Secretary of State must appoint a returning officer to facilitate the election of the first members of the Council.

2. For the purpose of the first elections of the members of the Council under article 4(1)(a) to (e), the returning officer must compile in relation to each of the Commons a list of each of the following—

(a) persons who appear to the returning officer to be active graziers upon that common;

(b) persons who appear to that officer to be commoners who are not active graziers; and

(c) persons who appear to that officer to own the common or part of the common.

3. In relation to each list, only persons included on the list are entitled to vote in the election of members of the category listed.

4. Before finalising the lists under paragraph 2, the returning officer must—

(a) by advertisement in a local newspaper circulating in the area of the Commons, specify a period (ending not less than 28 days after the date of publication of the notice) within which the draft lists may be inspected and representations may be made about them, and give details of the dates, times and place at which such inspection may be made, and of the website on which publication is required under sub-paragraph (c);

(b) make available for inspection a draft of each list during the period and at the place specified under sub-paragraph (a); and

(c) publish on a website both the notice and draft lists throughout the period specified under sub-paragraph (a).

5. In compiling and finalising the lists under paragraph 2(a) and (b), the returning officer must presume any declaration of entitlement to a right of common(**a**) contained in the register of common land kept by Barset County Council to be accurate.

6. The returning officer may request further information from any person who makes representations under paragraph 4(a), and in particular may require proof of ownership of, or (as applicable) other title to, land from—

(a) any person claiming to be entitled to be included on a list under paragraph 2(a) or (b) as the owner or tenant of land to which a right of common is registered as being attached; and

(b) any person claiming to be entitled to be included on a list under paragraph 2(c) as the owner of land forming part of the Commons.

7. In drawing up the final lists, the returning officer—

(a) must take account, subject to sub-paragraph (b), of any representations received within the time specified under paragraph (4)(a) and any further information provided pursuant to a request under paragraph 6;

(**a**) Regulation 44 of the Commons Registration (England) Regulations 2008 (S.I. 2008/1961) provides for the making of declarations of entitlement to a right of common.

Model Order

(b) must not take account of any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered.

8. The decision of the returning officer as to whether or not any person is entitled to be included on any list is conclusive, and the validity of the election shall not be questioned in any legal proceedings on the ground that any person should have been included in or omitted from any list.

9. The returning officer must, not less than 28 days before the first meeting of the Council, by advertisement in a local newspaper circulating in the area of the Commons—

(a) give notice of the holding of the initial meeting of the Council; and

(b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received.

10. The only persons eligible to be nominated for election as members of the Council are—

(a) in respect of persons to be elected under article 4(1)(a) to (c), the persons included on the relevant list compiled pursuant to paragraph 2(a);

(b) in respect of persons to be elected under article 4(1)(d), the persons included on the relevant list compiled pursuant to paragraph 2(b);

(c) in respect of persons to be elected under article 4(1)(e), the persons included on the relevant list compiled pursuant to paragraph 2(c), or any other person nominated by a person included on those lists.

11. Plumstead Episcopi parish council must, before the date of the first meeting, notify the returning officer in writing of the name of the person whom it wishes to appoint as a member of the Council pursuant to article 4(1)(f).

12. At the first meeting—

(a) the returning officer must announce the valid nominations received for membership of the Council; and

(b) in relation to any of the categories mentioned in article 4(1)(a) to (e)—

(i) where the number of valid nominations does not exceed the number of vacancies to be filled, the returning officer must declare the candidate or candidates to be duly elected unopposed; and

(ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

Election and appointment of subsequent members

13. For each subsequent occasion on which new members of the Council are to be elected under any of sub-paragraphs (a) to (e) of article 4(1), or for the purposes of any election to fill a casual vacancy caused by a person so elected ceasing to be a member, the secretary of the Council or another member chosen by the Council is to act as returning officer.

14. On any such subsequent occasion, a person may only be elected as a member or vote in an election if—

(a) in the case of an active grazier, the person is entered under article 8(1)(a) in the register kept by the Council;

(b) in the case of any other commoner, the person is entered under article 8(1)(c) in the register;

(c) in the case of an owner of any part of the Commons, the person provides the returning officer with such evidence of his ownership as the returning officer may reasonably require.

15. Where the membership of the person appointed by Plumstead Episcopi parish council expires, or a casual vacancy arises for that position, the parish council must notify the secretary of the Council of the person whom it wishes to appoint as a member.

Model Order

16. Members are to be elected or appointed, and any elections are to be conducted, in accordance with the standing orders of the Council.

General provisions

17. In any election of members of the Council—

(a) each commoner entitled to vote is entitled to one vote;

(b) each owner of the Commons entitled to vote has a vote that is weighted in proportion to the extent of his ownership, but may cast that vote only in respect of one candidate;

(c) where two or more persons are commoners or owners by virtue of a joint holding, they are not each entitled to vote but may jointly nominate one of them to be entitled to vote; and

(d) the returning officer may allow a person entitled to vote to appoint a proxy in writing to vote on that person's behalf.

18. A declaration signed by the returning officer of the election of a person to the Council is evidence of such election.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes, with effect from 1st October 2010, a commons council ("the Council") for the areas of registered common land known as Allington Common, Framley Common and Hogglestock Common within West Barsetshire (*article 3*).

The standard constitution for commons councils, as prescribed in the Commons Councils (Standard Constitution) (England) Regulations 2010 (S.I. 2010/XXXX), applies to the Council by virtue of section 29(2) of the Commons Act 2006 (c. 26).

This Order—

(a) makes provision as to the Council's membership, and its election or appointment (*article 4 and the Schedule*);

(b) confers functions on the Council, including that of making rules relating to agricultural activities, the management of vegetation, and the exercise of, and the leasing and licensing of, rights of common (*articles 5 and 6*);

(c) requires that any rule made or amended by the Council (other than an amendment consisting solely of the revocation of any previously made rule) must be confirmed by the Secretary of State before it shall come into force, and describes the procedure for publicising any rules it makes, and for obtaining the Secretary of State's confirmation of them (*article 7*);

(d) describes the information to be included in the register of grazing required to be prepared and maintained by the Council (*article 8*);

(e) permits the Council to appoint reeves, for the purpose of enforcing or securing compliance with any of its rules, and for carrying out other of the activities in pursuance of the council's functions (*article 9*);

(f) specifies those matters (including the making, amending or revoking of any rules) in which a decision of the Council requires a special majority of two-thirds of the members present (*article 10*).

A full impact assessment of the effect this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk.

Model Order

2010 No.

COMMONS, ENGLAND

The Barset National Park Commons Council Establishment Order 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*1st August 2010*

The Secretary of State has published a draft of this Order in the County of Barset and invited representations about it in accordance with section 27(2) of the Commons Act 2006(**a**), and has caused a local inquiry to be held in accordance with section 27(3) of that Act.

Having regard to the matters specified in section 27(4) of that Act, and, in accordance with section 27(5) of that Act, having particular regard to representations received from persons of a kind there specified, the Secretary of State is satisfied that there is substantial support for the making of this Order.

In exercise of the powers conferred by sections 26, 29(3) and (4), 30, 31(1) to (4) and 59(1) of that Act, the Secretary of State makes the following Order.

Title and commencement

1. This Order may be cited as the Barset National Park Commons Council Establishment Order 2010 and comes into force on 1st August 2010.

Interpretation

2. In this Order—

(a) "the 2006 Act" means the Commons Act 2006;

(b) "active grazier" means—

(i) in relation to the appointment of the first members of the Council, a commoner who the officer appointed under paragraph 1 of Schedule 1 determines has grazed animals upon the Commons in the period of two years immediately preceding the date of coming into force of this Order;

(ii) in relation to subsequent appointments, a commoner who is registered under article 8(2)(a) in the register kept by the Council pursuant to article 8;

(c) "the appointed day" means 1st February 2011;

(d) "commoner" has the same meaning as it is given in the Standard Constitution;

(**a**) 2006 c. 26; section 61(1) defines the "appropriate national authority" as the Secretary of State, in relation to England.

Model Order

(e) "the Commons" means all the areas of land within the boundaries of Barset National Park which are for the time being relevant land, and for this purpose "relevant land" means land which—

(i) before the date on which this Order comes into force was registered as common land; and

(ii) continues to be registered as common land;

(f) "the Council" means the Barset National Park Commons Council established by article 3;

(g) "quarter" means one of the four sub-divisions of Barset National Park shown edged red and respectively marked "north quarter", "east quarter", "south quarter" and "west quarter" on the map signed on behalf of the Secretary of State and dated 1st July 2010 and deposited with the proper officer of the Barset National Park Authority;

(h) "the Standard Constitution" means the constitution which, by virtue of section 29(2) of the 2006 Act, applies to the Council (subject to contrary or inconsistent provision in an order under section 26 of that Act(**a**)), being the constitution set out in the Schedule to the Commons Councils (Standard Constitution) (England) Regulations 2010(**b**).

Establishment of the Council

3.—(1) With effect from the appointed day a commons council, to be known as the Barset National Park Commons Council, is established for the Commons.

Membership of the Council

4.—(1) The Council is to consist of not less than 26 and not more than 28 members, of whom—

(a) for each of the four quarters, four are to be elected by the active graziers on land registered as common land in that quarter;

(b) for each of the four quarters, one is to be elected by the commoners with rights of common over land in that quarter who are not active graziers;

(c) two are to be appointed by the Barset National Park Authority;

(d) one is to be appointed by the Duke of Omnium;

(e) two are to be elected by the owners of lands forming part of the Commons, other than the Barset National Park Authority and the Duke of Omnium;

(f) one, who must be a veterinary surgeon, is to be appointed by the members referred to in sub-paragraphs (a) to (e); and

(g) up to two other members may be co-opted by the Council.

(2) Elections and appointments of members of the Council under sub-paragraphs (a) to (e) of paragraph (1) are first to be held or made before the appointed day.

(3) Of the members first elected or appointed under those sub-paragraphs (unless a member resigns or dies, or Schedule 1 provides differently)—

(a) the following are to hold office from the appointed day until 31st January 2015—

(i) two of the members elected pursuant to paragraph (1)(a) for each of the four quarters (as determined in accordance with Schedule 1);

(ii) the members elected pursuant to paragraph (1)(b) for the east quarter and the west quarter;

(iii) one of the members appointed pursuant to paragraph (1)(c) (as determined by the Barset National Park Authority);

(iv) the member appointed pursuant to paragraph (1)(d); and

(**a**) See section 29(5) of the Commons Act 2006.
(**b**) S.I. 2010/XXXX.

Model Order

(v) one of the members elected pursuant to paragraph (1)(e) (as determined in accordance with Schedule 1); and

(b) the remaining members are to hold office from the appointed day until 31st January 2013.

(4) Elections and appointments of subsequent members of the Council under sub-paragraphs (a) to (e) of paragraph (1) are to be held or made before 1st February in 2013 and in every second year thereafter, to replace those members whose terms of office expire in that year.

(5) Each member so elected or appointed is to hold office (unless the member resigns or dies, or Schedule 1 provides differently) for four years from the 1st February next following their election or appointment.

(6) The appointment of a member of the Council under paragraph (1)(f) is first to be made by 1st April 2011, and thereafter by 1st April in every fourth year.

(7) A member so appointed is to hold office (unless the member resigns or dies, or Schedule 1 provides differently)—

(a) in the case of the first appointment, from the date of appointment until 31st March 2015; and

(b) thereafter, for four years from the 1st April next following the appointment.

Functions of the Council

5. The Council has the following functions—

(a) making rules relating to—

(i) agricultural activities, the management of vegetation and the exercise of rights of common on the Commons;

(ii) the leasing and licensing of rights of common;

(b) maintaining a register of the grazing of animals on each of the Commons in accordance with article 8;

(c) maintaining and securing fences or other boundaries on land forming part of the Commons or between the Commons and adjoining land (including the enforcement of any obligation upon another person to fence against the Commons);

(d) removing unauthorised fences or other encroachments upon the Commons;

(e) removing animals unlawfully permitted to graze on the Commons;

(f) managing vegetation on the Commons; and

(g) managing the exercise of rights of common on the Commons.

Rules: further provision

6.—(1) Rules under article 5(a)(i) may in particular include provision—

(a) limiting periods when animals may be turned out onto the Commons;

(b) limiting the number of animals which may be turned out onto the Commons during a specified period (for example, by restricting each commoner with rights to graze animals from exercising more than a specified proportion of those rights during the specified period);

(c) restricting or prohibiting the turning out of entire animals;

(d) about measures to be taken to control disease among animals on the Commons, including temporary prohibition of the grazing of animals on the Commons;

(e) about the supplementary feeding of animals on the Commons;

(f) about standards of husbandry to be followed by persons keeping animals on the Commons; and

(g) requiring, from any person to be entered in the register maintained in accordance with article 8, the information described in that article.

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(2) Rules may be made under article 5(a)(i) applying to—

(a) all of the Commons; or

(b) such of the areas of land comprised in the Commons as are specified in the rules.

Procedure for making, amending or revoking rules

7.—(1) Rules to be made under article 5(a), or any amendments to such rules (other than an amendment consisting solely of the revocation of one or more rules), must be confirmed by the Secretary of State before coming into force.

(2) At least one month before it applies to the Secretary of State for confirmation of the proposed rules, the Council must—

(a) publish notice of its intention to apply for confirmation—

(i) in one or more local newspapers circulating in the area of the Barset National Park, and

(ii) together with a copy of the proposed rules, on a website;

(b) give notice in writing of its intention to such persons (if any) as it considers represent the interests of commoners;

(c) deposit a copy of the proposed rules with—

(i) the proper officer of the Barset National Park Authority,

(ii) the proper officers of Barset Vale District Council and East Barsetshire District Council, and

(iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972(**a**) and make it available for inspection and the making of copies in accordance with section 228 of that Act, in each case until such time as the proposed rules in question are either confirmed or confirmation of them is refused; and

(d) post a copy of the proposed rules, together with a statement of its intention to apply for confirmation of them, in a prominent place on or in the locality of each area of land forming part of the Commons.

(3) The Council must on an application made to it provide to any person a copy of the rules (before or after confirmation), on payment of a charge of such amount as the Council may reasonably determine.

(4) If any written representations are served on the Council before it applies for confirmation of the rules, the Council must send a copy of the representations to the Secretary of State with the application for confirmation, and the Secretary of State must take account of any such representations in deciding whether to confirm the rules.

(5) The Secretary of State may confirm, or refuse to confirm, any rules submitted under this article for confirmation, but reasons must be given to the Council if the Secretary of State refuses to confirm them.

(6) Upon confirming any rules, the Secretary of State may fix the date on which the rules are to come into operation, and if no date is so fixed the rules shall come into operation one month after the date of their confirmation.

(7) When rules have been confirmed by the Secretary of State, the Council must, at least 14 days before the rules come into operation—

(**a**) 1972 c.70. Section 225 contains amendments not relevant to its application to article 7. Section 228 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46. There are other amendments to section 228 which are not relevant to its application to the authorities referred to in article 7(2)(c). Sections 225(1) and 228 have effect as if, for the purpose of those provisions, a National Park Authority were a local authority, by virtue of paragraph 17(2) of Schedule 7 to the Environment Act 1995 (c. 25).

Model Order

(a) publish notice of their confirmation, together with a copy of the rules, on a website.

(b) give notice in writing to such persons (if any) as it considers represent the interests of commoners;

(c) deposit a copy of the rules with—

(i) the proper officer of the Barset National Park Authority,

(ii) the proper officers of Barset Vale District Council and East Barsetshire District Council, and

(iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972 and make it available for inspection and the making of copies in accordance with section 228 of that Act, in each case for as long as those rules remain in force; and

(d) post a copy of the rules, together with—

(i) a statement that they have been confirmed, and

(ii) the date on which they come into force,

in a prominent place on or in the locality of each area of land forming part of the Commons.

(8) Where the Council is acting solely to revoke any rules made under article 5(a), not less than 14 days before the revocation comes into effect the Council must—

(a) post notice of the revocation of the rules, and the date on which it comes into effect, in a prominent place on or in the locality of each area of land forming part of the Commons;

(b) give notice in writing of the revocation of the rules, and the date on which it comes into effect, to—

(i) the Secretary of State;

(ii) the proper officer of the Barset National Park Authority;

(iii) the proper officers of Barset Vale District Council and East Barsetshire District Council;

(iv) the chairman of each parish council and parish meeting within the area of the Commons; and

(v) such persons (if any) as it considers represent the interests of commoners; and

(c) publish notice of the revocation, together with a copy of the rules, on a website.

Register to be maintained by Council

8.—(1) The Council is to prepare before 1st August 2011, and thereafter to keep, a register which must contain the following information—

(a) the name and address of each commoner who at any time exercises a right of common to graze animals on any area forming part of the Commons;

(b) the name and address of each person who at any time exercises any other right to graze animals on any area forming part of the Commons;

(c) the name and address of any other person who is a commoner and who applies to be entered in the register;

(d) as respects each person falling within paragraph (a) or (b)—

(i) a description of that person's right of common, or other right, to graze animals and an explanation of his entitlement to exercise that right, and

(ii) in which quarter and on which area forming part of the Commons that person grazes animals; and

(e) as respects each person falling within paragraph (c)—

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(i) a description of that person's right of common, including in which quarter it may be exercised, and

(ii) an explanation of that person's entitlement to exercise that right,

(but not including information as to any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered).

(2) The register may also contain such further information as the Council thinks fit to record relating to the grazing of animals on the Commons, including for example—

(a) the number, types and breeds of animals grazed on any area of land forming part of the Commons, and the distribution of animals on different parts of any such area;

(b) the period during which such grazing takes place; and

(c) the mark, tag or other method by which the ownership of those animals may be identified.

(3) Any person who—

(a) has lawfully grazed an animal or animals on any part of the Commons in the preceding two years, or

(b) proposes to exercise a right to graze animals on any part of the Commons,

may apply to the secretary of the Council to be entered in the register, giving such information as is reasonably required.

(4) Any person who is entered in the register may, if—

(a) that person is no longer grazing animals on the common, or

(b) there is any other change in the relevant information recorded in the register,

apply to the secretary of the Council for the entry in the register to be amended or removed.

(5) Any member of the public may, on application to the secretary of the Council, make an appointment to inspect the register without charge.

(6) Any person objecting to any information recorded in the register, or to the omission of any information from the register, may complain in writing to the secretary of the Council, and the Council must consider the complaint and give the person notice of their decision in writing.

Appointment of reeves

9.—(1) The Council may appoint such persons as it thinks necessary to act as reeves for the purposes of—

(a) enforcing or securing compliance with rules made by the Council; and

(b) carrying out any activities on the Commons (such as managing vegetation, or removing animals turned out on to the Commons without lawful authority) in pursuance of the functions of the Council.

(2) Any reeve acting pursuant to an appointment under this article must carry a warrant issued by the Council as to that appointment and produce it if required.

Decisions of the Council

10.—(1) Schedule 2 makes provision about the manner in which decisions are to be taken by the Council.

(2) The application of paragraph 9 of the Standard Constitution is subject to Schedule 2.

Vacancies in membership of the Council

11.—(1) Paragraph 18 of the Standard Constitution applies subject to paragraph (2).

(2) If, for any quarter, all four of the posts to be filled by election under article 4(1)(a) are vacant, the Council may act only for the purpose of holding a by-election in that quarter to fill those vacancies.

Model Order

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

SCHEDULE 1 Articles 2 and 4(3), (5) and (7)

Election and appointment of members of the Council

Election and appointment of first members of the Council

1. The Secretary of State must appoint a returning officer to facilitate the election and appointment of the first members of the Council.

2. For the purpose of the first elections of the members of the Council under article 4(1)(a) and (b), the returning officer must, in relation to each quarter, compile a list of each of the following—

(a) persons who appear to the returning officer to be active graziers on land registered as common land in that quarter; and

(b) persons who appear to that officer to be commoners who are not within sub-paragraph (a), but are entitled to exercise rights of common over land registered as common land in that quarter.

3. For the purpose of the first election of members of the Council under article 4(1)(e), the returning officer must compile a list of the persons, other than the Duke of Omnium and the Barset National Park Authority, who appear to the returning officer to own any land forming part of the Commons.

4. In relation to each list, only persons included on the list are entitled to vote in the election of members of the category listed.

5.—(1) Sub-paragraph (2) applies in relation to a commoner who is entitled to exercise rights of common over land in more than one quarter.

(2) The commoner must be included on a list compiled under paragraph 2 for at least one quarter in which the rights are exercisable (to be that for the quarter notified by the commoner to the returning officer or, in the absence of such notification, that for such quarter as the returning officer decides), and must also be included on the list for any one or more other quarters in respect of which the rights are exercisable if the commoner so wishes and has notified the returning officer accordingly (and, consequently, the commoner is entitled to vote at the election meetings held in each of the quarters in respect of which the commoner is listed).

6. Before finalising the lists under paragraphs 2 and 3, the returning officer must—

(a) by advertisement in one or more local newspapers circulating in the area of the Commons, specify a period (ending not less than 28 days after the date of publication of the notice) within which the draft lists may be inspected and representations may be made about them, and give details of the dates, times and place at which such inspection may be made, and of the website on which publication is required under sub-paragraph (c);

(b) make available for inspection a draft of each list during the period and at the place specified under sub-paragraph (a);

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(c) publish on a website both the notice and draft lists throughout the period specified under sub-paragraph (a); and

(d) in drawing up the final lists, take account of any representations received within the time specified under sub-paragraph (a).

7. In compiling and finalising the lists under paragraph 2, the returning officer—

(a) must presume any declaration of entitlement to a right of common(**a**) contained in the register of common land kept by Barset County Council to be accurate; and

(b) must not take account of any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered.

8. The returning officer may request further information from any person who makes representations under paragraph 6(a), and in particular may require proof of ownership of, or (as applicable) other title to, land from—

(a) any person claiming to be entitled to be included on a list under paragraph 2 as the owner or tenant of land to which a right of common is registered as being attached; and

(b) any person claiming to be entitled to be included on the list under paragraph 3 as the owner of land.

9. In drawing up the final lists, the returning officer must take account of any representations received within the time specified under paragraph 6(a) and any further information provided pursuant to a request under paragraph 8.

10. The decision of the returning officer as to whether or not any person is entitled to be included on any list is conclusive, and the validity of the election may not be questioned in any legal proceedings on the ground that any person should have been included in or omitted from any list.

11.—(1) The returning officer must arrange a time, date and place for—

(a) an election meeting for each of the four quarters; and

(b) the first meeting of the Council.

(2) The election meeting for each quarter must be held—

(a) at a place within that quarter; and

(b) before the appointed day, but on a different date from the election meeting for any other quarter.

(3) The first meeting of the Council must be held—

(a) at a place within Barset National Park; and

(b) before the appointed day, but after the election meetings for each of the four quarters.

12. The returning officer must, not less than 28 days before the first of the meetings arranged under paragraph 11(1), by advertisement in one or more local newspapers circulating in the area of the Commons—

(a) give notice of the holding of those meetings; and

(b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received.

13. The only persons eligible to nominate persons for election as members of the Council are—

(a) in relation to each quarter—

(i) in respect of persons to be elected under article 4(1)(a), the persons included on the list compiled pursuant to paragraph 2(a) for that quarter; and

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(**a**) Regulation 44 of the Commons Registration (England) Regulations 2008 (S.I. 2008/1961) provides for the making of declarations of entitlement to a right of common.

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(ii) in respect of persons to be elected under article 4(1)(b), the persons included on the list compiled pursuant to paragraph 2(b) for that quarter; and

(b) in respect of persons to be elected under article 4(1)(e), the persons included on the list compiled pursuant to paragraph 3.

14. At the election meeting for each quarter—

(a) the returning officer must announce the valid nominations received for membership of the Council pursuant to article 4(1)(a) and (b) in relation to that quarter; and

(b) in relation to the categories mentioned in article 4(1)(a) and (b)—

(i) where the number of valid nominations does not exceed the number of vacancies to be filled, the returning officer must declare the candidate or candidates to be duly elected unopposed; and

(ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

15.—(1) Where an election by ballot is held for the election of members of the Council under article 4(1)(a) in relation to any quarter—

(a) the two candidates receiving the highest numbers of votes are to stand elected as members from the appointed day until 31st January 2015; and

(b) the two candidates receiving the next highest numbers of votes are to stand elected as members from the appointed day until 31st January 2013.

(2) Where members are elected unopposed under article 4(1)(a), or where two or more candidates receive the same number of votes in a ballot, their periods of membership are to be decided by lot.

16. The Barset National Park Authority and the Duke of Omnium must, before the date of the first meeting of the Council, notify the returning officer in writing of the names of the persons whom they wish to appoint as members of the Council pursuant to article 4(1)(c) and (d).

17. At the first meeting of the Council—

(a) the returning officer must announce the names of—

(i) the persons elected as members of the Council pursuant to article 4(1)(a) and (b) for each of the four quarters;

(ii) the persons appointed as members of the Council by the Barset National Park Authority and the Duke of Omnium pursuant to article 4(1)(c) and (d); and

(iii) the valid nominations received for membership of the Council pursuant to article 4(1)(e);

(b) in relation to the election of members under article 4(1)(e)—

(i) if the number of nominations is not greater than two, the returning officer must declare the candidate or candidates to be duly elected unopposed; and

(ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

18.—(1) Where an election by ballot is held for the election of members of the Council under article 4(1)(e)—

(a) the candidate receiving the highest numbers of votes is to stand elected as a member from the appointed day until 31st January 2015; and

(b) the candidate receiving the next highest number of votes is to stand elected as a member from the appointed day until 31st January 2013.

(2) Where members are elected unopposed under article 4(1)(e), or where two candidates receive the same number of votes in a ballot, their periods of membership are to be decided by lot.

Model Order

Appointment of subsequent members

19. For each subsequent occasion on which new members of the Council are to be elected under any of sub-paragraphs (a), (b) and (e) of article 4(1), or for the purposes of any election to fill a casual vacancy caused by a person so elected ceasing to be a member, the secretary of the Council or another member chosen by the Council is to act as returning officer.

20. On any such subsequent occasion, a person may only be elected as a member or vote in an election if—

(a) in the case of an active grazier, the person is entered under article 8(1)(a) in the register kept by the Council, and recorded in that register as grazing animals in the quarter for which the election is being held;

(b) in the case of any other commoner, the person is entered under article 8(1)(c) in the register, and recorded as being entitled to exercise rights of common in the quarter for which the election is being held; and

(c) in the case of an owner of any part of the Commons, the person provides the returning officer with such evidence of ownership of that part as the returning officer may reasonably require.

21. Where the membership of a person appointed by the Barset National Park Authority or the Duke of Omnium expires, or a casual vacancy arises for such a position, the Barset National Park Authority or the Duke of Omnium (as the case may be) must notify the secretary of the Council of the person whom it, or he, wishes to appoint as a member.

22. Members are to be elected or appointed, and any elections are to be conducted, in accordance with the standing orders of the Council.

General provisions

23. In any election of members of the Council—

(a) each commoner entitled to vote is entitled to one vote;

(b) each owner of the Commons entitled to vote shall have a vote that is weighted in proportion to the extent of his ownership, but may cast that vote only in respect of one candidate;

(c) where two or more persons are commoners or owners by virtue of a joint holding, they are not each entitled to vote but may jointly nominate one of them to be entitled to vote; and

(d) the returning officer may allow a person entitled to vote to appoint a proxy in writing to vote on that person's behalf.

24. A declaration signed by the returning officer of the election of a person to the Council is evidence of such election.

SCHEDULE 2

Article 10

Decisions of the Council

Voting rights

1. All members of the Council elected or appointed pursuant to sub-paragraphs (a) to (f) of article 4(1) are entitled to vote in any decisions taken by the Council, and their votes are to have equal weight, except as provided in paragraph 4.

2. Members of the Council co-opted pursuant to article 4(1)(g) are advisory members, and are not entitled to vote in decisions taken by the Council.

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Decisions requiring special majority

3.—(1) A decision by the Council on any of the matters specified in sub-paragraph (2) must be made at a meeting of the Council and approved in a vote by a majority of at least two-thirds of the members present.

(2) Those matters are—

(a) making, amending or revoking any rules;

(b) making, amending or revoking any standing orders;

(c) entering into any agreement under which the Council undertakes any obligation as to the manner in which it is to exercise any of its functions;

(d) co-opting any person as a member of the Council.

Decisions affecting only part of land comprised in the Commons

4.—(1) This paragraph applies in relation to any decision of the Council relating to the use or management of land which affects only part of the land comprised in the Commons.

(2) The members elected under article 4(1)(a) and (b) for a quarter are not entitled to vote on a decision which does not affect any of the land within that quarter.

(3) Where sub-paragraph (2) applies in relation to a decision, the votes of those members elected under article 4(1)(a) and (b) who are entitled to vote on the decision are to be weighted so that—

(a) if the members elected for one quarter are entitled to vote, each such member has 4 votes;

(b) if the members elected for two quarters are entitled to vote, each such member has 2 votes; and

(c) if the members elected for three quarters are entitled to vote, each such member has 1 1/3 votes.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes, with effect from 1st February 2011, a commons council ("the Council") for all the registered common land within the Barset National Park (*article 3*).

The Order—

(a) makes provision as to the Council's membership, and its election or appointment (*article 4 and Schedule 1*);

(b) confers functions on the Council, including that of making rules relating to agricultural activities, the management of vegetation, and the exercise of, and the leasing and licensing of, rights of common (*articles 5 and 6*);

(c) requires that any rule made or amended by the Council (other than an amendment consisting solely of the revocation of any previously made rule) must be confirmed by the Secretary of State before it shall come into force, and describes the procedure for publicising any rules it makes, and for obtaining the Secretary of State's confirmation of them (*article 7*);

(d) describes the information to be included in the register of grazing (*article 8*);

(e) permits the Council to appoint reeves, for the purpose of enforcing or securing compliance with any of its rules, and for carrying out other of the activities in pursuance of the council's functions (*article 9*);

(f) describes the manner in which decisions are to be taken by the Council (*Schedule 2*).

The standard constitution for commons councils, as prescribed in the Commons Councils (Standard Constitution) (England) Regulations 2010 (S.I. 2010/XXXX), applies to the Council by virtue of section 29(2) of the Commons Act 2006 (c. 26) but, in respect of that constitution, and in accordance with section 29(5) of that Act, the application of paragraph 9 is made subject to Schedule 2 to this Order (*article 10(2)*), and the application of paragraph 18 is made subject to article 11(2) (*article 11(1)*).

A copy of the map showing the quarters of the National Park defined in article 2(g) is available for inspection at the offices of the Barset National Park Authority, Park View, Great Dale, BT16 2PP, and at the Defra Library, Lower Ground Floor, Ergon House, Horseferry Road, London SW1P 2AL.

A full impact assessment of the effect this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk.

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