

## Summary: Intervention & Options

<b>Department /Agency:</b> Defra	<b>Title:</b> Impact Assessment of Commons Councils	
<b>Stage:</b> Final	<b>Version:</b> 2.1	<b>Date:</b> 15 January 2010
<b>Related Publications:</b> Commons Bill RIA (see <a href="http://www.defra.gov.uk/rural/documents/protected/commonland/bill-ria.pdf">www.defra.gov.uk/rural/documents/protected/commonland/bill-ria.pdf</a> )		

### Available to view or download at:

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

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### 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 foreseen 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

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Date: 3 February 2010

## Summary: Analysis & Evidence

<b>Policy Option: Option 3</b>	<b>Description: Providing legislative tools and full guidance/ further support for the establishment of statutory commons councils.</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> 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.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 2.2m	20	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0.37m		
<b>Total Cost (PV)</b>			£ 7.1m
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' All benefits are non-monetised, see below.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		
<b>Total Benefit (PV)</b>			£
Other <b>key non-monetised benefits</b> 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	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ -7.1m
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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

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of £ 6,739	Decrease of £ 0	<b>Net Impact</b> £ 6,739

Key: Annual costs and benefits: (Net) Present

## Summary: Analysis & Evidence

<b>Policy Option: Option 2</b>	<b>Description: Introduce legislative powers to establish commons councils</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> 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.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0.98m	20	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0.26m		
<b>Total Cost (PV)</b>			£ 4.4m
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' All benefits are non-monetised, see below.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		
<b>Total Benefit (PV)</b>			£
Other <b>key non-monetised benefits</b> 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	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ -4.4m
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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

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 11,314	Decrease of	£ 0
		<b>Net Impact</b>	£ 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')<sup>1</sup>. 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.

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<sup>1</sup> 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](http://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<sup>2</sup>. Models are provided<sup>3</sup> 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-

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<sup>2</sup> See the technical guidance available from the Defra website:  
[www.defra.gov.uk/rural/protected/commonland/councils.htm](http://www.defra.gov.uk/rural/protected/commonland/councils.htm).

<sup>3</sup> 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](http://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**

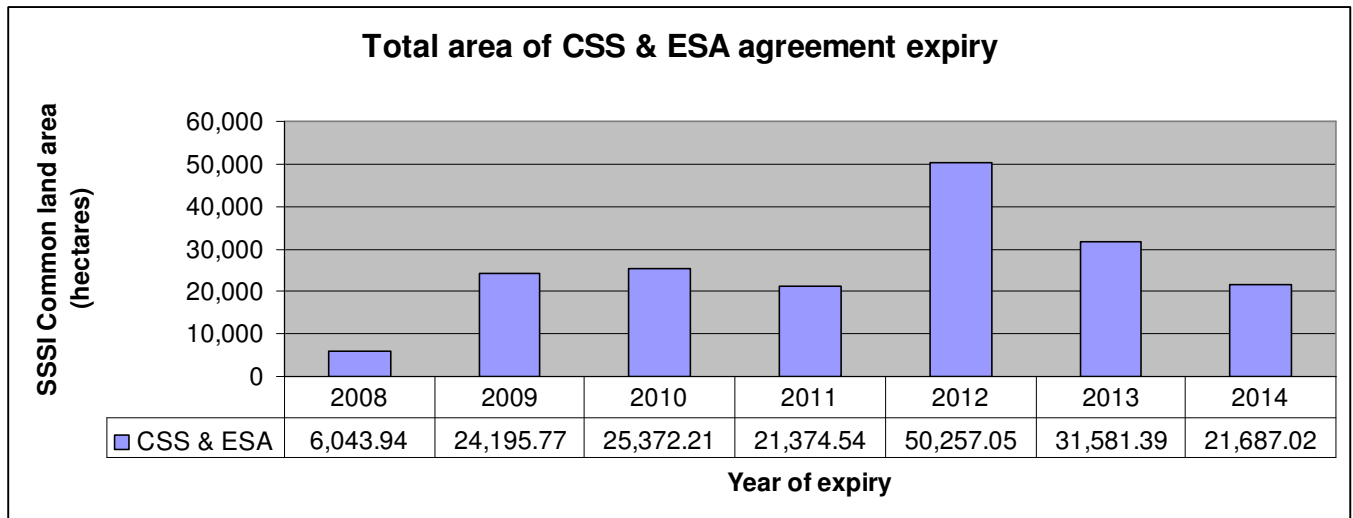
5.6. The following is an estimate of the number of commons councils that might be set up over a period of 20 years. The main driving force for commons council formation is likely to be improved ability to enter into an agri-environment agreement. Such schemes are particularly likely to be targeted at 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.

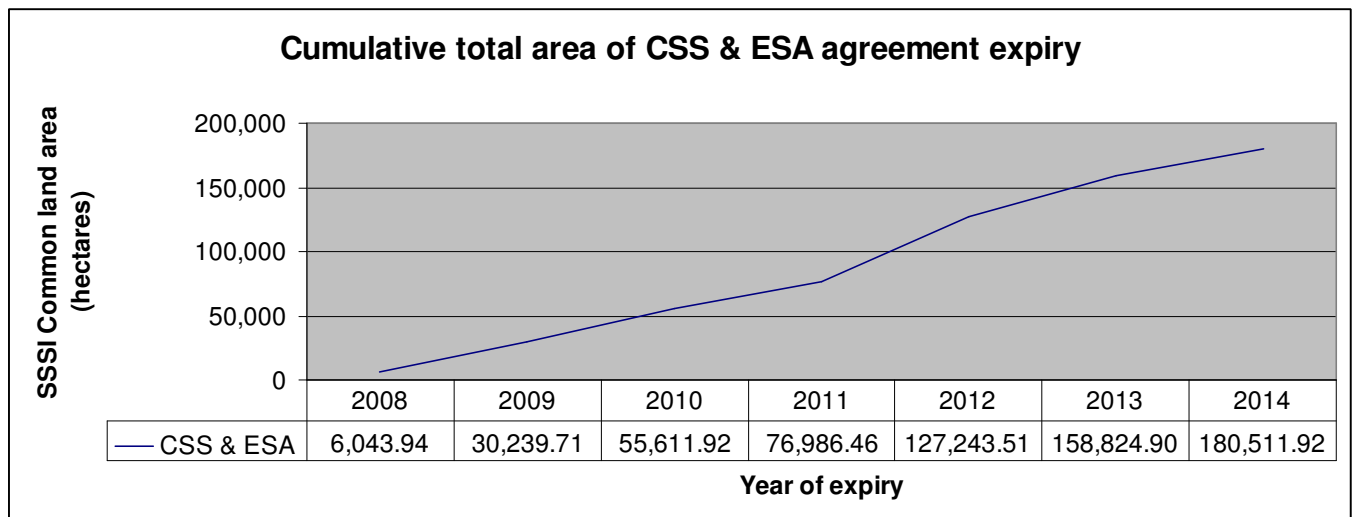
5.8 It is assumed that commons councils are most likely to be established on common land that is wholly or partly SSSI. Where existing classic scheme agreements expire, commoners and other interested parties may be more inclined to establish a commons council to facilitate entry into an Environmental 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**

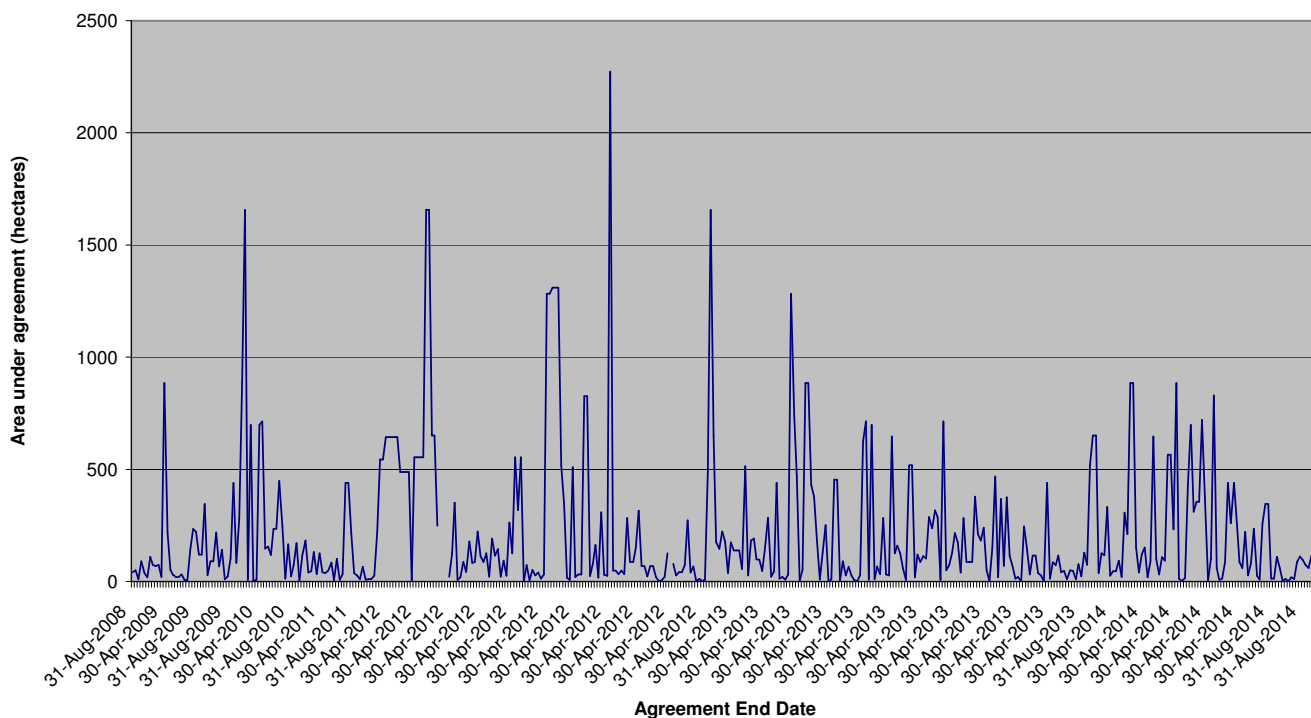


**Table 2**

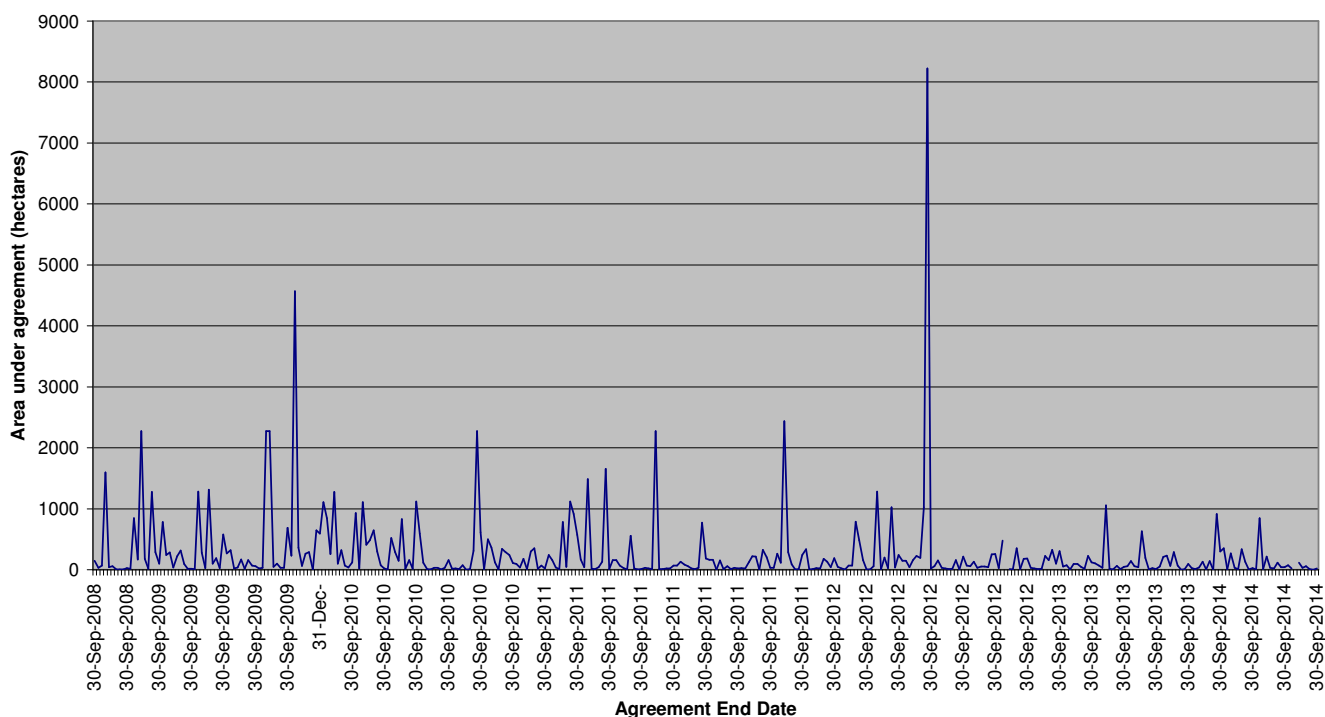




### Expiry of Environmental Sensitive Areas agreements



### 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.

<b>Benefit</b>	<b>Impact / significance</b>
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. <b>High significance.</b> <u>Maximised under option 3 – greater land area under agricultural management.</u>
More sustainable habitats	SSSIs in favourable condition. Improved habitats for wildlife (fauna and flora) through protection against over-grazing, and scrub and bracken encroachment. <b>High significance.</b> <u>Maximised under option 3 – greater land area under agricultural management.</u>
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. <b>High significance.</b> <u>Maximised under option 3 – increased operational effectiveness of councils.</u>
Ability to negotiate, and enter, into binding agreements	Establishment of more agri-environment agreements. <b>High significance</b>
Improved co-ordination and communications	Management structure provides a single point of contact for all communications concerning the agricultural management of the commons. <b>Moderate significance</b>
Ability to attract funding	Structure and powers in place to apply for grants and other sources of funding. <b>Moderate significance</b>
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. <b>Moderate significance</b>
Improved regulation of stock and animal husbandry practices	Improved animal welfare and stock quality. <b>Low significance</b>
Public health and safety	Tighter control over entire male animals. <b>Low significance</b>
Water quality	Better management should lead to reduced run-off and erosion. <b>Low significance</b>

## (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:

<b>Component</b>	<b>Cost</b>
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
<b>Total</b>	<b>£175,000</b>

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<sup>4</sup>, 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

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<sup>4</sup> 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](http://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:

$$(1,170 \times 7 = 8,190) + (142 \times 22 = 3,124) = \mathbf{£11,314} \text{ for Option 2.}$$

### 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:

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

#### 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<sup>5</sup>
- 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<sup>6</sup>
- 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 (hours)
		Land agent time (hours)	Returning officer time (hours)	Lawyer time (hours)	Officer time (hours)	
<b>Gauging support</b>						
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				

<sup>5</sup> 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)

<sup>6</sup> 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				
<b>Developing proposal for submission to Secretary of State</b>						
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
<b>Preparation of establishment order</b>						
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		
<b>Formation of council</b>						
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					
<b>Total number of hours</b>		154	20	27	2	-22
<b>Cost per hour</b>		£100	£17	£34	£17	£100
<b>Total cost</b>		£15,400	£340	£918	£34	-£2,200
		<b>£15,740</b>		<b>£952</b>		

## 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
<b>Total over 20 years</b>		£6,256,280	£94,784
<b>Average per year</b>		£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
<b>Total over 20 years</b>		£8,410,660	£134,468
<b>Average per year</b>		£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. <b>Moderate significance</b>
Commoners having to actively police themselves	Potential for conflict between commoners. <b>Moderate significance</b>
Liability	Commons council could be held liable in some situations. <b>Low significance</b> (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	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
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

<u>Direct Staff Inputs:</u> (£'s)		<i>Grade</i> <b>7</b>	<i>SEO</i>	<i>HEO</i>	<b>TOTAL</b>
PAY	(note 1)	68,300	34,300	31,573	
<b>SALARY COST</b>		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	
<b>TOTAL DIRECT STAFF COST</b>		77,958	43,958	41,231	
TIME INPUT (HOURS)		<u>10</u>	<u>35</u>	<u>30</u>	
<b>ACTUAL DIRECT STAFF COSTS</b>	(note 3)	503	993	799	<b>2295</b>
<u>Indirect Staff Costs:</u> (£'s)		<i>SCS</i> <b>Band 2</b>	<i>Grade</i> <b>5</b>	<i>Grade</i> <b>6</b>	
PAY	(note 1)	139,423	101,686	84,611	
<b>SALARY COST</b>		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	
<b>TOTAL INDIRECT STAFF COST</b>		149,081	111,344	94,269	
TIME INPUT (HOURS)		<u>3</u>	<u>5</u>	<u>10</u>	

<b>ACTUAL INDIRECT STAFF COSTS</b>	<b>(note 4)</b>	289	360	609	<b>1258</b>
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**Non-Pay Running  
Costs: (£'s)**

TRAVEL & SUBSISTENCE				444	
TRAINING					
STATIONERY, etc.				1000	<b>1,444</b>

**Capital Costs: (£'s)**

DEPRECIATION	<b>(note 5)</b>				
INTEREST ON CAPITAL					
& INSURANCE	<b>(note 6)</b>				
<b><u>Notional Insurance :</u></b>	<b>(note 7)</b>				
<b>(£'s)</b>					<b><u>5</u></b>
<b>TOTAL FULL COST</b>					<b><u>5002</u></b>

**NOTES**

- (1) These figures come directly from the Ready Reckoner pay tables.
- (1b) Shared Service costs are applicable to each member of staff.
- (2) Accommodation Costs are calculated for London premises.
- (3) These figures are the annual staff costs divided by the 215 working days available multiplied by the number of days of staff time, by grade, involved in the project. Note that the staff time involved must include time spent planning, training and managing as well as carrying out the exercise.
- (4) This represents senior management's supervision time for the exercise and is calculated by dividing the appropriate annual staff costs for each grade by 1,548 hours (215 × 7.2 hours) multiplied by the appropriate number of hours spent.
- (5) The depreciation is calculated at 20% of the cost of a PC and laser printer at the start of the year (here, for example, taken as £3,800). Because it is to be used throughout the year only by the EO, the amount of depreciation relevant to the exercise is 7 days out of a total of 215 available.

- (6) The interest on capital and insurance is calculated as 3.5% and 0.1%, respectively, of the current value of the assets at the mid-year point, apportioned for the appropriate number of working days, i.e. 7.
- (7) Notional insurance is calculated as 0.15% of total actual **SALARY** costs (i.e. Direct Pay, ERNIC, ASLC + allowances + Indirect Pay, ERNIC, ASLC + allowances) for the days/hours actually worked on the exercise being costed.