Common Land Policy Statement 2002

Department for Environment, Food & Rural Affairs

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Foreword

In the Rural White Paper for England, published in November 2000, the Government gave a commitment to legislate on common land as soon as Parliamentary time allowed. We said our objective was "to provide for the protection of all commons for the benefit of future generations; we want to increase our ability to tackle overgrazing wherever it occurs and to provide fairer and more effective systems of registration and management. We will also look to improve the arrangements for town and village greens".

Because of the way in which both the law and practice have developed over very many years, this is an extremely complex policy area to deal with and there is no 'quick fix'. Over the past 40 years various initiatives have been taken to protect common land, to ensure it is effectively managed and to increase the ability of the public to enjoy it. The Commons Registration Act of 1965 established registers of land and the rights held over it. In June 1998 the "Good Practice Guide on Managing the Use of Common Land" was published. More recently, this Government introduced landmark legislation – the Countryside and Rights of Way Act 2000 – to give the public a right of access on foot to all registered common land where such a right does not already exist.

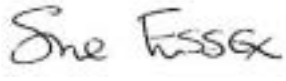
So a great deal has been done but more action is needed. In recent years common land has increasingly become valued for its natural character, its landscape features, the open space and recreational opportunities it provides and its archaeological, geological and nature conservation interest. 180,000 hectares of England's common land and 66,000 hectares in Wales are designated as Sites of Special Scientific Interest. Although in many areas it is still an important agricultural resource, elsewhere the exercise of common rights has significantly decreased. The challenge for the Government is to ensure that legislation adequately protects the land, continues to encourage public access, and that it promotes modern, sustainable, agricultural management practices.

Town and village greens also play an increasingly important role in providing areas where local inhabitants, and others, can take part in informal recreational activities. There is considerable confusion about the statutory controls over such land, some of which date back to the 19th century.

A public consultation exercise was launched in February 2000. Over 500 responses to the consultation document were received from organisations and individuals throughout England and Wales. These have been carefully analysed and the proposals contained in this policy statement reflect that analysis. Our proposals for England and Wales include making provision for correction of errors and better maintenance of the registers, improving the registration process for town and village greens in particular, clarifying the controls over such land, and strengthening protection for all registered land, both common and green. We will also develop flexible management frameworks that can be tailored to suit local needs and the individual circumstances of the land.

We are grateful to all those who made submissions during the consultation process and believe that we are now building a sound foundation on which to base the future protection of what the 1958 Royal Commission described as the "last reserve of uncommitted land in England and Wales".

Alun Michael
Minister of State (Rural Affairs)



Sue Essex, Minister for Environment,
National Assembly for Wales.

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Section 1: INTRODUCTION

1. In February 2000, the then Department of the Environment, Transport and the Regions, and the National Assembly for Wales issued a consultation document called *Greater Protection and Better Management of Common Land in England and Wales*. 519 responses were received from a wide variety of organisations and individuals. A detailed analysis of the responses can be found in the *Report on the Responses to the Consultation Paper: Greater Protection and Better Management of Common Land in England and Wales*; this is summarised in the *Summary Report on the Responses to the Consultation Paper: Greater Protection and Better Management of Common Land in England and Wales* and copies of the responses are available for viewing at the DEFRA library for 6 months from the date on which the reports are published. The address is WPW Library, Room 15, 3-8 Whitehall Place (West Block), London SW1A 2HH, tel. no. (020) 7270 8000/8421.

2. This statement sets out the Government's plans for taking the proposals in the consultation paper forward, in the light both of the replies to the consultation exercise, and from other discussions with interested parties. Our objectives are to secure the future of common land and village greens, to protect the features and characteristics that make such land so valuable, and to promote sustainability in its use.

3. What follows is a broad outline of proposals. The fine detail will need to be discussed further with a variety of interested parties. Careful consideration will need to be given to what controls, safeguards or exceptions should be applied to any new provisions. The elaborated proposals will also be subject to a detailed Regulatory Impact Assessment. **In view of this it is worth emphasising that these proposals reflect our current principal intentions. They are not binding on the Government and may well need to be adjusted in the light of further consultation and consideration.** Most of the proposals will require primary legislation that we plan to take forward when a suitable legislative opportunity arises. As regards those proposals that can already be achieved through secondary legislation, we shall prepare the necessary instruments in due course.

4. General information about common land policy and developments is available on the DEFRA website at: http://www.defra.gov.uk/wildlife-countryside/issues/common/index.htm

Section 2: COMMON LAND

Registration Issues

De-registration of common land

5. The Government intends to protect what remains of our common land by restricting the grounds for its de-registration. Our intention is to protect the land from any uses that would reduce its value to the community as a whole.

6. The consultation paper noted that, in some instances, land had been wrongly registered as common, and proposed that the legislation should be revised to enable such land to be de-registered (***Proposal 1***). There was strong support for this proposal. **The Government therefore intends to make provision for land that can be shown to have been wrongly registered according to the definition of common land in the Commons Registration Act 1965 to be removed from the registers. The scope of this provision will cover not only dwellings and gardens that have been wrongly included, but any land that should not have been registered, including agricultural land and public highways. There will be no time limit on applications for de-registration and eligibility to apply will not be confined to landowners only but is likely to be restricted.** This will require primary legislation.

7. In line with the above, **we propose that upon de-registration of such land and therefore the removal of any suggestion of common land status, the land should cease to be treated as access land for the purposes of the Countryside and Rights of Way (CROW) Act 2000 with immediate effect, provided that its registration as common land was the only reason for this. Subject to the same proviso, the land should also cease to be shown as access land on the maps of open country and registered common land, as of the date of the next review.**

8. The consultation paper noted that, when all rights of common over a particular area of common land have been extinguished, it may be possible to de-register that land if it is also not waste land of a manor, thus losing it as a public amenity. The paper proposed that in future it should no longer be possible to de-register common land simply because the rights of common have been extinguished (***Proposal 2***). There was strong support for this proposal. Accordingly, **we propose to provide that de-registration will generally be allowed only following appropriation, compulsory acquisition or where the land is exchanged for other land. In response to concerns expressed by some respondents, there will be powers to prescribe for exceptions to these general rules. These could include small isolated pockets of common no longer of much use or value to anyone, and preserving some scope for putting land to better public use in future in circumstances where land exchange or compulsory purchase orders (CPO) might not be possible or appropriate.** This change will require primary legislation.

Fresh registrations of common land

9. The consultation paper invited views on the question of making provision for registration of land that was once provisionally registered but not confirmed for various reasons, even though the land should have been finally registered; and also for eligible land that was not even provisionally registered (***Paragraph 1.12***). This idea was supported by most

respondents, and some respondents mentioned instances of land which they considered should have been put on the registers. For example, where an opposed registration application had been withdrawn simply to avoid conflict or where the land was not owned by the lord of the manor at the time of registration. There was, however, a significant minority that expressed concern about imposing on landowners the burden of common land status when they had been entitled to assume that the outcome of the original registration procedure had constituted a final decision. It was pointed out that in some cases the land was now used for arable or other purposes not consistent with the character of a common.

10. We accept that these concerns need to be taken into account. **We therefore propose to make it possible to register (a) land that was removed from provisional registration without justification or as a result of legal views concerning continued ownership by the lord of the manor which were later overturned, and (b) land which it can be proved was not registered as a result of a clear error. Both cases will require that appropriate criteria are met to the effect that the land still has the character of a common in today's context.** This limited process, which excludes land that might have been registered but in respect of which no action was taken whatsoever, will be different from the original registration process. It will be subject to very strict conditions to take account of individual circumstances that may make registration inappropriate, including subsequent use of the land since 1970. It will also restrict the possibility of registration to such cases where it should be relatively easy to prove that the non-registration was wrong. We will consult further on the detailed circumstances in which such fresh registrations should be allowed. This change will require primary legislation.

11. Some respondents suggested that, if we allow some registration of land that arguably should have been registered, we should also allow the registration of rights that should have been registered. We have considered this carefully. The Government's view is that common land should in the present day and age be regarded principally as a public resource, although we also recognise its continued importance in those areas where rights are still exercised and are still vital to the agricultural interests. Registered rights are protected but we see no public interest in registering rights lost over 30 years ago, and therefore we do not intend to legislate to allow this.

Unclaimed common land

12. The consultation paper noted that some commons have no registered owner. It is estimated that there are approximately 2,000 unclaimed commons in England, amounting to about 4,000 hectares. In Wales there are some 500 unclaimed commons amounting to over 21,000 hectares. Currently, local authorities can give only limited protection to such land, and the paper proposed that its protection should be strengthened by making provision for unclaimed common land to be vested in a local authority (***Proposal 3***). There was strong support for this proposal, but differing views as to the most appropriate body for this function with some respondents suggesting that such land should be vested in commons management associations. **We propose to enable the vesting of unclaimed common land in a suitable body who will be empowered to deliver effective management.** We will decide in the light of decisions on the creation of statutory commons management bodies (see paragraphs 79 et seq below) whether this should always be the local authorities, or whether vesting in a statutory commons management body would be more appropriate where one exists.

13. **If all such land is vested in the relevant local authorities, we propose that those authorities will be given powers to:**

- **transfer ownership, by agreement, to other councils in whose area the common lies wholly or partly;**
- **to delegate management functions to those councils, other agencies or bodies;**
- **or to enter into joint management arrangements and establish a broadly constituted management body with representatives of any or all of these interest groups.**

14. This will allow management arrangements to reflect the different needs of different commons.

15. The consultation paper proposed that provision should be made for claimants who proved that they had title to common land vested in a local authority to be registered as owner (part ***Proposal 5***). This would also ensure consistency with the Human Rights Act. **We therefore propose that the vesting of ownership in a local authority or other body will be revocable, in the event of an owner subsequently providing evidence of title within the specified period.** This will require primary legislation.

16. In the consultation paper, we invited views on making the specified period one of 12 years, reflecting the period for limitation of title to land (***Paragraph 1.11***). We are aware that the Law Commission has recently reviewed the law of limitation and recommended that the current 12 year period for limitation of title to land be changed to 10 years. We recognise that during this period the vested authority may be reluctant to exercise the full range of their remit as vested owners unless suitable indemnities are in place with regard to any potential actions that might be brought by the subsequent owner. We have considered that in the interests of implementing effective management sooner rather than later, a shorter period would be attractive. However, it should be borne in mind that although it would have been helpful for owners to declare themselves, there was no obligation to do so. We therefore conclude that the best approach, subject to any legislation in relation to the Law Commission's recommendation, is to adopt the limitation period prescribed in the Limitation Act 1980 for claiming title to land, and **we propose that the period of limitation for making claims should therefore be 12 years**.

17. The consultation paper also proposed that there should be provision to register claimants as owners where they could prove that the land had been erroneously registered in the ownership of another (part ***Proposal 5***). This is problematic because ownership registration in the commons registers is not conclusive of title and defers to the supremacy of a Land Registry registration. **But in cases where there is no owner registered at the Land Registry and conflicting claims are causing management difficulties on the common, we propose that the Commons Commissioners should be able to adjudicate on who should be regarded as the owner for the purposes of commons legislation.** This would not constitute proof of ownership for other purposes, and would be overtaken if a (different) owner was subsequently registered at the Land Registry. Where the Commissioners found no satisfactory evidence on which to base a decision in favour of either party, the existing registered claim to ownership would remain intact.

18. The consultation paper proposed that where unclaimed common land is vested in local authorities, they should be given the same powers and duties as apply in the case of greens, i.e. to hold the land in trust, be required to maintain it for public enjoyment and if necessary to make bylaws (***Proposal 4***). The proposal was supported by a large majority of respondents. However, concerns were expressed in particular that the proposal did not

adequately reflect the importance of other factors, e.g. the ecological or agricultural significance of the common. **We propose therefore to give local authorities in whom unclaimed common land is vested similar powers and duties as apply in the case of greens, but to ensure that these reflect the diversity of common land and take account of the different weight to be given to the various interests in different areas.** There will be further consultation on this aspect. These changes will require primary legislation.

Commons registers and their maintenance

19. The consultation paper noted that there was no provision for registers of common land to be updated to reflect certain changes, e.g. in ownership of the dominant land and at present, there is no requirement on owners of common land, town and village greens or of rights of common to notify the registration authorities of any changes. Over time this has led to inaccurate and out of date records. The paper proposed that the law should be changed to allow title to common land and rights of common to be recorded and collated at the Land Registry, with similar arrangements for town and village greens (***Proposal 6***). The responses to our consultation document revealed much dissatisfaction with the current reliability of commons registers and significant, though often qualified, support for transfer to HM Land Registry.

20. Further research has revealed that whilst the principle is plausible, there would be practical difficulties in making such a transfer and in subsequent operations.

21. First, registration as owner in the commons registers is not definitive in the same way that registration as the proprietor of the land at the Land Registry is. This is because title was not investigated when the commons registers were compiled. There would therefore be considerable difficulties in using the registrations of ownership in the commons registers as the basis for substantive registration at the Land Registry. Title would need to be investigated in each case and there may well be cases where the current owner does not come forward or cannot be traced, indeed some commons have several owners. Moreover, common land is already subject to the provisions relating to compulsory registration under the Land Registration Acts. In many cases, therefore, a transfer of the land will result in the new owner applying for first registration at the Land Registry. When the Land Registry receives such an application, it will investigate title and, if satisfied, register the new owner as proprietor of the land. Notice will then be sent to the commons registration authority so that it can remove the ownership entry from the commons register. This does not affect the land or rights section of the commons register. There is, therefore, a mechanism for the gradual transfer of ownership information to the Land Registry.

22. Secondly, the way in which the information is held at the Land Registry would not offer some of the advantages of the commons registers where the enquirer is concerned with the common as a whole rather than title to a defined area. The Registry records land by individual title and its records could not always be used easily to obtain information about the entire common. It is also doubtful whether the Land Registry is the most appropriate body to undertake some of the other functions carried out by the commons registration authorities. There seems advantage in keeping all registration functions together. We also envisage an enhanced role for local authorities in the protection and management of commons and village greens generally.

23. **We have therefore concluded that the registered information should be retained at the county-based level. We shall, however, look to devise ways to more closely link the information needs of the registration authorities and the Land Registry. We therefore**

propose instead of transfer to the Land Registry, to impose a mandatory requirement to notify the commons registration authorities of all material changes affecting an entry in the commons registers or creating the need for a new entry. We shall also aim to capture those land exchanges that have taken place but in respect of which no updating of the registers has occurred. This will require primary legislation.

Local registers of common land

24. The consultation paper asked whether there would be a need to retain the county registers in addition to Land Registry transfer and suggested that it might be helpful for local management associations to set up 'working' or 'live' registers which could be readily updated with day to day management information and would be easily accessible for people living near by (***Paragraph 1.17***). Although not all respondents made clear whether they were supporting or opposing retention of the county registers in addition to Land Registry transfer or the creation of 'live' or 'working ' registers instead, most who did refer to 'local' registers were in support. There were some concerns, however, as to whether such local registers could be successful without a statutory basis for their updating and maintenance. We remain convinced that 'live' or 'working' local registers would be an invaluable tool for commons management bodies as a means to record local information and are aware that some are already in use. They would not, however, constitute an official alternative to the information in the formal registers but would be more flexible in the type of information recorded and how easily it could be updated and accessed by relevant interested parties. We intend to look at this idea in more detail as part of a further examination of management issues (see para 79 et seq below).

Clerical and administrative errors

25. To further improve the quality of the information in the formal commons registers, **we propose to make provision for clear and acknowledged clerical errors to be corrected by the registration authorities** (***Paragraph 1.21 of the consultation document***). In most cases, if not all, these are likely to be transcription errors, e.g. from application to register or from application map to register map. Changes that increase the burden of rights or minor changes affecting boundaries will be subject to appropriate safeguards. More major changes or contested alterations to boundaries will be referred to the Commons Commissioners. In some respects, this proposal can be pursued under existing legislation but changes affecting boundaries, and therefore resulting in the removal or addition of land, might require primary legislation. On over-quantified or duplicated rights, see paragraphs 96 to 98.

26. As pointed out in ***Paragraph 1.20*** of the consultation paper, there are a few remaining registrations of common land that, because of administrative errors, remain provisional and cannot be made final. Two known examples involve errors of description of the land so that those who would have objected did not realise the need to make objections until it was too late to do so. **We propose to make provision for the resolution of these few remaining cases of unfinalised registrations, by allowing a further period for the lodging of objections. These registrations will then be referred to the Commons Commissioners for a final decision.** We believe that there should be a presumption in favour of registration, and that any objectors would have to prove that the land should not have been registered, especially as there may no longer be an applicant to defend the registration.

Access to commons registration authority files

27. The consultation document noted that some registration authorities treated the files on which relevant correspondence and information on registration applications are stored as confidential. The Government's view is that interested people should be able to investigate what happened in particular registration cases. The paper accordingly proposed that registration authority files relating to the registration of commons should be available for inspection by members of the public by appointment, subject to an appropriate fee (***Proposal 7***). There was strong support for this proposal and some authorities already provided access. **We therefore conclude that, in general, the public should have access to information on registration applications. We propose that this will not apply to information such as privileged documents and internal legal advice.**

28. In the light of the extra burden this will place on registration authority staff in preparing files for inspection, assisting with inspections (e.g. some documents are extremely fragile), and responding to any requests for advice or explanations, **we conclude that a fee would be appropriate as a contribution towards the provision of this service. An additional charge would be applicable for the provision of copies of documents from the file and registration authorities will be given the power to determine a reasonable charge for this, as they currently do in respect of providing certified copies of register entries or map extracts.**

Commons register search fees

29. The consultation paper noted that the fees for official searches of the registers had last been revised in 1989[1] and we had received a number of representations from registration authorities indicating that the fees no longer adequately reflected the costs involved. Registration authorities were invited to offer their views on the appropriate level of increase (***Paragraph 1.19***). In the light of the responses received, we accept that the Commons Register Search Fees should be increased. **We propose to raise the basic search fee from £6 to £14.00 and £1.00 per additional parcel of land up to a maximum payable of £20.00.** These figures to be reviewed at the time when legislation is being prepared. **In addition, we propose that where registration authorities have already completed the research before the request is withdrawn, the fee should not normally be refundable. We also propose to implement a mechanism whereby the search fees can in future be regularly increased at an appropriate rate without the need for another statutory instrument.** The raising of the level of fees can be achieved under existing legislation but other changes will require primary legislation.

Vehicular Access over Common Land

30. Although it was not discussed in the consultation paper, section 68 of the CROW Act 2000 addresses problems relating to vehicular access over common land. Regulations under that section have now been made that provide for the creation of a statutory easement that will, in effect, serve as lawful authority and will enable people who meet the criteria to obtain a legal right of vehicular access to their premises across common land that they do not own. Further information is available on the DEFRA website (see paragraph 4 above).

1 Official search and certificate – £6.00 plus £0.50 per additional parcel of land subject to a maximum of £10.00. (Previously set at £3 and £0.25 respectively in 1980).

Consent For "Grant Or Inclosure" Of Common Land – Section 22 Commons Act 1899

31. Section 22 of the Commons Act 1899 deals with grants or inclosures under a number of specified Acts, mainly from between 1601 and 1854. It provides that such grants or inclosures are invalid unless authorised by Act of Parliament, made to or by a Government Department or consented to by the Secretary of State. The consultation paper suggested that this was no longer an effective or necessary provision because inclosures of common or village green land now occur under modern compulsory acquisition powers and section 19 of the Acquisition of Land Act 1981 already provides adequate safeguards for land and rights. The repeal of section 22 was therefore proposed (***Proposal 19***). This proposition was supported by a large majority of respondents, provided that no loopholes were created. **We propose, therefore, to go ahead with the repeal of section 22.** It may be possible to achieve this through an order under deregulation legislation.

Section 3: WORKS AND FENCING ON COMMON LAND

Section 194 of the Law of Property Act 1925

Extending coverage of section 194 of the Law of Property Act 1925:

32. The consultation paper noted that section 194[2] of the Law of Property Act 1925, requiring the consent of the Secretary of State or National Assembly for Wales for fencing or works that impede access to common land, applies only to land subject to rights of common extant on 1 January 1926. It proposed that this protection should be extended to all commons (***Proposal 14***). There was strong support for this, **and we therefore plan to extend the protection of section 194 of the Law of Property Act 1925 to all registered common land but with the exception of metropolitan commons which remain subject to their own legislation.** We will however seek to ensure that the interaction between section 194 and the metropolitan commons legislation does not leave gaps in coverage. In all other cases, while the common remains registered, this will provide consistent protection; remove the doubt that arises where it is difficult for an applicant to establish whether rights existed in 1926; and end the particular vulnerability of many small commons not subject to rights since before that date. We will consider the scope for any exemptions or urgent procedures – see paragraphs 39 and 87 for example. This change will require primary legislation.

33. The paper also invited views on whether to retain the exemptions provided for by section 194 whereby consent is not required for works specially authorised by Acts of Parliament, or in pursuance of an Act or Parliament or an Order having the force of an Act, or if lawfully constructed in connection with the taking or working of minerals or any telecommunications apparatus installed for the purpose of a telecommunications code system (***Paragraph 3.4***). There was some support for removing the exemptions, with specific mention made of the scarring of commons by mineral workings. Opponents, however, were concerned that there should be no delay or impediment to works necessary for flood prevention for example. **We conclude that most of these exemptions should be retained but that consent should be required for works connected with the taking or working of minerals.** There will be greater flexibility in the consent process to accommodate conflicting interests because we intend to take powers to impose conditions or restrictions on a consent instead of simple grant or refusal as at present (see paragraph 36 below).

Revision of the section 194 decision criteria

34. The consultation paper proposed that the criteria to be considered in deciding whether to give or withhold consent for fencing or works on commons should be revised and clarified. At present, the Secretary of State / National Assembly for Wales is required to have regard to the "benefit of the neighbourhood" and "private interests in the land" before deciding whether to allow fencing or works that will prevent or impede access. The paper proposed (***Proposal 16***) that in future **the criteria should more explicitly take account of:**

2 Under **section 194 of the Law of Property Act 1925**, the erection of any building or fence, or the construction of any work, which prevents or impedes access to land which was subject to rights of common on 1 January 1926, is unlawful unless the consent of the Secretary of State or National Assembly for Wales is obtained.

- **the interests of the public;**
- **the rights of the owners and commoners;**
- **the need for effective management of the common;**
- **the conservation of wildlife and its habitats and of natural and historic features; and**
- **impacts on rights of public access.**

35. There was very strong support for appropriate clarification. **We plan, therefore, to go ahead on this basis.**

Applying conditions to section 194 consents

36. **We will also introduce a power to impose conditions or restrictions on a consent for fencing or works, so as to increase flexibility in the decision-making process. In respect of fencing or works of a non-permanent nature, and for use where appropriate, we will include a power to specify a time limit after which the consent will lapse.** A fresh application will then be necessary if the fencing or works are to continue in existence.

Transfer of section 194 consent procedure

37. The consultation paper proposed that responsibility for granting consent under section 194 should be transferred from the Secretary of State and the National Assembly for Wales to local planning authorities (***Proposal 15***). Although 167 respondents supported the proposal, including nearly 80 per cent of the principal local authorities and National Park Authorities who responded, as many as 76 respondents expressed opposition including ten principal authorities. Moreover, some of the support was expressed with reservations.

38. Although any speeding up of the decision process would be welcomed, there was a general concern about maintaining impartiality. There were concerns that it would be difficult for authorities to make objective section 194 decisions that might go against planning consent decisions already made by the same authority. **We therefore conclude that the advantages of transfer to local authorities and National Park Authorities are outweighed by the need to maintain public confidence and clearly demonstrate impartiality in the decision-making process; and the desirability of separating this function from other proposals that will enhance the role of local authorities in respect of commons.** The resource and efficiency implications of dealing with a small number of cases, widely scattered over the country, also point towards a continuation of the present centralised system. The Secretary of State and the National Assembly for Wales will, therefore, retain this function, but we will consider whether there is scope for the work to be undertaken by another central body or improved in other ways.

Fast-track system for section 194 consent:

39. The paper invited views on whether there were circumstances in which a fast-track procedure for consent would be helpful (***Paragraph 3.6***). There was some support for this in specified circumstances and with conditions such as a maximum allowable period before a full consent application decision should be submitted. The counter view was that retrospective applications for consent could be made which would immediately involve full consideration of the issues. It is always preferable that any fencing or works should have consent in the first place but **in the course of revising the decision criteria, we will consider the case for an urgent procedure in certain circumstances.**

40. In respect of all of the above, the Secretary of State and the National Assembly for Wales will have to have special regard to legal obligations concerning the exercise of their functions as they affect Sites of Special Scientific Interest (SSSI). For example, under section 28G of the Wildlife and Countryside Act 1981 as amended by schedule 9 of the CROW Act 2000, the Secretary of State and the Assembly have a duty to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features for which land has been notified as a SSSI.

Imposing a fee for section 194 consent applications

41. The paper proposed that a fee would be appropriate for section 194 consent applications (***Proposal 17***). Some applications for consent are necessary for management measures that would be entirely in the public interest, other applications involve varying degrees of private benefit. Many respondents suggested candidates for exemption from any fee or circumstances in which a refund might be appropriate. **In the course of reviewing the decision criteria and considering the different interests to be reflected, we will give further consideration to the question of whether a fee is appropriate.**

Improving enforcement of section 194

42. The consultation paper proposed (***Proposal 18***) to improve the process of enforcing the section 194 legislation by empowering local planning authorities to issue enforcement notices in respect of unlawful fencing and works on commons or greens, and giving the countryside bodies reserve powers to do so. This might in many cases form a cost-effective option to be tried before resorting to court action. The paper also invited views on dispensing with the county court mechanism or empowering the public to institute enforcement action (***Paragraph 3.11***). **We conclude that the enforcement notice procedure should be available instead of the current process whereby local authorities must bring an action in the county court.** It would be backed up by the prospect of court proceedings or possibly other remedies as outlined in the consultation paper in the event of non-compliance with the notice (e.g. prosecution, application for an injunction, undertaking remedial work and recovering costs etc). We envisage that local planning authorities should have the power to prosecute in the magistrates' courts in the event of non-compliance with an enforcement notice. Any council would remain eligible to bring action in the county court where it had a legal interest in the land, e.g. as landowner, but otherwise the local planning authorities will form a clear and single local authority tier able to pursue the enforcement notice procedure. This would not affect the ability of owners and others with legal interests to bring county court proceedings.

43. Some concerns were expressed that local authorities are too often reluctant to take action to protect the public's interest in commons. **We have, however, decided against enabling the general public to instigate enforcement action on the grounds that it could lead to confusion and that the discretion of the democratically elected councils to enforce should be maintained in addition to the ability of the owner or other legally interested parties to take action.** We expect that the introduction of enforcement notices as a precursor to court action should encourage and enable more timely and effective enforcement.

Section 4: TOWN AND VILLAGE GREENS

Registration Issues

44. The consultation paper invited views on the need for dual registration of land as common and green or for the exchange of registrations from one register to the other (***Paragraph 2.5***). There was some degree of support for this, for example where a common now served a public amenity purpose only, but no strong general need was perceived. Those opposed feared greater legislative complexity and public confusion. **We conclude that there is no need to make provision for dual or exchange registrations, particularly in the light of proposals for improved protection for commons**.

45. The consultation paper noted that there had been problems over meeting the requirements for the registration of land as a village green. It therefore proposed that:

- in future, it should be possible to apply for registration of land as a town or village green on the basis of at least 20 years' qualifying use not only if (as at present) the use is still continuing, but also up to 5 years after the use ceased (***Proposal 8***);
- evidence of a clear pattern of public use of an area of land should suffice to qualify land for potential registration as a green, without a requirement to show (as at present) that it emanates predominantly from one specified locality or group. There would, however, be a similar provision to that under Section 31 of the Highways Act 1980 concerning rights of way, so that a land owner could give notice that it is not his or her intention that the land should become a permanent town or village green (***Proposal 9***).

46. Both these proposals were supported by a large majority of respondents to the consultation exercise.

47. **Section 98 of the Countryside and Rights of Way (CROW) Act 2000 has since gone some way towards implementing these proposals** by clarifying the meaning of the term 'locality' and removing the prejudicial effect of use of the land by people who are not local inhabitants. In particular, it provides for regulations to be made prescribing a period within which a registration application must be lodged when qualifying use of the land has ceased. The courts have tended to the view that when the use is challenged or prevented, applicants must stake their claim that the land has become their green with due expediency. If there is long delay during which the evidence is gathered and the application prepared, this can be prejudicial to the success of the application. There is, however, a contrary view that the legislation does not impose any requirement for such expediency once the 20 year period has elapsed.

48. We believe that there would be advantage in greater clarity on what is required, and hence suggested a five year deadline in proposal 8. This would allow ample time for the preparation of an application and a clear cut off point for the landowner. Following the debates in Parliament on the CROW Act 2000 however, we concluded that this was too long because it imposes uncertainty for an unacceptably long period in cases where the landowner wants to sell or develop the land. As indicated in Parliament, **we therefore plan to use the regulation-making powers in section 98 of the CROW Act to provide that potential applicants should have a prescribed period from the date on which their use of the land was challenged in which to lodge a registration application.** This will provide certainty for applicants, landowners and registration authorities as to the timeliness of any applications. **We are minded to make this period two years but will consult on draft regulations.**

49. There is also provision under section 98 to prescribe for specific steps to be taken as part of the process of seeking registration and compliance with such steps would be necessary to secure the full two year period for making the application. **We will consider the scope for using the section 98 powers to provide other measures for reducing uncertainty and avoiding potentially futile investment of resources by landowners or developers.** These might include, for example, a requirement to serve interested parties with early notice of an intention to apply for registration, and we will consult on draft regulations.

50. Also in proposal 9, **we proposed introducing a formal mechanism by which landowners could clearly indicate that, although use of the land may continue for the time being, the nature of the use has ceased to meet the criteria for registration as a town or village green.** Any further use would be by general permission of the owner. There was support for providing a clear and unambiguous mechanism for making the public aware of their position and we plan to do so. This will require primary legislation.

Rights to indulge in lawful sports and pastimes

51. In the consultation paper, we stated our view that greens should generally be subject to permanent recreational rights (part ***Proposal 10***). This proposal was strongly supported. The courts have commented that it is unhelpful that registration of land as a green following 20 years use does not confer any rights on the inhabitants of the area. **We plan to address this by confirming that on registration of land as a town or village green, (whether as a consequence of 20 years user by local inhabitants or voluntarily by the landowner), there will be a right to indulge in lawful sports and pastimes on the land. We shall also look to ensure that the general public has a right of access to all greens once they have been established.**

Other improvements to registration arrangements for greens

52. At present, there is no explicit provision in the legislation that enables a registration authority to register part of the application land and reject other parts if the user evidence points to this being the appropriate course of action. This was not specifically consulted upon in the consultation paper and although the High Court could see no principal reason why a registration authority should not exercise this flexibility, we consider that it would be helpful to make clear provision for it. **We therefore propose to enable registration authorities to register part or parts of the application land and reject others in cases where they are not satisfied on the evidence that the whole of the application area has been used in a qualifying manner or sufficiently so to justify registration.**

53. At present, unless the application is defective, local authorities must pursue the full decision process for all applications, even those with very little credible supporting evidence, which is wasteful of time and resources. **We propose, therefore, to introduce a provision to enable registration authorities to reject town and village green registration applications which, on initial examination of the evidence, fall significantly short of establishing a reasonable prima facie case for registration.** This proposal is subject to the development of adequate safeguards against inappropriate use, for example, the registration authorities might be required to give reasons for any such rejections and a right of appeal to the Secretary of State / National Assembly for Wales might be necessary. An applicant would be able to submit an improved application up until expiry of the period to be prescribed in regulations.

54. Under section 8 of the Commons Registration Act 1965, unclaimed town and village greens registered during the 1967-1970 period were vested in local authorities. The consultation paper noted, however, that from time to time the original owner may be identified or come forward, and proposed that the Commons Commissioners should be able to enquire into such claims of ownership and if appropriate, direct the registration authority to register that claimant as owner (***Proposal 12***). There was strong support for this proposal, which is similar to that for common land described in paragraph 15 above. It would also ensure consistency with the Human Rights Act. **We therefore propose to make provision for such vested land to be restored to its former owner in the light of satisfactory proof of previous title produced within a specified period from the date of the legislation.** The period will be the same as that for common land (see paragraph 16). **We shall also provide similar arrangements to those in section 8 of the 1965 Act for enquiring into the ownership of new greens, i.e. those registered since 1970, in respect of which the owner is unknown and there is no clear responsibility for maintenance or management of the land.** Again, absent owners would be able to come forward to re-claim ownership within the specified period starting with the date of vesting.

55. The consultation paper made clear the Government's view that greens will remain registered except for cases where land not in local authority ownership has been registered in error; or the land has been compulsorily purchased or exchanged under a statutory procedure (part ***Proposal 10***). There was general agreement for confirmation in primary legislation for this protection of greens and **the Government plans to proceed along similar lines to that for wrongly registered common land.** However, see paragraph 70 regarding land exchange and private access ways.

56. Some consultees considered, however, that it was wrong to treat local authorities differently from other owners. On reflection, we agree. **Even though we think that there are fewer incidences of wrongly registered local authority land, we propose that it should be put on an equal footing in this respect.**

57. **We also propose to apply to greens the same requirement on the opening of files to the public as is proposed for commons in paragraph 27 above.**

58. Most registration authorities receive applications to register land as a town or village green relatively infrequently, but each application can be expensive to process. This is especially so where senior counsel are employed to hold a non-statutory inquiry or to advise an authority. We have considered whether, in the interests of efficiency savings and maximising the use of central expertise, to transfer all such applications – or at least the most contentious cases – to the Commons Commissioners for decision. **We have concluded that local decision-making is more appropriate in this regard as these are essentially local issues and that the existing arrangements should therefore continue**. The changes outlined above will, however, improve the existing process.

Voluntary registrations

59. The consultation paper noted that landowners might want to dedicate an area of land permanently for recreational use without having to wait for 20 years' use to accrue. For example, a millennium green is not registrable as a town or village green and would not qualify under the present definition even after 20 years' use because use is likely to have been with the permission of the landowner. The paper proposed that there should be a simple power for landowners to register land as a green, or alternatively to irrevocably grant other specific access rights over it on behalf of themselves and their successors in title

(***Proposal 13***). This proposal was supported by 167 respondents with no opposition. **We plan, therefore, to enable landowners to voluntarily register land as a town or village green. On registration, the land will acquire the status of green and thereby benefit from the legislative protection**. Some respondents suggested that landowners would be more likely to dedicate their land if they could do so on a temporary basis. We accept the force of this argument, but have concluded that what we chiefly wish to encourage is permanent dedication. A provision for permanent dedication would mirror section 16 of the CROW Act which provides a mechanism for owners to grant access rights irrevocably over land that is not otherwise access land within the meaning of the Act. The difference being that there will be far less scope for changes to the land that would be incompatible with its use for recreation if it is registered as a green. This will require primary legislation.

Consistent Protection for All Greens

60. There is at present some ambiguity over whether the protection for greens under section 12 of the Inclosure Act 1857[3] and section 29 of the Commons Act 1876[4] applies to new greens established after 1970 through 20 years use by local inhabitants, and those that were not traditional or customary greens but acquired green status through registration without question or objection. **We propose to end this ambiguity so as to ensure the consistent protection of sections 12 and 29 for all greens.** This will require primary legislation

61. **Paragraph 42 above describes our intention to provide new powers for local planning authorities to issue enforcement notices in respect of breaches of section 194 of the Law of Property Act 1925. We will also provide a similar mechanism for the enforcement of the legislative provisions covering land registered as a town or village green.** This will form a pre-court option and when used, the specified authorities will be able to pursue court or any other prescribed action if the notices are not complied with. This will not affect the ability of those currently eligible to bring their own actions under the legislation.

Modern Facilities

62. The consultation paper (***Paragraph 2.10***) noted that section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 provided protection for greens from damage and activities not designed to improve enjoyment of the green. The paper invited views on whether these provisions needed updating, for example to allow the creation of desirable public facilities as suggested by the Common Land Forum.

63. A majority of respondents were in favour, including most of the principal local and national park authorities, provided that adequate safeguards were put in place. But there was a substantial minority who felt that this would lead to reduced protection of greens. We acknowledge these concerns, but believe that some very limited relaxation would be justified. **We propose to relax the existing legislative restrictions under sections 12 and 29 to create limited scope for establishing facilities that would add comfort or convenience to public enjoyment of a green. These are not currently permissible under the legislation because they are not directly related to its enjoyment for air and exercise. However, there will be safeguards against inappropriate cluttering of greens with excessive provision of such facilities.** The facilities will be expected to be in keeping with the character of the green. As now, some works will also require planning permission.

3 Prevents damage and interruption to enjoyment of the green.

4 Prevents encroachment or disturbance other than to improve enjoyment of the green.

64. Section 194 of the Law of Property Act 1925, regulating the erection of buildings and fences, applies only to those greens subject to rights of common in 1926 (in the same way as it does to commons). The consultation paper invited views on whether it might be extended to all greens (***Paragraph 2.11***). The idea was generally supported, particularly if used as a safeguard in respect of facilities to be erected on greens under the provisions proposed above.

65. **We therefore plan to extend section 194 on the erection of works and fences to cover all greens but this extension will not be a blanket or catch-all extension. It will be qualified as follows:**

(i) **where rights of common are still registered over the green, section 194 consent will be required in respect of any fencing or works that fall within its remit. It will no longer be necessary to determine or guess whether rights existed in 1926 and this will operate to balance the interests of the public users against those of any existing commoners;**

(ii) **with regard to sections 12 and 29, section 194 consent will not be required in respect of works that are for the better enjoyment of the green for the purposes of recreation provided that there are no registered rights of common. In other words, works that are already permissible under the existing greens legislation will not require additional section 194 consent if there are no existing commoners;**

(iii) **works under the new provision to provide desirable public facilities that are not directly related to enjoyment of the green will require section 194 consent whether there are registered rights or not. This will operate as a safeguard against inappropriate use of the new provision.**

66. In respect of all of the above, it should be remembered that section 194 consent alone would be of no effect if the proposed works were not permissible under either the specific greens legislation in sections 12 and 29, or some other statutory authority, or the new facilities provision. The consent of the owner of the green would also be required. These changes will require primary legislation.

Vehicular Issues

Parking on greens

67. The consultation paper noted the view of the Common Land Forum that in some circumstances it would be desirable for temporary car parking to be allowed on greens. It was proposed that there should be a power for the owner of the green to grant permission for temporary vehicle parking in specified circumstances, for instance when an event is being held on the green (***Proposal 11***). There was general support for this proposal, although a significant minority were concerned at what they saw as further encroachment on the protection of greens. While we appreciate these concerns, **we have concluded that, on balance, we should seek to legislate to provide a power for landowners, leaseholders and any management body that has responsibility for the custody and care of town or village green land to grant consent for *temporary parking* on the green without contravening the legislative provisions that generally protect greens from vehicular intrusion. They would have a discretion to charge a fee. The power would be subject to appropriate controls, for example to protect the interests of any commoners in the exercise of their rights and to minimise any adverse effects on the green.** This will require primary legislation.

Vehicular access ways across greens

68. ***Paragraph 2.13*** of the consultation paper invited views on the desirability of making limited provision for the construction or improvement of vehicular accesses across village greens. A majority of those responding supported this proposal, but there was a strong minority who again expressed concern that it would encroach on the protection of greens. It has become apparent since publication of the consultation paper that vehicular access ways across village greens are far more numerous than previously thought. We therefore wish to avoid further proliferation of vehicular access ways across greens as this would not be consistent with the purposes for which the green was established.

69. Nevertheless, we are mindful of the need to address the serious problem faced by those whose only means of vehicular access to their premises is over the green. Regulations made under section 68 of the CROW Act 2000 contain provisions that enable owners of premises, where the appropriate criteria are met, to obtain a right of vehicular access to their premises across land over which it is otherwise an offence to drive, including town and village green. **The section 68 provisions do not necessarily resolve the issue that driving over the land might still be an offence under the 1857 and 1876 Acts (see paragraph 60 above). We intend to resolve this problem in future legislation so that section 68 easements are protected.**

70. **However, we also propose to reinforce observance of the existing legislation to the effect that no further vehicular access ways across land that remains registered as town or village green should be created. Subject to the consent of the Secretary of State or National Assembly for Wales, we propose to enable exceptions where the creation of the access way would be in the interests of the green's community of users, e.g. to serve a public facility such as a village hall.** We have decided against a policy of allowing land exchange for the purpose of new private access ways on the grounds that bisecting greens with private driveway strips that, strictly speaking, are no longer part of the green, is undesirable. Future development should take into account that seeking to create new vehicular access ways across registered greens to private dwellings will not be acceptable.

71. **In relation to access ways that are already in use but do not qualify for an easement under section 68 we propose that no easement granted by the landowner shall be lawful without the consent of the Secretary of State or National Assembly for Wales.** Certain criteria would have to be met that would include there being no other means of vehicular access to the premises. In publicising the application for consent, there would be an opportunity to gather relevant facts including evidence regarding any other means of access that might exist. Where consent was granted, the land would nevertheless remain part of the green. **We propose that there should be scope to take into account the availability of any private land to be given as a contribution to the green in compensation for the interruption of its enjoyment.**

72. Improvement to existing access ways could have significant impacts on the overall appearance and ambience of a green, particularly if there are several access ways. However, in some circumstances, the application of a more durable surface material in a sympathetic manner or in keeping with the character of the green, might be preferable to deep rutting or unsightly areas of vehicular erosion. **We therefore propose that, subject to public consultation, the consent of the Secretary of State or National Assembly for Wales should be required for any improvements to existing access ways and that such consent might be subject to conditions, e.g. to specify the surfacing material to be used.** The revised section 194 consent process might prove apt for these purposes.

Section 5: AGRICULTURAL USE AND MANAGEMENT

General Considerations

Grazing management

73. The Government's consultation paper noted the lack of effective mechanisms for managing grazing intensity on commons. For many commons there are currently no reliable means by which the commoners themselves, or any other interest group, can effectively control or regulate animal numbers or feeding practices. The issue of grazing on common land is complex, with problems of overgrazing in some areas of the country (principally upland areas) and, at the same time, less grazing than is ideal for nature conservation purposes in other areas, especially the lowland commons in the south and east. Both can cause serious difficulties with regard to:

- obligations under the European Habitats Directive (sites of international conservation importance);
- the achievement of the Government's Public Service Agreement target to get 95% of the area of Sites of Special Scientific Interest (SSSI) into favourable or recovering condition by 2010, and;
- the restoration and maintenance of habitats and species populations of high biodiversity value under the UK Biodiversity Action Plan.

74. Nearly half of all common land in England and Wales is designated SSSI but the geography of these sites, the uses to which the land is put and the management needs can be very different. The achievement of sustainable grazing levels that take full account of conservation requirements, whether that means increasing or decreasing grazing pressure, is a key issue.

75. Common Agricultural Policy (CAP) livestock subsidies have exacerbated overgrazing problems since they provide an incentive for graziers to maintain animal numbers according to the quota they hold. The Government's aim to reform the CAP and eliminate production-based subsidies will, if successful, ease the problem of overgrazing. The new Hill Farming Allowance (HFA) in England, "Tir Mynydd" in Wales, under the national Rural Development Programmes represent a step in the right direction. But these are unlikely to remove completely the need for other measures for managing grazing levels.

76. The responses to the consultation paper support the Government's view that further action is needed if we want to promote economic and environmental sustainability in the management of commons.

77. With one exception (see paragraph 110), the consultation paper included no firm proposals on agricultural management of commons. But, on the basis of the responses we received, we have concluded that some changes and additions to the law are warranted. The measures we have in mind are set out in this section. They are in outline only and **we plan to set up a stakeholder working group to help develop the proposals in more detail, with a view to consulting on final proposals before introducing legislation.**

78. Paragraph 34 above sets out our proposals for reviewing the decision criteria for section 194 of the Law of Property Act 1925[5]. The Secretary of State receives a number of applications for consent under section 194 to fence areas of under-grazed lowland commons in order to protect livestock from road traffic and vice versa. In many cases at least part of the justification for such works are the conservation benefits that will arise, through the introduction of animals to graze the commons. The proposed review of the section 194 decision criteria will afford the opportunity to consider the priority to be given to fencing for the purpose of conservation grazing on a common.

Management of Commons

79. The Government's consultation paper invited views on the possibility of introducing statutory powers for formally constituted commons associations (***Paragraphs 4.21 – 4.23***).

80. While the Government favours a voluntary approach to commons management, we recognise that such voluntary arrangements do not always work since they normally require the agreement of all commoners involved. The consultation paper noted that some organisations, notably farmers' representatives and existing commoners' associations, have called for new powers to allow the majority of active graziers on a common to pass binding resolutions. The consultation exercise confirmed that there is strong support for such powers.

81. **The Government accepts the need to develop statutory provisions to enable commons management associations to operate more effectively.** But there are a number of issues to address before legislation can be drafted. In particular, we will need to consider:

- to what sort of association, or other body, should statutory powers of self-regulation be granted;
- the extent of the body's membership, powers, duties and responsibilities;
- how such bodies will operate (including their regulatory powers);
- the means by which these measures will be enforced;
- how the interests of individual commoners, landowners, tenants and licensee graziers should be safeguarded; and,
- how the associations should be advised as to what constitutes acceptable grazing intensity.

82. These are matters that we shall want the working group to examine. The Government's preliminary views are, however, as follows. Almost all these proposals would require primary legislation.

5 Under **section 194 of the Law of Property Act 1925**, the erection of any building or fence, or the construction of any work, which prevents or impedes access to land which was subject to rights of common on 1 January 1926, is unlawful unless the consent of the Secretary of State or National Assembly for Wales is obtained.

Who would take the initiative

83. **We believe that the initiative for setting up a statutory body should come from those involved – i.e. those with rights to graze animals on the common. Graziers would be able to follow a process to set up such a body for their area. This might be administered by local authorities or the relevant National Park Authority in England, and perhaps the National Assembly in Wales.** Though we believe that the initiative should normally come from the graziers themselves, the wider public interest requires the existence of reserve powers. Where the formation of a statutory body cannot be agreed, or where insufficient use is made of its new powers, it would be wrong for the Government to turn a blind eye should the actions of some of the commoners seriously threaten the conservation and/or public amenity value. We shall ask the working group to consider the reserve powers the Government should have in order, if necessary, to regulate the activities of the commoners, and to hold them jointly responsible for any conditions and penalties that might apply.

Criteria that applicant bodies should meet

84. **Those administering the approval process for the establishment of statutorily empowered commons associations would need to ensure that basic criteria, designed as safeguards, are met. This is likely to include the need for support from a minimum number and/or percentage of active commoners/graziers.** The Government's view is that it would be wrong for a small number to be able to prevent the establishment of a management association desired by the great majority of commoners.

Scope of the regulatory powers

85. The scope of any new regulatory powers would need to be established but **the primary purpose of the associations would be to manage grazing practices and the exercise of rights for grazing.**

86. **Possible measures for management of grazing intensity by the associations might include the following**:

- limitations on, and monitoring, the exercise of rights in order to achieve sustainable grazing levels that take full account of conservation requirements;
- fixing of periods when animals may or may not be turned out onto the common;
- clearance of animals for disease control or other reasons;
- marking of any animals grazing the common;
- removal and, if necessary, disposal of unmarked animals or those not on the land by virtue of a right of common or other lawful authority;
- regulation of supplementary feeding;
- restrictions on the turning out of entire male animals (on grounds of public safety and proper animal husbandry);
- maintenance of local registers of active and inactive graziers;
- controls on lending or leasing of rights;
- raising of funds;
- appointment of reeves or shepherds;
- referring cases of erroneous or over-quantified rights registrations to the registration authority and/or the Commons Commissioners.

87. **We are minded to enable commons associations, in certain circumstances, to temporarily fence parts of a common for the purpose of managing grazing animals without having to go through the full section 194 consent procedure.** However, since an acceptable balance would have to be struck between the various interests in the common, such a provision might, for example, be exercisable only for animal welfare reasons or for the purpose of habitat restoration or enhancement in accordance with the objectives of a management plan. If there is support for this, conditions might be attached to safeguard access to the common. We shall want the working group to consider this issue carefully.

Membership of the statutory management associations

88. The number of commoners on individual commons varies widely, as does the proportion of those registered that are actually actively engaged in exercising their rights. Research has revealed that 65 per cent of commons had no more than five registered rights and nearly 14 per cent had 20 or more. On some of the larger commons there may be 100 or more registered commoners. **Where there are relatively small numbers of commoners, it should be practicable to require decisions to be voted on by individual members. But in cases where there are a large number of members, it may be appropriate to require the election of an executive committee to exercise statutory powers on their behalf.**

89. We envisage that all individuals with the right to graze animals on the common would be members of a statutory association although in practice, those currently exercising their grazing rights would probably form the active core. Landowners and anyone to whom grazing rights have been granted or leased would be included. **There may also be a case for enabling the associations to co-opt for example other landowners or farmers, the local authority or conservation, wildlife and amenity bodies if they wish.** Otherwise, we have set out below how we see the wider interests in commons management being served.

Role of Other Advisory and Management Bodies

90. Many commons provide benefits to a wide public – such as access, recreation, nature conservation and historical interest. The Government believes that there is a case for involving representatives of these interests in the overall management of the common, regardless of whether a statutory association has been established. **Our view is that county councils or the relevant National Park Authority should be empowered to convene broad-based management/advisory bodies.** These should include representatives of commoners, landowners, English Nature and the Countryside Agency or the Countryside Council for Wales, other wildlife and amenity groups, historic environment interests and other local authorities and councils with an interest in the commons.

91. A primary role for such bodies might be to produce a management plan for the common(s) covering:

- management of the common's flora, fauna, landscape, archaeological, geological and physiographical features;
- promotion of educational activities associated with the common;
- facilitation of access, in accordance with Part I of the Countryside and Rights of Way Act 2000;
- other recreational uses of the common and the provision of facilities for this (car parking, litter control, picnic sites, public lavatories etc – subject to section 194 consent);

- fencing (subject to section 194 consent) of the boundary or parts of the common for purposes such as protection or regeneration of flora or fauna or other public interests;
- control of invasive or damaging vegetation;
- controls on burning of heather, gorse, grass, bracken or other vegetation;
- providing incentives for additional grazing (subject to agreement with any commons association) where this is likely to benefit nature conservation or access.

92. Such bodies would need to work closely with the commons associations where they exist. **We propose that the commons associations would be placed under a duty to consult the broad-based body over any resolutions or management measures likely to impact on other interests,** (e.g. nature conservation or public access). They should be obliged to have regard to any advice given. Where the common or part of it is a protected site (eg Site of Special Scientific Interest, Special Area of Conservation, or Special Protection Area) a stronger role for the broad-based body might be appropriate, although existing statutory protection mechanisms would continue to apply.

93. We recognise the need to avoid confusion over roles and to minimise bureaucracy. It may be sensible, therefore, to have a single broad-based body for each county or national park. **The working group will be asked to consider a number of possible management structures,** including amalgamation of both types of bodies into a single management body where this would be more effective, or transfer of powers by agreement between them.

Grazing Rights and Related Issues

Fixed grazing limits

94. The consultation paper sought views on the option of imposing a fixed limit on grazing density that would apply to all commons, or all particular categories of common, irrespective of the rights that have been registered over them (***Paragraphs 4.24 – 4.26***). The view of respondents was that this would be an unnecessarily crude approach to management given the widely varying character and capacity of commons and **we do not propose to adopt it as a general measure.**

95. However, in the event of failure of other measures for influencing grazing intensity, or where a statutorily empowered commons association does not exist or fails to achieve sustainable grazing levels that also take into account any conservation aims, this idea might offer a last resort option. Although it is not an option we particularly favour, we shall nevertheless ask the working group to consider the merits of powers for the Secretary of State and National Assembly to impose grazing intensity limits on a common by common basis as a last resort. These powers might also include ability to reduce rights by suspension or extinguishment.

Reviewing grazing rights

96. Another option outlined in the consultation paper was to introduce a power to review grazing rights and to amend rights which are clearly in excess of the capacity of the land and appropriate sustainable levels (***Paragraphs 4.27 – 4.29***). Many respondents supported these ideas but there were differing opinions about how they could be achieved in practice. Some respondents were cautious about interfering with rights. Others supported a targeted review only, aimed at addressing the apparent over-quantification of some rights at the time of registration.

97. The process of reviewing rights was envisaged by the 1965 Commons Registration Act which states, in section 15(3), that: '… the right shall accordingly be exercisable in relation to animals not exceeding the number or numbers registered or such other number or numbers as Parliament may hereafter determine'. The process for that re-determination was not set out in the 1965 Act.

98. Having considered the responses, the Government's view is that a wholesale review of the original basis for the registration of rights would be extremely difficult and burdensome on rights holders and registration authorities. However, we believe that where there is a prima facie case to suggest that rights have been wrongly registered – for example because of duplication across several register units – there should be a mechanism to put this right. **We will provide new powers for any individual commoner or commons association to refer what they believe to be wrongly registered rights to the Commons Commissioners for investigation.**

Prohibiting severance of grazing rights

99. The consultation paper invited views on whether there should be a prohibition on the creation of new common rights in gross (i.e. independently of a land holding) and the severance of rights from the land holding to which they were originally attached (***Paragraphs 4.30 – 4.33***). There was strong support for this. Respondents generally took the view that the link between holdings and rights should not be severable**. We therefore propose to legislate to prohibit the severance of rights and the grant of new grazing rights in gross over a common. Existing rights in gross will remain unaffected by this.** We will, however, give consideration to making a specific exception for public or other approved bodies to acquire rights to be held in suspension in order to reduce grazing pressures.

100. As outlined at paragraph 84, commons associations will need to be aware of leases and loans of rights, including for the purpose of maintaining local 'working' registers. **The exercise of existing rights in gross will also need to be recorded on the local registers for management purposes. Statutorily empowered associations may be well placed to manage such transactions and, perhaps, to control the activation by lease or loan of hitherto unused rights that might previously have been severed.** We shall want the working group to consider how this could best be achieved and to think about whether there should be any limits on the length, or terms, of any leases or loans.

Lapse of grazing rights

101. Properties are sometimes bought by persons with little or no intention of exercising rights of common that are attached to them. In other cases, holdings with rights of common may be divided up with some new owners having no interest in exercising the rights. There are also a number of properties in respect of which the registered rights are forgotten or no more than a historical curiosity. These situations perpetuate uncertainty and may prejudice the success of management measures if rights might be re-activated at any time.

102. **The Government's view is that there should be better provision for maintaining both the accuracy and currency of the registers** and we have already set out our proposals to make notification of relevant changes affecting register entries a mandatory requirement (see paragraph 23).

103. The Common Land Forum recommended:

- that grazing rights should be extinguished where the benefiting land was developed for non-agricultural purposes;
- that where the relevant holding was not in agricultural use, the rights should be extinguished unless the land is still capable of benefiting from them; and,
- that subject to appeal to an appropriate body, registration authorities should be able to delete registered rights where the relevant holding was developed for non-agricultural purposes.

104. In order to meet our principal aim of ensuring accurate and current registers, the working group will be asked to consider these recommendations and put forward any practical suggestions.

105. **We are also minded to make a simple provision for holders of unwanted rights to surrender them for extinguishment and deletion from the registers.** This mechanism need not be confined to grazing rights and might well operate through the registration authorities but we shall also want to consider the interests of the landowner.

Management of Supplementary Feeding

106. The consultation paper noted that supplementary feeding of stock by commoners could lead to degradation of the ecological value of the land. Views were invited on whether the application of cross-compliance rules under the livestock subsidy schemes was sufficient or whether other approaches to dealing with this problem should be considered (***Paragraph 4.36***).

107. Respondents accepted that supplementary feeding could cause environmental problems but many noted that it was often necessary in order to maintain the economic viability of farming in the uplands. Some argued that supplementary feeding was necessary for animal welfare reasons, particularly in severe weather conditions, and others noted that it could be used as a management tool in the absence of effective shepherding.

108. **The Government's view is that existing cross compliance rules together with provisions allowing the control of supplementary feeding by grazing associations, or by voluntary agreement where these do not exist, should be sufficient. The Government is already looking at ways of improving the efficiency of existing measures.**

Control of Ploughing And Other Agricultural Changes

109. The consultation paper invited views on whether there was need for new controls on ploughing and other major agricultural changes (***Paragraph 4.37***) to protect the nature conservation, landscape, public amenity and other interests in common land. Section 42 of the Wildlife and Countryside Act 1981 already provides protection against ploughing or other significant agricultural operations on land that is moor or heath within a National Park, and which has not been in agricultural use during the previous 20 years. There are also new regulations which implement the Uncultivated Land and Semi-Natural Areas provisions of the Environmental Impact Assessment Directive in England. These impose a requirement for consent from the Secretary of State for projects likely to have significant effects on the environment. **The regulations require that before uncultivated land or a semi-natural area is brought into intensive agricultural use, an environmental impact assessment must be undertaken if that operation would be likely to have significant**

environmental effects. Implications for public rights of way and access over commons and other open spaces used by the public will form part of the relevant considerations in determining whether the procedure should be brought to bear on any particular project. **We do not, therefore, propose any additional measures for common land out of this review.**

Regulation of the Turning Out of Entire (Uncastrated) Animals

110. The consultation paper noted that Section 1 of the Commons Act 1908 provides means by which a majority of graziers may pass binding resolutions on the turning out of entire animals on a common, subject to approval by the Secretary of State or National Assembly for Wales. The paper noted that these powers were seldom exercised and suggested that it was not necessary for the Secretary of State or the Assembly to maintain this role. The Government proposed to remove the requirement for Secretary of State / National Assembly approval or transfer the responsibility to the commons registration authorities (***Proposal 20***).

111. The majority of respondents agreed that decisions on turning out entire animals should be a matter for local decision, although a small number were concerned about the loss of the check on its use. In view of our proposals for management by commons associations, **the Government believes that the requirement for the approval of the Secretary of State or National Assembly for Wales may be removed in cases where a properly constituted association exists. Where no such association exists, responsibility should be transferred to the commons registration authorities.**

Section 6: SUMMARY OF PROPOSALS

Common land: registration issues

Registration and deregistration

- Land that was wrongly registered under the Commons Registration Act 1965 will be de-registrable (paragraph 6);
- Subject to the above and any specified exceptions, properly registered land will remain so unless it is compulsorily acquired or exchanged for other acceptable land (paragraph 8);
- Subject to safeguards, provision to be made for land that was provisionally registered but removed without justification, and land that was missed by process error to be registered anew (paragraph 10);

Ownership issues:

- All unclaimed common land to be vested in an appropriate body with a range of powers to help ensure effective management (paragraph 12);
- Provision to be made for unknown owners to come forward within a reasonable time period to re-claim such vested land (paragraph 15);
- That the period for reclaiming title should be the normal limitation period – 12 years (paragraph16);
- In the absence of conclusive evidence of title at the Land Registry, the Commons Commissioners will be able to inquire into cases where disputed ownership is detrimental to effective management. For the purposes of commons legislation, where neither party produces satisfactory evidence, the Commissioners will find in favour of the claimant currently registered in the commons registers (paragraph 17);
- Bodies vested with unclaimed land will be placed under duties and responsibilities that reflect the diversity of commons and the different interests in them (paragraph 18);

Improving the registers:

- Instead of the current discretionary provisions for effecting amendments to the commons registers, mandatory requirements will be introduced so that registration authorities are notified of all material events affecting register entries or creating the need for new entries. **This is a change from the original proposal which was to transfer registration details to the Land Registry** (paragraph 23);
- Subject to appropriate safeguards, provision will be made for clerical errors in the registers to be corrected (paragraph 25);
- Provision to be made for resolving registrations left in suspension through administrative error (paragraph 26);
- Subject to a suitable fee, access should be provided to registration authority files concerning register entries (paragraphs 27 and 28);
- The fee for official searches of the registers will be increased to better reflect current administration costs. It should not be refundable in certain circumstances and we shall look to develop a simpler mechanism for implementing appropriate regular increases (paragraph 29).

Miscellaneous:

- Implementation of the provisions of section 68 of the Countryside and Rights of Way Act 2000 will, in certain circumstances, provide statutory easements for vehicular access across common land (paragraph 30). **Not included in consultation paper**.
- Section 22 of the Commons Act 1899 requiring consent for inclosure of land under specific Acts will be repealed. Section 19 of the Acquisition of Land Act 1981 is the relevant current provision (paragraph 31).

Works and Fencing on Common Land:

Section 194:

- The protection of section 194 of the Law of Property Act 1925 will be extended to cover all registered common land with the exception of commons subject to specific metropolitan commons legislation (paragraph 32);
- The prescribed exemptions from the consent requirement will be retained apart from works connected with the taking and working of minerals which, in future, will require consent (paragraph 33);
- We will revise the specified decision criteria for section 194 applications to more explicitly reflect current interests and policy considerations (paragraph 35);
- Powers will be introduced to enable the imposition of conditions or restrictions on a section 194 consent and the fixing of a time limit for works described in the application as 'temporary'. **New proposal** (paragraph 36);
- The section 194 consent process will be retained centrally with the Secretary of State and the National Assembly for Wales. **This is a change from the original proposal which was to transfer this function to local planning authorities**. We will consider, however, whether another central body might be better placed to undertake this function in due course (paragraph 38);
- We will consider the need and scope for an urgent section 194 procedure in certain circumstances (paragraph 39);
- In the course of reviewing the consent decision criteria, we will give further consideration to whether or not to introduce a fee for section 194 consent applications. The balance of private/public interest benefits might be a relevant factor (paragraph 41).

Enforcement:

- Local planning authorities will be empowered to issue enforcement notices in respect of works and fencing that are unlawful under section 194; and if necessary, to pursue enforcement via the magistrates' courts. Owners and those with legal interests in the land will remain eligible to pursue action via the county court (paragraph 42);
- We have decided against enabling the general public to instigate enforcement action (paragraph 43). **Not a firm proposal but the paper had invited views on this**.

Town and Village Greens:

Registration issues:

- We conclude that there is no need to enable dual registration of land as both common or green, nor for the exchange of registrations from one register to the other (paragraph 44);
- We have already improved and clarified the definition of town and village greens by means of section 98 of the Countryside and Rights of Way Act 2000 (paragraph 47);
- We will consult on draft regulations under section 98 of the CROW Act to allow a prescribed period for the lodging of an application for registration of land as a green where use has been prevented or suitably challenged. We have a period of two years in mind (paragraph 48);
- We will also consider the scope for using the powers to make regulations in section 98 to increase openness and transparency in the application process (paragraph 49);
- Provision will be made for landowners to give notification that any further use of land for recreation has ceased to qualify for registration purposes (paragraph 50);
- Clear provision will be made for registration authorities to register parts of the application land and reject others if they are satisfied on the evidence, that this is the appropriate course. **New proposal** (paragraph 52);
- Registration authorities will, subject to an appeal safeguard, be able to reject applications which on initial examination of the evidence, fall significantly short of establishing a prima facie case for registration. **New proposal** (paragraph 53);
- Similarly to common land proposals, public access should be possible to registration authority files concerning greens registrations (paragraph 57);
- We will address a legal issue on the effect of registration by ensuring that on registration of land as a green, users will acquire rights to indulge in lawful sports and pastimes (paragraph 51).

Ownership and related issues:

- Provision will be made for unknown owners to come forward and re-claim title to town and village green land vested in local authorities. As with the vesting of common land, a time limit will be imposed (paragraph 54);
- Reflecting arrangements for greens registered before 1970, and subject to the reclamation of title safeguard above, provision will be made for greens registered after 1970 with no known owner to be vested in local authorities. **New proposal** (paragraph 54);
- Similarly to our proposals for commons, in addition to the compulsory acquisition of land or where land is exchanged, provision will be made for land wrongly registered as town or village green to be de-registered. (paragraph 55);
- Local authorities will be eligible to de-register wrongly registered green land in the same way as other landowners. **This is an amended proposal as originally it was suggested that local authority owned wrongly registered greens should be excluded** (paragraph 56);
- Provision will be made for landowners to voluntarily register land as town or village green (paragraph 59);
- Subject to appropriate controls, provision will be made for landowners to give consent for temporary vehicle parking on town and village greens (paragraph 67).

Protection and enforcement:

- We will clarify in legislation that the protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 will apply to all registered town and village greens (paragraph 60);
- Similarly to section 194 enforcement, local planning authorities will be able to issue enforcement notices in respect of sections 12 and 29 as a preliminary step before proceeding to prosecution in the courts (paragraph 61);
- Subject to safeguards, provision will be made to create strictly limited scope for establishing facilities on greens that would add comfort or convenience for users (paragraph 63);
- The protection of section 194 of the Law of Property Act 1925 will be extended to all registered town and village greens on a qualified basis. Consent will be required in all cases where rights of common remain registered over the green. If there are no registered commoners consent will not be required for proposed works that are permissible under sections 12 and 29. Consent will be required in all cases of proposals concerning facilities to add comfort and convenience whether there are registered commoners or not (paragraph 65).

Vehicular access ways and greens:

- Section 68 of the Countryside and Rights of Way Act 2000 enables the acquisition of easements in certain circumstances and we will ensure that in those circumstances, an exemption from the effects of sections 12 and 29 will apply (paragraph 69). **Not included in the consultation paper**;
- Unless it is in the interests of the green's users and the Secretary of State or National Assembly for Wales has given consent, we will reinforce the existing position that new vehicular access ways should not be created over land that remains registered as a town or village green (paragraph 70);
- In respect of existing access ways that do not qualify for an easement under section 68, no easement granted by the landowner will be lawful without the consent of the Secretary of State or National Assembly for Wales (paragraph 71);
- Consent from the Secretary of State or National Assembly for Wales will be required for any improvement to existing access ways and there will be provision to impose conditions (paragraph 72).

Agricultural Use and Management:

Management by commons associations:

- We will develop statutory provisions to enable commons management associations to operate more effectively (paragraph 81);
- The initiative should come from the commoners and other graziers and the acquisition of statutory powers will involve an approval process (paragraph 83);
- Applicant management associations will be expected to meet specified criteria (paragraph 84);
- A range of measures for managing grazing practices and the exercise of rights of common for pasture might be made available to statutory commons management associations (paragraph 86);
- Subject to further consideration, statutory management associations might be empowered to erect temporary fencing without requiring section 194 consent (paragraph 87);

- Different circumstances might enable a vote per member on resolutions or require the election of an executive committee (paragraph 88);
- The associations should have facility to co-opt other interests (paragraph 89);
- County councils and National Park Authorities will be encouraged to establish broad-based management/advisory bodies that might be charged with producing overall management plans, exercising certain functions and providing advice to the commons associations (paragraphs 90-92).

We propose to establish a working group involving stakeholders to elaborate on the proposals above and to consider other options (paragraph 93).

Grazing rights and related issues:

- We do not propose to pursue the idea of broad fixed grazing intensity limits but will ask the working group to consider whether use on a common by common basis has merit as a last resort option if necessary (paragraphs 94 and 95);
- We do not propose to undertake a wholesale review of registered rights but will enable individual commoners or associations to refer cases of wrongly registered rights to the Commons Commissioners for investigation (paragraphs 96 to 98);
- We will prohibit the severance of rights from the holdings to which they attach and the grant of new rights in gross but will consider making an exception for public or other approved bodies to acquire rights in order to reduce grazing pressures (paragraph 99);
- Management associations will have power to control the activation by lease or loan of rights that might otherwise have been severed (paragraph 100);
- With a view to improving the accuracy of the registers, the working group will be asked to put forward practical suggestions for updating the registers in respect of rights that may have been abandoned, forgotten or can no longer be used (paragraphs 102 to 104);
- We are also minded to make provision for owners of unwanted rights of common to voluntarily surrender them for extinguishment (paragraph 105).

Other issues:

- In the light of existing cross-compliance measures and proposals for statutorily empowered management associations, we do not propose any other specific measures for management of supplementary feeding practices (paragraphs 106 to 108);
- New Environmental Impact Assessment regulations will provide a safeguard against significant agricultural changes on uncultivated or semi-natural land. We do not therefore propose any additional measures for commons out of this review (paragraph 109);
- The requirement for Secretary of State / National Assembly for Wales approval for resolutions on the turning out of entire animals on commons will be removed where a statutory management association is regulating such practices, and transferred to the registration authorities where there is no statutory association (paragraphs 110 and 111).

Outline Regulatory Impact Assessment of Proposals

Common Land

Registration issues:

a) To facilitate de-registration of wrongly registered land

b) To restrict de-registration in other circumstances

c) To enable fresh registrations of certain categories of 'missed' land

1. **(a)** Addressing the issue of wrongly registered land will be of positive benefit to landowners by lifting restrictive legislative burdens and clarifying that their land will not be access land under the Countryside and Rights of Way Act 2000 by virtue of such erroneous registrations. There could be some loss of de facto amenity to users. **(b)** The restrictions on de-registration will not stand in the way of compulsory acquisition powers and land exchanges will continue to be possible. Essentially the proposal will maintain in the public interest the state that has existed since registration (in most cases during 1967 -1970). Whether any landowners are likely to incur costs as a result will be examined in more detail during a full impact assessment. **(c)** There is land that ought to have been registered, e.g. where a simple error is to blame. Given the limited scope of the proposal and appropriate safeguards, we anticipate that no landowner's interests are likely to be seriously prejudiced by this proposal.

Ownership issues:

a) Unclaimed common land to be vested in appropriate bodies

b) Unknown owners to have provision for re-claiming title to vested land within a reasonable time period

c) Commons Commissioners to determine ownership disputes for the purpose of commons legislation where neither party can establish conclusive title at the Land Registry

d) Vested owners to have management duties and responsibilities that reflect the diversity and different interests in commons

2. **(a)** The legislation made provision for the vesting of unclaimed greens in local authorities but not for commons. We now understand that there are some 4,000 hectares of unclaimed common land in England and 21,000 hectares in Wales. Vesting this land will ensure clear responsibility for its general welfare, protection and management. **(d)** The vested bodies are likely to incur some resource costs in executing their increased responsibilities, and so this will be a new burden on them. The size of the burden will vary depending on how much input is necessary and how much of the land is in their area. For example, some may already be subject to good informal management arrangements, others may have suffered serious neglect. **(b)** Enabling unknown owners to re-claim title within a reasonable time will ensure compliance with the Human Rights Act 1998 and although in itself it will not involve any change to the status of the land, adverse changes to any management regime could

have detrimental effects. **(c)** A determination of disputed ownership for the purpose of commons legislation by the Commons Commissioners will affect only the parties in dispute. Little significant cost is expected to arise given that in the absence of satisfactory proof, the Commissioners will find in favour of the benefit to the existing registered claimant to ownership. Conclusive determination of title will remain the province of the Land Registry.

Improving the registers:

a) Notifying the registration authorities of all relevant changes affecting registrations to be made a mandatory requirement

b) Provision to be made for clerical errors in the registers to be corrected

c) Registrations left in suspension through administrative errors to be finalised

d) Registration authority files to be available for public inspection subject to a fee

e) Fees for official searches of the registers to be increased

3. **(a)** Amendment of the registers is currently on a discretionary basis and this is the prime contributing factor to out of date and inaccurate register information. Amendment requires the completion of a form and provision of some satisfactory proof of the change of circumstances. It will usually involve parties with an interest in land or rights and we do not anticipate this will create a significant burden on those individuals. Some degree of increased administrative work will be involved for registration authorities and probably mostly concentrated where there are significant numbers of common rights in use. **(b)** and **(c)** A similar balance of burdens is expected in relation to the correction of clerical errors and finalisation of registrations in suspension (only two cases of the latter are known). **(d)** Access to registration files may be required by individual parties seeking information for reasons of personal interests in land or rights. Charitable bodies or interest groups may be seeking information with which to justify fresh registrations or corrections concerning missed land. The fee will be incurred on a per case basis. **(e)** The registers are open to public inspection without charge though many parties with an interest in land or rights, including solicitors involved in transactions concerning the same, find it convenient to rely on the registration authorities to conduct a search on their behalf. The fee will be incurred only by those parties.

Miscellaneous:

a) To enable the acquisition of statutory easements for vehicular access across registered common land

b) To repeal section 22 of the Inclosure Act 1899

4. **(a)** The provisions concerning acquisition of easements for vehicular access are limited to specific circumstances. Parties involved will be seeking the benefit of lawful rights of way by vehicle to their premises and the regulations made will restrict the charges they will pay to an acceptable level. **(b)** Section 22 is concerned with archaic legislation and a modern provision enacted in 1981 is the current safeguard in respect of transactions concerning common land or greens. This is a deregulatory measure involving no additional cost to interested parties.

Works and Fencing on Common Land

Section 194:

a) To extend the coverage of section 194 of the Law of Property Act 1925 to all registered common land except those covered by metropolitan commons legislation

b) Prescribed exemptions from the requirement for section 194 consent to be retained except for works connected with the taking and working of minerals

c) To revise the section 194 decision criteria specified in the relevant legislation

d) To enable the imposition of conditions, restrictions or time limits on a section 194 consent

e) To retain the consent function centrally within Government

f) To consider the need for an urgent procedure in certain circumstances

g) To consider further whether a fee should be charged for consent applications

5. **(a)** The extension of section 194 to all commons will probably more than double the number of additional register units covered but these will mostly be small areas of land making up about 12% of the total area. Most will be 1 hectare in area or less and therefore the scope for large numbers of additional applications for consent to works on them is likely to be small. Consequently, these will be better protected and any additional consent burden is not expected to be significant. **(b)** Consent exemptions with statutory authority will remain e.g. for emergency works, but the taking of minerals as a commercial activity and associated works can cause significant damage. The proposed change will impact only on those legally entitled to work minerals from the land. **(c)** and **(d)** Revising the decision criteria and imposing conditions on grants of consent are expected to be largely cost neutral resulting in better regulation but occasionally some extra cost of compliance may affect the applicant. **(e)** Retention of the consent function within government will be cost neutral as a continuation of the present regime. **(f)** Costs implications will depend on the form of any procedure developed. **(g)** A decision to introduce an application fee will involve costs for applicants in addition to those of executing the proposed works.

Enforcement:

a) To empower local planning authorities to issue enforcement notices in respect of works and fencing that are unlawful under section 194

6. **(a)** The introduction of the enforcement notice procedure will involve some initial administrative set up costs for local planning authorities and subsequent operational costs per enforcement case. This will be a new burden although once set up, it is expected to offer an effective and less resource intensive alternative to the present mechanism which means bringing an action in the county court. For any one authority, it is not expected that action would be necessary on a frequent basis.

Town and Village Greens

Registration issues:

a) Having already clarified the legal definition of greens, to consult on a proposal to allow two years for applications from the date of a challenge to use of the land

b) To consider scope for regulations to increase openness and transparency in the application process

c) To enable landowners to give clear notice that use has ceased to qualify for registration

d) To allow registration authorities flexibility to accept or reject parts of the application land according to the user evidence

e) Subject to an appeal safeguard, to enable registration authorities to reject applications falling significantly short of a prima facie case for registration

f) To provide public access to registration authority files

g) To ensure that rights to indulge in lawful sports and pastimes ensue on successful registration of the land

7. **(a)** Allowing a fixed application period should involve no extra costs for applicants and should ease pressure to lodge the application in haste. It might cause some delay to the landowner's intentions, although any major projects are likely to involve significant lead-in time in any event. It will however provide the landowner/developer with certainty against any risk of registration once the period has elapsed, potentially saving fruitless investment of time and resources. **(b)** The development of any prescribed steps to improve openness in the application process could serve to alert registration authorities, planning authorities and landowners/developers at an early stage, again with potential savings. **(c)** Facilitating landowner's notice regarding use of the land is expected to be largely cost neutral in that both landowner and users will simply have a clear understanding of each other's position. There would be a new burden for registration authorities arising from the associated administrative role. **(d)** Enabling partial registration /rejection according to the user evidence could benefit both applicants and objectors. Making clear provision where currently there is doubt could avoid the costs of further applications. It is not expected to impose any additional costs or burdens. **(e)** Providing for summary rejection of poor applications will enable savings for registration authorities, landowners and/or developers where applications made clearly do not have the necessary support of the community. In the interests of applicants, there will be safeguards. Additional costs or burdens are not expected from proper exercise of this power unless there is resort to an appeal process in any individual case. **(f)** As with common land registrations, access to registration files will involve a fee for the interested parties. However we would expect the need for access in respect of greens to be less than that concerning commons. **(g)** Ensuring that there is a legal right for recreational activities is not expected to create any additional costs or burdens in respect of land registered as a green.

Ownership related issues:

a) Unknown owners to have provision for re-claiming title to vested town or village green land within a reasonable time period

b) Land with no known owner and registered as a green since 1970 to be vested in local authorities in similar fashion to pre-1970 unclaimed greens

c) To facilitate de-registration of wrongly registered land

d) To include local authorities as landowners eligible to de-register land wrongly registered as a green

e) To enable landowners to voluntarily register land permanently as a green

f) Subject to controls, to enable landowners to consent to temporary vehicular parking on a green

8. **(a)** Enabling unknown owners to re-claim title within a reasonable time will ensure compliance with the Human Rights Act 1998 but it will not involve any change to the status of the land. **(b)** Vesting post 1970 unclaimed greens in similar fashion to pre 1970 ones, but subject to the reclamation of title safeguard, will provide clarity with regard to aspects concerning ownership and enable the exercise of functions otherwise reserved to the owner, e.g. for granting certain consents. It is not expected that there are many greens in this situation but in respect of those that are, vested authorities are likely to incur additional costs though many are likely to be already tending to or maintaining such greens. There will, therefore, be a new burden. **(c)** and **(d)** As with common land, enabling de-registration of wrongly registered land will lift legislative burdens and free up the land to the owner's benefit. As greens are mainly close to communities, it may involve some degree of loss of de facto amenity to users. **(e)** Enabling voluntary registration of land as a green will be a positive and permanent public benefit. Some new burdens/costs are likely depending on the arrangements for management and maintenance of such land. **(f)** Providing for temporary parking on greens could positively benefit the landowner and the community of users but risks of harm also exist. The provision is likely to involve some additional supervisory burden in order to monitor compliance with controls and safeguards.

Protection and enforcement:

a) To clarify that legislation specifically protecting greens will apply to all registered greens

b) To enable local planning authorities to issue enforcement notices in respect of breaches of the specific greens legislation as a preliminary option before prosecution

c) To create limited scope for establishing facilities for the comfort and convenience of users on greens

d) To require that consent be obtained under section 194 of the Law of Property Act 1925 for fencing or works on greens where there are registered commoners, and in any event if the proposals are for comfort and convenience of users

9. **(a)** Clarifying the application of the protective legislation is expected to be cost neutral as confirmation of what is generally considered to be the case already. **(b)** The ability to issue enforcement notices in respect of alleged breaches of the legislation will involve some initial administrative set up costs for local planning authorities (probably concurrently with similar proposals for section 194 and common land) and subsequent operational costs per case. For any one authority, it is not expected that action would be necessary on a frequent basis. Where it is used, it is expected in many cases to suffice as an effective preliminary step that would be cheaper and less resource intensive than the current necessity to proceed straight away to prosecution in the magistrates' courts. **(c)** Enabling the creation of facilities

for comfort and convenience on greens will involve benefit to some users but others might consider that in some cases a loss of amenity is involved. Proposers of works will incur the costs of a consent application in respect of all proposals for such facilities but it is not expected that there would be large numbers of applications. Opponents will incur the small burden of voicing objections to this new category of facilities but generally the legislation is there to protect the existing benefit in the land. **(d)** Consent will be required in all cases where there are registered commoners and this represents no change to the present. Where there are no registered commoners and the proposals would directly improve enjoyment of the green for lawful sports and pastimes, additional section 194 consent will not be required. This will lift this burden in cases where the section's application is uncertain and remove an additional hurdle when the proposals are already permissible under the specific legislation that protects greens.

Vehicular access ways and greens:

a) To enable the acquisition of statutory easements for vehicular access across registered town or village green land

b) To reinforce the position that new vehicular access ways across land that remains registered as a green should not be created

c) To provide that no easement in respect of existing access ways that do not qualify for a statutory easement under section 68 of the Countryside and Rights of Way Act 2000 will be lawful without the consent of the Secretary of State or National Assembly for Wales

d) To enable improvement to existing lawful vehicular access ways subject to the consent of the Secretary of State or National Assembly for Wales

10. **(a)** The provisions concerning acquisition of easements for vehicular access are limited to specific circumstances. Parties involved will be those seeking the benefit of lawful rights of way by vehicle to their premises and the regulations made will restrict the charges they will pay to an acceptable level. **(b)** Reinforcing observance of the existing legislation that prevents the creation of further access ways across registered greens is expected to involve no costs other than to the authorities for occasional enforcement. **(c)** Those benefiting from existing ways that do not qualify for the statutory easements will incur the costs of an application for consent to legitimise any easement granted by the landowner. **(d)** All those benefiting from vehicular access ways will incur the costs of seeking consent for any improvement to the access way. None of the above impose a direct burden on the recreational users of the land in addition to any loss of amenity that has already been tolerated. Landowners may gain from the ability to grant effective easements over town or village green land.

Agricultural Use and Management

11. This section is subject to further development of our proposals but some initial expectations are outlined below.

Management by commons associations:

12. A working group will help to further develop our broad proposals for statutory commons management associations but we expect that commoners/graziers will incur some costs to help underpin these associations. Any fresh burdens may be financial e.g. a levy payable to the association, or other e.g. a time commitment to attend meetings. A commitment to comply with management measures passed by the association may mean business impacts but these might be offset by agri-environment scheme payments where scheme applications are successful. Similarly the association will incur costs connected with its administration and enforcement functions. However, we would expect that such associations, largely consisting of graziers themselves, would seek to exercise their functions as effectively as possible and with the least adverse impact on the interests of their members and their businesses. Improved and more robust management should however act to protect, amongst other things, the long-term economic interests of the members.

13. There will be a new burden on local authorities and National Park Authorities who are required to consider and approve the acquisition of statutory powers by commons management associations. This burden will be concentrated in the most agriculturally active areas. There will also be a new burden on county councils and National Park Authorities who take up the call to establish broadly representative management/advisory bodies. In the long term however, this is expected to reap reward through improved management and protection of all interests in the land.

14. Other specific agricultural and management proposals will generally require development in conjunction with the main management arrangements above. At this stage it is difficult to identify any costs implications associated with these specific measures but the use of last resort powers to combat overgrazing, for example by imposing grazing limits, would have direct business impacts. The prohibition of severance would block income from single severance transactions but our intention is to facilitate regulated lending and leasing of such rights instead.