

Title: Impact Assessment of the consultation on the registration of new town or village greens Lead department or agency: Environment, Food and Rural Affairs Other departments or agencies: Communities and Local Government	Impact Assessment (IA)
	IA No:
	Date: 25/07/2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries: Grant McPhee, 0207 238 6326	

Summary: Intervention and Options

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

Provision was made under the Commons Registration Act 1965 to register land which became a town or village green after 1970. The provision was regarded as technical: few applications were made until the late 1990s, but the number in England has now risen to 200 per annum. The volume of applications, the character of application sites, the cost of the determination process on the parties affected, and the impact of a successful registration on the landowner, now merit a review of the system. The registration system is being widely used to oppose development of land where planning permission has been sought or granted. The costs in such cases outweigh the benefits, and arise from a failure of the existing regulatory process which can only be resolved by Government intervention.

What are the policy objectives and the intended effects?

The objective is to reform the town and village green registration system to effect a better balance between protecting high quality green space valued by local communities and enabling legitimate development to occur where it is most appropriate. The Government also wishes to improve the operation of the current registration system for all involved, reducing the burden on local authorities which are responsible for implementing it, and on landowners. Reform is intended to deliver a system which discourages applications for, and excludes from registration, sites which fail to deliver net benefits, and which reduces the costs for both local authorities and landowners, while continuing to allow the registration of greens where justified by the net benefits.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing

Option 1: Adopt a package of proposals addressing different perceived shortcomings of the current greens registration system.

Option 2: Adopt an abridged package of proposals which can be delivered by secondary legislation.

The impact assessment considers a package of proposed reforms in the context of the objectives adopted, against a baseline position of 'do nothing'. It concludes that only a package of measures will help deliver all our objectives for reform, and that individual proposals, taken in isolation, will have insufficient impact against those objectives. The Government is minded to reform the greens registration system by adopting Option 1, but will consider, in the light of responses to the consultation, whether these changes, taken together, offer the best possible package for reform.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 1/2014

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review? Yes

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

 Date: 25 July 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Adopting a package of five measures, each addressing different aspects of the current perceived weaknesses of the registration system

Price Base Year 2010	PV Base Year 2010	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: 5.44	High: 27.31	Best Estimate: 10.92

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	0.00	0.05
High	-	0.01	0.19
Best Estimate	0.01	0.00	0.08

Description and scale of key monetised costs by 'main affected groups'

Local authorities:

- staff hours spent familiarising themselves with new guidance
- costs associated with publicising new guidance to potential applicants or enacting new guidance

Landowners:

- time spent and fee incurred in making declarations to protect land from registration

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

Local community:

- development of green space results in a loss of health, biodiversity and amenity values to primarily the local population (but generally confined to sites with negative net benefit)
- community deterred from registering some high net benefit sites because of blunt measures

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00	0.37	5.50
High	0.00	1.87	27.50
Best Estimate	0.00	0.74	11.00

Description and scale of key monetised benefits by 'main affected groups'

Landowners: professional costs savings

Local authorities: public inquiry cost savings, processing time and resource savings

Applicants and local community: savings in time taken to complete and support registration application

Other key non-monetised benefits by 'main affected groups'

Landowners:

- value uplift of land formerly threatened by greens application
- reduced uncertainty eliminates delays to development

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Sensitivity: complexity of interaction between different measures and difficulty of estimating net impact of package of measures contained in Option 1

Risks:

- measures are less effective in discouraging ultimately unsuccessful applications or more effective in discouraging potentially successful applications
- lack of Parliamentary time to deliver new primary legislation
- unforeseen consequences of measures addressing complex area of law

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	Yes	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			No date yet adopted		
Which organisation(s) will enforce the policy?			Top tier local authorities		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0.00	Non-traded: 0.00	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0%	Benefits: 0%	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro 0.00	< 20 0.00	Small 0.00	Medium 0.00	Large 0.00
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	23
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	23
Small firms Small Firms Impact Test guidance	Yes	24
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	24
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	25
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes	25
Human rights Human Rights Impact Test guidance	No	26
Justice system Justice Impact Test guidance	Yes	26
Rural proofing Rural Proofing Impact Test guidance	No	27
Sustainable development Sustainable Development Impact Test guidance	No	27

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Adopting two measures, capable of being implemented through secondary legislation, which will partially address aspects of the current perceived weaknesses of the registration system

Price Base Year 2010	PV Base Year 2010	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: 5.44	High: 10.92	Best Estimate: 8.18

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	0.05
High	Optional	Optional	0.08
Best Estimate	0.01	0.00	0.07

Description and scale of key monetised costs by 'main affected groups'

Local authorities:

- staff hours spent familiarising themselves with new guidance
- costs associated with publicising new guidance to potential applicants or enacting new guidance

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

Local population:

- development of green space results in a loss of health, biodiversity and amenity values to primarily the local population
- community deterred from registering some high net benefit sites because of fee

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00	0.37	5.50
High	0.00	0.74	11.00
Best Estimate	0.00	0.56	8.25

Description and scale of key monetised benefits by 'main affected groups'

Landowners: professional costs savings

Local authorities: public inquiry cost savings, processing time and resource savings

Other key non-monetised benefits by 'main affected groups'

Landowners: reduced uncertainty diminishes delays to development

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Sensitivity: complexity of interaction between different measures and difficulty of estimating net impact of package of measures contained in Option 1

Risks:

- measures are less effective in discouraging ultimately unsuccessful applications or more effective in discouraging potentially successful applications

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	Yes	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	06/04/2012				
Which organisation(s) will enforce the policy?	Top-tier local authorities				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0.0		Benefits: 0.0		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro 0.00	< 20 0.00	Small 0.00	Medium 0.00	Large 0.00
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	23
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	23
Small firms Small Firms Impact Test guidance	Yes	24
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	24
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	25
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes	25
Human rights Human Rights Impact Test guidance	No	26
Justice system Justice Impact Test guidance	Yes	26
Rural proofing Rural Proofing Impact Test guidance	No	27
Sustainable development Sustainable Development Impact Test guidance	No	27

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No. Legislation or publication

- 1 Consultation on the registration of new town or village greens (Defra, 2010) [not yet published]
- 2 Study of registered town and village greens and the attitudes towards applications (Defra, 2009)
- 3 Local authority survey of registration of new town or village greens (Defra, 2009)
- 4 Management and protection of registered town and village greens (Defra, 2010)
- 5 Common land policy statement (Defra, 2002)

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	see	spread	sheet							
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Section 1: Background

Proposal

1. This impact assessment accompanies a consultation which explains the background to the current statutory system for registering new greens, and sets out measures which we propose to adopt to reform the system. The purpose of the consultation is to test whether the proposed reforms are appropriate and proportionate
2. These measures are considered only in relation to England: please see chapter 1.6 of the consultation paper.

Objectives

3. The objectives of the proposed reforms are to:
 - strike a better balance between protecting high quality green space, valued by local communities, and enabling legitimate development to occur where it is most appropriate, and
 - ensure that when land is registered as a green, because of the exceptional protection afforded to new greens, the land concerned really does deserve the level of protection it will get.
4. We also wish to improve the operation of the registration system where applications to register land as a green are made so as to reduce the burden on local authorities which are responsible for implementing the registration system, and on landowners, and to gather further evidence, from respondents to the consultation, which will assist in developing our impact assessment of the proposed reforms.
5. The proposals for reform will be appraised taking account of responses to the consultation, and the Government will then decide how to proceed. We expect to announce a decision on the way forward later in 2011, and we will, at the same time, publish a summary of responses to the consultation.
6. This is a consultation stage IA and is therefore based on the options included in the consultation document and the evidence currently available. If the decision is to press ahead with the reforms then we would publish a final Impact Assessment. Further evidence, both qualitative and quantitative, will be gathered through the consultation period which may inform the decision about proposals to change the registration system for town and village greens. Stakeholders are asked to contribute evidence via the public consultation.

Background

7. Town or village greens (referred to in this document as just 'greens') are registered on application to a commons registration authority under section 15 of the Commons Act 2006 ('the 2006 Act'). Registration as a green confers on local people a right of access to the land for lawful sports and pastimes, and strong protection against encroachment and development. Most traditional greens were registered in a 'first wave' of registration under the Commons Registration Act 1965, in the late 1960s. The 1965 Act made technical provision to register 'new' greens, largely to take account of land given in exchange under compulsory purchase schemes, and few applications were made until the late 1990s.

8. Increasingly, however, applications are now being made to register new greens on the basis of 20 years' use of land as if it were a green. From an initially negligible level in the 1970s and 1980s, the volume of applications appeared to have significantly risen from around 50–70 per annum in the period 2003–05, to some 100–200 per annum in the period 2006–09, but the volume of applications granted has fluctuated greatly from year to year, between 30 in 2005 and just 8 in 2006. Further details of activity is given in Annexe 2 below, and in the consultation document.

Background: Benefits of Greens

Health Benefits

9. People using the space for recreation will benefit from improved health. There is a large body of evidence linking the existence of and access to green space with benefits for communities' mental and physical health. Research has linked the increase in green space with an improvement in health outcomes. For every 10% increase in green space there can be a reduction in health complaints in communities equivalent to an increase of five years of age³.

Biodiversity

10. It is difficult to value biodiversity benefits and the character and size of potential application sites are wide ranging. Moreover, green space does not automatically deliver significant biodiversity benefits: such benefits will vary from site to site. For example, mown grassland may confer few such benefits compared to semi-natural meadow land.

Air quality

11. Such benefits may lead to health benefits. Again, differing size and location of greens makes it difficult to ascertain values.

Non use benefits

12. Individuals may value the existence of the green for use by others both by present and future generations. These benefits are largely non-monetary in character, but they may be realised in, for example, an increase in local property prices, reflecting the value of the green to the community. However, the benefits are not necessarily realised on registration, but may accrue much earlier, because the benefits may flow from the undeveloped character of the site, so that registration merely confirms the long-term value of the site in generating such benefits (however, if a registration application is unsuccessful, and the site is developed, then clearly, such benefits will cease).
13. These benefits potentially accrue to the local community, rather than only to the applicant for registration and those supporting the application. This does not mean that an application for registration will necessarily be supported by all of the local community, but if the application is granted and the green is registered, then the community may benefit. It is not necessary that a particular individual wishes (or is able) to enjoy the green for recreational purposes: for example, a local homeowner may benefit from maintaining the value of that home, without any intention to use or even visit the green. However, a proportion of the community may have no interest or intention to use the green — for example, because there is alternative recreational space, which is nearer than or preferred to the green.

³ De Vries S, Verheij RA and Groenewegen PP. (2001) *Nature and Health: The relations between health and green space in people's living environment*. Euro Leisure-congress Netherlands.

Property values

14. Residential properties that have a view of green space or are close to green space can be more highly valued than other similar residential properties, taking into account all other factors. Research has shown that the price of a property rises proportionate to proximity to green space. Given that most greens are used by the immediate local community, any development on that green space could lead to reduction in house prices in the vicinity. The change in house prices would depend how far the property was from other green spaces and the size and quality of that green space. It is not possible to monetise this impact as there is not enough information on the number of properties that would be affected and specific information relating to house prices in local areas is not readily available.
15. The Department for Communities and Local Government commissioned a study into the external benefits of undeveloped land⁴ which conducted a partial literature review that estimated the value of open space in urban fringe areas of £177,800 per hectare (2001 prices). This gives an indication of the potential value of the benefits, but there is insufficient information to apply this value to sites given the variation in typology and location.

Temporary Benefits from Applying for Registration

16. Even where an application for registration is ultimately unsuccessful, an application (while its determination is pending) may be seen as generating benefits for some people (such as the applicant and supporters of the application), because of:
 - temporary protection from development and continuing use for recreation;
 - delay to any development;
 - possible withdrawal of development proposals (*i.e.* the developer ‘throws in the towel’);
 - community engagement to secure registration of a green and oppose development (which may deliver an enduring capacity for community involvement).

It is conceivable that the temporary benefits delivered by an ultimately unsuccessful pending application for registration may sometimes be sufficient in themselves to make the application worthwhile — even if the applicant (and those supporting the applicant) have no real expectation of the application being granted, and applications which are perceived to have been made in these circumstances may be seen as vexatious or speculative. However, some landowners respond to applications by excluding access to the land pending determination, and in such cases, the land itself will cease to be available for recreation (although the other benefits described above may endure).

17. Benefits will seldom accrue to the landowner from registration (but note that landowners wishing to achieve the benefits of registration for the local community can apply to register land as a green voluntarily).

Background: Costs of greens

Costs to the owner

18. The owner of the land will be affected most obviously where an application for registration is granted and the owner had intended changing the use of the land at some stage in the future: the effect of registration of land as a green is likely to constrain future use to the same low-level activities consistent with recreational use — for example, for extensive or rough grazing, for crops of hay or silage, for golf, or as playing fields — which are

⁴ *Valuing the External Benefits of Undeveloped Land*; www.communities.gov.uk/archived/publications/planningandbuilding/valuingbenefits.

consistent with the use (if any) to which the land was put prior to registration (any more intensive use is likely to be incompatible with use of the land for lawful sports and pastimes 'as of right'). But where the landowner has the necessary permissions to enable development, or reasonable prospects of securing such permissions (e.g. because the land is allocated for housing in the local development framework), or plans to intensify use of the land (e.g. by cultivating land previously used for extensive grazing), registration will present an insuperable impediment.

19. Even low level use, such as extensive grazing, may become impracticable following registration: for example, a green which frequently is used for walking dogs may be incompatible with the grazing of sheep. Similarly, significant recreational use of the whole area of a green may render it impracticable for cutting hay or silage making, because of disturbance to the grass. However, as a rule, use of a green by local inhabitants is expected to be compatible with low level use by the owner, and their use must accommodate the owner's where necessary (for example, by not disturbing grass cut for hay, and by not interfering with sports played with the landowner's permission).
20. Where registration of a green prevents the owner's plans for development of the site, the cost to the owner may be very considerable (in some cases, the owner's interest in development may have been sold to a developer, in which case, the cost may be borne by both the owner and the developer). Land that has the potential to be subject to an application for registration as a green may be priced at a discount to similar land elsewhere to take account of the possibility of a successful application for registration having an impact on the potential for development. An existing undeveloped plot of land may have 'development value' which is the value above existing current use value associated with the potential for planning permission being granted for development. This may vary from site to site but will be insignificant if the plot becomes registered as a green.
21. The owner is also likely to incur costs in opposing an application for registration of the land as a green, whether or not the application is likely to succeed. In addition to the owner's own time, and that of his employees, the owner may well employ legal and other professional advisers to advise on the case against registration, and if the application is referred to a public inquiry, to present the case to the inquiry.

Case study. An application was made in 2007 to register land at Oulton St Michael in Suffolk. A three day inquiry was held to consider the evidence. In due course, the inspector recommended that the application be refused, and the registration authority accepted the inspector's recommendation.

One of the two owners of the land, the Norwich Diocesan Board of Finance, incurred legal costs of £49,445 in opposing the application, together with other professional fees of approximately £3,000. Had the application been granted, the Board estimated that the loss of development value would have been around £300,000.

Costs to Commons Registration Authorities

22. An application for registration also imposes costs on the registration authority which is responsible for determining the application. The 2009 survey recorded 17 public inquiries in 2009 presided over by a barrister, at an average cost of about £13,000. The total legal fees incurred in the first three quarters of 2009 by responding authorities solely in relation to the 21 public inquiries commissioned by them were approximately £¼ million; total legal fees in 2008 for public inquiries held by all authorities in England are estimated at over £1 million. These figures do not include the cost to the registration authority itself, in officers' and members' time, in processing the application.

Costs to Third Parties

23. An application for registration may also impose costs on third parties, including:
- those who support or oppose the development or the registration application — such as supporters of the application, who may be required to attend a public inquiry during working hours to give evidence of use;
 - those who have an interest in development of the land — for example, a body which is interested in acquiring part of a completed development (such as a business proposing to lease office space, or a housing association proposing to acquire new homes), and which must make alternative arrangements (which may be less satisfactory);
 - the local community, where a registration application causes previously tolerated use of the land to be withdrawn by the owner — particularly if the application is rejected but public access is not subsequently restored;
 - the wider community — especially where an application which is granted, or which causes significant delay, affects a development undertaken in the public interest, such as a health centre, court building or affordable housing, so that alternative arrangements must be made (which may be less satisfactory).
24. Finally, the applicant for registration may incur costs in pursuing the application, measured in terms of the applicant's own time and that of any advisers, the applicant's out-of-pocket expenses, and the costs of any legal advice which is sought. It is perhaps unwise to assume that the applicant's costs are willingly incurred: few applicants are likely to have previous direct experience of an application, and the commitment of time and money to an application may prove to be very much higher than originally expected. Moreover, if the application is unsuccessful, the rewards may be minimal.

Case study. An application was made in December 2006 by Friends of Warneford Meadow to register the Meadow as a green. A public inquiry was held into the application in October 2007 and January 2008, and concluded in May 2008, presided over by a Queen's Counsel. The legal costs of the applicants totalled £45,000, which was raised by local residents. The registration authority decided in April 2009 to grant the application, and the decision was upheld on judicial review.

25. Moreover, the Coalition Agreement includes a commitment to protect green areas, of particular importance to local communities: see paragraph 36 below.

Why a review?

26. An estimated 185 applications were made in 2009 to register new greens⁵. While some applications are uncontroversial, and may, even today, relate to land whose owner remains unknown, others are strongly contested by landowners and even local communities, particularly where an application affects plans to develop the land for commercial, residential or community use. The cost to the applicant and supporters, the local authority, and the landowner and other objectors, in determining the application, may be very high and perhaps exceed £100,000; the cost to the landowner of an application which is granted may be higher still.
27. The greens registration system ensures that some land in long-term informal use by the community for recreation is given permanent protection. But such protection can bring about unintended consequences: landowners may well want to exclude all public use of their land, wary of their land becoming a green — even though any such use might fall well short of the criteria for registration. Any such system must therefore seek a compromise between the desirability of protecting sites in long-standing public use for recreation, and

⁵ See chapter 4.1, figure derived from 2009 survey and scaled up for non-responding commons registration authorities and for the fourth quarter 2009. We refer in this consultation paper to greens registered after 1970 as 'new' greens.

encouraging landowners to tolerate informal recreational use without fear of the consequences.

28. The process for determining greens applications is less than satisfactory and undermines credibility in the registration system because:
- applications may lack substance or merit, but registration authorities cannot easily reject them without disproportionate effort;
 - applications may be submitted at any time up to, or even after, development has begun and so can act as a 'last ditch' attempt to stop authorised development;
 - applications stand outside the planning system, and must be determined on legal criteria without consideration of need, impact or hardship affecting any of the parties;
 - the increasing number of applications is raising costs to registration authorities, and leading to delays in applications being determined;
 - making an application is free to the applicant and so there is no mechanism for discouraging vexatious or speculative applications, notwithstanding the costs imposed on landowners, developers and registration authorities; and
 - application sites may bear little relationship to traditional concepts of a green, so that the physical setting of a green (e.g. whether it is open to the road, whether it is grassland or woodland) is generally immaterial to the application's success.

Many of these impacts occur irrespective of whether an application is granted: although a successful application is likely to impose greater costs, particularly on the landowner, any application is capable of incurring substantial expenditure by the landowner, the registration authority, the applicant, and other supporters and objectors.

Reforming the system

29. There are many ways in which the greens registration system could be reformed, some of which are discussed in the consultation paper. Further information about the background to this consultation, and about the greens registration system, is available in the consultation paper.
30. The consultation paper includes five specific proposals for changes to be made to the existing registration system. This analysis examines how the measures proposed will contribute to the objectives of reform, and then continues to a review of the overall impact of the proposals as part of a package. This analysis is designed to help consideration of the proposals posed by the consultation document. Once a decision has been taken on the reforms to be adopted, a full impact assessment will take place on those reforms.
31. Achieving a balance between the competing claims of green space and development cannot always be done objectively: within a community, views will differ about the value and quality of a potential site for registration as a green, and about the desirability of a proposal for development — even without taking account of the interests of local businesses, the wider community in the area, and the public generally. Every site will have its own characteristics — size, setting, landscape, use, convenience *etc.* — and every proposed development will vary in its scope, impact, and utility. It is not practicable, or even possible, to appraise every greens registration application, and every development affecting an application, to take account of all these factors. But it is possible to apply general rules to different classes of cases, so that in each class, an assumption may be drawn about where the balance lies between protection and development — so that, although those assumptions may sometimes be mistaken when applied to particular examples, they are more often right than wrong. That is the approach taken in this consultation in relation, particularly, to our proposals for a character test and for better integration with local planning: sites which may not fulfil the requirement for registration as a town or village green could instead be designated under the Green Areas Designation.

32. The proposals summarised here are being considered in this impact assessment:

Option 0 — Do nothing

- No change: The existing registration system would remain unchanged. The costs and benefits of Option 1 below are measured relative to Option 0.

Option 1 — Package of five measures

Refining the registration system

- Streamline sifting of applications: This proposal would enable registration authorities to reject applications at an early stage where insufficient evidence had been submitted. This proposal would primarily reduce burdens on both local authorities and landowners.
- Declarations by landowners: Landowners would be given the opportunity to make a statutory declaration to negate any evidence of use of a claimed green during the period while the declaration remained in effect. This proposal would reduce burdens on landowners.
- Character: New legislation would add a 'character' test to the existing criteria for the registration as a green. Only land which is unenclosed, open and uncultivated would be eligible for registration. This proposal would help ensure that only applications relating to sites with traditional character, and therefore with high net benefits, would be capable of being granted. It would also reduce the burden on local authorities and landowners.

Taking account of the planning system in shaping local places

- Integration with local planning: This proposal would take decisions on the future of sites into the planning system. It would prevent registration of land which was subject to a planning application or permission for development of the site, or which was designated for development or as a green area in a local or neighbourhood plan. It would discourage applications relating to sites which were on track for development, and therefore with high net costs, and ensure that such sites could not be registered. It would also reduce the burden on landowners.

Contributing to costs

- Charging fees: An applicant would be required to pay a fee when making an application. This proposal would discourage applications relating to sites with low prospects of being granted, and would reduce the burden on local authorities.

Option 2 — Partial package of measures

33. This impact assessment also explores an alternative Option 2, which comprises only those two proposals (Streamline sifting of applications, Charging fees) which can be delivered through secondary legislation to a potentially shorter timetable.
34. Further details of each proposal, including a fuller explanation of the background, are given in Annexe 3 below, and in the consultation document.

Summary and preferred option

35. The volume of applications to register new greens, the changing character of application sites, the controversy which such applications often attract, the cost of the determination

process on the parties affected, and the impact of a successful registration on the landowner, are increasingly giving cause for concern. The Government regards these impacts as arising from a registration system which is no longer fit for purpose, and which consequently imposes unintended regulatory costs on the parties affected by applications made under it. It continues to see a long-term role for the greens registration system in ensuring the preservation of land, but only where the benefits of registration are likely to outweigh the very substantial costs to the parties involved, and to the community.

36. The Government has therefore reviewed the registration system, and the consultation puts forward proposals for reform to deliver the objectives identified in paragraph 3 above. The Government takes the view that the proposals in Option 1 will each contribute to the achievement of the objectives for the review, but that only reform containing a comprehensive package of measures, together with the Government's proposals for a new green area designation, and for neighbourhood planning set out in the Localism Bill, will fully deliver the objectives sought.
37. The Coalition Government agreement contains a commitment to "create a new designation — similar to SSSIs — to protect green areas of particular importance to local communities". This designation would be used in local and neighbourhood planning and would be backed by strong planning policy in the new national planning policy framework. The Government believes the new designation will underpin reforms to the greens registration system. Details of how the new policy will work will be set out in a consultation on the new national planning policy framework later in 2011; the consultation paper does not therefore seek views on the new designation, and this impact assessment excludes the effect of the new policy from its analysis.

New One-In-One-Out guidelines

38. The Government is implementing a 'one-in, one-out' system for any new regulations that impose costs on businesses. In such cases, each new regulation will have to identify an existing piece of regulation to be removed.
39. While the majority of the measures considered in Options 1 and 2 will present additional steps in the regulatory process for an application for registration as a green, the overall effects are expected to present a net gain to society, and to business in particular. Some of the costs of implementing these proposals (particularly those which arise from the loss of preservation of green space) are yet to be monetised. These costs are likely to be small compared to the large gains stemming from the increase in property values which may result from a freeing up of the planning process, with fewer applications being granted relating to higher net benefit sites.
40. Some parties affected by the measures in Options 1 and 2 will face modest additional regulatory burdens (particularly landowners, in pursuing declarations, and local authorities in applying the new rules), but these will be more than offset by the regulatory savings accruing from fewer applications relating to low or negative benefit sites, and from the rise in land value accruing from declarations. The Government takes the view that, while it is not practicable at this stage to fully monetise all the costs and benefits, the proposals will, taken as a whole, secure benefits which are likely to outweigh the costs, and that the net impact on business will be to reduce costs notwithstanding any modest increased burden.

Section 2: Analysis of Options 1 & 2

41. The following analysis sets out the potential costs and benefits associated with the package of measures within option 1 to change the current registration system.
42. At this stage, many of the individual costs and benefits are as of yet unmonetised. It is expected that initial information received over the course of the consultation period will

help in monetising some key costs and benefits for the final impact assessment. Where appropriate, monetised costs and benefits are given.

Summary table

43. The summary table, Table 1 below, compares the different measures detailed above and provides a quick overview of the extent to which the proposals address the three criteria arising from change to the current framework for registration of greens, as outlined on the first page of this document. The impact of each proposal on the three criteria is compared to the baseline scenario of ‘no change’, which is assumed to have a neutral impact. The summary table should be considered in conjunction with the further details of each proposal, which are examined in detail in Annexe 3.

Table 1: Summary table of each measure assessed by ability to meet the three key objectives of the policy

	Protect high quality green space valued by local communities	Enable legitimate development to occur where it is most appropriate	Reducing costs to local authorities
Do nothing (Option 0)	0	0	0
Streamline sifting of applications (Options 1 & 2)	0	+	+
Declarations by landowners (Option 1)	–	+	+
Character (Option 1)	++	+	+
Integration with local planning (Option 1)	–	+++	+
Charging fees (Options 1 & 2)	–	+	+
– = negative impact 0 = zero or marginal impact + = positive impact multiple symbols indicate greater impact			

44. As the table above illustrates, any change to the current system with the aim of reconciling the three criteria of protecting the registration of high quality green space, but enabling legitimate development and reducing the costs to local authorities, may not achieve a uniform change in all three criteria. While any changes considered seek to improve the overall net benefit to society as a whole, the impact of any measure may impose costs on individuals or groups of individuals.

45. The current system allows for any person to apply for registration of land as a green as long as it satisfies the criteria set out in the legislation. Some of the measures will affect the ability of a person to apply and therefore may have a significant negative impact on those people who would like to register land which, following a change in policy, may no longer be possible. This cost would be significant to those people, but needs to be considered against the other benefits of any change which would be to reduce the impediment to legitimate development and reduce processing costs.

46. In assessing the total net costs and benefits of any change to the existing system, full consideration will be given to all parties affected, but it will be very difficult to make any changes that will not involve significant winner and losers, despite generating a net benefit

when the impact on the whole of society is considered. The consultation process will give the opportunity to gather further information on affected individuals but the assessment of the impact of each measure will be performed on an objective basis.

Benefits associated with the measures

47. The following benefits arise from some or all of the measures proposed, and are therefore set out in general context, not focusing on any particular intervention. These benefits are cited in Annexe 3 in the discussion of specific policy proposals.

B1. Potential rise in value of land

48. The greens registration system currently stands apart from the planning system. Any site which potentially satisfies the criteria for registration will be subject to some possibility that the site is registered in the future so that no development can take place on it. This can act as an impediment to development plans for the site and may result in a lower value of that land, even if it is not currently registered as a green. If changes are made to the system of registration such that land that was potentially subject to registration ceases to be eligible, then the value of that land may increase as there is greater certainty of the potential for development. This impact can be seen in the market for insurance of development sites, to indemnify developers against the impact of a registration application. Indemnity insurance can be taken out by a landowner or developer to protect against a third party registering the land as a green: premiums range from between 0.2%–0.5% of the developed value of the site⁶.
49. Under the base case scenario, given the precedence of green registration over planning consent, it is possible that all land that is currently green space and lies within a reasonable distance from residential property may be subject to a potential application for registration as a green. Under the knowledge that this would stop any development potential, it is likely that this sort of land would have some discount attached to the development value of the land which would correspond to the probability of the value of the land falling significantly in the case of a successful registration. The existing value of land may incorporate many factors, but the development of land is usually associated with revenue flow and therefore an uplift in the value of the plot above its current use value. It is not possible to monetise this value but it may be significant depending on the number of sites that have the characteristics detailed above.
50. In other cases, for measures which would make it easier for landowners to develop green space that might otherwise have been subject to a preceding or concurrent application for registration for a green, there is a benefit for the landowner in terms of a rise in the price of the land, both after approval for development and after the development is completed. As an indication of the potential uplift in value of land, the Valuation Office Agency reports the value of land for residential development for a suburban site of 0.5ha from £850,000 in Wrexham to £4.7m for London sites⁷. Many of the locations of applications to register greens are not in suburban areas and may be in rural or agricultural sites where the value of land for residential development may be much lower (although such sites are often urban fringe, and may reflect development pressures). Even considering a return to agricultural use (unlikely in most cases), the value of the land may be over £10,000 per ha.
51. Research on applications for registration as a town or village green showed the size of site can vary considerably from less than 0.1ha to over 100ha. Smaller sites appear to be more successful in becoming registered but size as such does not feature as a criterion in

⁶ Information supplied by Title & Covenant Brokers Ltd.

⁷ *Property Market Report* January 2010.

the legislation. It is not possible to monetise the impact on land prices of any measures given the lack of information about future sites but the impact could be significant.

52. Research also found that the probability of an inquiry into a registration application is greater on sites that have some development ambition so that there are higher related costs that may also be avoided by measures which make the registration of such sites less likely.
53. There are costs incurred in the process of applying for, processing and determining greens applications that may be reduced by some of the measures considered above. Further costs are incurred when cases are referred to a public inquiry, which can significantly increase the costs of determination.

B2. Reduced processing costs to local authorities

54. Local authorities will incur reduced processing costs where any measures taken will reduce the number of applications each year or will lead to a reduction in the costs of determining each application (e.g. a decreased likelihood of going to public inquiry). We expect any measure which imposes clear constraints on the type of application which may be granted to reduce the overall level of applications, because potential applicants will be deterred from applying if they are confident their application will fail, particularly if the application may be sifted out early on and any fee paid is therefore spent unproductively. The costs are particularly high where a registration application is contested and goes to public inquiry, and so the savings from avoiding an application which might otherwise go to inquiry are commensurately high.

B3. Avoided landowner and other costs of opposing an application

55. The current registration system can incur high costs to landowners who oppose registration of their land as a green. Opposition will incur costs of the landowner's own time, and the landowner may need to pay for expert services, such as legal advice. If any measures taken reduce the number of cases opposed by a landowner, the annual costs incurred by landowners in such cases would be reduced. The costs incurred by each landowner differ and are difficult to monetise, but the evidence from the Oulton St Michael case (see paragraph 20 above) indicates they can be quite substantial.

B4. Reduced uncertainty

56. The time period between submission of an application and its determination causes uncertainty which can result in costs to the landowner and potential beneficiaries of any development. The period of uncertainty may delay the commencement of any development and therefore incur costs. The costs of uncertainty would be reduced by any measure which reduces the number of registration applications.

B5. Reduced costs for applicants

57. Registration of greens can often result in benefits for all or part of the local community. The application process is not likely to impose excessive costs on applicants compared to those incurred by local authorities. Nor are those costs incurred entirely unwillingly. However, the application process does take up the time of those completing the application form, assembling the evidence, and subsequently supporting the application. In cases where high quality green space which fulfils the criteria for registration is being protected, it may confer significant benefits to those making the application, as well as others. In cases where an application fails to meet the criteria for registration, it has imposed a cost to the applicants in terms of their time. Any measure which reduces the total number of applications or the likelihood of an application being rejected will result in a

benefit to the applicants of reduced time taken to make applications that are rejected — again, even if such savings are not obvious to the applicant. Measures which seek to refine and reduce the number of rejected applications will result in reduced costs for applicants.

Costs associated with the measures

58. The following costs arise from some or all of the measures proposed, and are therefore set out in general context, not focusing on any particular intervention. These costs are cited in Annexe 3 in the discussion of specific policy proposals.

C1. Foregone benefits of registration if there is a change in land use

59. The current registration system protects registered greens from future development and promotes the use of the land for recreational purposes. Any change in the registration system which reduces the amount of eligible land or the number of applications would reduce those benefits which flow from the current registration system. It is difficult to determine what impact measures will have at this stage, but if land that would have been subject to a successful application can no longer be registered as a green, then there may be costs to the local community if it does not receive protection from development. These costs are the potential benefits foregone described in paragraph 8–16 above.

C2. Deterrence of potentially successful applications

60. Any measures which reduce the number of applications may deter applications which would otherwise have been granted — for example, a potential applicant may decide that the new tests for registration make it unlikely that the application would be granted, and therefore decide not to apply, even though an application would have succeeded if made. If such applications are deterred then certain sites otherwise eligible for registration will no longer be protected and the benefits of registration are foregone. Those benefits are detailed above.

C3. Potential costs of more complex registration process

61. Measures which introduce additional complexity to the application process — for example, which impose additional criteria which must be satisfied, or additional steps which must be taken by applicants — impose additional costs on local people wishing to register land. Most obviously, such additional costs will arise if a fee is imposed on applicants — but they could also arise if the applicant must obtain additional evidence to satisfy any new tests (*e.g.* evidence of the character of an application site).

C4. Potential costs to landowners of new administrative process

62. Measures which impose new burdens on landowners, such as a requirement to make declarations in order to protect their land from registration, will impose additional costs on landowners, even though such steps may be taken only voluntarily. These costs will be greater if landowners must pay a fee in addition to the costs of any administrative burden.

Assumptions

63. An initial cost-benefit analysis has been carried out for each of the proposals being consulted on. For monetised costs and benefits, the impact of the policy is assumed to take six months to have an impact on application number and quality. The expectation is

that the consultation process will gather further information on the potential costs and benefits of each measure to different sectors. For several measures it is not yet possible accurately to determine the impact each would have, for example on the number of applications being received. In these cases, in order to indicate potential costs and benefits, we have made assumptions about the impact any individual changes would make which will be tested as part of the consultation process.

64. A number of the factors involved are unquantifiable. For example it is not possible to quantify the opportunity costs to communities from losing the ability to register particular sites at some date in the future. Similarly, it cannot be known which sites will be subject to future applications and therefore identifying the benefits to individual landowners is unquantifiable.
65. All the proposals have assumed a flat profile for the number of greens applications. Defra has conducted surveys of activity in 2007 and 2009: while the data show an increasing level of activity, this is not necessarily indicative of a long term trend. We have therefore assumed for the purposes of this impact assessment that the level of applications received over the last five years would remain at a similar level in future and have employed a figure of 200 applications per year.
66. In relation to public inquiry costs, the 2009 survey estimated that over the last three years a total of 118 inquiries were held at a total cost of £1.8m. The average cost of an inquiry was £15,709. The number of cases going to public inquiry has accounted for 60% of determined cases over the last three years.
67. A recent survey of commons registration authorities puts the average (of successful and unsuccessful applications) cost of a determined application at £18,100. Included in this are public inquiry costs and cases with extremely low registration or rejection costs in the £200s, presumably where applications were of either very low quality or where landowners offered their land for registration. These data will be further tested during the consultation process.
68. All monetised costs and benefits are calculated assuming that the policy will be effective for 20 years.
69. Following the consultation, the Government will decide how it intends to proceed. Further impact assessment will be carried out on adopted policies, using any additional data gathered, before final decisions are taken.

Option 1: Cumulative impact of a full package of measures

70. We intend that all the proposals listed in paragraph 31 above should be adopted as a package. What would be the impact of implementing this package?
71. Each proposal, implemented in isolation, would be likely to affect both the number and type of applications made to register greens. But the impact of the proposals implemented as a package will be more complex than simply the sum of the impacts of each proposal in isolation.

Example: consider an application which (in the absence of any reform) might be made in relation to a development site which has the benefit of a planning permission: the application meets the current criteria, and is granted, and the development cannot go ahead.

Now consider the possible position after the reforms are implemented: the application is forestalled by a declaration previously made by the landowner relating to the development site (so that part of the 20 years' use claimed in the application is discounted because of the declaration): the landowner is particularly likely to make such a declaration, in an effort to protect the development value of the site.

But the application would also fail because of the precedence of a planning permission already granted.

72. We consider the likely impact of proposals to enable declarations, to adopt a test of character, and to improve integration with local and neighbourhood planning, in reducing the number of registration applications (and the number of applications which are granted): this effect will enable local authorities to focus limited resources on determining those applications which remain, and which are more likely to be successful. But it can be seen that each application may be affected by two or more proposals, so any assessment of overall impact must avoid double counting.
73. Table 3 on page 45 of the consultation paper shows the inter-relationship of the impacts of the proposals.
74. The collective impact of these proposals will be to focus applications on sites which are most likely to be successful, to increase landowners' powers to safeguard their land from registration (particularly where development is already in train), to ensure that sites that remain eligible for registration are likely to conform to popular perception of a green, and to increase the efficiency of the registration process by both discouraging speculative applications and swiftly rejecting those which persist (thereby helping to unblock the log jam for those applications which have the potential to be granted). Only a package of measures will help deliver all our objectives for reform: each proposal may have some effect on one or more of those objectives, but is unlikely to be effective in securing improvements against all three — indeed, some proposals may have a negative impact against an objective, but, implemented as part of a package, deliver significant and worthwhile gains against the remaining objectives.
75. Taking the proposals as a package, we expect the proposal for a character test to be most effective in enabling high quality green space to be registered; we expect the Integration with local planning proposal to be most effective in enabling legitimate development to occur where it is most appropriate; and we expect that all the proposals will lower local authorities' costs in dealing with applications, through a lower volume of activity, and enable them to focus on providing a better service to the fewer, higher quality applications which remain

Costs and benefits to local authorities

76. Updating the greens registration process using any of the proposals outlined in this impact assessment will result in local authorities spending some time and resources familiarising themselves with any new guidance. This cost is estimated to be around £24,000 across all local authorities. It is assumed that each of the 160 local authorities have on average 0.5 officers dealing with registration functions. Taking an average salary of £30,000 (including pension obligations), and assuming that it will take each officer a day to read and work through the new guidance the above cost can be arrived at.
77. For a number of the proposals given in this impact assessment, applications will still be made, even though it may be easier to reject those which fall clearly outside the revised criteria (and some will be sifted out at an earlier stage). It is likely that in this case, processing costs will still be incurred by the local authority on each application. However, other potential applications which might have been made under the present legislation will be deterred under the revised criteria, and the authority will avoid the processing costs associated with them.
78. Table 2 below summarises the costs and benefits of an overall package of proposals, which succeeds in limiting the number of applications, or making it easier to reject applications. It is assumed that on average, over the different proposals, local authorities incur a cost of ten employee hours for every 'deterred application' (this is an average cost to the local authority of dealing with an application affected by the proposals, whether in fact it is deterred, sifted out at an early stage, or is refused only after a public inquiry),

whether on sifting, advertising new guidance etc. This cost is calculated using an average salary of £30,000 (see above).

Table 2: Summary of Net Present Value Costs and Benefits of proposal package, in £million

	10% Deterred	20% Deterred	50% Deterred
Costs	£0.05	£0.08	£0.20
Benefits	£5.50	£11.00	£27.50
Net Benefit	£5.45	£10.92	£27.31

79. The costs and benefits listed here are exclusively those accruing to local authorities. Benefits comprise inquiry and processing savings, while costs relate to any remaining costs associating with deterring or sifting applications.
80. It is at this stage not possible to foresee the exact impact of the measures considered, in terms of number of applications not made or the number of applications that can be rejected. The consultation and informal discussions with stakeholders are intended to establish whether it is in fact reasonable to assume that the package will result in deterring applications. As at this stage more detailed information is lacking, three different scenarios with 10%, 20% and 50% of deterred or rejected applications are considered. It is expected that the consultation will help refine estimates of deterrence rates. Local authorities, which will be consulted extensively, are well placed to comment on deterrence rates.
81. While costs and benefits of individual proposals are considered below to allow for a careful consideration of each individual proposal, the overall target of each proposal lies in limiting the number of applications which are considered a ‘nuisance’ and which will with a large probability be unsuccessful after a significant outlay of private and public funds. For this reason, the analysis on the cumulative impacts is listed on the Summary Sheets of this impact assessment, while the costs and benefits of individual proposals will help assessing options further.

Illustrative Costs of Development

82. There are significant uncertainties associated with implementing these proposals as a package. Many of the costs from developing green space and the subsequent loss of health, amenity and environmental benefits described above are difficult to monetise and depend on, among other things, the specific site, its topology and location. Recognising that valuing every site individually can be time consuming and costly, some summary figures from existing research were drawn up in the 2002 report *Valuing the External Benefits of Undeveloped Land* by the then Office of the Deputy Prime Minister (now the Department for Communities and Local Government)⁸ on how to put a value on land benefits which are not reflected in conventional market prices. These benefits include the value society puts on ecology, recreation, tranquillity, landscape and cultural heritage.
83. Drawing on research commissioned by Defra which suggests that the typical size of a greens registration application is around one hectare, the typical cost associated with developing a grass covered urban fringe (green belt) green is £219,000 per green, while for extensively used agricultural land this cost lies at £780,000. These are the present values of the foregone benefits from losing land to development.

⁸ See footnote 4.

84. This analysis is an attempt at capturing some of the costs associated with losing undeveloped land. They are indicative rather than definitive, as they are drawing on some preliminary research done by the Government. Furthermore the external benefits captured in this analysis are not exhaustive and external costs can vary widely between different potential green locations.

Illustrative Example of Net Benefits

85. To illustrate some of the benefits and costs of reforming the greens registration process, some of the costs and benefits which have been discussed elsewhere in this impact assessment are summarised in Table 3 below. Not included are one-off transitional administrative costs to the local authority as this 'case study' is concerned with the evaluation of a single green which gets developed under the new system and would not have been developed under an unreformed registration process.
86. This case study should be viewed as a general example — not all unregistered greens will be granted planning permission and in individual cases the value of developing the land may be substantially higher or lower. The Department for Communities and Local Government estimates that the value uplift from having a pending green application removed is on average around £1,200,000 per hectare for residential land, and significantly less for agricultural land.

Table 3: Case study: illustrative benefits and costs from site where registration application deterred

Costs	£219,000–£780,000
External costs of developing typically sized green	£219,000–£780,000
Benefits	£1,300,000
Typical value uplift from development status	£1,200,000
Inquiry & processing savings	£18,700
Legal costs savings	£78,000
Net Benefit	£500,000–1,000,000

87. The case study in Table 3 relates to an example of an application to register a site with substantial development value within the range of values supplied by the Department for Communities and Local Government. The proposed reforms may, in some cases, deter the registration of sites with very low or zero development value (e.g. a field which is used only for rough grazing, and without plans for a future change of use), so that registration (if an application had succeeded) would confer some benefits to the local community, with a very low cost to the landowner. In these cases, the net benefit may be low or negative.

Option 2: Impact of a partial package of measures

88. We have also considered the implementation of a partial package of measures. Option 2 assumes that there may be insufficient Parliamentary time to enact the full range of reforms envisaged in Option 1, and therefore adopts the two measures which could be achieved through secondary legislation (*i.e.* regulations) alone, viz: Streamline sifting of applications, and Charging fees.
89. We expect that the benefits arising from Option 2 would be much more limited than Option 1. We estimate that it would deter a range of 10–20% of current applications, largely so as to deter applications with few prospects of success, but it would also ensure

that applications which are nonetheless made, can be sifted out earlier in the process at lower cost.

90. Streamlining the sifting of applications and charging fees would make a modest contribution to our objective of reducing local authority costs, and would also make it easier in some cases to reject vexatious applications, or to discourage such applications being submitted, thus enabling development to go ahead sooner and reducing the burden on landowners. But the impact would be significantly less marked than the package of proposals included in Option 1, and in particular it would make a minimal contribution (compared to Option 1) towards achieving a better balance between protecting high quality green space and enabling legitimate development to occur where it is most appropriate. We have therefore rejected Option 2 as the preferred approach to reform, but do not rule out its adoption as a short-term measure, to deliver some benefits, pending the opportunity for further legislative reform.

Outcome of other Impact Tests

Statutory Equality Duties Guidance

91. The proposals are expected to have neither positive nor discriminatory effect on people of different racial groups, disabled people and men and women.

Competition Assessment

A. Directly limit the number or range of suppliers?

This is likely to be the case if the proposal involves:

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

Conclusion: no effect as proposals would have no direct impact on suppliers.

B. Indirectly limit the number or range of suppliers?

This is likely to be the case if the proposal significantly raises the costs:

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

Conclusion: no effect as proposals would not indirectly limit the number or range of suppliers.

C. Limit the ability of suppliers to compete?

This is likely to be the case if the proposal:

- controls or substantially influences
 - the price a supplier may charge
 - the characteristics of the product supplied, for example by setting minimum quality standards,

- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or
- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

Conclusion: no effect as proposals would not limit the ability of suppliers to compete.

D. Reduce suppliers' incentives to compete vigorously?

This may be the case where a proposal:

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

Conclusion: no effect as proposals would not reduce suppliers' incentives to compete.

Note: Suppliers or firms include any private entity, any local authority acting in a private capacity and any not-for-profit firm which is competing in the market

Overall impact: none.

Small Firms Impact Test

92. The proposals set out in the consultation would be beneficial to small firms, because they would give increased protection to owners of land from applications to register the land as greens. Such applications can relate to land owned by small businesses (such as farmers, small developers and golf courses) as well as larger landowners (such as local authorities, agricultural estates and major developers) and individuals — and indeed, the capacity of small businesses to accommodate the impact of an application (whether successful or not) may be very much more limited, so that an application can have a very serious effect on the viability of the business.
93. The proposal to enable landowners to make declarations, thus protecting their land from subsequent applications for registration (relating to the period to which the declaration applies) would be particularly helpful to small businesses, as a declaration could be made at low cost and without the need for professional advice. Making a declaration will impose modest costs on landowners, including small businesses: we assume costs in the range of £20–100 for each declaration, plus a fee payable to the local authority. However, a declaration will be a one-off exercise, and the costs are likely to be very small in relation to the protection of land value secured by it. Guidance will help make the declaration process as simple as possible.
94. The proposals would not be expected to have any adverse effects on small firms, because such firms are not generally party to applications to register new greens, and therefore the proposals would be wholly beneficial in character.

Greenhouse Gas impact assessment

95. The proposals are intended to strike a better balance between protecting green space and enabling legitimate development: it is possible that as a result, some development could

take place on green field sites which would (in the absence of any reform) otherwise not have been possible. However, such development would be highly likely to be displaced elsewhere, and there is no reason to expect that the greenhouse gas impact would be significantly different.

Wider Environmental Impact Test

96. The proposals are intended to strike a better balance between protecting green space and enabling legitimate development: it is possible that as a result, some development could take place on sites intended for development which would (in the absence of any reform) otherwise not have been possible. This will deprive the community of those sites which were formerly used for recreation and lead to a change to the appearance of the landscape of townscape: however, these impacts are attributable to the development process, and are taken account of in determining development proposals. Planning authorities are required to plan for the provision of adequate high quality green infrastructure, open space and sports, recreation and play spaces and facilities to meet the current and future needs of local communities, and to take account of these requirements in considering applications for planning permission affecting existing green spaces. Communities will also be able to employ the new designation for green areas in developing neighbourhood plans.

Health & Well-being

A. Will your policy have a significant impact on human health by virtue of its effects on the following wider determinants of health?

- Income
- Crime
- Environment
- Transport
- Housing
- Education
- Employment
- Agriculture
- Social cohesion

Conclusion: minimal effect (but potential localised effect arising from non-registration of greens: see *Other Environmental issues* above).

B. Will there be a significant impact on any of the following lifestyle related variables?

- Physical activity
- Diet
- Smoking, drugs, or alcohol use
- Sexual behaviour
- Accidents and stress at home or work

Conclusion: no effect as proposals would have no direct impact on lifestyle related variables.

C. Is there likely to be a significant demand on any of the following health and social care services?

- Primary care
- Community services
- Hospital care
- Need for medicines
- Accident or emergency attendances
- Social services
- Health protection and preparedness response

Conclusion: no effect as proposals would have no direct impact on demand.

Overall impact: no significant effect.

Human Rights

97. The courts have concluded that registration of land as a green is not contrary to the Human Rights Act 1998. In *Whitney*, the court ruled that the greens registration system was no more than a “control [on] the use of property in accordance with the general interest”⁹, while in the *Trap Grounds*, the House of Lords found that the system was justified in human rights terms because: “first, the owner retains his title to the land and his right to use it in any way which does not prevent its use by the inhabitants for recreation and, secondly, the system of registration in the 1965 Act was introduced to preserve open spaces in the public interest.”¹⁰ The proposals will not, in our view, give rise to any new inconsistency: on the contrary, the achievement of a better balance between protecting high quality green space valued by local communities and enabling legitimate development to occur where it is most appropriate, and the reduction of the burden imposed on unwilling landowners, is likely to minimise any risk that the present regime is subsequently found to be non-compliant.

Justice Impact Test

98. The proposals would generally have a very small but beneficial impact on the volume of cases going through the courts. At present, applications to register greens may be challenged both by landowners (where the application is granted) or by applicants (where the application is refused). Such challenges may give rise to legal aid (e.g. where an applicant wishes to defend a challenge brought by the landowner, and qualifies for legal aid). There have been twelve high profile cases in the superior courts, of which four in the House of Lords or Supreme Court, in the past decade, relating to greens registration applications.
99. The proposals would reduce the likelihood of challenges by landowners, where applications to register greens have been granted, because the proposals would eliminate some of the contexts in which conflict is most likely to arise. The proposals may also reduce the likelihood of challenges by applicants, because new legislation will reduce the number of applications which are made, and hence the likelihood of a challenge being brought.

⁹ *R (on the application of Whitney) v Commons Commissioners*: www.bailii.org/ew/cases/EWCA/Civ/2004/951.html.

¹⁰ Paragraph 59, per Lord Hoffmann: *Oxfordshire County Council v Oxford City Council and Robinson* (also referred to as *The Trap Grounds*), at: www.bailii.org/ew/cases/EWCA/Civ/2005/175.html.

Rural Proofing

100. Town or village greens are, by definition, found in both villages and larger, urban areas. The CCRU survey reviewed 48 application sites: it did not classify sites as specifically rural, but of the 48 sites, six were classified as 'agricultural' and 14 'rural open spaces' in character, suggesting that about two-fifths were essentially rural in character. (Of these, no application relating to an agricultural site was granted, and ten applications relating to rural open spaces were granted.)
101. The proposals are not expected to discriminate between rural and urban areas, but to have a roughly proportionate effect. However, insofar as Option 1 includes a test of character, it is likely that sites in rural communities, such as in or adjoining villages or small towns, which tend to have undergone less development, and retain open spaces of traditional character, are, on balance, more likely to be the subject of successful greens registration applications, than those in urban environments.

Sustainable Development

102. The proposals have been appraised for their contribution to the five principles of sustainable development to which the Government is committed. The five principles are:
- living within environmental limits,
 - ensuring a strong, healthy and just society,
 - achieving a sustainable economy,
 - promoting good governance, and
 - using sound science responsibly.

The purpose of the review into the greens registration system is to ensure that the right balance is struck between protecting high quality green space of value to communities and enabling legitimate development to take place where it is most appropriate to do so. In so doing, this fully supports sustainable development principles that the economic, social and environmental needs of communities must be fully considered. If the review concludes that some of the principles of sustainable development as outlined above are not sufficiently reflected in the current registration system then the Government will consider making changes accordingly.

Other Economic issues

103. The proposals are intended to strike a better balance between protecting high quality green space valued by local communities and enabling legitimate development to occur where it is most appropriate. The proposal for Integration with local planning is specifically intended to reduce conflicting signals between permissions given for development of land (such as planning permission) and the constraint imposed on such development arising from applications to register the development site as a green — and where applications are granted, the status of the land as a green. The proposal is therefore expected to have a beneficial effect on development.

Other

104. No other particular impacts have been discerned. For example, the proposals are not expected to have a disproportionate impact on:
- children and young people

- older people,

nor are they expected to have a differential impact on:

- income groups
- particular regions of England.

Risk Assessment

105. The principle risks to the policy are as follows:

- proposals fail to discourage applications which are unlikely to be successful or applications relating to sites which show low or negative net benefits, or alternatively, discourage applications which are likely to be successful;
- under Option 1, lack of Parliamentary time to deliver the changes to greens registration framework requiring primary legislation;
- the proposals, implemented together as a package, have an unforeseen impact, particularly having regard to the context of a complex area of law, in which legal action to probe the effectiveness of new measures is highly likely.

106. To mitigate these risks, we will take the following actions:

- strive to adopt and deliver proposals which achieve our objective;
- seek to promote widespread support for reform;
- review, in a revised impact assessment, the combined effect of such proposals as are adopted.

Enforcement and Sanctions

107. The greens registration system is itself an enforcement mechanism: it enables the resolution of claims to acquire recreational rights through long-standing use of land, to be resolved on application to the commons registration authority. The proposals explored in the consultation would amend the criteria for registration, but would not substantially change the nature of the registration system. Existing remedies available to applicants, landowners and other parties affected, by application to the High Court for judicial review, would remain as now, but there would be no appeal mechanism, also as now. Therefore, no new external enforcement mechanism is proposed.

108. The greens registration system is self-enforcing: an application for registration of land as a green which is granted secures permanent protection for that land. Failure to apply for registration leaves the land without the protection that registration confers. No new sanctions are proposed.

Monitoring and review

109. This impact assessment accompanies a consultation on the registration system which explores the changes which the Government believes are appropriate. We expect to announce a decision on the way forward later in 2011. Any measures put forward for implementation at that time will be accompanied by a final impact assessment, including measures for monitoring and review.

110. We welcome evidence from persons and organisations that have been a party to a greens registration application, and that can supply further evidence of the costs and benefits of their involvement in the process. We would particularly welcome feedback from:

- Applicants: can you tell us about the time spent gathering evidence from potential users of the application site, or of the extent of use made of the green following registration?
- Landowners: do you have information about the costs of opposing an application, and the impact of a successful registration on land values?

- Local authorities: can you provide further information on the costs of processing applications, including the costs of officers' time?
111. We are also seeking information about the impact of the proposals (individually or as a package) on applications to register new greens — particularly the effect which they would have had on past applications. For example:
- Applicants: would the proposed fee have deterred your application, and would a refundable fee have made a difference? (It would be helpful to know whether your views are associated with an application which was granted or unsuccessful.)
 - Landowners: if your land has been the subject of an application, had you made a declaration for that land in relation to public rights of way (so that one might assume that you would have made a similar declaration in relation to greens had the opportunity been available at the time)? Would such a declaration have affected the outcome of the application?
 - Local authorities: how would applications granted in the past have fared had the proposals for additional character and planning tests been in place at that time?
112. If you are able to supply evidence of this kind, please say whether you are willing to have your evidence quoted, and if so, whether you wish it to be attributed to you¹¹. Such evidence will improve our assessment of the costs and benefits of the proposals set out in the consultation paper and in this impact assessment, and help inform the Government's decision on how to proceed in the light of the consultation. We explain in chapter 2 of the consultation paper how you can respond to the consultation.

¹¹ Please note that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Environmental Information Regulations 2004.

Annexes

Annexe 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

Defra has since 2007 undertaken bi-annual surveys of commons registration authorities regarding the level of activity for applications to register new greens and this will continue.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To monitor activity levels of the number of applications received, decided, granted and rejected.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

To survey all 151 English commons registration authorities responsible for processing new greens applications to determine whether there has been an overall increase or decrease to the number of applications submitted, and to identify factors which explain such change.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

In 2009 some 200 applications were made. We would expect that figure to reduce if the reforms are introduced.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The registration of new town and village greens which have a special or traditional character, whilst negating the use of the registration system as a means of preventing legitimate development.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

The approach is to circulate survey forms to all commons registration authorities in England and publish the data and a summary thereof on the Defra website.

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

This annexe sets out our initial plans for a review. However, as this impact assessment is being prepared at the consultation stage, we will develop our plans for post-implementation review in the light of responses to the consultation and the Government's subsequent decision on how to take forward reforms, and the timetable for those reforms. Any subsequent full impact assessment will contain revised plans for a post-implementation review.

Annexe 2: Level of greens registration activity

1. Registration authorities have determined all applications to register new greens made from 1970 onwards. But no information was systematically collected by Government about successful applications until 2007.
2. The (then) Nature Conservancy Council commissioned a survey of registration authorities' registers of greens which took place between 1984 and 1989. The database records 4,332 greens in England, but does not identify those which were registered after 1970¹. However, very few new greens are thought to have been registered between 1970 and 1988.
3. Defra commissioned a report in April 2005 from ADAS to review and update existing data on greens, to identify and analyse conflicts of interest occurring in relation to the registration of new greens, and to analyse the problems arising over the use^{and} management of greens including vehicular access and parking². The report noted that, since 1993, the 114 authorities which responded to the survey in England and Wales had received 380 green applications. Of these, 89 applications had been granted. Assuming that the authorities surveyed are representative of those nationally, the survey suggested around 116 new greens were registered in England between 1993 and 2004³.
4. Defra undertook surveys of all registration authorities in England in October 2007 and October 2009 to gauge the level of registration activity⁴. The surveys sought information about the number and outcome of recent applications. The surveys also asked for information about the cost of public inquiries to determine disputed applications, and for comments on the registration system under the 2006 Act. Approximately two-fifths of authorities responded to each survey, and the results were considered to be reasonably representative of all authorities in England. The survey results were therefore used to estimate activity data for England as a whole, based on an analysis of responses classed by London borough, metropolitan district, non-metropolitan counties, and unitary authorities. The following table shows estimates of activity for England:

Table 4: Estimated numbers of greens applications in England, 2003–September 2009

Year	Number of green applications...			
	applications in year	of which, determined [§]	of which, granted	of which, rejected
2009 (to end Sep)	139	77	17	79
2008	196	73	26	52
2007⁵	143	44	18	35
2006	103	24	8	16
2005	69	48	30	22
2004	56	33	9	29
2003	56	42	10	30

§ Values in this column should equal the sum of the following two columns. However, there are various discrepancies, probably owing to applications considered over several years being assigned to the wrong year.

5. The data, taken together, suggest that the total number of registered greens in England is likely be around 4,547⁶, but this figure can only be a rough estimate.

¹ A database containing some of the survey data is available from the Defra website, at: www.defra.gov.uk/rural/protected/commonland/tvg.htm.

² <http://ww2.defra.gov.uk/rural/protected/greens/>.

³ Approximately one-third of applications that had been received since 1993 were still being processed at the time of the survey, which could well increase the total number of greens registered in consequence of applications made during that period. The figures here must be treated with caution, since the local authorities surveyed may not be representative.

⁴ The full survey data are available in an Excel workbook on the Defra website, at: www.defra.gov.uk/rural/protected/commonland/tvg.htm.

⁵ The criteria for application were amended with effect from April 2007, by the implementation of section 15 of the 2006 Act. These data include applications under both the 1965 and 2006 Acts.

6. It can be seen that the volume of applications appeared to have significantly risen from around 50–70 per annum in the period 2003–05, to some 100–200 per annum in the period 2006–09, but the volume of applications granted has fluctuated greatly from year to year, between 30 in 2005 and just 8 in 2006. However, the data also show that the number of determinations has, since 2006, generally been well below the level of applications, which in our view reflects increasing congestion within some registration authorities dealing with applications, and a likelihood that the determination of many applications is being deferred as resources permit.
7. Indeed, there is some specific evidence of clustering of applications: for example, both Kent County Council and Derbyshire County Council have 25 applications awaiting determination⁷. A continuing high level of applications is likely to worsen the backlog in those authorities already affected, and increase the likelihood of a backlog forming in other authorities.
8. The survey also sought information about the costs and frequency of public inquiries held by registration authorities:

Table 5: Estimated volume and cost of greens application inquiries in England, 2007–2009

	Public inquiries		
	public inquiries	inspectors' fees	average barrister's fees [§]
2009 (until 30 Sept)	40	419,000	£13,000
2008	48	1,093,000	£21,000
2007	26	358,000	£15,000

[§] average (mean) fee for barristers presiding over public inquiry (some inquiries are presided over by inspectors or local authority solicitors, and the costs are not included in this calculation).

⁶ Comprising 4,332 on greens database, 89 from ADAS report, and total number of greens registered between 2004 and end of Q3 2009 (99).

⁷ Information supplied by local authorities, December 2010 and on website: <https://shareweb.kent.gov.uk/Documents/environment-and-planning/public-rights-of-way/website-register-of-apps.pdf>.

Annexe 3: Details of measures under Options 1 and 2

1. This annexe contains details of the range of measures comprised in Options 1 and 2. Option 1 contains all the measures set out below. Option 2 contains only those measures which can be delivered through secondary legislation, namely 1. Streamline sifting of applications, and 5. Charging fees, below.

1. Streamline sifting of applications

Summary

2. This proposal would enable registration authorities to reject applications at an early stage where insufficient evidence had been submitted. It is included in both Option 1 and Option 2.

How it would work

3. If, having received an application, the registration authority considers (having regard to the application itself and the landowner's comments) that there is sufficient relevant evidence in support of the application then it should be properly scrutinised in the usual way. If, however, the application lacks sufficient evidence, or it is clear that the application cannot meet the criteria for registration, then the authority may reject the application. As now, there would be no appeal from the authority's decision, but either party could seek judicial review of the authority's decision. We would not expect the authority to reject an application at this stage where there was merely doubt that the application could be granted, but only where it were incapable of being granted owing to insufficient evidence or failure to adhere to the criteria for registration.
4. Although an improved application could be submitted at a later date, it may be necessary to confer a power on registration authorities to refuse repeated applications to avoid applicants reapplying continually to register the same land — but this may require new primary legislation, and the introduction of application fees may act as a deterrent.

Impact

5. This proposal would improve the efficiency of the application process, allowing the earlier rejection of applications which are incapable of being granted.

Streamline sifting of applications	
<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • reduced costs to all parties in dealing with poor quality applications • greater efficiency in the process — fewer delays from poor quality applications enabling authorities to focus on those which remain • determination delivered sooner 	<ul style="list-style-type: none"> • applications may be rejected for insufficient evidence even though capable of being put right • may fail to discourage applications being repeated at a later date leading to further delays

Benefits

- Decrease in number of cases passing initial sift stage leading to Reduced processing costs to local authorities (see Benefit B2. on page 17)), Avoided landowner and other costs of opposing an application (B3.) and Reduced costs for applicants (B5.).

Applications which are sifted out at an early stage will reduce the costs to applicants of pursuing the application, and to landowners of opposing the application. It is also possible the number of applications may fall if there is improved information for applicants about the application process and the likelihood of applications failing at the sift stage.

- Potential rise in value of land (B1.). A more effective system will increase confidence that any application which may be made for registration and which is incapable of being granted will be disposed of briskly.

Costs

- While some applications sifted out may be resubmitted, this is considered part of the normal business of local government and therefore not to be seen as a direct cost.

2. Declarations by landowners

Summary

6. Landowners would be given the opportunity to make a statutory declaration to negate any evidence of use of a claimed green during the period while the declaration remained in effect. It is included in Option 1 only.

How it would work

7. A deposit and declaration made by a landowner in relation to land would be treated as an interruption to any use of the land for lawful sports and pastimes as of right. No claim to register land as a green could relate to any period of time during which a declaration was in force.
8. A declaration might be made in relation to land which had already been used, or was alleged to have been used, for 20 years for lawful sports and pastimes. In such a case, a claim to register the land as a green, on the basis of use over a period of at least 20 years prior to the date of the declaration, would have to be brought within two years of that date.

Example: Eastwell Civic Society makes an application in 2036 to register Church Field as a green, on the basis of 24 years' use as of right since 2012, continuing up until the date of the application. However, the landowner, Glebe Investments Ltd, deposited with the registration authority a map, and a declaration, in relation to the land, in 2035, in accordance with legislation giving effect to this proposal. The application is nevertheless granted, because the registration authority concluded that use of the land for 20 years between 2012 and 2035 (when the deposit and declaration was made) was as of right, and the application had been made within two years of the date of the deposit and declaration.

9. Local communities should be made aware that landowners have made a deposit and declaration in relation to land within their area, so that they know that the declaration has triggered the two year period of grace within which an application for registration can be made⁸. Registration authorities would be required to keep a register of deposited maps, published on their websites, and to make declarations and maps available for inspection. Copies of declarations and maps would be sent to the parish council or chairman of the parish meeting, which would be expected to consider whether the declaration related to land in regular use for recreation.

⁸ Under section 15 of the 2006 Act, an application to register a green may be made while use is continuing (subsection (2)) or within two years of the cessation of use (subsection (3)). A transitional provision in subsection (4) enables application within five years of a cessation of use occurring before 6 April 2007.

10. Registration authorities would be able to charge a fee to landowners to cover the costs of administration.

Impact

11. We expect that the facility to make a deposit and declaration would be quickly adopted by many landowners, particularly where the land is professionally managed, or where landowners are members of representative organisations and follow the guidance which such organisations would be expected to offer their members. In some cases, deposits and declarations would relate to land where 20 years’ use for lawful sports and pastimes had already been acquired, and landowners might (by making a declaration) stimulate a latent claim to register the land as a green: however, it is likely that any such claim would merely have been brought forward by the landowner’s action.
12. In relation to land where there is no latent claim to registration as a green, we expect that increasing numbers of landowners, and particularly owners of potential development sites, would make a deposit and declaration to secure long term protection of their land from claims to registration. This proposal may also encourage landowners to permit or tolerate recreational use of their land (whether occasional dog walking or regular permissive use by the local community), confident that such use could not (while a deposit and declaration remained in force) give rise to a claim to registration as a green. Without such protection there is the potential for landowners deciding they have no option but to prevent access to land at all times in order to negate the risk of a greens application at some point in the future (unless the land were already subject to legal rights of access for recreation).
13. However, landowners’ initial steps to take advantage of legislation giving effect to this proposal, by making deposits and declarations, could trigger a wave of new greens applications by persons who see the landowners’ actions as a challenge to existing use of the land, and an impetus to secure registration of the land within the period of grace of two years. Registration authorities may initially need to deal with a temporary increase in the number of greens applications while also receiving deposits and declarations from landowners: however, their costs in respect of the latter would be covered by the fee payable with a declaration (expected to be £20–100).

Declarations by landowners	
<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • shield available to any landowner • affected land identifiable from publicly available registers • landowners and some access interests already familiar with similar mechanism available to shield against rights of way claims • straightforward test whether land subject to deposit • landowners likely to be more willing to allow continued recreational use of land 	<ul style="list-style-type: none"> • delayed impact: deposit has no effect on potential greens applications for at least two years • could trigger new greens applications in response to perceived ‘challenge’ • users of land may be unaware of deposit, and that application must be brought within two years • primarily benefits well-informed or professionally advised landowners • excludes land from registration regardless of quality of use • small administrative burden on registration authority, recovered from landowner • fee must be paid by landowner to protect interests

14. The number of landowners who apply for exemption could be within a large range; there will also be applicants for exemption who would not have been subject to greens status at all.

Benefits

- Avoided landowner and other costs of opposing an application (B3.):
Further information is required on the number of locations that would have been subject to an application for green status and rigorously defended, that will not be as they will now be exempt because of declarations. The underlying assumption is that a landowner will make a declaration only if there is a risk of application for green status that will be successful. The possibility of an application that goes to public inquiry could be an indication of possibility of success. An application that is rigorously defended is likely to go to public inquiry, incurring greater time and outside costs for both parties. In the research, 60% of determined greens involved an inspector. This would indicate that there may be high costs to the landowner in 60% of cases and it would be in the landowner's interests to apply for exemption.
- Reduction in number of applications and Reduced processing costs to local authorities (B2.) and Reduced costs for applicants (B5.).
- Potential rise in value of land if certainty of potential for planning application and development (B1.). According to the CCRI study some 48% of applications were motivated in some way by prospective development. We expect a significant proportion of landowners may want to submit a landowner declaration to ensure future protection against registration, but estimates depend on landowners' awareness of the declaration procedure.

Costs

- Potential costs to landowners of new administrative process (C4.):
Average annual cost would be based on the amount of time taken to fill in application form and calculated on the basis of the median hourly pay of landowner. We assume costs in the range of £20–100 for each declaration. Assuming an initial 1,000 declarations per year for the first five years as there is a rush following the change in policy, followed by a trickle of 50 per year, we have calculated the costs of administration of the registration. This will involve the time of the applicant and the processing time for the local authority. There will also be initial costs of designing new forms and training staff to process the applications.
- Costs of exempting land to local authority:
In many cases this is likely to be local authority administrative employee as over 50% of plots in research are owned by local authorities. The number of applications is assumed to be 1,000 for first five years and 50 per annum thereafter.
- Foregone benefits of registration if there is a change in land use (C1.).

3. Character Test

Summary

15. New legislation would add a 'character' test to the existing criteria for the registration as a green. Only land which is unenclosed, open and uncultivated would be eligible for registration. It is included in Option 1 only.

How it would work

16. A test of character could be added to the existing tests in the 2006 Act. Registration would be afforded only to land which was:
 - unenclosed: meaning both that the land is not substantially bounded by fences or other physical features erected with the purpose of discouraging or deterring access to and egress from the land from or to surrounding land;
 - open: meaning that the land is not substantially covered by scrub, trees or other dense vegetation which would interfere with the use of the land (as opposed to particular paths) for most sports and pastimes;
 - uncultivated: whether at the time of application for registration or at any time in the 20 years preceding the application.
17. Where land contained in an application clearly failed the test, the registration authority would be able to reject the application at the initial sift.
18. Land which is bounded by public roads, or by dwellings which are built to overlook the land (so that the principal means of access is to and from the land) would qualify as unenclosed, whereas land which is enclosed by fencing, or where tall fencing divides the land from neighbouring properties, would not. Land would not be disqualified merely because it was bounded on one side by, for example, a railway line or major road, and separated from it by a fence, provided that the character test were met in respect of the substantial part of the boundary.

Impact

19. A character test would restrict the registration of new greens to sites which are popularly perceived to be traditional in character, or which, although modern in character (such as play areas on post-war housing estates) are of a similar, open nature to traditional greens. Such a test might increase public support for new greens, because they would be popularly perceived to be greens in character, and therefore worthy of special protection. Moreover, the test would ensure that sites which achieved registration would generally be the focal point of the community — open to local roads, easily accessible, free of encroaching scrub, and visibly the pride of that community.
20. A character test would prevent the registration of sites which were enclosed or otherwise not the focal point of their community: for example, fields, post-industrial land, public parks and playing fields would be likely to fail the character test (although each claim would need to be assessed on its merits).
21. However, a character test could be difficult to apply: Lord Hoffmann said, in *The Trap Grounds*, that "To say that the registration authority will recognise a village green when it sees one seems inadequate." A character test should be reasonably certain in its application to land. Guidance would need to explain how the test should be applied.

Character	
<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • restores registration to traditional perception of greens, so as to maintain public support • confines protection to open, easily accessible sites, typically focal point of community • reduces non-conforming applications, so freeing up registration authorities to determine 	<ul style="list-style-type: none"> • introduces further technical test • excludes all non-conforming land from registration regardless of other factors

<p>applications for sites which meet test</p> <ul style="list-style-type: none"> • clearly non-conforming applications (e.g. public parks) can be quickly rejected 	
---	--

22. The number of applications that would be affected by the proposal will depend on the rigour of the character test. A strict test will deter a greater number of applications. We have assumed that the test proposed in the consultation document to limit applications for land which is ‘open and unenclosed’ in character would reduce application by 10–40%.

Benefits

- Protection of high quality sites, traditional in character and which therefore are typically open, accessible and the focal point of the community.
Some sites which achieve registration under the character test may not be regarded as ‘high quality’ sites, while others which may be excluded from registration may nevertheless show significant net benefits. However, as explained in paragraph 30, we expect that the application of the character test will generally be effective in achieving this benefit.
 - Reduction in number of applications and Reduced processing costs to local authorities (B2.) and Reduced costs for applicants (B5.).
23. In cases where the land does not satisfy the criteria for registration under the character test, there are benefits of:
- Potential rise in value of land (B1.).
 - Avoided landowner and other costs of opposing an application (B3.).
 - Reduced uncertainty (B4.).

Costs

24. In cases where the land does not satisfy the criteria for registration under the character test but would have done previously:
- Foregone benefits of registration if there is a change in land use (C1.).

4. Integration with local planning

Summary

25. This proposal would take decisions on the future of sites into the planning system. It would prevent registration of land which was subject to a planning application or permission for development of the site, or which was designated for development or as a green area in a local or neighbourhood plan. It is included in Option 1 only.

How it would work

26. An application to register a green could not be made in relation to any land in respect of which there was an application for full or outline planning permission, which had been received and validated or on which there was statutory pre-application consultation⁹. However, where the green application had been submitted before any of these steps had

⁹ By ‘statutory pre-application consultation, we mean the planned new requirement for certain developers to consult communities prior to publishing a planning application, which is included in the Localism Bill.

begun, then it would proceed to determination in the usual way. Furthermore, no application to register a green could be made during the determination of any appeal against the refusal of planning permission. However, an application could be made where the period for lodging an appeal against the refusal of permission had lapsed and no appeal had been made or on expiry of the period allowed for legal challenge.

- 27. In the same way, an application to register a green could not be made in relation to any land in respect of which a planning permission had been granted, until either the development was complete (in which case, the application could seek the registration only of any remaining undeveloped land in respect of which the statutory criteria were met), or the planning permission had expired.
- 28. Nor could an application to register a green be made in relation to any land designated for development or as a green area in a local plan which had been adopted by the local planning authority, or which was in a draft local plan which had been published for consultation. The same principles would apply to land designated for development or as a green area in a neighbourhood plan envisaged by the Localism Bill, either at consultation stage or after formal adoption.
- 29. Where a proposal for development were made under the planned Community Right to Build¹⁰, the same principles would apply and the land would be protected from an application for registration in the same way.
- 30. Where land is protected in this way from an application to register a green, provision would be required so that an application could be made after the protection ceases (e.g. when the planning permission expires) notwithstanding that the claimed use may have ceased more than two years before the date of the application. This is because the landowner may also have taken steps to prevent use of the land after having sought planning permission, without the possibility of any person being empowered to make a greens application within two years after cessation of use (as required by section 15(3)).

Impact

- 31. This proposal places emphasis on the local planning authority and communities to consider a site’s future through the development planning process. It would help reconcile conflict between the development of land, and applications to register the land as a green, particularly where such applications are made once the planning process is already underway.
- 32. This proposal means that action could not be taken to bypass the planning process by seeking to register land as a green and is consistent with localism: some pieces of land which are highly valued by some local people and which would currently meet the test for greens registration would not be eligible for registration, but their future use — for development or green space — would be determined by the community in ‘the round’.

Integration with local planning	
<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • ensures proposals in local or neighbourhood plans are not derailed • puts the consideration of a site’s future in the hands of local people and their council • allows the future needs of a neighbourhood and wider 	<ul style="list-style-type: none"> • may encourage landowners to submit speculative application for planning permission • may encourage speculative greens application to avoid being pipped to the post by a planning application • limited risk that a landowner might move straight to the formal stages of a planning

¹⁰ The Community Right to Build is proposed under the Localism Bill, and will give groups of local people the power to deliver the development that their local community wants, with minimal red tape.

<p>community to be considered in the round</p> <ul style="list-style-type: none"> • protects proposed development once an application for planning permission or statutory pre-application consultation has begun in advance of any green application • helps protect developers from potentially considerable costs associated with having to abandon worked up schemes • supports delivery of housing, other sustainable development and Community Right to Build • applications merely to delay development could not be made 	<p>application and not engage early with local communities — so as to avoid inspiring a blocking greens application</p> <ul style="list-style-type: none"> • some sites, which otherwise meet the criteria for registration, may be ineligible for registration because of preferred alternative uses approved by the planning system
--	--

33. This proposal removes additional costs to developers from opposing greens applications on land already with planning permission. It also prevents loss of value of land with extant planning permission. It will deter applications when planning permission has already been granted. We have assumed that it will deter 10–30% of applications, reducing costs to registration authorities.

Benefits

- Potential rise in value of land (B1.).
The CCRI research found that in 40% of cases within the study greens applications were made after planning applications had been submitted for the same site.
- Avoided landowner and other costs of opposing an application (B3.).
- Reduced uncertainty (B4.).
- Reduction in number of applications and Reduced processing costs to local authorities (B2.) and Reduced costs for applicants (B5.).

Costs

- Foregone benefits of registration if there is a change in land use (C1.).

5. Charging fees

Summary

34. An applicant would be required to pay a fee when making an application. It is included in both Option 1 and Option 2.

How it would work

35. Submission of an application to the registration authority would require to be accompanied by a fee which is set by the registration authority. The registration authority would refuse to consider any application which did not include a fee, and would have no discretion to dispense with the payment of a fee in any particular case (although it could decide to set a fee lower than £1,000).

36. In the case of a refundable fee, the fee would be refunded to the applicant were the application granted.
37. Fees would be retained by the registration authority.

Impact

38. This proposal is principally intended to discourage an applicant from submitting a speculative application which stands little chance of success. This would reduce the number of applications thereby enabling registration authorities to concentrate on speeding up decision making on fewer, better quality applications. This would also avoid the potential for delay to development, or perhaps from discouraging the developer from proceeding with the application, given the length of time taken to reach decisions.

Charging fees	
Advantages	Disadvantages
<ul style="list-style-type: none"> enables authorities to recoup some of their costs likely to deter spurious applications which have little chance of success 	<ul style="list-style-type: none"> likely to deter some worthwhile applications too fees could not realistically be set at a level which would enable full cost recovery does not contribute to other parties' costs

Charging fees, refunded if application is granted	
Advantages	Disadvantages
<ul style="list-style-type: none"> enables authorities to recoup some of their costs where applications rejected likely to deter spurious applications which have little chance of success encourages applications in accordance with criteria less likely to deter worthwhile applications with reasonable chance of success 	<ul style="list-style-type: none"> no known precedent, so approach is untested and uncertain (but similar to principle for costs of court action) makes no contribution to costs of registration authority where application is granted perception that registration authority predisposed to refuse application in order to retain fee

39. Assumption is a fee of £1,000 per application but the amount will be determined following the consultation process.

Benefits

40. Currently the benefits cannot be monetised owing to the issue of sensitivity of applications to fee size.
- Reduction in number of applications and Reduced processing costs to local authorities (B2.) and Reduced costs for applicants (B5.).
- This would be based on the number of applications discouraged per year and the estimated costs of processing those applications (£18,710). We expect the proposal would be particularly effective in discouraging applications with low prospects of being granted, and would reduce the burden on local authorities in not having to take the applications through a lengthy and costly process, To determine the number of applicants deterred from applying we would need to know the size of the fee and the

sensitivity of applications to the fee size — which will be explored at consultation. However if the fee was set at, say £1,000, then this option would likely have a relatively low effect in reducing applications overall (but a more targeted effect in relation to applications with low prospects). We estimate the reduction in applications in the range of 15–30%.

41. In cases where applications are deterred because of the fee, potential benefits are:

- Potential rise in value of land (B1.).
- Avoided landowner and other costs of opposing an application (B3.).
- Increase in revenue from fees (assuming fee is retained).

Costs

- Annual costs of processing fee in addition to application.
- Deterrence of potentially successful applications (C2.).
- Cost to applicants of paying a fee (assuming fee is retained by local authority).
- Foregone benefits of registration if there is a change in land use (C1.).