

## **Explanatory Memorandum to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Group, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation in accordance with Standing Order 27.1.

### **Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Cabinet Secretary for Environment and Rural Affairs  
13 April 2017

## **1. Description**

The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (“the Regulations”) give effect to sections 19 and 22 of, and Schedule 2 to, the Commons Act 2006 (“the 2006 Act”). They concern applications and proposals that may be made to a Commons Registration Authority in relation to the correction of errors and rectification of mistakes in the commons registers in Wales.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

Section 19 of the 2006 Act enables Commons Registration Authorities to correct certain errors in the commons registers. Section 22 of the 2006 Act introduces Schedule 2 to the 2006 Act, which makes provisions for rectification or mistakes and other matters in the commons registers. In the first instance, applications will be made to the Commons Registration Authority, which, in prescribed circumstances must refer the case to an appointed person. Section 54 of the Planning (Wales) Act 2015 is being fully commenced in co-ordination with the Regulations. This amends section 24 of the 2006 Act and enables the Welsh Ministers to make provision within the Regulations whereby fees can be required to be paid to the body to whom the application is made and, if different, to the body who is determining the application.

## **3. Legislative background**

The Commons Act 2006 received Royal Assent on 19 July 2006. Since this time there have been various commencement orders and Regulations, to implement certain sections of the 2006 Act.

The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 give effect to sections 19 and 22 of, and Schedule 2 to, the 2006 Act. They include provisions about the making, managing and determination of applications and proposals to amend common land registers in Wales.

The Statutory Instrument is subject to annulment (the negative procedure).

## **4. Purpose & intended effect of the legislation**

The aim of the Commons Registration Act 1965 (“the 1965 Act”) was to create a legal record of the common land, Town and Village Greens and rights associated with them which existed at that time. Whilst this was achieved in the majority of cases, mistakes and anomalies did occur as the registers were compiled. Some applications to register common land and Town and Village Greens and rights contained inaccurate information, for example there are instances where applicants included land that was not actually part of the common or the town or village green. Mistakes were also made by Commons Registration Authorities when recording entries in the registers. Many mistakes were not noticed until after registers became conclusive on 31 July 1970. As

the 1965 Act made insufficient provision for the correction of mistakes after this point there are numerous instances in which the registers continue to be inaccurate and there is no provision to enable such mistakes to be rectified.

The implementation of sections 19 and 22 of, and Schedule 2 to, the 2006 Act will allow certain concerns to be addressed of people who claim that certain mistakes and anomalies occurred when the registers were compiled under the 1965 Act. Cases include fields, gardens and village greens, it is alleged, that have been wrongly registered and as a result are causing problems for owners in claiming entitlements or selling property. The Regulations aim to provide a mechanism to bring closure to what can be complex and emotive issues; for example by removing land (such as a home or garden) which has been wrongly registered as common land from the register of common land.

Within sections 19 and 22 of, and Schedule 2 to, the 2006 Act, are provisions considered to be in the public interest. For example, provisions providing for the registration of land as common land or a town or village green where certain provisions apply in the case of land that was not registered under the 1965 Act (paragraphs 2 – 5 of Schedule 2 to the 2006 Act). The cost of the work associated with the determination of such applications is seen as being in the public interest. These 'public interest' applications will be funded by Welsh Government, as it is believed that there would be little or no incentive for an individual to submit an application and pay fees for something that is for the benefit of the wider public. Such applications must be made within 15 years of the Regulations coming into force.

## **5. Consultation**

A Regulatory Impact Assessment (RIA) has been completed and details of the consultation are included in the RIA.

## 6. Regulatory Impact Assessment (RIA)

### PART 2 – REGULATORY IMPACT ASSESSMENT

Unless stated otherwise, figures have been extrapolated from Defra's pioneer study and figures contained in Defra's 2014 Impact Assessment 'Implement Part 1 Commons Act 2006 in full in Cumbria and North Yorkshire and corrective applications under Part 1 across England.' It is assumed that the outcomes from the pioneer study (in particular, the number of applications) are representative of the likely outcomes in Wales. Costs have been adjusted to take account of inflation since the Defra Impact Assessment was completed. Costs are presented for the first five years after the Regulations come into effect. Please note that all figures are approximate.

#### Options

Three options have been considered:

Option 1 – Do nothing: sections 19 and 22 of, and Schedule 2 to, the 2006 Act would not be implemented in Wales and there would continue to be no mechanism by which a commons register could be corrected in accordance with the 2006 Act provisions.

Option 2 – Do minimum: implement sections 19 and 22 of, and Schedule 2 to, the 2006 Act without including the public interest provisions of Schedule 2.

Option 3 – Implement sections 19 and 22 of, and Schedule 2 to, the 2006 Act in full, including the public interest provisions.

## **Option 1 – Do nothing**

### **Description**

Sections 19 and 22 of, and Schedule 2 to, the 2006 Act would not be implemented in Wales and there would continue to be no mechanism by which a commons register could be corrected in accordance with the 2006 Act provisions.

### **Costs**

This option maintains the status quo and does not create additional costs.

#### **i) Welsh Government**

There are no additional costs to Welsh Government associated with this option, however, the Welsh Government has committed to fully implementing the Commons Act 2006 (the 2006 Act), including section 19 and 22 of, and Schedule 2 to, the 2006 Act, through a rolling programme of events. If the provisions are not enacted, the Welsh Ministers will need to keep under review the appropriateness of commencing the law as enacted. The commitment of the Welsh Ministers to fully implement the 2006 Act aims to ensure that the improved management of common land in Wales is in line with the Welsh Government's new Programme for Government 'Taking Wales Forward', and meets obligations under the Well-Being of Future Generations (Wales) Act 2015. Failure to implement sections 19, 22 and Schedule 2 will result in the commons registers remaining out of date thus limiting the effective management of common land in Wales, to the detriment of the environment and local communities for their recreation, health and social well being.

The Welsh Government receives a large volume of correspondence from stakeholders (mostly landowners and Commons Registration Authorities (CRAs)) who are keen to see the implementation of sections 19 and 22 of, and Schedule 2 to, the 2006 Act. Pursuing the do nothing option would leave the issues raised in such correspondence unresolved.

#### **ii) Commons Registration Authorities (CRAs)**

No additional costs would be incurred by CRAs if this option were pursued, as the status quo would be maintained. However the commons registers would remain out of date and inaccurate and CRAs would continue to receive a high volume of correspondence on the matter.

#### **iii) Planning Inspectorate (PINS) – as the appointed person**

The Regulations refer to an 'appointed person' who carries out administrative work associated with the making of decisions in connection with certain applications or proposals. It is envisaged that the Planning Inspectorate (PINS) will be appointed – at least in the short term – by the Welsh Ministers as the appointed person. For ease of reference this document refers to PINS, on the

understanding that they are expected to be the appointed person for the purpose of the Regulations.

This option maintains the status quo and does not create additional costs for PINS.

iv) Members of the public seeking to apply to change the commons register

This option maintains the status quo and so would not create additional costs for potential applicants seeking to correct a commons register, as it wouldn't be possible to make an application under sections 19 or 22 or Schedule 2. Welsh Government is aware, however, of instances across Wales where errors in the registers have delayed or prevented house sales, sales of land and are preventing the proper use of land which has been incorrectly identified as common land.

These instances can have a negative impact on peoples' lives and businesses. It is not possible to quantify the financial impact of the continuation of non-implementation, although CRAs in Wales are aware of approximately 175 specific cases where landowners or commoners have brought forward concerns about inaccuracies in the commons registers.

v) Third Parties

This option maintains the status quo and so would not create additional costs for third parties, however, the commons registers would remain out of date thus limiting the effective management of common land in Wales, to the detriment of the environment and local communities for their recreation, health and social well being.

**Benefits (monetised and non-monetised)**

This option maintains the status quo and does not create additional benefits for the Welsh Government, CRAs, landowners, commoners or third parties.

## Option 2 - Do minimum

### Description

Do minimum: implement sections 19 and those provisions of Schedule 2 which attract an application fee, without implementing the public interest provisions of Schedule 2 (see section 4 of the Explanatory Memorandum).

This option involves the making of Regulations in connection with the purposes set out in the following provisions of section 19 and Schedule 2:

- Section 19(2)(a) – Correcting a mistake made by the CRA in making or amending an entry in the register;
- Section 19(2)(b) – Correcting any other mistake, where the amendment would not affect:
  - (i) the extent of any land registered as common land or as a town or village green; or
  - (ii) what can be done by virtue of a right of common;
- Section 19(2)(c) – removing a duplicate entry from the register;
- Section 19(2)(d) – updating the details of any name or address referred to in an entry;
- Section 19(2)(e) – updating any entry in the register relating to land registered as common land or as a town or village green to take account of accretion or diluvion;
- Schedule 2 paragraph 6 – Buildings registered as common land;
- Schedule 2 paragraph 7 – Other land wrongly registered as common land;
- Schedule 2 paragraph 8 – Buildings registered as town or village green;
- Schedule 2 paragraph 9 - Other land wrongly registered as town or village green.

The following provisions would not be implemented:

- Schedule 2, paragraph 2 or 3 – non-registration of common land or town or village green;
- Schedule 2, paragraph 4 – waste land of a manor not registered as common land;
- Schedule 2, paragraph 5 – town or village green wrongly registered as common land.

Whilst we are aware of approximately 175 cases where landowners or commoners have brought forward concerns about inaccuracies in the commons registers it is believed that the figure, based on information available in England, is more likely to be in the region of 416 cases.

Under this option it is anticipated that applicants would pay a 'reasonable' fee, set by the CRA, for all of the applications listed, with the exception of those under section 19(2)(a) and (c), for which no fee is payable. The expectation would be that the fees set would be based on full cost recovery. Where an

applicant can prove the mistake in the commons register has been made by the CRA (section 19(2)(a)), the authority would rectify the issue at their cost.

Under this option, the CRA will be required to refer to PINS the following types of applications and proposals:

- cases where the CRA itself has an interest in the outcome, and where it is possible that concerns may exist about the CRA's ability to impartially determine such an application;
- cases where a person with a legal interest in the land objects to the application or proposal and seeks to add or remove land from the register, or seeks to correct an error as to the quantification of rights of common in a register;
- cases where a person with a legal interest in the land objects to the application or proposal and the application or proposal is made under paragraphs 6-9 of Schedule 2 to the 2006 Act.

Applicants whose cases are referred to PINS by the CRA will be expected to pay a further fee for work carried out by PINS, and again, the expectation would be that the fees charged would be on a full cost recovery basis.

Where CRAs refer applications or proposals that have been made under section 19(2)(a) and (c), to PINS, Welsh Government will reimburse these costs as there is no provision under the 2006 Act for PINS to recover costs from the CRA in these instances. Payments will be made via the established framework between Welsh Government and PINS

## **Costs**

### i) Welsh Government

Based on our analysis, it is estimated the Welsh Government would reimburse PINS in the region of £271,020 for proposals and applications made under section 19(2)(a) and (c), and sent from the CRAs to PINS for determination. Implementing Option 2 would also require the Welsh Government to spend time (and therefore allocate resources) producing guidance etc. This option would not require a budget for implementing the public interest provisions.

Whilst this option would go some way towards improving the commons registers, not implementing the public interest provisions would mean that the registers are not updated to the extent envisaged by the 2006 Act, and result in the commons registers remaining out of date to the detriment of the environment and local communities for their recreation, health and social well being, as with Option 1. Environmental obligations and commitments under the Welsh Government's new Programme for Government 'Taking Wales Forward' and the Well-Being of Future Generations (Wales) Act 2015. These regulations contribute to the delivery of environmental obligations and commitments.

Welsh Government would likely continue to receive a high volume of correspondence urging for implementation of the public interest provisions.

ii) Commons Registration Authorities

Based on our analysis, it is estimated that CRAs in Wales will receive and determine around 416 applications<sup>1</sup> in the first 5 years of the Regulations coming into force. It is estimated that this will cost a total of £264,140 - a cost of £634.95 per application (Annex B). These costs will be met by the applicant, Welsh Government or the CRAs depending upon the nature of each application.

As noted above, CRAs would cover the costs of processing applications where the applicant demonstrates the mistake has been made by the CRA (section 19(2)(a) of the 2006 Act) and applications for the removal of a duplicate entry (section 19(2)(c) of the 2006 Act). The total cost to CRAs would therefore be approximately £80,000 over the first five years (see Annexes C & D).

iii) Planning Inspectorate (PINS)

In line with the rest of this Regulatory Impact Assessment, the figures from Defra's pioneer authorities have been used to calculate projected figures in Wales. Twenty eight percent of applications made in the pioneer authorities were referred to PINS.

Based on the anticipated 416 applications to CRAs in Wales during the first five years (this figure does not include the public interest applications discussed under Option 3), it is assumed that 123 (28%) will be referred to PINS. Data obtained from Defra's Impact Assessment shows the average cost to PINS to process each application was £4,428<sup>2</sup> (excluding administrative support). Adjusting this figure for inflation since 2014 gives an average cost of £4,517 in 2016-17. For the 123 applications, this equates to a cost of approximately £555,590 over the first five years for the work undertaken by PINS (excluding administrative support).

There would be no cost to PINS as all costs will be met by the applicant or Welsh Government, depending upon the nature of each application. A breakdown of the applications expected to be referred to PINS is shown in Annexes E and F. Of the £555,590 cost over the first five years, it is anticipated that approximately £271,020 will be paid by the Welsh Government (for proposals under section 19(2)(a) and (c)) and approximately £284,570 will be paid by the applicants.

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<sup>1</sup> Total number of applications CRAs in Wales might expect to receive in the first 5 years if sections 19 and 22 of, and Sch 2 to, the 2006 Act were implemented in full (758 see Annex B for calculation)), minus the public interest applications not implemented under Option 2, (sch 2, paragraphs 2-5) (342) = 416.

<sup>2</sup> See paragraph 34 of Defra's 2014 Impact Assessment 'Implement Part 1 Commons Act 2006 in full in Cumbria and North Yorkshire and corrective applications under Part 1 across England.'

iv) Members of the public applying to change the commons register

Making an application is a voluntary process so it must be assumed that the benefits which accrue to the applicant outweigh the cost of any application.

Typically applicants are expected to be people who have rights of common (a mixture of individuals and farmers/small businesses) and land or property owners seeking to either add new information to the register or to amend the existing information within it.

The costs of the CRA processing applications not resulting from a CRA error will be covered by the applicant (specifically, applicants will pay for applications under sections 19(2)(b), (d) and (e) and Schedule 2 paragraphs 6-9 of the 2006 Act), this is estimated to be £182,970 over the first five years (see annexes C & D). Applications considered to be in the public interest have not been included under this option.

The applicant will also be required to cover the cost of cases referred to PINS under sections 19(2)(b), (d) and (e) and Schedule 2 paragraphs 6-9 of the 2006 Act. This cost is estimated to be £284,570 (see Annex F) over the first five years.

Finally, the applicant will incur the cost of completing an application form. The cost of filling out each application form has been estimated at £13.18 per form<sup>3</sup>, giving a cost of £5,480 to complete the 416 applications expected over the first five years.

The total cost to applicants in Wales over 5 years is therefore estimated to be £473,020 in this option.

v) Third Parties

Not implementing the public interest provisions would result in the commons registers remaining out of date to the detriment of the environment and local communities for their recreation, health and social well being.

## **Benefits**

i) Welsh Government

The Welsh Government has committed to fully implementing the Commons Act 2006 (the 2006 Act), including sections 19 and 22 of, and Schedule 2 to, the 2006 Act to ensure the improved management of common land in Wales in line with environmental obligations under the Welsh Government's new Programme for Government 'Taking Wales Forward'. Fulfilling this commitment, in part,

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<sup>3</sup> The cost of completing the application form is based on the median hourly wage for 'Administrative and secretarial occupations' in Wales of £10.14 and is taken from ONS' Annual Survey of Hours and Earnings 2016 (Table 15.5a – gross hourly pay by region and occupation). The hourly wage has been adjusted by 30% to reflect an employers pension and National Insurance Contributions. It is assumed each application will take an hour to complete.

would go some way towards improving the commons registers, however, not implementing the public interest provisions at this point in time would result in the commons registers remaining out of date to a greater extent than would be the case were the provisions implemented in full, to the detriment of the environment and local communities for their recreation, health and social well being, as with Option 1.

The Welsh Government currently receives a large volume of correspondence from stakeholders who are keen to see the full implementation of sections 19, 22 and Schedule 2. If these sections of the 2006 Act were implemented without including the public interest provisions, the Welsh Government would receive less correspondence on this subject, however, it is anticipated that correspondence would continue to be received in connection with the public interest aspects of the provisions.

ii) Commons Registration Authorities

The implementation of sections 19 and 22 of, and Schedule 2 to, the Act would give CRAs the mechanism by which they could update the commons registers. The commons registers would be more accurate than they are at present and CRAs would receive less correspondence in connection with the correction of mistakes. These benefits would not, however, be as fully realised as they would be if sections 19 and 22 and Schedule 2 were implemented in full.

iii) Members of the public applying to change the commons register

Implementing sections 19, 22 and Schedule 2, without the public interest provisions of Schedule 2, will benefit potential applicants through the provision of commons registers which are more correct, more accurate and more reliable than is presently the case. From the information we have, we anticipate that implementation along the lines of Option 2 will result in financial reward to a number of people who will be in a position to make an application in accordance with the Regulations - for example, correcting the register and providing clarity on a contentious common land issue may mean that affected people are subsequently able to sell their property.

iv) Third parties

The implementation of sections 19, 22 and Schedule 2, excluding the public interest provisions, will facilitate the proper management of common land. This will benefit local communities for their recreation, health and social well being. These benefits would not, however, be as fully realised as they would be if sections 19, 22 and Schedule 2 were implemented in full.

### **Non monetised benefits**

It is likely that people will only apply to correct the registers where the benefit outweighs the cost, for example where removing the legal uncertainty connected with the land allows it to receive its full market value. Table 1 shows the non monetised benefits conferred by each type of application.

*Table 1: Non monetised benefits by type of application and group affected.*

<b>Commons Act Provision</b>	<b>Benefits by group affected</b>
Section 19 - correction of the register	Public, landowners and rights holders - accuracy of register improved to correct a mistake made by the registration authority or other parties.
Schedule 2 para 6 - buildings registered as common land	Landowner – will free the building from its designation as common land and all the protection such land attracts.
Schedule 2 para 7 - other land wrongly registered as common land	Landowner – will free the land from its designation as common land and all the protection such land attracts.
Schedule 2 para 8 - buildings registered as a town or village green	Landowner – will free the building from its designation as a town or village green and all the protection such land attracts.
Schedule 2 para 9 - other land wrongly registered as town or village green	Landowner – will free the land from its designation as a town or village green and all the protection such land attracts.

### **Option 3 – Implement sections 19, 22 and Schedule 2 in full, including the public interest provisions**

#### **Description**

Under this option, sections 19, 22 and Schedule 2 would be implemented in full, including the provisions within Schedule 2 regarded as being in the public interest and therefore non-chargeable to the applicant. Applicants would pay a 'reasonable' fee set by the CRA for most types of application and the expectation is that these fees would be based on full cost recovery. Where applications are made in the public interest, Welsh Government will cover the costs of an application being processed by the CRA and PINS. Where an applicant can prove the mistake in the commons register has been made by the CRA, the authority would rectify the issue at their cost – the Regulations would prescribe that no fee is payable in connection with applications made under section 19(2)(a) or (c).

As with Option 2, the CRA will be required to refer to PINS the following types of applications and proposals:

- cases where the CRA itself has an interest in the outcome, and where it is possible that concerns may exist about the CRA's ability to impartially determine such an application;
- cases where a person with a legal interest in the land objects to the application or proposal and seeks to add or remove land from the register, or seeks to correct an error as to the quantification of rights of common in a register;
- cases where a person with a legal interest in the land objects to the application or proposal and the application or proposal is made under paragraphs 2-9 of Schedule 2 to the 2006 Act.

The anticipated 758 applications would be sent, initially, to the CRA for determination.

Applicants whose cases are referred to PINS by the CRA will be expected to pay a further fee work carried out by PINS, and again, the expectation would be that the fees charged would be on a full cost recovery basis.

Where CRAs refer applications or proposals under sections 19(2)(a) and (c) to PINS, Welsh Government will reimburse these costs as there is no provision under the 2006 Act for PINS to recover costs from the CRA in these instances. Payments will be made via the established framework between Welsh Government and PINS.

It is believed that many of the applications that are likely to be made under Schedule 2 could be complex, as they have the potential to raise both historical and legal questions. For example an application to deregister land such as a home or garden which was mistakenly included in a commons register in the 1960s could be contentious and could prove difficult in terms of the applicant

providing sufficient evidence, or could raise significant local opposition, depending on the circumstances.

Applications and proposals made under Schedule 2 to the 2006 Act for the purposes of remedying non-registration or mistaken registration under the 1965 Act must be made within the period of 15 years from the coming into force date of the 2017 Regulations (2032).

## **Costs**

### **i) Welsh Government**

Welsh Government would provide the budget to pay for the administration costs of applications considered to be within the public interest (i.e. making these free to applicants) and for the costs of referrals by CRAs of proposals to PINS.

Based on evidence from Defra's pioneer study, and presented in their Impact Assessment, Welsh Government could expect to pay around £625,050 over 5 years for the anticipated 344 applications made under Schedule 2, paragraphs 2-5 of the 2006 Act - applications which are considered to be within the public interest (see Annex C). As outlined above, costs to Welsh Government comprise of the cost of processing public interest applications by CRAs (£218,520 over 5 years in Wales, see Annex C) and PINS (£406,530 over 5 years in Wales, see Annex F).

In addition to the public interest applications, is estimated the Welsh Government would pay PINS in the region of £271,020 for applications and proposals, under section 19(2)(a) and (c) sent from the CRAs to PINS for determination.

In total, it is anticipated that the Welsh Government would incur costs of about £896,070 over the first five years of the Regulations being in force.

Implementing Option 3 would also require the Welsh Government to spend time (and therefore allocate resources) producing guidance etc.

### **ii) Commons Registration Authorities**

Based on evidence from the pioneer study, it is estimated that CRAs will receive and determine around 758 applications in Wales in the first 5 years of the Regulations coming into force. It is estimated that this will cost a total of £481,300, based on a cost of £634.95 per application. These costs would be met by the CRA, Welsh Government or the applicant depending upon the type of application (see Annexes C & D).

CRAs would cover the costs of processing applications where the applicant demonstrates the mistake has been made by the CRA (section 19(2)(a)) and applications for the removal of a duplicate entry (section 19(2)(c)). The total cost to CRAs would therefore be approximately £80,000 over the first five years (see Annexes C & D).

Welsh Government would cover the CRA application processing costs for applications considered to be in the public interest, 344 such applications are anticipated at a cost of approximately £218,420 over 5 years in Wales.

The costs of the CRA processing applications not considered to be in the public interest and not resulting from a CRA error will be met by the applicant. These costs are expected to come to around £182,970 in Wales in the first 5 years of the Regulations coming into force.

The CRA may also refer their own proposals to the PINS. As there is no provision under the 2006 Act for PINS to charge a fee to CRAs, Welsh Government will reimburse these costs in the established framework between Welsh Government and PINS.

iii) Planning Inspectorate

In line with the rest of this Regulatory Impact Assessment, the figures from Defra's pioneer authorities have been used to calculate projected figures in Wales. Twenty eight percent of applications made in the pioneer authorities were referred to PINS.

Based on the expected 758 applications to CRAs in Wales during the first five years, it is assumed that 213 (28%) will be referred to PINS. Data obtained from Defra's Impact Assessment shows the average cost to PINS to process each application was £4,428<sup>4</sup> (excluding administrative support). Adjusting this figure for inflation since 2014 gives an average cost of £4,517 in 2016-17. For the 213 applications, this equates to a cost of approximately £962,120 over the first five years for the work undertaken by PINS (excluding administrative support).

There would be no cost to PINS as all costs will be met by the applicant, Welsh Government or the CRAs depending upon the nature of each application. A breakdown of the applications expected to be referred to PINS is shown in Annexes E and F. Of the £962,120 cost over the first five years, approximately £677,550 is expected to be paid by Welsh Government for public interest applications and corrections for mistakes originally made by the CRAs. The remainder, approximately £284,570 will be incurred by the applicants.

iv) Members of the public applying to change the commons register

Making an application is a voluntary process so for each application it must be assumed that the benefits which accrue to the applicant outweigh the cost of any application.

Typically applicants are expected to be people who have rights of common (a mixture of individuals and farmers/small businesses), and land or property

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<sup>4</sup> See paragraph 34 of Defra's 2014 Impact Assessment 'Implement Part 1 Commons Act 2006 in full in Cumbria and North Yorkshire and corrective applications under Part 1 across England.'

owners seeking to either add new information to the register or to amend existing information within it.

Costs of applications not considered to be in the public interest or where no mistake has been made by the CRA will be met by the applicant. In these cases, applicants will pay for the cost of the CRA processing the application and where the application is referred to the Planning Inspectorate, the applicant will be charged an additional fee (which may be paid in stages) to cover further processing costs. As outlined above, these costs are estimated to be £182,970 and £284,600 respectively over the first five years. In addition, there will be a cost to the applicant of completing an application form. Based on 758 applications and a cost per form of £13.18<sup>5</sup>, the total of this cost is expected to be approximately £10,000 over the first five years.

The total cost to applicants over the first five years is therefore estimated to be £477,570.

v) Third Parties

There would be no cost to third parties unless they wished to raise an objection to an application or proposal. No one would be obliged to raise an objection and so any cost incurred would be through the choice of the objector.

## **Benefits**

i) Welsh Government

The Welsh Government has committed to fully implementing the Commons Act 2006 (the 2006 Act), including sections 19, 22 and Schedule 2 of the 2006 Act, through a rolling programme of events to ensure the improved management of common land in Wales in line with the Welsh Government's new Programme for Government 'Taking Wales Forward'. The Well-being of Future Generations (Wales) Act 2015 sets out the Welsh Government's vision to enhance the economic, social and environmental well-being of people and communities in Wales, achieve a better quality of life for our own and future generations. The implementation of sections 19 and 22 of, and Schedule 2 to, the 2006 Act contributes to this vision, and the vision under 'Taking Wales Forward', to protect and enhance biodiversity and local ecosystems, by seeking to safeguard common land, allowing mistakes to be rectified which could benefit the environment and local communities for their recreation, health and social well being. Implementing these provisions in full will improve the reliability and accuracy of commons registers allowing more effective management of common land in Wales, for the benefit of the environment and local communities for their recreation, health and social well being.

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<sup>5</sup> The cost of completing the application form is based on the median hourly wage for 'Administrative and secretarial occupations' in Wales of £10.14 and is taken from ONS' Annual Survey of Hours and Earnings 2016 (Table 15.5a – gross hourly pay by region and occupation). The hourly wage has been adjusted by 30% to reflect an employers pension and National Insurance Contributions. It is assumed each application will take an hour to complete.

The Welsh Government currently receives a large volume of correspondence from stakeholders who are keen to see the implementation of sections 19, 22 and Schedule 2. If these sections of the 2006 Act were implemented in full, to reflect Option 3, Welsh Government would not receive this correspondence.

ii) Commons Registration Authorities

The implementation of sections 19 and 22 of, and Schedule 2 to, the Act would give CRAs the mechanism by which they could update the commons registers to the extent permitted under the 2006 Act. This would make the registers more reliable. The commons registers would be more accurate and CRAs would receive less correspondence on the matter.

iii) Members of the public applying to change the commons register

Implementing sections 19, 22 and Schedule 2 in full will benefit the applicant, as applications to rectify mistakes and correct errors will enable applicants to champion the provision of more correct, more accurate and more reliable commons registers. From the information we have, we anticipate that implementation along the lines of Option 3 will result in financial reward to a number of people who will be in a position to make an application in accordance with the Regulations – for example, correcting the register and providing clarity on a contentious common land issue may mean that affected people are subsequently able to sell their property.

iv) Third parties

The full implementation of sections 19, 22 and Schedule 2 will facilitate the proper management of common land, this will benefit local communities for their recreation, health and social well being.

**Non monetised benefits**

It is likely that people will only apply to correct the registers where the benefit outweighs the cost, for example where removing the legal uncertainty connected with the land allows it to receive its full market value. Table 2 shows the non monetised benefits conferred by each type of application.

*Table 2: Non monetised benefits by type of application and group affected.*

<b>Commons Act Provision</b>	<b>Benefits by group affected</b>
Section 19 - correction of the register	Public, landowners and rights holders - accuracy of register improved to correct a mistake made by the registration authority or other parties.
Schedule 2 para 2 – non-registration of common land	Public - new common land will provide more land to which the public has a right of access, which can improve health and wellbeing outcomes for local people.

Schedule 2 para 3 - non-registration of a town or village green	Public – new town or village green will provide more land for public recreation. Land will become heavily protected from interference and development.
Schedule 2 para 4 - waste land of the manor not registered as common land	Public – new common land will provide more land to which public has right of access, which can improve health and wellbeing outcomes for local people.
Schedule 2 para 5 - a town or village green wrongly registered as common land	Public – common land will instead become town or village green which is subject to high level protection from interference and development.
Schedule 2 para 6 - buildings registered as common land	Landowner – will free the building from its designation as common land and all the protection such land attracts.
Schedule 2 para 7 - other land wrongly registered as common land	Landowner – will free the land from its designation as common land and all the protection such land attracts.
Schedule 2 para 8 - buildings registered as a town or village green	Landowner – will free the building from its designation as a town or village green and all the protection such land attracts.
Schedule 2 para 9 - other land wrongly registered as a town or village green	Landowner – will free the land from its designation as a town or village green and all the protection such land attracts.

## Summary and preferred option

Under Options 1 and 2, the commons registers would remain out of date thus limiting the effective management of common land in Wales, to the detriment of the environment and local communities for their recreation, health and social well being. In addition, Option 1 would prevent landowners from resolving longstanding inaccuracies in the registers which, from continual volumes of correspondence, we know to be impacting on house and land sales.

Option 3, whilst the most expensive option for all concerned in terms of calculable monetised costs, is the preferred option as it will realise non monetised benefits for the environment and local communities and incalculable monetised benefits for landowners. Table 2 below summarises the calculable costs of each option.

*Table 2 – Calculable costs over the first 5 years after implementation*

	Option 1	Option 2	Option 3
Welsh Government	£0	£271,020	£896,070
Commons Registration Authority	£0	£80,000	£80,000
Applicants	£0	£473,020	£477,570
Total:	£0	£824,040	£1453640

## **Duties**

### **Well-Being of Future Generations (Wales) Act 2015**

The Welsh Government's vision is about enhancing the economic, social and environmental well-being of people and communities in Wales, achieving a better quality of life for our own and future generations. The introduction of sections 19 and 22 of, and Schedule 2 to, the Commons Act 2006 contributes to this vision by seeking to safeguard common land, allowing mistakes to be rectified which could contribute to protecting the environment and local communities for their recreation, health and social well being.

### **Equality and Human Rights**

An Equality and Human Rights Impact Assessment has been completed. The implementation of sections 19 and 22 of, and Schedule 2 to, the Act will potentially enable those who allege mistakes have been made to find a remedy to restore their land to rightful entitlements. There are no other issues relevant to the Welsh Government's obligations.

### **The United Nations Convention on the Rights of the Child (UNCRC)**

A United Nations Convention on the Rights of the Child (UNCRC) impact Assessment has been completed. The proposed legislation aims to improve access to common land to the population as a whole, including children, providing a clean environment as it will facilitate the proper management of common land, this will benefit local communities for their recreation, health and social well being. There are no other issues relevant to the Welsh Government's obligations.

### **The Tackling Poverty Agenda**

There are no issues relevant to the Welsh Government's obligations under the Tackling Poverty Agenda. The implementation of the public interest applications will help to facilitate the proper management of common land, this will benefit local communities for their recreation, health and social well being.

### **The Welsh Language Standards**

A Welsh Language Impact Assessment has been completed. All Welsh Government guidance will be published in both Welsh and English and the service provided by Local Authorities will meet the requirements of the Welsh Language Wales Measure 2011.

## **Consultation**

A formal consultation took place in 2009 in connection with the implementation of Part 1 of the 2006 Act. Responses were received from those with an interest in the implementation of the Commons Act 2006 as a whole along with those individuals that the proposals will affect. A synopsis of the outcome of the public consultation set out the Welsh Government's response, and proposed way forward in connection with, the proposals. The Regulations take forward a limited section of the proposals that were consulted on, the substance of which remains as it was at the time of consultation. Officials met with the Commons Act 2006 Advisory Group on 28 February to discuss the implementation. These stakeholders engage regularly with individuals and members of the public wishing to make applications to enable them to rectify alleged mistakes within the Commons Registers. Officials are also aware of the amount of, and content of, correspondence that is received by Ministers from members of the public pressing for the implementation of the provisions mentioned above.

## **Competition Assessment**

A completed competition assessment is attached at Annex A. No impact is expected in Wales.

## **Post implementation review**

The Welsh Government plans to monitor and reviewed the implementation of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 by liaising with the Commons Act 2006 Advisory Group. The numbers of applications to CRAs, referrals to PINS and correspondence with Welsh Government will also be monitored.

## Annex A

### The Competition Assessment - the competition filter test

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

**Annex B: Total cost of applications to CRAs anticipated in Wales over 5 years:**

<b>Wales total referrals to PINS S 19, 22, Sch 2</b>	<b>% of applications referred to PINS in England = 186.6 (Number of applications referred to PINS in England) / 657 (Total applications in England) x 100</b>	<b>Number of applications in Wales over 5 years = 214 (Number of applications referred to PINS anticipated in Wales) x 657 (Total applications in England)/185.6 (Number of applications referred to PINS in England)</b>	<b>Cost per application (Defra's cost per application £622.50 + 2% inflation)</b>	<b>Total cost of CRA processing applications in Wales over 5 years = 758 x £634.95</b>	<b>Total cost of form filling (£13.18 per form x 758)</b>
214	28.25%	758	£634.95	£480,995.15	£9984.28

### Annex C: CRA application processing costs by application type:

Defra's impact assessment contains no data on numbers of applications sent to CRAs by type of application, except for section 19(2)(a) and Schedule 2, paragraphs 6-9. Numbers of applications per type, therefore have been averaged once numbers of applications under section 19(2)(a) and Schedule 2 paragraphs 6-9 have been deducted.

Application type sent to CRA	Numbers of applications anticipated in Wales by type	Total cost of applications processed by CRA	Who will cover the cost?
19(2)(a) correction of a mistake made by a CRA	41 (see annex G)	£25,372.85 (see annex G)	CRA
19(2)(b) correction of any other mistake	86	£54,631.07	Applicant
19(2)(c) removal of a duplicate entry	86	£54,631.07	CRA
19(2)(d) updating details	86	£54,631.07	Applicant
19(2)(e) accretion & diluvion (e.g. where the course of a river changes)	86	£54,631.07	Applicant
Sch 2, paragraph 2 non-registration of common land	686	£437,048.59	Welsh Government
Sch 2, paragraph 3 non registration of a town or village green	86	£54,631.07	Welsh Government
Sch 2, paragraph 4 waste land of the manor not registered as common land	86	£54,631.07	Welsh Government
Sch 2 paragraph 5 town or village green wrongly registered as common land	86	£54,631.07	Welsh Government
Sch 2 paragraph 6 buildings registered as common land	31 (see annex G)	£19,077.40 (see annex G)	Applicant
Sch 2 paragraph 7 other land wrongly registered as common land			
Sch 2 paragraph 8 buildings registered as a town or village green			
Sch 2 paragraph 9 other land wrongly registered as a town or village green			
Total (see annex B for calculations):	758	£480,995.15	

**Annex D: Totals costs of CRA processing costs over 5 years in Wales:**

Who is paying?	Total number of applications	Total cost
Applicant	289	£182,971
Welsh Government	344	£218,524
Commons Registration Authority	127	£80,004

**Annex E: Applications referred to PINS by CRAs<sup>6</sup>**

<b>Application type referred to PINS</b>	<b>Numbers of referrals to PINS anticipated in Wales by type (figures rounded to nearest whole number)</b>	<b>Total cost of applications (No. of applications x £4,517)</b>	<b>Who will cover the cost?</b>
19(2)(a) correction of a mistake made by a CRA	60	£271,020	Welsh Government
19(2)(b) correction of any other mistake	0	0	Applicant
19(2)(c) removal of a duplicate entry	0	0	Welsh Government
19(2)(d) updating details	0	0	Applicant
19(2)(e) accretion & diluvion (e.g. where the course of a river changes)	0	0	Applicant
Sch 2, paragraph 2 non-registration of common land	6	£27,102	Welsh Government
Sch 2, paragraph 3 non registration of a town or village green	0	0	Welsh Government
Sch 2, paragraph 4 waste land of the manor not registered as common land	84	£379,428	Welsh Government
Sch 2, paragraph 5 town or village green wrongly registered as common land	0	0	Welsh Government
Sch 2, paragraph 6 buildings registered as common land	36	£162,612	Applicant
Sch 2, paragraph 7 other land wrongly registered as common land	18	£81,306	Applicant
Sch 2, paragraph 8 buildings registered as a town or village green	6	£27,102	Applicant
Sch 2, paragraph 9 other land wrongly registered as a town or village green	3	£13,551	Applicant
Totals	213	£962,121	

<sup>6</sup> Based on percentages of types of application, referred to PINS by pioneer authorities, extrapolated from data in table 8 of Defra's 2014 impact assessment.

**Annex F: Total costs of applications referred to PINS to different parties:**

<b>Who is paying?</b>	<b>Total cost</b>
Applicant	£284,570
Welsh Government	£677,550
Commons Registration Authority	£0

**Annex G: Estimated number of applications under section 19(2)(a) and Schedule 2 paragraphs 6-9 and cost to each CRA.** The table below shows the total number of hectares of commons and Town or Village Greens within each corrective authority, the estimated number of each type of corrective application and cost of dealing with them over 5 years based on figures provided by Defra's pioneer authorities. This is calculated using the baseline number of applications per hectare for section 19(2)(a) which is 0.000232603 and for Schedule 2, paragraphs 6-9, which is 0.000174451. The estimated numbers of applications are then multiplied by the cost of the application. For section 19(2)(a) this cost is £606.72 and for Schedule 2, paragraph 6-9, it is £615.40, plus 2% to take account of inflation since 2014.

Authority	Total ha of CL and Town or Village Greens	No of s19(2)(a) apps (hectares x 0.000232603)	Cost of s19(2)(a) apps ((£606.72 + 2% = £618.85) x no. of applications)	No of Sch2p6-9 apps (hectares x 0.000174451)	Cost of Sch 2p6-9 (£615.40 + 2%=£627.71) x no. of applications)	Total no of apps	Total cost of apps s19(2)(a) & Sch2 p6-9
Blaenau Gwent	3684.23	1	£618.85	1	£627.71	2	£1,246.56
Bridgend	3058.59	1	£618.85	1	£627.71	2	£1,246.56
Caerphilly	3604.01	1	£618.85	1	£627.71	2	£1,246.56
Cardiff	109.55	0	£-	0	£-	0	£-
Carmarthenshire	15606.69	4	£2,475.40	3	£1,883.13	7	£4,358.53
Ceredigion	10460.63	2	£1,237.70	2	£1,255.42	4	£2,493.12
Conwy	11491.51	3	£1,856.55	2	£1,255.42	5	£3,111.97
Denbighshire	7157.02	2	£1,237.70	1	£627.71	3	£1,865.41
Flintshire	797.20	0	£-	0	£-	0	£-
Gwynedd	19864.64	5	£3,094.25	3	£1,883.13	8	£4,977.38
Isle of Anglesey	802.03	0	£-	0	£-	0	£-
Merthyr Tydfil	2929.58	1	£618.85	1	£627.71	2	£1,246.56
Monmouthshire	4924.02	1	£618.85	1	£627.71	2	£1,246.56
Neath Port Talbot	2088.79	0	£-	0	£-	0	£-
Newport	968.95	0	£-	0	£-	0	£-
Pembrokeshire	5294.74	1	£618.85	1	£627.71	2	£1,246.56
Powys	68934.87	16	£9,901.60	12	£7,532.52	28	£17,434.12
Rhondda Cynon Taf	1979.63	0	£-	0	£-	0	£-
Swansea	7541.27	2	£1,237.70	1	£627.71	3	£1,865.41
Torfaen	2959.12	1	£618.85	1	£627.71	2	£1,246.56
Vale of Glamorgan	515.17	0	£-	0	£-	0	£-
Wrexham	2087.85	0	£-	0	£-	0	£-
Total:	176860	41	£25,372.85	31	£19,077.40	71.99161	£43,946.56

