

WHAT IS A COMMONS COUNCIL?

Commons councils are statutory organisations established under the Commons Act 2006 by the Secretary of State. The legislation is not compulsory and a Council can't be imposed on a common. In Cumbria, a Council can only be established where a number of Common Land (CL) units decide to join the Council. Each CL unit must demonstrate that there is substantial support from those with legal rights to join the Council. A Council is a democratic organisation. The Council's members (decision makers) are elected by the active graziers, non

graziers and land owners from those commons who have joined the Council. The Council is governed by a standard constitution provided by Defra.

Case study

A common of 500ha had four active graziers who got on well, but just before the HLS was agreed one grazier decided he wanted to sell his farm and didn't sign the HLS. The new owner didn't understand commons and turned out too many sheep many of which died. The common has therefore been in breach of the HLS and the SPS. This puts the other graziers' payments at risk. Currently the association has no powers to resolve this problem but a Commons Council will.

WHAT CAN A COMMONS COUNCIL DO?

A Council provides a tool to help improve the management of the agricultural activities and vegetation on commons.

A Council has the powers to make rules which are legally binding on all rights holders even those who were not in favour of their common joining the Council. For example, if a rights holder is undertaking unlawful and damaging agricultural activities on the common (over grazing, under grazing, putting out dangerous/unfit animals etc) the Council can assert various powers to stop that particular person from doing it, by prohibition orders and removing stock.

A Council has legal teeth. It has the power to enforce actions through the civil court. A local commons association doesn't have this power, so if a rights holder shows disregard to their local association's rules, the association does not actually have any real powers to enforce things. But the Council can.

A Council can offer solutions. For example, on a common where a minority of rights holders do not want to enter an agri-environment scheme or an owner will not give consent, the Council can, if asked, step-in. It provides the structure for a majority vote to be carried for the wider benefit of the common. This would alleviate past problems where without 100% agreement local commons association couldn't get into a scheme. It can arbitrate in disputes between commoners.

Local Commons Associations will still run the day-to-day management of their commons and the Council will only intervene if asked, and as a last resort.

FUNCTIONS OF THE COMMONS COUNCIL

The functions of a Council are:

- To make rules relating to:
 - To regulate management of vegetation
 - To maintain and improve animal husbandry on the Common
 - The exercise of rights of common

- To keep and maintain a register of active grazing (live register)
- To regulate the usage of rights of common (lawful grazing, leasing and licensing of rights etc)
- To ensure maintenance of Commons boundaries
- To remove unlawful fencing and encroachments
- To ensure information about the council is publicly available

Plus some non-statutory functions such as:

- To act as an example of best practice for a large commons councils
- To respond to local or national consultations
- To undertake awareness raising of commons/uplands issues

WHAT ARE THE BENEFITS OF A COMMONS COUNCIL?

The main benefit is that a Council can establish binding rules that cannot be put in place by a local commons association. Other benefits include:

- Offer a stronger voice for negotiations, in particular, in respect of agri-environment agreements.
- Legal recognition by Government and other external agencies.
- Statutory powers to enforce agreed rules.
- Powers to purchase or long-term lease grazing rights should there be a need to do so.
- Potential to attract additional funding and raise money to allow for improvement management, e.g. through an annual membership fee.
- Ability to liaise with official bodies/organisations in a more unified manner.
- Potential to pool resources to aid management of the common, e.g. machinery, facilities and volunteers.
- Longer term security for right holders
- Improved relations between graziers
- Better administration of the common
- Better accountability of commoners and other legal interests.

WHAT CAN'T A COUNCIL DO?

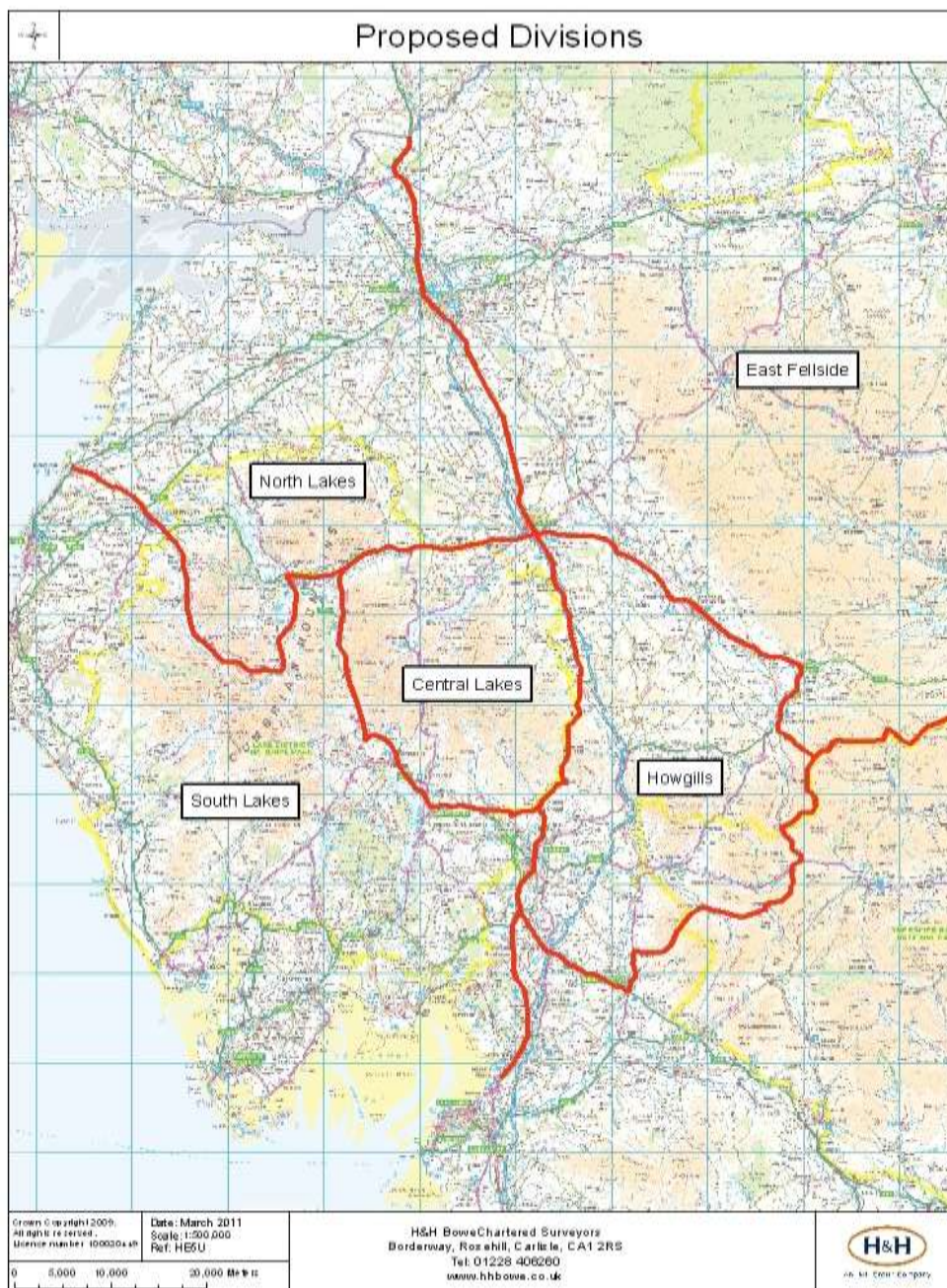
A Council can't be imposed on a common, they can only be established where there is substantial support from the:

- Owners
- Commoners (includes all rights holders but especially those exercising rights), and
- Others with legal interests.

A Council would not be able to make rules that fall outside of its functions, for example it cannot make rules about public access, it cannot over-ride the normal need for landowners consent for certain activities and does not have the powers to regulate damage caused by illegal activities such as the use of motor vehicles in sensitive areas. Existing laws already cover these areas.

PROPOSED DIVISIONS OF THE COMMONS COUNCIL FOR CUMBRIA

For the purposes of democratic representation, Cumbria will be divided up into five areas as shown in the map. Commoners and others with legal interests in each of these five areas will be able to vote for people to represent them on the commons council.



COMMONS IN EAST FELLSIDE AREA

Cross Fell Common	<i>Knock Fell</i>
<i>Melmerby Fell</i>	<i>Milburn Fell</i>
<i>Skirwith Fell</i>	East Stainmore Regulated Pasture (North Moor)
<i>Ousby Fell</i>	East Stainmore Regulated Pasture (South Moor)
<i>Kirkland Fell</i>	Hartley Fell
<i>Blencarn Fell</i>	Winton and Kaber Fell Regulated Common.
Moorhouse Group	Side Fell
<i>Dufton Fell</i>	Hellbeck Common
	Warcop

COMMONS IN HOWGILLS AREA

Asby Common (or Little Asby Scar)	Middleton Common
Baugh Fell Commoners Association	Nateby Common
Brant Fell	Northern and Eastern parts of Mallerstang Common.
Birkbeck Fells Common	Ravenstonedale Common
Bretherdale Bank	Ravenstonedale Moor
Bretherdale Common	Roundthwaite Common
Crosby Garrett Regulated Common	Tarn Moor or Tarn Pasture.
Crosby Ravensworth Fell	Tebay Fell
'Flass' together with part of Ash Fell.	Western part of Mallerstang Common.
Frostrow Fell	Wharton Fell
Hardendale Fell	Whernside Great Allotment
Langdale Common	Wild Boar Fell

COMMONS IN NORTH LAKES AREA

Buttermere, Brakenthwaite above Derwent	Skinburness and Calvo Marshes Common
<i>Brackenthwaite Fell</i>	Bassenthwaite and Skiddaw Commons
<i>Brackenthwaite Common</i>	Derwent Fells or Common
<i>Scawdale Fell</i>	Skiddaw Common
Whelpside, Steel End, West Head, Armboth and Bleaberry Fells.	Little Calva
Langstrath and Coombe Fells in Borrowdale.	Mungrisdale common
Uldale Fells	Caldbeck Common
Wedholme Flow	

COMMONS IN WEST AND SOUTH LAKES AREA

Bethecar Moor	Kirkby Moor
Birkby Fell	Little Langdale Common
Birker Fell	Loughrigg Common
Black Combe and White Combe	Lowick High Common
Blawith Common	Muncaster
Bootle Fell	Nether Wasdale Common
Corney Fell	Ponsonby Fell

Drigg Common	Stockdale Moor
DSTC	Thwaites Fell
Eskdale Common	Torver Low Common
Grasmere Common	Ulpha Fell
Great Langdale Common	Waberthwaite Fell
Kinniside Common	Woodland Fell

COMMONS IN CENTRAL LAKES AREA

Bampton & Askham Common	Mardale Common
Barton Fell	Matterdale Common
Deepdale Common	Parts of Lake Ullswater and its forshore.
Eastern portion of Martindale Common	Patterdale Common
Glenridding Common	Ralfland Forest and Rosgill Moor
Grisedale Forest	St. John's Common
Helton Fell	Watermillock Common
Kentmere Dale Head Common	Western portion of Martindale Common.
Langstrath and Coombe Fells in Borrowdale.	

NB These are taken from a Defra list of 100 largest Cumbrian Common Land Units.

MAKE UP OF THE CUMBRIA COMMONS COUNCIL

The Council will have seats for 15 Members as follows:

- **10 Active graziers**, made up of 2 members from each of the five areas, must be a commoner who has grazed an even aged hefted fell flock for at least the previous two years
- **2 Non-active graziers**, to be from separate areas, must be a commoner who has not grazed animals on the common for at least the previous two years
- **3 Landowners**, at least one to be a non-institutional landowner, may need to show, if required, proof of ownership

Also 4 non-voting members can be co-opted onto the Council. They may represent statutory bodies such as a National Park Authority, local authorities and people with specific knowledge like veterinary surgeons.

VOTING

All commoners, landowners and others with legal interest in the common land (CL) units that join the Commons Council will be able to vote in elections of council members and at general meetings of the council. The first list will be prepared by a returning officer who will identify all eligible voters. This list will be kept up-to-date by the Council.

ECLECTIONS FOR MEMBERS

The returning officer will give 28-days notice of the first meeting of the Council and invite nominations in writing for council members. Where the nominations do not exceed the vacancies to be filled the returning officer will declare the appointment of the candidates straight away. However, if more than one nomination is received for any given post an election will be held. Voters will be entitled to one vote in respect of any position representing their interest in the common. For example if there are 4 nominations for the two active grazier vacancies for East Fellside, then all eligible active graziers in the East Fellside area will be able to vote for two candidates.

OFFICERS OF THE COUNCIL

The chairman, secretary, treasurer and any other officers considered necessary will be appointed at the first meeting by the elected members of the Council. The period of time for which these officers are appointed will be decided by the Council.

TERMS OF APPOINTMENT

Under the standard constitution from Defra the terms of appointment for a council member is for a period of up to four years although once a term of office has ended a council member may stand for re-election.

DECISION MAKING BY COUNCIL MEMBERS

If a Council is established the regulations governing the Council will be set out in the Standard Constitution and in the Establishment Order specific to Cumbria Commons Council.

Each elected council member has one vote (co-opted members cannot vote). All decisions of the Council will be taken by a simple majority vote of those council members present at the meeting and voting. If the votes are equal, then the chair will have a casting vote in addition to his or her own vote.

Except

- Where a decision relates to only one or several of the five areas (East Fellside, Howgills, North Lakes, South Lakes, Central Lakes). The voting will be restricted to those who represent the area affected by the decision, whilst maintaining the original weighting of interest in respect to active graziers, non-active graziers and landowners
- **Two thirds majority vote** will be required of those present at the meeting to change existing rates of subscription
- **Three quarters majority vote** will be required of those present at the meeting for:
 - Approval, amendment or revocation of rules
 - Entry into an agri-environment or other similar scheme
 - Making, amendment or revocation of standing orders
 - The co-option of any person as a member of the council

FINANCING THE COMMONS COUNCIL AND THE FEDERATION OF CUMBRIA COMMONERS

To keep costs low, avoid duplication and provide services to all local commons associations in Cumbria, the Federation of Cumbria Commoners (FCC) and the Cumbria Commons Council will run side-by-side using the same part-time, self employed administrator.

Grants will be sought for the establishment costs of the Council. A key cost would be setting up a live register. Thereafter the estimated running costs for both organisations are shown in the table on the next page.

COMBINED (COMMONS COUNCIL & FEDERATION OF CUMBRIA COMMONERS) ESTIMATED RUNNING COSTS

Costs	£
Part-time administrator (incl. office costs)	12,000
Newsletters (including mailing)	1,500
Meeting costs (including AGM)	1,000
Live register	500
Website	500
Travel costs	1,000
Insurance (professional indemnity)	500
Professional expertise	1,000
Audit fees	500
Total	18,500

FINANCING THE COSTS

The costs would be financed through membership fees in accordance with Defra's standard constitution, which says a person can only: a) become or remain a member of the council, b) participate in the appointment or election of members of the council, or c) otherwise participate in the affairs of the council if that person has paid the fee that is due.

Fees: Commoners (active and non-active)

- **Ordinary membership** of FCC at £15 per member of local commons associations affiliated to the Federation - this currently brings in ≈ £8,500
- **Dual membership:** FCC and commons council membership for those local associations who join the commons council. They would get the added benefits of upkeep of live registers, dispute resolution and rule enforcement. They would pay £15 for membership of FCC plus around 0.30p/ha – this figure is based on 31, 510ha for the fourteen local associations who voted for a commons council in the consultation in March 2011. If more local associations joined the council the fee per hectare would decrease. In addition, no contribution from owners has been taken into account in calculating this figure.
- **Owners** - fee to be discussed and agreed

CUMBRIA COMMONS COUNCIL RULES (“THE RULES”)

The following gives an example of the Council rules. If a Council is established, one of the first duties of the Members will be to agree on, and adopt a set of rules

All land detailed in the establishment order for the Cumbria Commons Council (“the Council”) and all persons using such land will be subject to the following rules and any associated guidance notes.

1. Rights

- a. All persons turning out stock on the common must have sufficient grazing rights and be able to provide evidence of such rights
- b. Subject to consent from the Council rights of common can be let separate from the land to which they are attached for up to ten years if the common and the rights are being entered into an environmental stewardship scheme or equivalent contract.
- c. The Council may on the request of a person with legal rights of grazing limit the exercise of grazing rights on a particular common such a decision will be taken in accordance with current guidance
- d. All commoners and others with legal rights to graze common land shall complete the register of grazing rights maintained by the Cumbria Commoners Council and update it in accordance with issued guidance;
 - (i) on an annual basis
 - (ii) on the event of any changes
- e. Where the Council owns rights of common these will be managed in accordance with a guidance note to be developed by the Council on the acquisition of the rights

2. Flock / Herd Management and Husbandry

- a. All persons grazing common land shall follow local good practice for animal husbandry and welfare and comply with national legislation and regulations and any Council guidance or codes of practice
- b. All persons turning out animals on the commons shall take all reasonable steps to ensure the stock are hefted in accordance with the custom of the common where traditional and appropriate
- c. All animals turned out on common land shall be marked in accordance with local custom and national requirements.
- d. All animals over the age of 12 months shall be permanently marked in accordance with local custom and for the avoidance of doubt paint marks and tagging are not regarded as permanent.
- e. where two or more marks cannot be adequately distinguished the Council may require the mark(s) to be altered
- f. Any changes in marks shall be notified to the Council within 2 months of the change being introduced.
- g. Disease control
 - i. Any notifiable disease that occurs on a common in the Council area shall be reported to the Council
 - ii. The Council may issue a prohibited period notice such that all animals affected by the disease are required to be removed from the common and treated as necessary
 - iii. No stock shall be returned to the common until all animals have been effectively treated and the prohibited period notice lifted
- h. Entire Animals shall not be turned out onto a common except in accordance with agreed practice on that common

3. Land Management

- a. All burning must follow the Heather and Grass Burning Code
- b. All undertaking works on Commons shall follow statutory procedures to obtain consent

(The following may or may not be able to be included as Council Rules)

- c. Vehicle Use – if it affects agriculture can we make rules about it, only rules for commoners and owners or also public if it affects agriculture? E.g. bikers, travelers, overnighting, Forestry ??
- d. Renewable Energy
- e. Organised Events open to the public (running races, orienteering, riding)

In the event any person contravenes any of the above rules the Council may seek compliance of the rules through civil proceedings in the County Court. In the event a County Court order is issued and not complied with then the Council will seek enforcement of the order through the courts who may issue a fine or prison sentence for contempt of court.

4. Procedures for Breaches and Infringements

The Council would hope most disputes could be resolved in local communities and through local associations but in the event they cannot and the Council is approached the following procedures would apply;

- a. the Council will in the first instance investigate the dispute and seek to mediate a resolution
- b. the Council will issue a written warning prior to initiating legal action
- c. In the last resort the Council will take legal action requesting a County Court order requiring compliance with the Rules and or remedy of the breach.
- d. In the event the County Court Order is not complied with the Council will seek enforcement of the order through the courts – non compliance with the order may be a criminal offence(check)
- e. In the event of animals illegally grazing common land the Council may appoint a Reeve to detain an animal and remove from the common and will;
 - i. Arrange that the animal to be properly cared for
 - ii. As soon as is practicable issue a detention notice and give it to the owner of the animal informing the owner of how the release of the animal may be secured
 - iii. The Council may reclaim the costs of the detention and care for the animal before returning the animal to the owner
 - iv. If the owner cannot be traced or the animal is not collected then the Council may after advertising its intention in a local paper for two consecutive weeks sell the animal and return the proceeds less the costs incurred to the owner or in the event of the owner not being known the funds will be retained by the Council for a period of six months after which if still unclaimed then the funds are transferred to the Council