

*These notes refer to the Commons Act 2006 (c.26)
which received Royal Assent on 19 July 2006*

COMMONS ACT 2006

EXPLANATORY NOTES

OVERVIEW

26. The Act is arranged in five Parts:
- Registration
 - Management
 - Works
 - Miscellaneous
 - Supplementary and General.

Part 1: Registration

27. **Part 1** of the Act provides for commons registration authorities to continue to keep registers of common land and town or village greens ('the commons registers'), and to permit amendments to be made to the registers in accordance with the provisions in that Part. This replaces and improves the registration system under the 1965 Act, but using the same registers prepared under that Act.
28. In particular, Part 1 includes provisions for:
- the amendment of the registers upon the occurrence of registrable events, such as the disposition of rights of common, statutory dispositions of common land (*e.g.* under compulsory purchase legislation) and the creation of new town or village greens;
 - the prohibition of the severance of a registered right of common from any land to which it is attached, subject to certain exceptions;
 - the deregistration of common land and registration of other land as common land in exchange, subject to the consent of the appropriate national authority;
 - the correction of errors in the registers by commons registration authorities;
 - the establishment of electronic registers;
 - transitional powers to rectify mistakes made in registers under the 1965 Act, and to register events which occurred while the 1965 Act was in force; and
 - ensuring that only registered rights of common may be exercised over land to which Part 1 applies.

Part 2: Management

29. **Part 2** enables the appropriate national authority to establish commons councils with functions related to the management of agricultural activities, vegetation and the

exercise of rights of common on common land (or on town or village greens where rights of common exist over such land).

30. There has been a lack of effective mechanisms for managing agricultural activity, in particular grazing, on common land. This resulted in poor management of agricultural activity on many commons leading to deterioration of the resource base and, in some cases, to severe over-grazing and consequent damage to the soil and vegetation. This was exacerbated in the past by production subsidies under the Common Agricultural Policy, which increased over-grazing pressures. Over-grazing is undesirable from a nature conservation perspective, affecting the Government's ability to meet its international obligations (*e.g.* under the European Habitats Directive) and its national objectives (*e.g.* improving the condition of SSSIs).
31. Previously, the establishment of a body with powers to manage and regulate common land has required an Act of Parliament. In the late nineteenth and early twentieth centuries, a number of boards of conservators were established by provisional order confirmed by Acts made under the Commons Act 1876¹ or by local Act². More recently, the Dartmoor Commoners' Council was established by the Dartmoor Commons Act 1985, and the Greenham and Crookham Common Commission by the Greenham and Crookham Commons Act 2002.
32. **Part 2** of the Act will enable the appropriate national authority to establish commons councils without the requirement for primary legislation. By establishing commons councils, commoners, owners of common land and other interests will be able to work together to manage agricultural activities and the vegetation to meet the varied demands made on common land across the country. Commons councils will also be able to enter into agri-environment agreements — that is, government-funded schemes under which farmers sign long-term agreements to manage the land in particular ways in order to protect, enhance or restore biodiversity and particular features of the landscape, or to protect the environment (*e.g.* through decreased use of agricultural chemicals) in return for annual payments which help to offset the additional costs of changed farming practices. They will also be able to secure compliance with the conditions of such agreements through their rule-making function. This enables a commons council to make legally binding rules on all those using a common for agricultural purposes, which may be enforced through the courts where non-compliance occurs.
33. **Part 2** also provides power for the appropriate national authority to modify or remove existing statutory schemes of management where they might conflict with functions given to a new commons council. This enables a commons council to be established where there are existing management bodies that no longer operate effectively, or where there are bodies that may wish to take advantage of the range of functions which can be given to councils.

Part 3: Works

34. **Part 3** contains provision to prohibit the carrying out of works on certain common land without the consent of the appropriate national authority and makes provision about how consent may be obtained. It replaces section 194 of the Law of Property Act 1925, the main existing statutory control on works on common land (see paragraph 1313), which is repealed.
35. The controls on works in section 194 apply to common land subject to rights of common on 1 January 1926. This gives rise to some considerable problems of application, since, as that date recedes into the past, it has become increasingly unclear whether the controls apply to particular common land. The problem is especially acute in relation to common

¹ For details of boards of conservators established under provisional orders, see the Defra website at: www.defra.gov.uk/wildlife-countryside/issues/common/manage/acts.htm

² For example, the Conservators of Wimbledon and Putney Commons established under the Wimbledon and Putney Commons Act 1871.

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land not subject to any rights of common at the date of registration, and in relation to town or village greens. Part 3 instead provides that the controls apply to all registered common land.

36. Certain enactments which make specific provision about works on particular classes of common land are amended to ensure consistency with the new regime.

Part 4: Miscellaneous

37. **Part 4** contains provisions conferring powers of intervention on the appropriate national authority to deal with situations where unauthorised agricultural activities are taking place and damaging the common (for example, through over-grazing where grazing is occurring by those without rights of common or by those grazing more livestock than their rights allow), and no person is otherwise able to act to control it. The powers can be used to stop activities that are detrimental either those with rights in the common or to the public interest.
38. **Part 4** also preserves powers to enable local authorities to step in to protect unclaimed common land and town or village greens from unlawful interference. And it includes amendments to the Commons Act 1899, which confers power on local authorities to make schemes for the regulation of commons.

Part 5: Supplementary and General

39. **Part 5** contains powers to amend the application of other enactments to common land and town or village greens, and to amend local and personal enactments which confer functions on the Secretary of State or the National Assembly for Wales in relation to common land and greens.
40. It also contains Schedules of minor and consequential amendments and repeals, and general provisions about commencement, orders and regulations, Crown application, interpretation, the title of the Act and its extent.