

Draft Regulations laid before Parliament under section 59(3) of the Commons Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

COMMONS, ENGLAND

The Commons Councils (Standard
Constitution) (England) Regulations 2010

Made - - - - ***
Coming into force in accordance with regulation 1(b)

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 29(1) and 30 of the Commons Act 2006(1).

In accordance with section 59(3) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

Title, commencement and application

1. These Regulations—
 - (a) may be cited as the Commons Councils (Standard Constitution) (England) Regulations 2010;
 - (b) come into force on the day after the day on which they are made; and
 - (c) apply in relation to England.

Standard constitution of commons councils

2. The standard terms as to the constitution and administration of commons councils (the “standard constitution”), which (by virtue of section 29(2) of the Commons Act 2006) apply to every commons council established by an order under section 26 of that Act for any area or areas of land in England, are those set out in the Schedule(2).

(1) [2006 c.26](#); section 61(1) defines the “appropriate national authority” as the Secretary of State, in relation to England.
(2) Section 29(5) of the Commons Act 2006 provides that where (under section 29(3) of that Act) an order under section 26 of that Act establishing a commons council makes provision as to the constitution and administration of that council, and that provision is inconsistent with any term of the standard constitution and any such term has not been expressly disappplied, then the provision made under section 29(3) will prevail, to the extent of any inconsistency, over the term of the standard constitution.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Commons Councils (Standard Constitution) (England) Regulations 2010 No. 1204

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

THE SCHEDULE

Regulation 2

STANDARD CONSTITUTION OF COMMONS COUNCILS

Definitions

1. In this standard constitution—

“commoner” means a person entitled to exercise a registered right of common over any land in respect of which a commons council is established, and includes—

- (a) a person in favour of whom such a right has been temporarily severed by the person otherwise entitled to it where that temporary severance was achieved by leasing or licensing in accordance with article 2(1) of the Commons (Severance of Rights) (England) Order 2006⁽³⁾, and
- (b) a person whose entitlement to exercise such a right has lawfully been suspended under an agreement to which that person is a party;

“establishment order” means an order under section 26 of the Commons Act 2006 establishing a commons council;

“financial year” means the 12 months ending on 31st March or such other date as may for the time being be decided by a commons council;

“officer” means the chairperson, secretary or treasurer of a commons council, or other member of the council who is appointed to a specified office in accordance with paragraph 11;

“owner” means the owner of any land in respect of which a commons council is established.

Membership

2. The members of a commons council are to be the individuals—

- (a) elected by a class of persons,
- (b) appointed by a specified person, or
- (c) co-opted by the existing members,

from time to time in accordance with the council’s establishment order.

3.—(1) The persons eligible to become members of a commons council are—

- (a) any commoner;
- (b) any owner; and
- (c) such other persons or classes of persons as may be specified in its establishment order.

(2) The persons entitled to elect or appoint members of a commons council are—

- (a) the commoners;
- (b) the owners; and
- (c) such other persons or classes of persons as may be specified in its establishment order.

4. Where, in accordance with section 32 of the Commons Act 2006, a commons council has duly required the payment of a fee by any person, that person may 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,

(3) [S.I. 2006/2145](#).

if that person has paid the fee that is due, unless the council decides for good reason to extend the time for payment.

5. Members of a commons council are to be elected, appointed or co-opted for a term not exceeding four years.

6. Any member of a commons council may resign at any time by giving notice in writing to the chairperson or secretary of the council.

7. A member of a commons council whose term expires may, if that person remains eligible to be a member, be elected, appointed or co-opted for a further term.

8.—(1) This paragraph applies where a casual vacancy is caused by a person ceasing to be a member of a commons council other than on the expiry of the term of that person’s membership.

(2) Where a casual vacancy is for an elected member, the council may hold a by-election to fill the vacancy, and must do so if requested in writing by not less than one third of the persons who would be entitled to vote in such a by-election.

(3) Where a casual vacancy is for an appointed member, the person entitled to appoint that member may appoint a replacement member.

(4) Where a casual vacancy is for a co-opted member, the remaining members of the commons council may co-opt a replacement member.

(5) Where a person (“the successor”) is elected, appointed or co-opted as a member of a commons council to fill a casual vacancy, the successor remains a member of the council for the remainder of the term of the person the successor is replacing.

Proceedings of a commons council

9. Except where otherwise provided in this standard constitution or an establishment order, decisions of a commons council are to be taken at a meeting by a majority of those members present at the meeting and voting, and if votes are equal the person presiding at the meeting is to have a casting vote in addition to that person’s own vote.

10.—(1) A commons council must (except for the year in which it is established) hold an annual general meeting within six months after the end of each financial year, and may hold such other general meetings as it may determine.

(2) Notice of the annual general meeting and any other general meeting must be publicised by the commons council in such manner as it considers sufficient to come to the attention of persons entitled to appoint, or vote in an election of, any member of the commons council.

11.—(1) A commons council must appoint from among its members a chairperson, secretary and treasurer, and may appoint such other officers as it thinks necessary.

(2) The appointment of the officers of a commons council in an event specified in sub-paragraph (3) must be made at the first meeting of the council after that event.

(3) The events referred to in sub-paragraph (2) are—

- (a) the establishment of the council;
- (b) the election, appointment or co-option of its members at the beginning of a new term in accordance with paragraph 5; and
- (c) in the case of an appointment to replace an officer whose term of office has expired, the expiry of that term.

(4) The period for which an officer of a commons council is appointed is to be determined by the council, but must not exceed the term for which that officer has been elected, appointed or co-opted as a member of the council.

(5) Subject to sub-paragraph (4), each officer appointed under this paragraph is to continue in office until the appointment of a successor, unless that officer resigns from the position or ceases to be a member of the commons council.

(6) Upon a casual vacancy occurring in the office of chairperson, secretary or treasurer, a commons council must appoint a successor in that office at its next meeting, and, where the office vacated is that of chairperson, any other officer may call a meeting for that purpose.

12. The chairperson of a commons council—

- (a) may call a meeting of the council at any time; and
- (b) must call a meeting if requested in writing to do so by not less than one third of the total number of members, and, if the chairperson fails to do so within 14 days of such a request being made, any group of not less than one third of the total number of members may call a meeting of the council.

13. A commons council may appoint committees or allocate individual members to carry out any of its functions.

14.—(1) Subject to sub-paragraph (2), meetings of a commons council and any committee of a council must be open to the public.

(2) The public may, by resolution of the council or committee (as appropriate), be excluded from a council or committee meeting during an item of business in respect of which it is likely that publicity would be prejudicial to the public interest by reason of the confidential nature of that business, or for other special reasons stated in the resolution and arising from the nature of that business.

15.—(1) Subject to sub-paragraph (2), a commons council must make available to the public the agenda and minutes of meetings of a kind to which this paragraph applies by—

- (a) publishing them on a website; and
- (b) providing a copy of them to any person who makes a request to the secretary of the council.

(2) A commons council may exclude from any such publicly available agenda and minutes any information (including any reference to it) in respect of which it has passed a resolution under paragraph 14(2).

(3) This paragraph applies to—

- (a) the annual general meeting and other general meetings of the council;
- (b) ordinary meetings of the council; and
- (c) any meetings of committees of the council.

16. Subject to the provisions of this standard constitution and its establishment order—

- (a) a commons council may make standing orders with respect to its proceedings, including in particular provision about—
 - (i) a quorum;
 - (ii) a place of meeting;
 - (iii) frequency of meetings;
 - (iv) notice to be given of meetings;
 - (v) procedure at meetings of the council and any committees appointed by it; and
 - (vi) procedure for the election, appointment and co-option of members;

- (b) the council may amend or revoke any such standing orders; and
- (c) the council and any committee of the council may, subject to such standing orders, regulate its proceedings as it thinks fit.

17. Decisions and actions of a commons council, or of any committee appointed by it, are not invalidated by any defect in the appointment, election or co-option, or eligibility for membership, of any member.

18. A commons council may continue to act notwithstanding any vacancy in its numbers unless the number of vacancies exceeds one third of the maximum number of members, in which case it may act only for the purpose of co-opting or arranging the election or appointment of new members.

Fees

19. Any decision by a commons council in accordance with section 32 of the Commons Act 2006 to require the payment of fees in connection with—

- (a) the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established, or
- (b) participation in the council,

or to change the existing rates of such fees, does not have effect unless it is approved at a meeting of the council by a two-thirds majority of the members present.

20. Where a decision by a commons council to require the payment of fees has been duly approved the council must demand in writing from each person liable to make such payment the amount due from that person, specifying the date by which payment is due.

Use of income and property

21. The income and property of a commons council must be applied solely towards the carrying out of its functions as set out in its establishment order.

22. A commons council may pay any member or other person reasonable remuneration for, and expenses incurred in, carrying out the functions of the council.

Accounts

23. A commons council must keep proper accounts of all sums received or paid by it and proper records in relation to those accounts.

24.—(1) The accounts of a commons council for any financial year must, if the gross income of the council in that year is greater than £10,000, be examined by an independent examiner appointed by the council.

(2) A person is eligible to be appointed as an independent examiner under this paragraph if that person is an independent person who is—

- (a) reasonably believed by the commons council to have the requisite ability and practical experience to carry out a competent examination of the accounts, and
- (b) additionally, if the gross income of the council in that year is greater than £250,000, a member of one of the bodies listed in section 43(3B) of the Charities Act 1993⁽⁴⁾.

25. At each annual general meeting of a commons council there must be presented a report, balance sheet and statement of income and expenditure for the preceding financial year.

(4) 1993 c. 10; section 43(3B) was inserted by S.I. 2008/527.

26. Any member of the public may, by appointment with the treasurer of a commons council, inspect without charge the council's accounts (whether or not independently examined) for the last three financial years for which accounts have been prepared.

Execution of documents

27.—(1) A commons council may confer on any one or more of its members an authority to execute documents in the name and on behalf of the council.

(2) A document is executed by a commons council by being signed by one or more members of the council in accordance with an authority given under sub-paragraph (1).

(3) An authority under sub-paragraph (1)—

- (a) may be general, or limited in such manner as the commons council thinks fit; and
- (b) subject to any such limitation, and until it is revoked, has effect as a continuing authority notwithstanding any change in the membership of the council, until the expiry of the term of membership of the person on whom it is conferred.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe (as required by section 29(1) of the Commons Act 2006 (c. 26)) a standard constitution for commons councils established by orders under section 26(1) of that Act (*regulation 2 and the Schedule*).

The standard constitution applies to any such commons council, save to the extent that the order establishing it provides otherwise or makes any provision which is inconsistent with the standard constitution (see section 29(2) and (5) of the Commons Act 2006).

The standard constitution contains terms governing: a council's membership and proceedings; its procedure in respect of requiring the payment of fees; its use of its income and property; the requirement to keep accounts and, where the council's gross income exceeds £10,000 in any financial year, to have those accounts independently examined; and the manner in which the council may execute documents.

A full impact assessment of the effect this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.