

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

COMMONS ACT 2006

EXPLANATORY NOTES

ANNEX A: GLOSSARY OF TERMS

The 1965 Act: the Commons Registration Act 1965, which (generally) required common land, town or village greens, and rights of common over such land, to be registered by commons registration authorities.

Appropriate national authority: the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales).

Improvement: the right of an owner to inclose any part of the common which is not required to meet the needs of the commoners.

Attachment (of rights): Rights of common are sometimes described as being ‘attached’ to land. The land to which they are attached is known as the ‘dominant tenement’ (the common over which the rights may be exercised is sometimes referred to as the ‘servient tenement’). Such rights belong to (and may be exercised by) the owner of the dominant tenement. Historically, rights which are attached to land were known as either ‘appurtenant’ or ‘appendant’ to land, but the distinction is for most purposes obsolete. Rights which are not attached to land are ‘in gross’ (*q.v.*).

Common land: In general terms, common land is land owned by one person over which another person is entitled to exercise rights of common (such as grazing his animals), and these rights are generally exercisable in common with others. However, in legal terms, the situation is inevitably more complex. There is no single definition of the term ‘common land’, or indeed of ‘common’ or ‘common rights’. The 1965 Act introduced a statutory definition of ‘common land’, but this is strictly relevant only for the purpose of deciding whether land was or was not eligible for registration under that Act. The 1965 Act stated that common land was “land subject to rights of common (as defined in that Act) whether those rights are exercisable at all times or only during limited periods; and waste land of a manor not subject to rights of common”. Definitions of ‘common’ can also be found in various nineteenth century Acts of Parliament, such as section 3 of the Metropolitan Commons Act 1866, section 37 of the Commons Act 1876, and section 15 of the Commons Act 1899, but each of these was drawn up with a particular purpose in mind, and the definitions must be treated with caution when applied in a different context.

Commoners: persons with the benefit of a right of common, because they own land to which a right of common is attached, because they are the owner of a right of common held in gross, or because they have acquired entitlement to such rights through a lease or letting.

Commons Commissioners: solicitors or barristers appointed under the 1965 Act to determine disputed provisional registrations of common land, town or village greens and rights of common registered under section 4, and to determine (for the purposes of the 1965 Act) the ownership of common land and greens registered under section 4 where the ownership of the land was disputed or unclaimed. A small number of such registrations remain outstanding at the date of Royal Assent.

Dominant tenement: the land to which rights of common may be attached (*q.v.*). The owner of the dominant tenement is the commoner and is entitled to exercise the rights.

Estovers (right of): to cut wood, gorse or furze for domestic fuel. Also to collect bracken and other plants for use as animal bedding, or to collect (or sometimes lop) wood for use in repairing fences *etc.*

Inclosure (inclosure): the act of removing rights of common from land. In the case of land registered as common land, the removal of rights of common from the land will not cause the land to cease to be registered common land.

In gross: a right which is held personally and is not attached (*q.v.*) to land.

Pannage/Mast (right of): to graze pigs on beech mast or acorns, generally in the autumn. Pannage is an ancient practice to fatten pigs before slaughter and salting for the winter. It

can also be useful to others — the pigs turned out eat green acorns and beech mast that are poisonous to cattle and ponies.

Pasture (right of): to graze, generally cattle, sheep, goats or horses.

Piscary (right of): to fish. Rights of piscary are invariably for domestic rather than commercial profit.

Prescription: the acquisition of a right to use land or take the produce of land by reason of long use. Prescription may be attributed to the common law, the Prescription Act 1832, or lost modern grant.

Provisional order confirmation Act: an Act which confirms a provisional order, which is generally submitted to Parliament for confirmation after scrutiny by a Government department. The powers to prepare a provisional order, and the procedure for its scrutiny by the relevant department, are contained in specific enabling legislation. A Bill confirming a provisional order is usually subject to a shorter Parliamentary process than Bills in general. In relation to common land, the Commons Act 1876 enabled orders to be submitted to Parliament by the Inclosure Commissioners for the regulation or inclosure of common land. It is believed that 36 orders for regulation and 27 orders for inclosure were confirmed by Parliament⁴ (some orders provide for both regulation and inclosure, and are therefore double counted).

Register of title: the register held by the Land Registry (and under the custody of the Chief Land Registrar), which shows the proprietorship of land. Generally, an entry in the register as to the owner of land is guaranteed by the Land Registry. Provision as to the register of title is contained in the Land Registration Act 2002, and the rules made under that Act.

Right of common: a right usually shared with an owner of land to take certain produce of the land. There are many such rights of which pasturage (the right to put animals onto the land to graze) is the most important today. Other rights include pannage (right to put pigs onto the land to eat acorns and beechmast), turbary (the right to cut peat or turf for fuel), estovers (the right to take wood or bracken for fuel, animal bedding and so on) and piscary (the right to fish). Most rights are attached (*q.v.*) to land but see ‘in gross’.

Soil (right of common in the): to take sand, gravel, stone and minerals. For example, marl is a lime-rich clay used to fertilise land; it was also used for building. The right was to dig marl from common pits. It is not now exercised: modern fertilisers have made the practice unnecessary and exercise of the right generally died out in the last century.

Turbary (right of): to cut turf or peat for fuel. The turf must be burned in the hearth of the dwelling to which the right is attached (not sold for profit).

Waste land of the manor: In the case of *Attorney General v. Hammer*⁵, waste land of the manor was defined as “the open, uncultivated and unoccupied lands parcel of the manor... other than the demesne lands of the manor”. ‘Of the manor’ was held by the court in the *Hazeley Heath* case⁶ to mean land which is or was formerly connected to the manor.

⁴ See footnote 1.

⁵ See footnote 2

⁶ See footnote 3