

# COMMONS ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Registration

#### Registration, deregistration and exchange of land

#### *Section 15 Registration of greens*

87. *Section 15* sets out the circumstances in which land may be newly registered as a town or village green. It is derived from, but varies in certain respects from, the definition of a town or village green in section 22(1), (1A) and (1B) of the 1965 Act. (There is no substantive distinction in law between a ‘town’ and a ‘village’ green: these terms merely reflect the physical setting of a green.) *Subsection (1)* provides that in qualifying circumstances, any person may apply to the commons registration authority to register land as a green. *Subsections (2), (3)* and *(4)* set out the three alternative qualifying circumstances.
88. The first case (*subsection (2)*) is where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, and continue to do so at the time of the application. ‘As of right’ has been defined in case law as meaning openly, without force, and without permission<sup>1</sup>. The reference to “a locality” does not necessarily connote a defined area for administrative purposes, such as a parish, and the phrase “any neighbourhood within a locality” means in effect ‘any neighbourhood within one or more administrative areas’, in line with the judgment of the House of Lords in the *Trap Grounds* case<sup>2</sup>.
89. The second case (*subsection (3)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased after commencement of section 15, and the application is made within two years of this cessation.
90. The third case (*subsection (4)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased before commencement of section 15, and the application is made within five years of this cessation. Land is not covered by this third case (because of *subsection (5)*) if three conditions are all met:
- planning permission was granted in respect of the land before 23 June 2006;
  - before that date, construction works were commenced in accordance with the permission on that land, or on any other land covered by the permission; and

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<sup>1</sup> See the judgment of the House of Lords in *R v. Oxfordshire County Council and others, ex parte Sunningwell Parish Council* [2000] AC 335 per Lord Hoffman at paragraph 27.

<sup>2</sup> *Oxfordshire County Council v. Oxford City Council and another* [2006] UKHL 25.

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

- the land either has become, or will become, permanently unusable by the public for lawful sports and pastimes as a result of works carried out in accordance with that planning permission.
91. *Subsections (6) and (7) amplify how subsections (2) to (4) are to work. Subsection (6) provides that any period during which access to the land was prohibited by reason of any enactment is to be disregarded in the calculation of the 20 year period. Subsection (7) makes provision about when use is to be regarded as continuing for the purpose of subsection (2)(b).*
92. *Subsection (8) enables the owner of any land to apply voluntarily for its registration as a green, without having to show that there has first been 20 years' qualifying use of it by local inhabitants. Subsection (9) requires the consent to such an application of any 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land, thereby protecting these parties' interests in the land. Both of these terms are defined in subsection (10).*