

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Registration

Conclusiveness and Correction of the Registers

Section 18 Conclusiveness

103. Section 10 of the 1965 Act provides that “the registration ... of any land as common land or as a town or village green, or of any rights of common over any such land, shall be conclusive evidence of the matters registered, as at the date of registration”. Section 18 makes similar provision as to the extent to which information in the registers can be relied on. It is immaterial for the purposes of this section whether an entry in the register was made after commencement of the Act or under the 1965 Act — see *subsection (6)*.
104. Under *subsection (2)*, where land is registered as subject to a right, it is deemed to have become subject to the right on its registration if it would not otherwise have been so subject. It can therefore be assumed that, in law, the land is subject to the right. *Subsection (2)* does not in itself guarantee that the land continues to be subject to the right. But, given the preceding provisions of the Act, it is in most cases impossible for the situation to have changed, since the right cannot be extinguished by common law, and cannot be surrendered or varied without the surrender or variation being registered. One possible exception is an extinguishment or variation of the right by virtue of another enactment which may have effect before the necessary amendment is made to the register (for example, by a compulsory purchase order made under the Acquisition of Land Act 1981). But section 14(5) enables regulations to be made which cause the effect of such an enactment to be delayed until the register is amended.
105. *Subsection (3)* provides that, where the register shows that a right of common is attached to land, the right is deemed to be attached to that land upon registration. *Subsection (3)* does not in itself guarantee that the right continues to be attached to that land. But again, given the provisions of the Act, it is in most cases impossible for the situation to have changed, since the effect of *subsection (6)*, and the prohibition on severance contained in section 9, is generally that any right of common registered as attached to land¹ will continue to be attached to land. The exceptions are either that an application is made under paragraphs 1 or 3 of Schedule 1 to sever the right, or that an application is made during the transitional period (see Schedule 3 and the notes to that Schedule) for an amendment to the register to show that the right had been severed after the register entry was made but before the commencement of Schedule 3², and the commons registration authority is satisfied that the register should be amended to give effect to the severance. In either case, the severance of the right will then be registered.

¹ The rights section of the commons registers prepared under the 1965 Act is prescribed in Form 3 of Schedule 1 to the [Commons Registration \(General\) Regulations 1966 \(SI 1966/1471\)](#). Column 5 of the prescribed form provides for entries describing “Particulars of the land (if any) to which the right is attached”.

² Subject to regulations made under paragraph 5 of Schedule 3.

106. *Subsection (4)* provides that, where the register shows that a person is the owner of a right of common in gross, that person is to be taken as the owner upon registration, even if he or she would not otherwise be the owner. Section 12 provides that a transfer of a right held in gross cannot be effective in law unless the transfer is registered under that section, thereby ensuring that the register remains an accurate record of ownership of such rights.
107. *Subsection (5)* preserves what is believed to be the present position under the 1965 Act, which is that, where a right of common is subject to any customary constraint not mentioned in the register (for example, that the rights may be exercised only at certain times of the year, that stock should be hefted in accordance with local custom, or that the times at which stock may be turned out are to be determined by a manorial or other ancient court³), those constraints are preserved notwithstanding that they are not mentioned in the commons registers.

Section 19 Correction

108. **Section 19** enables commons registration authorities to correct certain errors in the commons registers. *Subsection (4)* provides that a correction may be made on the authority's own initiative or on an application by any person. *Subsection (2)* sets out the purposes for which a correction may be made. These comprise:
- In paragraph (a), a mistake in making or amending an entry in the register (including, by virtue of *subsection (3)*, an ambiguous description of, for example, rights of common), but only where the mistake was made by the authority. Such a mistake may arise, for example, where an error was made by the authority in transposing onto the register map a map supplied by an applicant for provisional registration of common land, or where in amending an entry in the register (for example, on an apportionment under the 1965 Act), the authority erroneously added a zero to (or deleted a zero from) the number of rights registered. An error made in a map supplied by an applicant defining the area of common land, which was faithfully reproduced in the register entry, could not be corrected under this provision (but it may be possible to correct such an error under the provisions in Schedule 2).
 - In paragraph (b), any other mistake, whether made by the authority or another person, provided that the amendment would not affect the extent of land registered as common land or as a town or village green, nor the quantification of any right of common. For example, a mistake may have been made by an applicant for registration of a right of common attached to land by which the dominant tenement was wrongly defined. The authority would be able to correct such a mistake.
 - In paragraph (c), removing a duplicate entry in the register (whether caused by the error of the authority or another person). Duplicate entries typically arose where application was made for provisional registration of a right of common under the 1965 Act, both by the tenant of a farm entitled to exercise the right, and the landlord of the farm⁴, and no objection was made to either registration, so that they both became final.
 - In paragraph (d), updating any details of name or address, such as those which relate to the registered owner of a right held in gross.
 - In paragraph (e), updating an entry in the register to take account of the common law principles of accretion and diluvion. The principles apply to all land where the boundary of ownership follows a body of water — whether river, lake or sea shore. They provide that, if by gradual and imperceptible accretions in the ordinary course of nature, land is added on one side, it falls into the ownership of the person

³ The jurisdiction of certain ancient courts to transact customary business was preserved by section 23 of the Administration of Justice Act 1977.

⁴ See regulation 7(1) of the [Commons Registration \(General\) Regulations 1966 \(SI 1966/1471\)](#).

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

owning the rest of the land on the same side, and the boundary line correspondingly advances, and (in the case of diluvion) *vice versa*. If one side of the body of water is also subject to rights of common, then the rights of the commoners will adjust along with the rights of the owners.

109. Corrections may be made to the registers for the purposes set out above, whether the error originates from a registration made under this Act or under the 1965 Act (*subsection (3)*). In some cases, an error may meet the criteria for correction both under this section and under Schedule 2.
110. *Subsection (5)* provides that the commons registration authority may not correct mistakes in the register if it would be unfair to do so. For example, if land had been acquired by a person reliant on an inspection of the register which showed it not to be registered common land, but the commons registration authority had mistakenly excluded that land from the register, it would not be able to correct the mistake if it would, in all the circumstances, be unfair to do so (having regard, for example, to the interests of the person acquiring the land, as well as the interests of others interested in correcting the error).
111. *Subsection (7)* provides a limited power, derived from section 14(a) of the 1965 Act, for the High Court to order the register to be amended where an entry, or any information in an entry, has been secured by fraud and it would be just to amend it. The High Court will also be able to judicially review the actions of a commons registration authority, but it is not necessary to include provision in the Act for this purpose.