

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Management

Status and constitution of commons councils

Section 28 Status

157. *Section 28* contains provision about the status of commons councils. *Subsection (3)* provides that a commons council is not to be regarded as an authority to which section 28G of the Wildlife and Countryside Act 1981 applies. Section 28G bodies have a duty to further the conservation and enhancement of particular features of land by reason of which the land is designated as a Site of Special Scientific Interest (SSSI). Imposing such a duty on a commons council could discourage their establishment. However, *subsections (6) and (7)* of section 31 require commons councils to have regard to the public interest, including nature conservation, in discharging their functions. In addition, paragraph 3 of Schedule 5 amends the Wildlife and Countryside Act 1981 so that for the purposes of that Act a commons council falls within the definition of an occupier of land which is designated a SSSI.
158. As the functions of a commons council will include functions of a public nature, it is the opinion of Defra that a commons council will be a public authority within the meaning of section 6 of the Human Rights Act 1998, and will therefore be subject to the duty in section 6(1) of that Act not to act in a way which is incompatible with the rights conferred under the European Convention on Human Rights.

Section 29 Constitution

159. *Section 29* requires the appropriate national authority to prescribe by regulations standard terms for use in the constitution of a commons council. The standard terms will apply to all commons councils (subject to *subsections (3) and (4)*). It is intended the terms will include provision about, for example, the terms for which council members are appointed, and financial reporting requirements.
160. Under *subsections (3) and (4)* the appropriate national authority may, in an order made under section 26, specify additional constitutional terms for a council and, if necessary, disapply any terms of the standard constitution, or replace them with alternatives more suited to local circumstances. This ensures that an order made under section 26 has the flexibility to take account of differences in local circumstances. It is expected that certain elements contained in the standard terms will vary between individual commons councils, for example, those relating to whose interests will be represented on the council and the frequency of meetings.

Section 30 Constitution: supplementary

161. *Section 30* provides an illustrative list of matters which may appear in either the standard constitution or the order under section 26 establishing the council. *Subsections*

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

(2) to (6) identify some of the terms which may be included in the constitution of a commons council, such as the procedures for the appointment of members and voting, and requirements for meetings and financial accounting.

162. Under *subsection (2)*, terms can determine both membership of the council and participation in the council by persons who are not members. A commons council will appoint or elect persons to be members of the council. The members will represent the different interests in the common or group of commons for which the council is established. The size and form of the membership will vary depending on the number or size of the commons covered by the council and the number and range of different interests represented. A small council for just one or two commons may have fewer than ten members to represent the different interests. A larger council comprising several commons with active and inactive graziers, landowners and sporting interests may require a membership body of twenty to thirty elected or appointed persons in order to represent all the interests in a fair and equitable manner. The appropriate national authority will consider what representation and voting arrangements would be appropriate for each commons council on a case-by-case basis, following representations from the commoners and other interested parties.
163. In many cases it is likely that the majority of persons with interests in a common will not be members of the council but will be eligible to participate to some degree in the council. In particular, they will appoint or elect persons to membership of the council to represent their interests, and be eligible to vote at general meetings of the council. The form and nature of participation will vary depending on local circumstances. The order establishing the council will identify which persons are entitled to appoint or elect members, and who is entitled to attend meetings of the council.
164. *Subsection (7)* ensures that a commons council may regulate its own proceedings, subject to anything in the standard constitution or the order establishing the council.