

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Management

Functions of commons councils

Section 31 Functions

165. *Section 31* sets out the functions that may be conferred on a commons council in an order made under *section 26*. *Subsection (1)* limits the functions to those which relate to the management of agricultural activities, the management of vegetation and the management of rights of common. *Subsection (2)* requires the appropriate national authority to confer only those functions which it considers appropriate for each council.
166. *Subsection (3)* contains an illustrative list of the sort of functions which may be conferred. It is envisaged that the principal function of a commons council will be to make rules relating to the agricultural use of the land, the management of the vegetation, and the management of rights of common. A council might make rules, for example, regarding the numbers of animals and the times when animals may be turned out on a common, the marking of animals grazing on the common, letting of rights of common, and requirements for managing animals while they are on the common (*e.g.* hefting requirements).
167. There is no requirement for a commons council to be given functions relating to all the matters referred to in *subsection (1)* or all the functions set out in *subsection (3)*. Equally, the list of functions in *subsection (3)* is not exhaustive and other functions may be conferred where appropriate. For example, on an upland common where agricultural activity is taking place, it may be appropriate to confer functions on the council relating to management of grazing which are wider in scope than the specific matters referred to in *subsection (3)*.
168. It is envisaged that an order establishing a commons council will normally either permit or, where appropriate, require it to prepare and maintain a register to record which commoners are exercising their rights of common. Similar registers of the exercise of grazing rights already operate on some commons and have been found to be useful in managing the numbers and movements of animals. For example, the Dartmoor Commons Act 1985 requires the maintenance of such a register by the Dartmoor Commoners' Council, with requirements for commoners to provide up-to-date information on a continuing basis.
169. A council might be given the function of making rules relating to the leasing and licensing of rights of common. This would permit the council to control the use of rights of common by persons other than the commoner entitled to the rights. For example, controls might be imposed where holders of common rights wish to lease out their rights to others on the common, or, if they are active graziers, to take on more rights for significant periods of time. Any local rules made by a council would take precedence over any regulations made under paragraph 2 of Schedule 1 to regulate the leasing or

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

licensing of rights of common generally (see paragraph 7070), but could not apply to any arrangements made by the owner of a common to lease or licence any part of the surplus grazing to a third party, since the owner's right to use the surplus grazing is not a right of common.

170. *Subsection (4)* enables a commons council to make rules which have the effect of limiting or imposing conditions on the exercise of rights of common or on the exercise of the rights of an owner to use the surplus of a common. The intention is that all those exercising rights, whether through rights of common or to the surplus, should be subject to the same rules. For example, a commons council might enter into an agri-environment agreement that might require a period where no grazing takes place on the common. In such a case all those grazing animals on the common would be required to remove them for the specified period.
171. *Subsection (6)* requires a commons council in discharging its functions to have regard to the public interest (as defined in *subsection (7)*), as well as to any guidance issued by the appropriate national authority.