

# COMMONS ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 4: Miscellaneous

##### Intervention powers

##### *Section 45 Powers of local authorities over unclaimed land*

211. [Section 45](#) substantially re-enacts section 9 of the 1965 Act. It confers powers on a local authority (defined in *subsection (3)* to include a parish or community council) to protect land registered as common land or a town or village green where the land has no owner recorded in the register of title at the Land Registry, and the local authority cannot identify the owner of the land. In some cases these powers may be exercisable even though an owner is noted in the ownership section of the commons register, because the ownership section of the commons register is not usually updated when ownership of the land changes, and may be out of date.
212. *Subsection (2)* enables a local authority to take any steps to protect the land against unlawful interference that could be taken by the owner of the land, and to institute proceedings for any offence committed by a person in respect of the land. The powers in section 45 are exercisable by National Park authorities by virtue of paragraph 1(2)(d) of Schedule 9 to the Environment Act 1995 (and consequential amendment is made to that provision by paragraph 6(a) of Schedule 5).

##### *Section 46 Powers relating to unauthorised agricultural activities*

213. [Section 46](#) enables the appropriate national authority to stop unauthorised agricultural activities on registered common land or certain greens, which are detrimental to the interests of persons with rights over the land or those who own or occupy the land, or to the public interest (as defined in *subsection (9)*).
214. The power may be exercised in relation to any common land, or any town or village green where there are registered rights of common — even where a commons council exists, if that council is failing to prevent such activity from occurring. The intention is to enable the appropriate national authority to deal with problems where other persons who could have taken action (such as the owner or the commoners) have not done so. The power may be used, for example, where one or more persons has been grazing animals on the common without any right to do so, the owner or the commoners have failed to take action, and the public interest in the common is threatened (for example, by over-grazing leading to deterioration of nature conservation, or because animals unlawfully present on the common present a threat to lawful recreational activity).
215. *Subsection (2)* enables the appropriate national authority to serve a notice either on the person actually carrying out the unauthorised activity or on a person who has caused him to do so (for example, on a person who has hired a contractor). The notice may require that person to stop carrying out the activity, not to carry out any other unauthorised agricultural activities, and to provide any information requested.

216. *Subsections (3) to (5)* require that before using this power, the appropriate national authority must, where appropriate and practicable, notify certain persons with interests in the common of its intention to act.
217. *Subsection (6)* requires the appropriate national authority first to have regard to any court proceedings that have been initiated or proposed, and any actions a commons council might have taken to deal with the unauthorised activity, before deciding to exercise the power available to it under this section.
218. Where a person fails to comply with a notice served under *subsection (2)*, the appropriate national authority may apply to a county court for an order requiring the person to comply with the notice (*subsection (7)*).

## **Abolition of powers of approvement and inclosure**

### ***Section 47 Approvement***

219. The Commons Act 1285 conferred statutory powers on landowners to inclose land surplus to the needs of commoners (a process known as approvement). This power is thought to be obsolete and *subsection (1)* repeals the Act. *Subsection (2)* abolishes any power of approvement at common law which may subsist alongside the 1285 Act.

### ***Section 48 Inclosure***

220. *Section 48* repeals various powers to inclose land. There are sufficient modern powers, including sections 16 and 17, to enable the inclosure of land to render these old provisions unnecessary. The provisions repealed in *subsection (2)* were formerly generally exercisable only with the consent of the Secretary of State or National Assembly for Wales under section 22 of, and Schedule 1 to, the Commons Act 1899 (and consequential amendment is made to Schedule 1 of that Act by Part 3 of Schedule 6).

### ***Section 49 Notice of inclosure***

221. *Section 49* repeals section 31 of the Commons Act 1876 and amends section 3 of the Metropolitan Commons Act 1878, which require notice to be advertised of the approvement or inclosure of common land subject to rights of common. The repeal and amendment are consequential on sections 47 and 48.

## **Commons Act 1899**

### ***Section 50 Schemes under the Commons Act 1899***

222. Part 1 of the Commons Act 1899 enables a district council<sup>1</sup> or a National Park authority<sup>2</sup> to make a scheme for the regulation and management of a common<sup>3</sup> in its area. A scheme must be made substantially in the form prescribed by the Secretary of State or National Assembly for Wales<sup>4</sup>. A scheme, once made, vests the management of the common in the authority. Under section 2 of the 1899 Act, a draft scheme made in accordance with that section may be approved by the authority unless either the owner of the common or one-third in value of those having interests in the common object.
223. *Section 50* amends Part I of the 1899 Act so as to update and broaden the purpose for which a scheme may be made (*subsection (2)*), to confer additional powers in prescribing model schemes (*subsections (4) and (5)*), to enable regulations to clarify

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<sup>1</sup> A district council includes in England, a unitary authority; and in Wales, it includes a county or county borough council, see section 17 of the Local Government (Wales) Act 1994.

<sup>2</sup> See paragraph 1 of Schedule 9 to the Environment Act 1995.

<sup>3</sup> Including any town or village green (see section 15 of the 1899 Act).

<sup>4</sup> For the current prescribed schemes, see the [Commons \(Schemes\) Regulations 1982 \(SI 1982/209\)](#) and the [Commons \(Schemes\) \(Welsh Forms\) Regulations 1982 \(SI 1982/667\)](#).

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

the circumstances in which a scheme may be amended or revoked (*subsection (6)*), and to update the power conferred on the authority to make byelaws in relation to a scheme (*subsection (7)*).

## **Vehicular access**

### ***Section 51 Vehicular access***

224. **Section 51** repeals section 68 of the Countryside and Rights of Way Act 2000. Section 68 was enacted to deal with a problem that had arisen as a result of the judgment of the Court of Appeal in *Hanning v. Top Deck Travel*<sup>5</sup>, affecting householders who access their homes by vehicle over typically unenclosed land such as commons or greens. In Defra's view section 68, and the regulations made under that section<sup>6</sup>, have now become redundant following the judgment of the House of Lords in *Bakewell Management Ltd v. Brandwood*<sup>7</sup>.

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<sup>5</sup> [1993] 68 P & CR 14.

<sup>6</sup> The Vehicular Access Across Common and Other Land (England) Regulations 2002 (SI 2002/1711), and The Vehicular Access Across Common and Other Land (Wales) Regulations 2004 (SI 2004/248).

<sup>7</sup> [2004] 2 AC 519.