



Commons Act 2006

2006 CHAPTER 26

PART 2

MANAGEMENT

Modifications etc. (not altering text)

- C1** Pt. 2 modified (temp.) by SI 2010/61 art. 3(2)(a) (as added (E.) (1.12.2010) by [The Commons Act 2006 \(Commencement No. 1 and Savings \(England and Wales\) and Commencement No. 5 \(England\) \(Amendment\) Order 2010 \(S.I. 2010/2356\)](#), art. 2(1)(2) (with art. 4))

Commons councils

26 Establishment

- (1) The appropriate national authority may, for any area or areas of land to which this section applies, establish a body corporate to carry out functions conferred under this Part.
- (2) This section applies to any land that—
 - (a) is registered as common land; or
 - (b) is registered as a town or village green and is subject to rights of common.
- (3) A body corporate established under this section is to be known as a “commons council”.
- (4) A commons council is to be established by order.
- (5) An order establishing a commons council must specify—
 - (a) the name of the council;
 - (b) the area or areas of land for which the council is established.

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

Commencement Information

II S. 26 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

27 Procedure for establishment

- (1) This section applies where the appropriate national authority proposes to make an order under section 26 establishing a commons council.
- (2) The appropriate national authority must—
 - (a) publish a draft of the proposed order in such manner as it thinks fit; and
 - (b) invite representations about it.
- (3) The appropriate national authority may cause a local inquiry to be held.
- (4) The appropriate national authority may not make the proposed order unless, having regard to—
 - (a) any representations received pursuant to subsection (2)(b), and
 - (b) the result of any local inquiry held under subsection (3),
 it is satisfied that there is substantial support for the making of the order.
- (5) For the purposes of subsection (4) the appropriate national authority must have particular regard to representations received pursuant to subsection (2)(b) from—
 - (a) persons having rights (other than rights of common) in relation to, or occupying, land specified in the draft order;
 - (b) persons who are entitled to exercise rights of common (and in particular persons exercising rights of common) over any such land; and
 - (c) persons with functions under an enactment which relate to the maintenance or management of any such land.

Commencement Information

I2 S. 27 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

Status and constitution of commons councils

28 Status

- (1) A commons council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The property of a commons council is not to be regarded as the property of, or as property held on behalf of, the Crown.
- (3) A commons council is not to be regarded as an authority to which section 28G of the Wildlife and Countryside Act 1981 (c. 69) applies.

Commencement Information

I3 S. 28 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

29 Constitution

- (1) The appropriate national authority must by regulations prescribe standard terms as to the constitution and administration of commons councils (in this Part, the “standard constitution”).
- (2) The terms of the standard constitution apply to every commons council, subject as follows.
- (3) An order under section 26 may also make provision as to the constitution and administration of a commons council.
- (4) Provision which may be made under subsection (3) includes in particular—
 - (a) provision supplementary to any term of the standard constitution;
 - (b) provision disapplying any such term;
 - (c) provision replacing any such term.
- (5) Where in relation to a commons council—
 - (a) provision is made under subsection (3) that is inconsistent with any term of the standard constitution, and
 - (b) any such term has not been expressly disappplied under that subsection,the provision made under subsection (3) prevails, to the extent of the inconsistency, over the term of the standard constitution.
- (6) Terms of the standard constitution prescribed by regulations under subsection (1) may be amended by further regulations under that subsection; and this section applies in relation to such terms as amended as it applies in relation to the terms as first prescribed.

Commencement Information

- I4** S. 29 partly in force; s. 29 not in force at Royal Assent see s. 56(1); s. 29(1)(6) in force for certain purposes for W. at 12.8.2007 by S.I. 2007/2386, art. 2
- I5** S. 29 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

30 Constitution: supplementary

- (1) This section applies in relation to terms as to the constitution and administration of a commons council contained in—
 - (a) the standard constitution; or
 - (b) an order under section 26.
- (2) The terms may in particular include terms as to—
 - (a) the membership of the council;
 - (b) participation in the council by persons other than members;
 - (c) the proceedings of the council;
 - (d) the keeping and publication of accounts, annual reports and other information relating to the council.
- (3) The terms referred to in subsection (2)(a) include in particular terms as to—
 - (a) the appointment of members (by election or otherwise);
 - (b) the term for which members are appointed;

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- (c) co-option of members;
 - (d) the conduct of members;
 - (e) resignation and disqualification of members;
 - (f) termination and renewal of membership;
 - (g) payment of allowances to members.
- (4) The terms referred to in subsection (2)(b) include in particular terms as to—
- (a) entitlement to elect members;
 - (b) entitlement to attend meetings.
- (5) The terms referred to in subsection (2)(c) include in particular terms as to—
- (a) the frequency of meetings;
 - (b) voting procedures at meetings;
 - (c) committees and sub-committees.
- (6) The terms referred to in subsection (2)(d) include in particular terms as to—
- (a) the appointment of auditors;
 - (b) the preparation and publication of accounts;
 - (c) the preparation and publication of annual reports.
- (7) Subject to any terms made of the kind referred to in subsection (2)(c), a commons council may regulate its own proceedings.

Commencement Information

I6 S. 30 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

Functions of commons councils

31 Functions

- (1) An order under section 26 is to confer on a commons council functions relating to any one or more of the following—
- (a) the management of agricultural activities on the land for which the council is established;
 - (b) the management of vegetation on the land;
 - (c) the management of rights of common on the land.
- (2) The functions conferred on a commons council under subsection (1) must be those the appropriate national authority considers appropriate in the case of that council.
- (3) The functions which may be conferred on a commons council under subsection (1) include in particular functions of—
- (a) making rules relating to agricultural activities, the management of vegetation and the exercise of rights of common on the land for which the council is established;
 - (b) making rules relating to the leasing or licensing of rights of common;
 - (c) preparing and maintaining a register of grazing;
 - (d) establishing and maintaining boundaries;
 - (e) removing unlawful boundaries and other encroachments;

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

- (f) removing animals unlawfully permitted to graze.
- (4) Rules made by virtue of subsection (3)(a) may have the effect of—
- (a) limiting or imposing conditions on the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established;
 - (b) requiring the provision of information to the commons council in relation to the exercise of those rights.
- (5) In exercising a function conferred under subsection (3)(f), a commons council may—
- (a) dispose of any animal it removes; and
 - (b) recover from the owner of the animal the costs that it may reasonably incur in removing and disposing of it.
- (6) A commons council must discharge its functions having regard to—
- (a) any guidance given by the appropriate national authority; and
 - (b) the public interest in relation to the land for which it is established.
- (7) The reference in subsection (6)(b) to the public interest includes the public interest in—
- (a) nature conservation;
 - (b) the conservation of the landscape;
 - (c) the protection of public rights of access to any area of land; and
 - (d) the protection of archaeological remains and features of historic interest.

Commencement Information

- 17** S. 31 partly in force; s. 31 not in force at Royal Assent see s. 56(1); s. 31(6)(a) in force for certain purposes for W. at 12.8.2007 by S.I. 2007/2386, art. 2
- 18** S. 31 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

32 Ancillary powers

- (1) A commons council has the power to do anything which it considers will facilitate, or is conducive or incidental to, the carrying out of its functions.
- (2) The power conferred by subsection (1) includes power to—
- (a) enter into agreements;
 - (b) prepare and adopt management plans;
 - (c) raise money (including by applying for funds from any source);
 - (d) acquire or dispose of land;
 - (e) employ staff.
- (3) The power of a commons council to raise money as specified in subsection (2)(c) includes power to require the payment of fees in connection with—
- (a) the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established, and
 - (b) participation in the council,
- and any such fees owed to the council may be recovered as a debt due to it.

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

Commencement Information

I9 S. 32 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

33 Consent

- (1) Subject to subsections (2) and (3), nothing in this Part authorises a commons council to do anything on the land for which it is established without the consent of a person with an interest in the land, where that person's consent would otherwise be required.
- (2) A commons council does not need the consent of a person who has a right of common over the land for which it is established in order to do anything on the land.
- (3) A commons council does not need the consent of any other person with an interest in the land for which it is established in order to do anything on the land where what is proposed to be done could be done without that person's consent by any person who has a right of common over the land.
- (4) Where a commons council wishes to obtain the consent of any person with an interest in the land for which the council is established in respect of anything it proposes to do on the land, it may serve a notice on him.
- (5) A notice under subsection (4) must specify—
 - (a) what the commons council proposes to do;
 - (b) the time within which the person on whom it is served may object (which may not be less than 28 days after service of the notice); and
 - (c) the manner in which he may object.
- (6) If the person on whom a notice under subsection (4) is served does not object within the time and in the manner specified in the notice, he is to be regarded as having given his consent in relation to the proposal specified in the notice.
- (7) Where a commons council proposes to serve a notice on a person under subsection (4) but is unable after reasonable enquiry to ascertain his name or proper address—
 - (a) the council may post the notice on the land; and
 - (b) the notice is to be treated as having been served on the person at the time the notice is posted.
- (8) An order under section 26 may make further provision as to the form and service of notices under subsection (4).
- (9) For the purposes of this section, a person with an interest in any land is a person who—
 - (a) owns the land; or
 - (b) is entitled to exercise any right over the land.

Commencement Information

I10 S. 33 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

34 Enforcement of rules

- (1) A person who breaches a rule to which subsection (2) applies is guilty of an offence.

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

- (2) This subsection applies to a rule which—
 - (a) is made with the consent of the appropriate national authority pursuant to a function of making rules conferred on a commons council under section 31; and
 - (b) specifies that a person who contravenes it is guilty of an offence under this section.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to—
 - (a) a fine not exceeding level 4 on the standard scale; and
 - (b) in the case of a continuing offence, to a further fine not exceeding one half of level 1 on the standard scale for each day during which the offence continues after conviction.
- (4) A commons council may bring proceedings in relation to an offence under subsection (1) in respect of breach of any rule made by it to which subsection (2) applies.
- (5) A commons council may apply to ^{F1}the county court for an order to secure compliance with any rule that it has made pursuant to a function of making rules conferred on it under section 31.
- (6) But a commons council may only make an application under subsection (5) for the purpose of securing compliance with a rule to which subsection (2) applies if it is of the opinion that proceedings for an offence under subsection (1) would provide an ineffectual remedy against the person who has failed to comply with the rule.
- (7) On an application under subsection (5) the court may make such an order as it thinks fit.

Textual Amendments

F1 Words in s. 34(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

Commencement Information

I11 S. 34 in force at 20.1.2010 for E. by [S.I. 2010/61](#), [art. 2](#) (with [art. 3](#))

35 Rules: supplementary

- (1) Any power to make rules conferred on a commons council under section 31 includes power to vary or revoke the rules made by the council.
- (2) An order under section 26 conferring a power to make rules may provide for the procedure to be followed in the exercise of the power (and may in particular require the consent of the appropriate national authority to be obtained before rules are made).
- (3) The appropriate national authority may by direction revoke any rule made by a commons council.
- (4) A direction under subsection (3) must set out the reason why the rule is being revoked.

Changes to legislation: There are currently no known outstanding effects for the Commons Act 2006, Part 2. (See end of Document for details)

- (5) Before revoking any rule under subsection (3) the appropriate national authority must consult—
- (a) the commons council; and
 - (b) any other person it thinks appropriate.

Commencement Information

I12 S. 35 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

Commons councils: supplementary

36 Consequential provision

- (1) The appropriate national authority may by order under section 26 make any provision specified in subsection (2) if it appears to the authority desirable to do so in consequence of functions conferred on a commons council in relation to any land.
- (2) The provision referred to in subsection (1) is provision to—
- (a) vary or abolish the jurisdiction so far as relating to the land of any court of a description referred to in Part 1 of Schedule 4 to the Administration of Justice Act 1977 (c. 38) (certain ancient courts);
 - (b) vary or revoke any regulations or arrangement made under the Commons Act 1908 (c. 44);
 - (c) vary or revoke any scheme made under the Commons Act 1899 (c. 30), or any arrangement arising under such a scheme;
 - (d) vary or revoke any Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners or any arrangement arising under such an Act;
 - (e) vary or revoke any local or personal Act, or any scheme or arrangement under such an Act, which relates to the management or maintenance of, or the exercise of rights of common over, the land.
- (3) The appropriate national authority may not under subsection (1) make provision specified in subsection (2)(c) to (e) to the extent that to do so would have the effect of abolishing or restricting a right of access of whatever nature exercisable by members of the public generally or by any section of the public.

Commencement Information

I13 S. 36 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

37 Variation and revocation of establishment orders

- (1) The appropriate national authority may by order under section 26 revoke a previous order under that section establishing a commons council only if it is satisfied that—
- (a) the council has ceased to operate;
 - (b) the council is failing to discharge its functions in an effective manner; or
 - (c) the council is, in discharging its functions, failing to have sufficient regard to the public interest as required by section 31.

*Changes to legislation: There are currently no known outstanding effects
for the Commons Act 2006, Part 2. (See end of Document for details)*

- (2) An order under section 26 revoking a previous order under that section may include—
- (a) provision for the transfer of rights, property and liabilities of the commons council;
 - (b) provision amending any enactment previously amended under section 36 in relation to the council.
- (3) Section 27 applies to an order under section 26 varying or revoking a previous order under that section as it applies to an order under that section establishing a commons council (but as if the references in section 27 to land specified in the order were to land affected by the variation or revocation).

Commencement Information

I14 S. 37 in force at 20.1.2010 for E. by S.I. 2010/61, art. 2 (with art. 3)

Changes to legislation:

There are currently no known outstanding effects for the Commons Act 2006, Part 2.