
STATUTORY INSTRUMENTS

2007 No. 2587

COMMONS, ENGLAND

**The Works on Common Land
(Exemptions) (England) Order 2007**

<i>Made</i>	- - - -	<i>3rd September 2007</i>
<i>Laid before Parliament</i>		<i>7th September 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Secretary of State, in exercise of the powers conferred by sections 43(1)(b), (7) and (8) and 59(1) of the Commons Act 2006⁽¹⁾, and being satisfied of the matters specified in section 43(3) of that Act, makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Works on Common Land (Exemptions) (England) Order 2007 and comes into force on 1st October 2007.

(2) This Order applies in relation to England only.

Exemption

2. Section 38 of the Commons Act 2006 (prohibition on works without consent) does not, subject to articles 3 and 4, apply to the carrying out on land registered as common land of any works of a description specified in the second column of the table in Schedule 1, by a person of a description specified in the corresponding entry in the third column of that Table.

Preservation of rights of access

3.—(1) The exemption in article 2 does not apply unless paragraph (2) is complied with.

(2) Where any person or class of persons has a legal right of access to or across the land which the works are to enclose, or to which the works are otherwise to impede access, means of access must be provided which enable that right to continue to be exercised.

Notice of carrying out exempt works

4.—(1) The exemption in article 2 does not apply unless paragraphs (2) and (3) are complied with.

(1) 2006 c.26.

- (2) A notice in the form of the model notice in Schedule 2 and containing the information indicated in it must be displayed in a prominent place at the site of the works—
- (a) in the case of works described in paragraphs 1 to 3 of the table in Schedule 1, from the commencement of the works until they are removed; or
 - (b) in the case of works described in paragraph 4 of the table in Schedule 1, from the commencement of the works until at least 28 days after their completion.
- (3) A copy of the notice displayed under paragraph (2) must be sent to the Secretary of State not later than the commencement of the works.

Interpretation and transitional provision

5.—(1) In this Order—

“moorland” means any area of land shown coloured pink in the three volumes of maps, each entitled “Moorland Map of England 2006” and marked with the number of the volume, dated 13th February 2006, signed on behalf of the Secretary of State for Environment, Food and Rural Affairs and deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, Horseferry Road, London SW1P 2AL;

“register unit” means the whole of an area of land registered as common land pursuant to a single registration;

“section 38 consent” means consent under section 38 of the Commons Act 2006 to carry out restricted works.

(2) References to “land registered as common land” shall be taken, until the commencement of section 1 of the Commons Act 2006 in relation to the area in which any land in question is situated, as references to land so registered under the Commons Registration Act 1965(2).

Jeff Rooker
Minister of State
Department for Environment, Food and Rural
Affairs

3rd September 2007

SCHEDULE 1

Article 2

Works exempt from requiring section 38 consent

<i>Paragraph</i>	<i>Description of works</i>	<i>Description of person carrying out works</i>
1.	<p>The erection of temporary fencing (which may include electric fencing) for a period not exceeding six months, to enclose land for the purpose of restricting the movement of grazing animals which are on the land—</p> <p>(a) in the exercise of a right of common to graze animals; or</p> <p>(b) in the interests of nature conservation.</p> <p>The exemption in respect of works specified in this paragraph only applies if—</p> <p>(a) the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed the lesser of 10 hectares or 10% of the area of the register unit of which it forms part; and</p> <p>(b) no part of the land to be enclosed has, during the period of 6 months immediately before the works are carried out, previously been enclosed without section 38 consent by virtue of this paragraph.</p>	<p>1. The owner of the land.</p> <p>2. Any person entitled to exercise rights of common over the land.</p> <p>3. Any other person acting with the written consent of the owner of the land.</p>
2.	<p>The erection of temporary fencing, for a period not exceeding 3 years if the fence is wholly on moorland or 1 year in any other case, to enclose land for the purpose of—</p> <p>(a) carrying out work which facilitates the growth or restoration of vegetation for the benefit of the common land; or</p> <p>(b) protecting the vegetation during a period of such growth or restoration, in so far as such protection is necessary or expedient to enable the growth or restoration to occur.</p> <p>The exemption in respect of works specified in this paragraph only applies if—</p> <p>(a) the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed 1% of the area of the register unit of which it forms part; and</p> <p>(b) no part of the land to be enclosed has, during the period of 1 year immediately before the works are carried out, previously been enclosed without section 38 consent by virtue of this paragraph.</p>	<p>1. The owner of the land.</p> <p>2. Any person entitled to exercise rights of common over the land.</p> <p>3. Any other person acting with the written consent of the owner of the land.</p>
3	<p>The erection of temporary fencing, for a period not exceeding 5 years, to enclose land in order to restrict</p>	<p>1. The owner of the land.</p>

access to it in the interests of nature conservation, where that is required under the terms of a written agreement relating to the management of the land, being—

- (a) an agreement between the owner of the land and Natural England; or
- (b) an agreement between the owner of the land and the Secretary of State, entered into before the commencement of this Order.

- 2. Natural England.
- 3. Any other person acting with the written consent of the owner of the land.

The exemption in respect of works specified in this paragraph only applies if the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed 1% of the area of the register unit of which it forms part.

- 4. The installation of a row, not exceeding 200 metres in length, of obstacles (such as bollards or large stones) which, whether by themselves or together with any existing obstructions interrupting the row, are intended to prevent or restrict vehicular access to common land, where the owner reasonably considers that such access would interfere with or be detrimental to—

- (a) the use of the land by members of the public for the purpose of open-air recreation pursuant to any right of access;
- (b) the exercise of rights of common; or
- (c) nature conservation.

- 1. The owner of the land.
- 2. Any other person acting with the written consent of the owner of the land.

The exemption in respect of works specified in this paragraph only applies if—

- (a) no other row of obstacles is installed without section 38 consent by virtue of this paragraph, and remains in place, on land forming part of the same register unit; or
 - (b) the works consist of the extension of an existing row of obstacles which has been installed without section 38 consent by virtue of this paragraph, and the combined length of the existing row and the extension does not exceed 200 metres.
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in relation to England only, prescribes exemptions to the prohibition in section 38(1) of the Commons Act 2006 on the carrying out, without the consent of the Secretary of State, of any restricted works on land to which that section applies.

Exemptions are prescribed (article 2 and Schedule 1) which, subject to certain conditions, allow specified persons to erect temporary fencing for the purposes of (a) restricting the movement of animals which are grazing on the land, (b) allowing recovery of vegetation, and (c) nature conservation. An exemption is also prescribed for the installation, in certain circumstances, of permanent regularly spaced obstacles (such as bollards or stones) to prevent or restrict vehicular access to common land.

Where works are carried out pursuant to an exemption contained in this Order, there are requirements for a notice to be displayed at the site of the works and for notification to be given to the Secretary of State (article 4 and Schedule 2).

The exemptions only apply in relation to registered common land (article 2), and not in relation to other classes of land to which section 38 applies. Nothing in this Order authorises any person to carry out works which are prohibited by any other enactment or rule of law, nor exempts any person from complying with any other requirement to obtain consent or permission which may exist independently from section 38.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.