

**EXPLANATORY MEMORANDUM TO
THE COMMONS REGISTRATION (OBJECTIONS AND MAPS) (AMENDMENT)
(ENGLAND) REGULATIONS 2007**

2007 No. 540

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Regulations will enable the status of a very small number of areas of land in England, which have been provisionally registered as common land (or town or village green), to be determined. The Regulations provide for objections to be made to the provisional registration of the land, so that, where such objections are received, the registration may be referred to a Commons Commissioner for a decision.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Commons Registration Act 1965 (“the 1965 Act”) enabled, for the first time, the registration of all common land and town or village greens, and of all rights of common exercisable over such land.
 - 4.2 Local authorities, at that time generally county councils and county borough councils, were appointed to act as registration authorities for their areas. The 1965 Act enabled any person to apply to the relevant commons registration authority for the registration of land which they believed to be common land or a town or village green. There was no requirement for applicants to have a legal interest in the land.
 - 4.3 Registrations were initially provisional, and were subject to objection by anyone during one of two periods specified in regulations made under the 1965 Act. The last objection period closed in 1972. If no objection was made to the provisional registration, it automatically became final at the end of the first or second objection period as appropriate.
 - 4.4 The Commons Registration (Objections and Maps) Regulations 1968 (“the Regulations”) made under the 1965 Act required registration authorities to advertise all provisional registrations, so that anyone who wished could object to the registration. The Regulations did not require the provisional registration of land to be notified to the landowner, so advertisement was the principal means by which the landowner might be made aware of the registration and afforded an opportunity to object. Where an objection was made to a registration, and not withdrawn, the registration authority would refer the dispute to a Commons Commissioner for determination. The Commissioner would either confirm the registration of the land, in which case it became final, or, if he concluded that the land was not common land or a green, would

instruct the registration authority to void the registration. In the latter case the land would be removed from the register. The decision of the Commons Commissioner was final.

4.5 In *Smith and others v East Sussex County Council* (1977) 76 LGR 332 (“the *Smith* case”) the landowner did not become aware of the registration of his land as common land because the registration authority had wrongly described the land in the public notice. He only became aware of the registration after the time limit for lodging an objection had expired. The landowner challenged the registration in the High Court. The court held, because of the failing by the council, that the registration had not become final. However, because the period allowed for lodging objections had closed in 1972, the landowner was unable to lodge an objection to the registration with the result that the land has remained provisionally registered ever since.

4.6 The purpose of these regulations is to prescribe a new period for lodging objections to provisional registrations of land in the circumstances of the *Smith* case and any cases consistent with it. This will enable the landowner and others with an interest in affected land finally to resolve the status of that land.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 1965 Act was intended to carry out part of the recommendations made by the Royal Commission on Common Land (1955–58) to encourage the better management and improvement of common land, by creating greater certainty about who held rights over the land, the nature of those rights, and over exactly what land the rights were exercisable.

7.2 The vast majority of unresolved objections to provisional registrations under the 1965 Act were dealt with by the Commons Commissioners many years ago. Powers were taken in the Commons Act 2006 to repeal the 1965 Act (and with it the functions of the Commissioners). However, before repealing the 1965 Act, it is necessary that any outstanding questions over the status of land provisionally registered as common land are resolved. These include the *Smith* case, and any cases similar to it. The Government’s *Common Land Policy Statement 2002* contained a commitment to deal with such cases. However, unless a fresh period is prescribed during which objections may be lodged, registrations which remain provisional cannot either become final or be referred to the Commissioners for a determination.

7.3 The new regulations introduce a new, short objection period in relation to qualifying provisional registrations. There is no requirement to readvertise affected registrations, as the interested parties will already be known to the registration authority. The regulations provide that only land which was the subject of the judgment in the *Smith* case, or any similar order of the courts, will be eligible

because, in cases where there is no such order, the registrations will, in Defra's view, have become final. The number of cases is expected to be very few (indeed, the *Smith* case may be the only such case).

7.4 In view of the very limited impact of these regulations, we have conducted a short, and restricted, consultation. We have written directly to the registration authorities we think may be affected, and to the body representing commons registration officers within all registration authorities. We have also consulted other key stakeholders. Those local authorities potentially affected by these regulations have also confirmed their agreement.

7.5 All registration authorities will be advised of the new regulations, and guidance (with a form for use by persons objecting to any qualifying provisional registration) will be made available on Defra's website. Registration authorities will be asked to alert any persons within their areas who have an interest in land affected by these new regulations.

8. Impact

8.1 In view of the negligible impact of these regulations on the private or voluntary sector, no Regulatory Impact Assessment has been conducted.

8.2 The impact on the public sector, including local authorities, is negligible.

9. Contact

9.1 Nick Wilson at the Department for Environment, Food and Rural Affairs, Tel: 0117 372 8875 or e-mail: nick.wilson@defra.gsi.gov.uk can answer any queries regarding the instrument. Further information about the registration process for common land (and greens), the Commons Registration Act 1965, and the Commons Commissioners is also available on the Defra website, at: <http://www.defra.gov.uk/wildlife-countryside/issues/common/registration/index.htm>