

EXPLANATORY MEMORANDUM TO
THE COMMONS REGISTRATION (ENGLAND) (AMENDMENT)
REGULATIONS 2009

2009 No. 2018

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. Purpose of the instrument

2.1 The Commons Registration (England) Regulations 2008¹ ('the 2008 Regulations'), which came into force on 1 October 2008, set out the procedures for amending registers of common land and town or village greens ('the commons registers') within a pilot implementation of Part 1 of the Commons Act 2006 ('the 2006 Act') in seven local authority areas (known as the pilot registration authorities)².

2.2 These Regulations amend the 2008 Regulations by extending the "transitional application period" and the "transitional period" — in each case by a year — so that applications and proposals under Schedule 3 to the 2006 Act in relation to the areas of the pilot registration authorities can be submitted (without payment of a fee) or proposals made (in line with the duty on the pilot registration authorities to review their registers) until 30 September 2010. The purpose of such applications and proposals is to bring the commons registers up-to-date to reflect events which took place between 1970 and 30 September 2008.

2.3 The Regulations also make other minor additions and alterations to, and correct some minor errors in, the 2008 Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Part 1 of the 2006 Act continues the commons registers established under the Commons Registration Act 1965, but makes provision for bringing and keeping the registers up-to-date. In particular, Part 1 includes provision for:

- the amendment of the commons registers upon the occurrence of registrable events, such as the creation or variation of rights of common, statutory dispositions of common land (*e.g.* under compulsory purchase legislation) and the creation of new town or village greens, and provides (in general) that such events are only to have effect in law when the register is amended so as to record them;
- the correction of errors in the commons registers; and

¹ S.I. 2008/1961.

² These comprise the areas of the following commons registration authorities: Blackburn with Darwen Borough Council, Cornwall County Council, Devon County Council, County of Herefordshire District Council, Hertfordshire County Council, Kent County Council, and Lancashire County Council.

- transitional powers to rectify mistakes made in the commons registers under the 1965 Act, and to register events which occurred while the 1965 Act was in force.

4.2 Certain provisions of Part 1 are already in force throughout England: section 9 and Schedule 1 were deemed to come into force on 28 June 2005³ in relation to the prohibition (with exceptions) of severance of rights of common; sections 4, 5, 15 and 24 of the 2006 Act were brought into force on 6 April 2007⁴, to enable the registration of new town or village greens under section 15 of the Act; and sections 16 and 17 of the Act were brought into force on 1 October 2007⁵ to enable the Secretary of State to determine applications for the deregistration and exchange of common land and town or village greens. The rest of Part 1 (with the exception of section 25) was brought into force on 1 October 2008 solely in relation to the areas of the pilot registration authorities⁶, and both the 2008 Regulations and these amending Regulations apply to those areas.

4.3 These amending Regulations extend, by one year, the period during which applications within the areas of the pilot registration authorities can be made free of charge, and pilot registration authorities can make proposals, under Schedule 3 to bring the commons registers up-to-date. The Regulations are necessary in order to amend the existing period of one year specified in the 2008 Regulations, which would otherwise expire on 30 September 2009. They also permit pilot registration authorities to allow an applicant longer than 21 days to respond to representations, provide model entries for applications and proposals under section 19 to correct the register, and make other minor amendments.

5. Territorial Extent and Application

5.1 This instrument will have the same application as did the 2008 Regulations: it will apply to the registration areas of the seven pilot registration authorities in England specified in Schedule 1 to the 2008 Regulations.

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

- *What is being done and why*

7.1 Part 1 is intended to replace and improve the registration system under the Commons Registration Act 1965, but using the same commons registers prepared under that Act. Part 1 provides for registration authorities to continue to keep the commons registers, and permits amendments to be made to the registers in accordance with the provisions in that Part. But Part 1 also requires that the commons registers are kept up-to-date, by providing that an event which would affect the validity of information contained in the registers is only to have legal effect if the event is registered in

³ Section 9(7) of the 2006 Act.

⁴ The Commons Act 2006 (Commencement No. 2, Transitional Provisions and Savings) (England) Order 2007 (SI 2007/456).

⁵ The Commons Act 2006 (Commencement No. 3, Transitional Provisions and Savings) (England) Order 2007 (SI 2007/2584).

⁶ The Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008 (SI 2008/1960).

accordance with Part 1. That will help ensure that the commons registers become and remain a true record of the extent of common land and greens, and of the rights of common exercisable over such land.

7.2 During an initial transitional application period, pilot registration authorities are required to conduct a review of their commons registers to identify any unregistered consequences of certain “qualifying events” that affect their registers, and to make proposals to update the registers. They must also receive and determine applications made to them to correct other such consequences and errors in the registers: such applications are free of charge during the transitional application period.

7.3 Monitoring of the progress of the pilot implementation has shown that the review of the commons registers has taken longer than anticipated, and that the task is unlikely to be completed by 30 September 2009. These Regulations extend the transitional application period so that potential applicants will have a further year in which to apply free of charge (until 30 September 2010). The pilot registration authorities will also have a further year during which they can complete their reviews, and make proposals consequent on them. After the extended closing date, it will still be possible to apply to update the registers under Schedule 3, but applicants will need to pay a fee to the registration authority, and applications will need to pass an additional test of ‘fairness’ (*i.e.* fairness to any other parties affected by the application).

7.4 The effect of these Regulations will be of interest primarily to stakeholders (such as farmers with rights of common and owners of common land) in the area of the pilot registration authorities, and to the authorities themselves.

- **Consolidation**

7.5 These Regulations make a small number of amendments to the 2008 Regulations. Defra expects to make new regulations, revoking these Regulations and the 2008 Regulations, for the purposes of national implementation of Part 1 of the 2006 Act, in 2010.

8. Consultation outcome

8.1 These Regulations have been prepared following regular discussions between Defra and the pilot registration authorities. Defra agrees with the pilot authorities’ contention that the scheduled conclusion to the transitional application period on 30 September 2009 would be premature. It notes that the low level of applications to date under Schedule 3 within the pilot registration authorities’ areas is suggestive that some stakeholders are unaware of their opportunity to apply to update the commons registers, and that more time is needed to inform stakeholders. Defra has consulted with the Local Government Association and the Association of Commons Registration Authorities, and these bodies support the extension of the transitional application period.

9. Guidance

9.1 Defra will inform stakeholders of the effect of the Regulations in a *Commons Act implementation update*, distributed widely, but the obligation will rest primarily with pilot registration authorities to communicate with local stakeholders. The effect of the Regulations will be reflected in amended guidance to applicants, and to the pilot registration authorities, published on Defra’s website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is wholly beneficial, as stakeholders who need to apply to amend the commons registers in the areas of the pilot registration authorities will have a further year in which to make their application free of charge.

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10.2 The extension of the transitional application period will not increase costs to pilot registration authorities in the pilot areas, but will allow those authorities to discharge their obligations and incur concomitant costs over a longer period.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business, but generally only to small business in the areas of the pilot registration authorities, such as farmers with rights of common, who wish to apply to amend the commons registers.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is consistent with the effect of the Regulations on stakeholders generally, in that they will have a longer period of time in which to apply to amend the commons registers free of charge.

11.3 The basis for the final decision on what action to take to assist small business is also consistent with the effect of the Regulations on stakeholders generally, in that they are wholly beneficial.

12. Monitoring & review

12.1 The pilot implementation of Part 1 of the 2006 Act will be reviewed in late 2009, taking into account the amendments made by these Regulations, and the conclusions of the review will be published in early 2010. The conclusions of the review will help inform a decision on how to proceed with national implementation of Part 1, which is provisionally planned to begin in October 2010.

13. Contact

Grant McPhee at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 6326 or e-mail: commons.villagegreens@defra.gsi.gov.uk can answer any queries regarding the instrument. Further information about the 2006 Act generally is also available on the Defra website, at: www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/index.htm.