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STATUTORY INSTRUMENTS

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**2013 No. 2959**

**COMMONS, ENGLAND**

**The Brendon Commons Council Establishment Order 2013**

*Made* - - - - *20th November 2013*

*Laid before Parliament* *25th November 2013*

*Coming into force* - - *1st January 2014*

The Secretary of State has published a draft of this Order in the neighbourhood of Brendon Common, and invited representations about it, in accordance with section 27(2) of the Commons Act 2006<sup>(1)</sup>.

In accordance with section 27(4)(a) of that Act, the Secretary of State is satisfied that there is substantial support for the making of this Order.

The Secretary of State considers, in accordance with section 31(2) of that Act, that the functions conferred on the commons council<sup>(2)</sup> established by this Order are appropriate in the case of that council.

In exercise of the powers conferred by sections 26, 29(3) and (4), 30, 31(1) to (4), 35(2) and 59(1) of that Act, the Secretary of State makes the following Order.

**Title and commencement**

1. This Order may be cited as the Brendon Commons Council Establishment Order 2013 and comes into force on 1st January 2014.

**Interpretation**

2. In this Order—

“the 2006 Act” means the Commons Act 2006;

“active grazier” means—

- (a) in relation to the election and appointment of the first members of the Council, a commoner named in the list compiled under paragraph 2(a) of Schedule 1;
- (b) in relation to subsequent appointments, a commoner who is registered under article 8(1), or pursuant to an application under article 8(2), in the register maintained by the Council under article 8(1);

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<sup>(1)</sup> 2006 c. 26; section 61(1) defines the “appropriate national authority” as the Secretary of State, in relation to England.

<sup>(2)</sup> The expression “commons council” is defined by section 61(1) of the Commons Act 2006 as a commons council established under Part 2 of that Act.

“the appointed day” means 1st April 2014;

“the Common” means the areas referred to in article 3;

“commoner” has the meaning it is given in the Standard Constitution;

“the Council” means the Brendon Commons Council established by article 3;

“owner”, in relation to the Common, means a person holding the estate of fee simple in the land in which the Common or any part of the Common is situated, and any reference to owning, or ownership of, the Common is to be construed accordingly;

“the Standard Constitution” means the constitution in the Schedule to the Commons Councils (Standard Constitution) (England) Regulations 2010(3).

### **Establishment of the Council**

3. With effect from the appointed day a commons council, to be known as the Brendon Commons Council, is established for the areas of registered common land known as Brendon Common and registered as units CL168 and CL175 in the register of common land kept by Devon County Council under Part 1 of the 2006 Act(4).

### **Membership of the Council**

4.—(1) The Council is to consist of not fewer than five and not more than seven members, of whom—

- (a) three are to be elected by the active graziers, from among themselves;
- (b) one is to be elected by the commoners who are not active graziers, from among themselves;
- (c) one is to be appointed by the owner of the Common, to represent the interests of the owner; and
- (d) up to two may be co-opted by the Council.

(2) Elections and appointments of members of the Council under paragraph (1)(a) to (c) are first to be held and made before the appointed day and subsequently during the period of three months, beginning on 1st January and ending on 31st March, immediately preceding each biennial anniversary of the appointed day.

(3) Each member so elected or appointed is to hold office (unless the member resigns or dies, or paragraph (4) applies)—

- (a) in the case of the first election or appointment, from the appointed day up to and including 31st March 2016; and
- (b) thereafter, for two years from the 1st April next following their election or appointment.

(4) A person elected as a member of the Council pursuant to paragraph (1)(a) or (b) ceases to be a member of the Council if at any time during the period of membership that person ceases to be eligible for membership.

(5) Schedule 1 (election and appointment of members) has effect.

### **Functions of the Council**

5. The Council has the following functions—

- (a) managing agricultural activities on the Common;

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(3) [S.I. 2010/1204](#).

(4) Section 20 of the 2006 Act provides *inter alia* that any person may inspect and make copies of, or any part of, a register of common land. Contact Devon County Council, County Hall, Topsham Road, Exeter, Devon, EX2 4QD; e-mail: [customer@devon.gov.uk](mailto:customer@devon.gov.uk), for details of the place and times at which the register may be inspected.

- (b) managing vegetation on the Common;
- (c) managing rights of common on the Common;
- (d) making rules relating to—
  - (i) agricultural activities, the management of vegetation and the exercise of rights of common on the Common;
  - (ii) the leasing or licensing of rights of common;
- (e) preparing and maintaining a register of the grazing of animals on the Common in accordance with article 8;
- (f) establishing and maintaining boundaries on land forming part of the Common or between the Common and adjoining land;
- (g) removing unlawful boundaries and other encroachments on the Common; and
- (h) removing animals unlawfully permitted to graze on the Common.

#### **Rules: further provision**

6. Rules under article 5(d)(i) may in particular include provision—
- (a) limiting periods when animals may be turned out onto the Common;
  - (b) limiting the number of animals which may be turned out onto the Common during a specified period (for example, by restricting each commoner with rights to graze animals from exercising more than a specified proportion of those rights during the specified period);
  - (c) restricting or prohibiting the turning out of entire animals;
  - (d) prohibiting the turning out of animals by anyone not having a legal right to do so;
  - (e) about measures to be taken to control disease among animals on the Common, including temporary prohibition of the grazing of animals on the Common;
  - (f) about the supplementary feeding of animals on the Common;
  - (g) about standards of husbandry to be followed by persons keeping animals on the Common; and
  - (h) requiring, from any person to be entered in the register maintained in accordance with article 8, the information described in that article.

#### **Procedure for making, amending or revoking rules**

7.—(1) Rules under article 5(d) are to be made pursuant to a decision of the Council and must be confirmed by the Secretary of State before coming into force.

(2) Paragraph (1) applies to any variation of such rules as it applies to the making of rules, save that a variation consisting solely of the revocation of one or more rules is not subject to confirmation by the Secretary of State.

(3) At least one month before applying to the Secretary of State for confirmation of the rules, the Council must—

- (a) publish notice of its intention to apply for confirmation together with—
  - (i) details of the website on which publication is required under paragraph (ii), in one or more local newspapers circulating in the area of the Common; and
  - (ii) a copy of the rules, on an appropriate website;
- (b) give notice in writing of its intention to apply for confirmation, together with a copy of the rules, to—

- (i) every commoner whose name and address appears in the register maintained in accordance with article 8; and
  - (ii) the owner of the Common; and
- (c) give notice in writing of its intention to apply for confirmation to, and deposit a copy of the rules with—
  - (i) the proper officer of Devon County Council,
  - (ii) the proper officer of North Devon District Council,
  - (iii) the proper officer of the Exmoor National Park Authority, and
  - (iv) the chairman of each parish council and parish meeting within the area of the Common.
- (4) The Council must provide to any person who so requests a copy of the rules, before or after confirmation, on payment of a reasonable charge.
- (5) If any written representations are served on the Council before it applies for confirmation of the rules, the Council must send a copy of the representations to the Secretary of State with the application for confirmation, and the Secretary of State must take account of any such representations in deciding whether to confirm the rules.
- (6) The Secretary of State may confirm, or refuse to confirm, any rules submitted under this article for confirmation, but reasons must be given to the Council if the Secretary of State refuses to confirm them.
- (7) When rules have been confirmed by the Secretary of State, they come into force either—
  - (i) one month after the date of their confirmation; or
  - (ii) upon such later date as the Secretary of State may determine.
- (8) When rules have been confirmed by the Secretary of State, the Council must, at least 14 days before the rules come into force—
  - (a) publish notice of their confirmation, together with a copy of the rules and notification of the date on which they are to come into force, on an appropriate website;
  - (b) give notice in writing of their confirmation and the date on which they are to come into force to, and deposit a copy of the rules with—
    - (i) the proper officer of Devon County Council;
    - (ii) the proper officer of North Devon District Council;
    - (iii) the proper officer of the Exmoor National Park Authority; and
    - (iv) the chairman of each parish council and parish meeting within the area of the Common; and
  - (c) give notice in writing of their confirmation and the date on which they are to come into force, together with a copy of the rules, to—
    - (i) such persons (if any) as it considers represent the interests of commoners not included in paragraph (ii);
    - (ii) every commoner whose name and address appears in the register maintained in accordance with article 8;
    - (iii) the owner of the Common; and
    - (iv) the chief constable of Devon and Cornwall Police.
- (9) Where the Council is acting solely to revoke any rules made under article 5(d), not less than 14 days before the revocation comes into force the Council must—
  - (a) give notice in writing of the revocation, and the date on which it comes into effect, to—

- (i) the Secretary of State;
  - (ii) the proper officer of Devon County Council;
  - (iii) the proper officer of North Devon District Council;
  - (iv) the proper officer of the Exmoor National Park Authority;
  - (v) the chairman of each parish council and parish meeting within the area of the Common;
  - (vi) such persons (if any) as it considers represent the interests of commoners;
  - (vii) every commoner whose name and address appears in the register maintained in accordance with article 8;
  - (viii) the owner of the Common; and
  - (ix) the chief constable of Devon and Cornwall Police; and
- (b) publish notice of the revocation, together with a copy of the rules (in which any unrevoked rules are clearly to be distinguished from those newly revoked), on an appropriate website.
- (10) The proper officers and other persons mentioned in paragraphs (3)(c) and (8)(b) must retain the deposited copy of the rules in accordance with section 225 of the Local Government Act 1972<sup>(5)</sup> and make it available for inspection and the making of copies in accordance with section 228(5) and (6) of that Act—
- (a) in the case of paragraph (3)(c), until such time as the confirmation of the rules is either given or refused by the Secretary of State or, prior to their confirmation, the Council withdraws the rules; or
  - (b) in the case of paragraph (8)(b), for as long as those rules remain in force.
- (11) In this article “proper officer” has the meaning given by section 270(3) of the Local Government Act 1972.

### **Register to be maintained by the Council**

**8.—**(1) The Council must prepare (and in so doing may rely on the lists prepared by the returning officer under Schedule 1) within one month of the appointed day, and maintain, a register containing the following information—

- (a) the name and address of each commoner who at any time in the period of 12 months immediately preceding 1st January 2014 has exercised a right of common to graze animals on any area forming part of the Common;
- (b) the name and address of any other person who at any time in the period of 12 months immediately preceding 1st January 2014 has exercised any other right to graze animals on any area forming part of the Common;
- (c) the name and address of any other person who is a commoner and who applies to be entered in the register, together with a description of that person’s right of common and an explanation of that person’s lawful entitlement to exercise that right;
- (d) as respects each person falling within sub-paragraph (a) or (b), or within paragraph (2) (a)—

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<sup>(5)</sup> 1972 c. 70. Section 225 contains amendments not relevant to its application to article 7. Section 228 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; by virtue of section 228(5), the offence in section 228(7) of obstructing inspection of documents, or refusing to give copies or extracts of documents, applies in relation to any rules deposited in accordance with article 7(3)(c). There are other amendments to section 228 which are not relevant to its application to the authorities referred to in article 7(2)(c). Sections 225(1) and 228 have effect as if, for the purpose of those provisions, a National Park Authority were a local authority, by virtue of paragraph 17(2) of Schedule 7 to the Environment Act 1995 (c. 25).

- (i) a description of that person's right of common, or other right, to graze animals and an explanation of that person's lawful entitlement to exercise that right;
- (ii) the number, types and breeds of animals which for the time being that person grazes on that area;
- (iii) the period during which such grazing takes place; and
- (iv) the mark, tag or other method by which the ownership of those animals may be identified; and
- (e) such other information as the Council thinks fit;

but in each case not including information as to any matter which is, or was, capable of being registered under Part 1 of the 2006 Act, but which has not been so registered.

(2) Any person who—

- (a) has lawfully grazed any animal on any part of the Common during the immediately preceding period of twelve months, or
- (b) proposes to exercise a right to graze any animal on any part of the Common,

may apply to the secretary of the Council to be entered in the register, giving such information as the Council may reasonably require.

(3) Any person who is entered in the register may apply to the secretary of the Council for the entry in the register to be amended or removed, if—

- (a) that person is no longer grazing animals on the Common,
- (b) that person, having applied to be entered in the register under paragraph (1)(c) no longer wishes to be entered in the register, or
- (c) there is any other change in the relevant information recorded in the register.

(4) Any member of the public may, on application to the secretary of the Council—

- (a) make an appointment to inspect the register without charge, and make copies or take extracts, or
- (b) on payment of a reasonable charge, be provided with copies by the Council.

(5) Any person having a legal interest in the matter and objecting to any information recorded in the register, or to the omission of any information from the register, may complain in writing to the secretary of the Council, and the Council must consider the complaint and give the person notice of its decision in writing.

### **Decisions of the Council**

9.—(1) Schedule 2 (decisions of the council) has effect.

(2) The application of paragraph 9 of the Standard Constitution is subject to Schedule 2.

### **Vacancies in membership of the Council**

10.—(1) Paragraph 18 of the Standard Constitution applies subject to paragraph (2).

(2) If all three of the posts to be filled by election under article 4(1)(a) are vacant, the Council may act only for the purpose of holding a by-election to fill those vacancies.

20th November 2013

*de Mauley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

SCHEDULE 1

Article 4(5)

Election and appointment of members

**Election and appointment of first members of the Council**

1. The Secretary of State must appoint a returning officer to facilitate the election and appointment of the first members of the Council.

2. For the purpose of the first election or appointment of the members of the Council under article 4(1)(a) to (c), the returning officer must compile in relation to the Common a list of each of the following—

- (a) persons who appear to the returning officer to be commoners who have lawfully grazed animals on any area forming part of the Common in the period of 12 months immediately preceding the date of coming into force of this Order;
- (b) persons who appear to that officer to be commoners not falling within sub-paragraph (a); and
- (c) the person who appears to that officer to be the owner of the Common or of any part of the Common.

3. Before finalising the lists under paragraph 2, the returning officer must—

- (a) by notice in a local newspaper circulating in the area of the Common, specify a period (ending not less than 28 days after the date of publication of the notice) during which the draft lists may be inspected and representations may be made about them, and give details of the dates, times and place at which such inspection may be made, and of the website on which publication is required under sub-paragraph (c);
- (b) make available for inspection a draft of each list during the period and at the dates, times and place specified under sub-paragraph (a); and
- (c) publish on a website both the notice and draft lists throughout the period specified under sub-paragraph (a).

4. In compiling and finalising the lists under paragraph 2, the returning officer may presume any declaration of entitlement to a right of common<sup>(6)</sup> contained in the register of common land kept by Devon County Council to be accurate.

5. The returning officer may request further information from any person who makes representations under paragraph 3(a), and from any person the subject of such a representation, and in particular may require proof of ownership of, or (as applicable) other title to, land from—

- (a) any person claiming to be entitled to be included on the list under paragraph 2(a) or (b) as the owner of any interest in land to which a right of common is registered as being attached; and
- (b) any person claiming to be entitled to be included on the list under paragraph 2(c) as an owner of land forming part of the Common.

6. In finalising the lists, the returning officer—

- (a) must take account of any representations received within the time specified under paragraph 3(a) and any further information provided pursuant to a request under paragraph 5; and

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<sup>(6)</sup> Regulation 44 of the Commons Registration (England) Regulations 2008 (S.I. 2008/1961, amended by S.I. 2009/2018) provides for the making of declarations of entitlement to a right of common.



- (b) must not take account of any matter which is, or was, capable of being registered under Part 1 of the 2006 Act, and which has not been registered (though not so as to exclude any matter on the ground only that it was capable of being the subject of a declaration of entitlement to a right of common but was not thus declared).

7. The decision of the returning officer as to whether or not any person is entitled to be included on any list is conclusive, and the validity of the election or appointment of any member of the Council may not be questioned in any legal proceedings on the ground that any person should have been included in or omitted from any list.

8.—(1) The returning officer must, not less than 28 days before the first meeting of the Council—

- (a) give notice of the holding of the initial meeting of the Council;
- (b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received; and
- (c) invite the owner to appoint a member of the Council.

(2) The returning officer must perform his obligations under sub-paragraph (1) by means of—

- (a) notice in writing to every person on a list compiled in accordance with paragraph 2; and
- (b) advertisement in a local newspaper circulating in the area of the Common.

9. In relation to each list, only persons included on the list are entitled to vote to elect or, as the case may be, to appoint, members of the Council of the category listed.

10. The only persons eligible for election as members of the Council are—

- (a) in respect of persons to be elected under article 4(1)(a), the persons included on the relevant list compiled pursuant to paragraph 2(a); and
- (b) in respect of persons to be elected under article 4(1)(b), the persons included on the relevant list compiled pursuant to paragraph 2(b).

11. At the first meeting of the Council—

- (a) the returning officer must announce the name of any validly appointed member of the Council and any valid nominations received for membership of the Council; and
- (b) in relation to either of the categories mentioned in article 4(1)(a) and (b)—
  - (i) where the number of valid nominations does not exceed the number of vacancies to be filled, the returning officer must declare the candidate or candidates to be duly elected unopposed; and
  - (ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

### **Election of subsequent members**

12.—(1) For each subsequent occasion on which new members of the Council are to be elected under article 4(1)(a) or (b), or for the purposes of any election to fill a vacancy caused by a person so elected ceasing to be a member, the secretary of the Council or another member chosen by the Council is to act as returning officer.

(2) On any such subsequent occasion, a person may only be elected as a member or vote in an election if—

- (a) in the case of an active grazier, the person is entered under article 8(1)(a) in the register maintained by the Council;
- (b) in the case of any other commoner, the person is entered under article 8(1)(c) in the register maintained by the Council.

13. Members are to be elected or appointed, and any elections are to be conducted, in accordance with the standing orders of the Council.

**General provisions**

14. In any election of members of the Council—

- (a) each commoner entitled to vote is entitled to one vote;
- (b) where two or more persons are commoners by virtue of a joint holding, they are not each entitled to vote but may jointly nominate one of them to be entitled to vote;
- (c) the returning officer may allow a person entitled to vote to appoint a proxy in writing to vote on that person's behalf; and
- (d) in the event that any candidates receive an equal number of votes, each vote received must be weighted according to the extent of the rights held by the person casting that vote (the greater the amount of the right, the greater the weight of the vote), and the candidates elected are to be those with the largest weight of votes.

15. In any appointment of a member to the Council where there is more than one owner of the Common, the appointment is to be made—

- (a) by the owner who owns more than half the area of the Common; or
- (b) where no-one owns more than half the area of the Common, by any two or more owners who, acting jointly in the making of the appointment, between them own more than half the area of the Common.

16. A declaration signed by the returning officer as to the election or appointment of a person to the Council is evidence of such election or appointment.

SCHEDULE 2

Article 9

Decisions of the Council

**Voting rights**

1.—(1) Members of the Council elected or appointed pursuant to article 4(1)(a) to (c) are entitled to vote in any decisions taken by the Council, and their votes are to have equal weight.

(2) Members of the Council co-opted pursuant to article 4(1)(d) are advisory members and are not entitled to vote in decisions taken by the Council.

**Decisions requiring special majority**

2.—(1) A decision by the Council on any of the matters specified in sub-paragraph (2) must be made at a meeting of the Council and approved in a vote by a majority of at least two-thirds of the members described in paragraph 1(1) who are present.

(2) Those matters are—

- (a) making, varying or revoking any rules;
- (b) making, amending or revoking any standing orders;
- (c) entering into any agreement under which the Council undertakes any obligation as to the manner in which it is to exercise any of its functions; and
- (d) co-opting any person as a member of the Council.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes, with effect from 1st April 2014, a commons council (“the Council”) for the areas of registered common land within the County of Devon known as Brendon Common (*article 3*).

The standard constitution for commons councils, as prescribed in the Commons Councils (Standard Constitution) (England) Regulations 2010 (S.I. 2010/1204), applies to the Council by virtue of section 29(2) of the Commons Act 2006 (c. 26).

This Order—

makes provision as to the Council’s membership, and the election or appointment of its members (*article 4 and Schedule 1*);

confers functions on the Council, including that of making rules relating to agricultural activities, the management of vegetation, and the exercise of, and the leasing and licensing of, rights of common (*articles 5 and 6*);

requires that any rule made or varied by the Council (other than a variation consisting solely of the revocation of any previously made rule) must be confirmed by the Secretary of State before it comes into force, and describes the procedure for publicising any rules it makes, and for obtaining the Secretary of State’s confirmation of them (*article 7*);

describes the information to be included in the register of grazing required to be prepared and maintained by the Council (*article 8*);

describes the manner in which decisions are to be taken by the Council (*article 9 and Schedule 2*).

An Impact Assessment has not been produced in respect of this Order because no burden on the private, voluntary or public sector is foreseen.