

EXPLANATORY MEMORANDUM TO
THE COMMONS REGISTRATION (ENGLAND) REGULATIONS

2014 No. 3038

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Commons Registration (England) Regulations 2014 provide for the maintenance of the registers of common land and town and village greens, including the procedure for applications to amend them under Part 1 of the Commons Act 2006 (the Act). The registers can be amended to add new information or amend or remove existing information. Amendments can be made to reflect contemporary changes (sections 6 to 15 of the Act), mistakes and anomalies (section 19 and Schedule 2 to the Act) and historic unregistered events (Schedule 3 to the Act).

2.2 The Regulations apply in full to the areas of Cumbria and North Yorkshire (“the 2014 registration authorities”) and the pioneer areas (“the original registration authorities”, which were previously subject to the Commons Registration (England) Regulations 2008, which the 2014 Regulations now replace) (explained below). Cumbria and North Yorkshire are required to review their registers to identify anomalies and to process fifteen types of applications.

2.2 The Regulations partially apply elsewhere in England to allow five types of applications to correct mistakes in the registers. The five types of applications are those under: section 19(2)(a) (correction of mistakes made by an authority when it made an entry in the register), and paragraphs 6, 7, 8 and 9 of Schedule 2 which allow for the removal of certain types of land that was wrongly registered as common land or town or village green.

2.3 The Regulations require applications to be submitted to Commons Registration Authorities, who have the power to charge fees, set by themselves in relation to most types of applications (certain types are specified as liable to no fee, due to a public interest). Applications must be referred to the Planning Inspectorate for determination where the Authority has an interest in the outcome of an application. Applications to correct a mistake, or add land to, or remove land from, the registers must also be referred provided objections have been received from persons with a legal interest in the land. The Planning Inspectorate will charge fees for referred applications but the amounts are prescribed in the Regulations (with, again, “no fee” being specified for some types of application).

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

3.1 None.

4. Legislative Context

4.1 The Act received Royal Assent on 19 July 2006. Part 1 of the Act provides for the maintenance of, and amendment of the information in, the registers of common land and of town and village greens which were established under the Commons Registration Act 1965.

4.2 Section 1 provides that commons registration authorities shall continue to keep registers of common land and of town and village greens (i.e. those originally prepared under the 1965 Act). Sections 2 to 5 provide for the purpose of the registers, the definition of commons registration authorities and the land to which Part 1 applies, which is all England and Wales, except the New Forest, Epping Forest and the Forest of Dean.

4.3 Sections 6 to 17 specify the types of applications to amend the registers to reflect contemporary events which affect the information contained in the registers. For example section 6 allows for the creation of rights of common, either over a registered common or land that would become common land for having become subject to a right of common over it.

4.4 Section 18 provides for the conclusiveness of the registers, e.g. land (i.e. common land) is deemed to be subject to rights of common upon the registration of the right. Section 19 allows for the correction of the registers in prescribed circumstances, e.g. where the commons registration authority made a mistake when it made an entry in the register.

4.5 Section 20 requires that the registers must be made available for inspection by any person and section 21 provides for official copies of the registers.

4.6 Section 22 gives effect to Schedule 2 which allows for the registration of common land and town and village greens that were not registered, and for the removal of land that was wrongly registered as common land or town or village green, under the 1965 Act.

4.7 Section 23 gives effect to Schedule 3 which provides for a transitional period during which historic events which were not recorded in the registers can now be recorded.

4.8 Section 24(1) provides the Secretary of State with powers to make regulations that provide for the making and determination of applications to amend the registers under Part 1. Subsection (2) lists the matters that the regulations may in particular provide for, which includes: the form of an application, the information to be supplied with one, notice requirements, the making of objections and the persons who must be consulted, the holding of inquiries, the evidence to be taken into account. Subsection (2A) provides the

Secretary of State with powers to make regulations for the fees payable for applications, including where the person who determines the application is different from the person to whom it was made. Subsection (3) provides that the regulations can specify the persons entitled to make certain types of application. Subsection (6) provides the Secretary of State with powers to make regulations concerning the making and determination of proposals made by commons registration authorities (i.e. applications the authority makes to itself), and subsection (7) lists the matters that such regulations may in particular include. Subsection (8) provides that the appropriate national authority (in England, the Secretary of State) may make regulations to appoint persons to discharge functions of a commons registration authority in relation to applications or proposals.

4.9 Section 25 provides for the creation of electronic registers of common land and town and village greens.

4.10 The Commons Registration (England) Regulations 2008 implemented Part 1 in the seven 'pioneer' local authority areas in October 2008. Those authorities comprise: Blackburn with Darwen Borough Council, Cornwall Council, Devon County Council, County of Herefordshire District Council, Hertfordshire County Council, Kent County Council and Lancashire County Council. The 2008 Regulations will be revoked and replaced by these new Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 The Regulations apply in full to the areas of Cumbria, North Yorkshire and the pioneer areas, but only partially elsewhere in England in respect of five types of application to correct historic mistakes in the registers.

6. European Convention on Human Rights

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 Commons Registration Act 1965 created a legal record of common land, town and village greens and rights over the land by requiring that all were registered by a cut-off point, failing which they lost that status. The compilation of the original registers resulted in many mistakes and anomalies, e.g. land was recorded as common land despite having never been part of the common. Many of these mistakes were not noticed until after the registers became conclusive on 31 July 1970 but there were insufficient powers to correct them. The 1965 Act also failed to require that registers kept updated when events took place that affected the information in the registers. Consequently the registers currently maintained under the 1965 Act are not an accurate record of common land, town or village greens or the rights over them.

7.2 Part 1 of the 2006 Act provides for applications to amend the information in the registers to reflect contemporary events, anomalies and mistakes, and unregistered events. It also provides that changes to the information in the registers are only considered lawful when recorded in the register, which ensures that the register will be kept up to date.

7.3 The pioneer project ran from October 2008 to September 2010. We collected information on the efficacy of the regulations and the guidance, and data on the number of applications and the cost of implementation.

7.4 Defra ministers announced on 9 January 2014, via Written Ministerial Statements, the next stage of implementation of Part 1: to fully commence it in the areas of Cumbria and North Yorkshire and to partially implement it elsewhere in England by enabling five types of application to correct mistakes.

8. Consultation outcome

8.1 A detailed public consultation, titled 'Updating the commons registers – Implementation of Part 1 of the Commons Act 2006' took place in September 2007 and contained proposals for what became the Commons Registration (England) Regulations 2008.

8.2 The new Regulations are based on and are largely the same as the 2008 Regulations, so there was no public consultation. Changes to the Regulations were discussed with the pioneer authorities, Planning Inspectorate and the National Common Land Stakeholder Group. These groups comprise expert practitioners and a broad range of stakeholder representatives (from the National Farmers Union and Country Land and Business Association to commoners associations).

9. Guidance

9.1 Comprehensive guidance entitled 'Guidance for commons registration authorities and the Planning Inspectorate for the pioneer implementation areas' is available to the pioneer authorities. There is also guidance for applicants. Both will be revised to reflect the new Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is zero net cost. The Impact Assessment was validated by the Regulatory Policy Committee as a green rating.

10.2 The impact on the public sector is a cost of £1.06 million over five years. There are a number of unquantified public and private benefits which accrue from correcting the registers – see the Impact Assessment.

10.3 An Impact Assessment is attached to this memorandum, both of which will be published on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business farmers who have rights of common, e.g. livestock farmers.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Regulations, subject to one exception, do not place a legal duty to keep the information in the registers up to date, so applications will only be submitted where the benefit outweighs the cost. The exception is statutory dispositions (section 14 of the Act): these are legal instruments that displace or extinguish common land or town or village greens and rights over them, e.g. Compulsory Purchase Orders or road exchange schemes. The Regulations require the sponsor of a statutory disposition to register the displacement or extinguishment of the common or town or village green. Generally statutory dispositions are sponsored by public bodies (e.g. local authorities or Highways Agency) or larger businesses, such as utility companies. The impact on small businesses will be minimal.

12. Monitoring & review

12.1 Bi-annual surveys will be undertaken to establish the number of applications made under the Regulations.

12.2 The Written Ministerial Statements of 9 January 2014 confirmed that “The question of further implementation of Part 1 in England will be considered again as soon as resources permit, which I expect to be within the life of the next Parliament at the earliest.”

13. Contact

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