

**EXPLANATORY MEMORANDUM TO
THE BODMIN MOOR COMMONS COUNCIL ESTABLISHMENT ORDER**

2015 No. 1515

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 To establish the Bodmin Moor Commons Council under section 26(1) of the Commons Act 2006 (the Act)¹.

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

- 3.1 None

4. **Legislative Context**

- 4.1 The Act received Royal Assent on 19 July 2006, and Part 2 (comprising sections 26 – 37) provides for the establishment of statutory commons councils. The Secretary of State can establish commons councils by order under section 26(1). Commons councils are democratic structures through which the various interests (e.g. commoners, landowners) on a common can manage and protect the common. Part 2 of the Act was commenced in England on 20 January 2010 by the Commons Act 2006 (Commencement No. 5) (England) Order 2010².

- 4.2 Section 31 of the Act prescribes the functions capable of being conferred on commons councils, covering the management of (a) agricultural activities, (b) vegetation and (c) rights of common, on the land for which the council is established, which may include, in each case, the function of making rules. According to section 34 of the Act where any rule specifies that its contravention constitutes a criminal offence, and such rule is made with the consent of the Secretary of State, then breach of that rule is an offence.

- 4.3 The Secretary of State is required by section 29(1) of the Act to prescribe in regulations standard terms regarding the constitution and administration of all commons councils. This was done in the Commons Councils (Standard Constitution) (England)

¹ The Commons Act 2006: www.legislation.gov.uk/ukpga/2006/26/pdfs/ukpga_20060026_en.pdf.

² 2010 No. 61: www.legislation.gov.uk/uksi/2010/61/pdfs/uksi_20100061_en.pdf.

Regulations 2010³, which came into force in April 2010 and provide the terms by which commons councils generally must abide. The Standard Constitution (found in the Schedule to S.I. 2010/204) contains terms governing a commons council's membership and proceedings, procedures as to the payment of fees, its use of income and property, and the requirement to keep accounts and the manner of executing documents. Section 29(4) of the Act gives the Secretary of State power to supplement, disapply or replace any terms of the Standard Constitution when making an establishment order. Other elements can be specified in the establishment order of a commons council and pages 21 and 22 of the Technical Guidance on setting up a commons council⁴ lists such likely elements.

4.4 The Secretary of State must, under section 27 of the Act, consult on a draft order (which would establish a commons council) and can only make the order if, having regard to responses received and, if applicable, the result of a local inquiry, substantial support is shown for the making of the order. The Secretary of State must pay particular regard to responses from persons with rights other than rights of common in relation to the land (e.g. tenants, the landowner), person with rights of common over the land, and persons with a legal power or duty to maintain or manage the land (e.g. a National Park Authority).

4.5 A commons council is established with effect from the appointed day specified in its establishment order. For the Bodmin Moor Commons Council Establishment Order 2015 (the Order), this will be 1 March 2016, which is six months after the Order itself comes into force on 1 September 2015. This delay will provide the returning officer, who is appointed by the Secretary of State, sufficient time to prepare lists of persons eligible to vote in the first elections, organise the meetings at which the elections will take place, which includes giving adequate notice, and announcing the results of the elections. Schedule 2 to the Order makes provision for the first elections and appointments of the Council's members.

4.6 The Order makes provision for the membership of the Council, which is restricted to between 24 and 26 members. There will be sixteen members who are active graziers, four other commoners who are not active graziers and four members will represent the landowners' interests. Two other non-voting members may be co-opted.

4.7 The Bodmin Moor Commons Council will cover 71 register units on Bodmin Moor, which are listed in Schedule 1. To facilitate elections the commons will be broken into eight 'Sections': (1) Blisland, (2) Hamatethy, (3) Davidstow, (4) Westmoor, (5) East Moor, (6) St Cleer, (7) Warleggan and (8) Cardinham. Two active graziers will be elected by each Section to represent the active graziers' interests. Some of the Sections will be combined into "Section-Groups" for the purpose of electing the four other commoners who are not active graziers and the four landowner representatives. The Sections will be

³ S.I. 2010/1204: www.legislation.gov.uk/uksi/2010/1204/made.

⁴ The Technical Guidance on setting up a commons council can be found at the following web address: www.gov.uk/government/uploads/system/uploads/attachment_data/file/218757/cc-techguide.pdf

combined into four such Groups as follows: one and two; three, four and five; seven and eight. Section 6 will constitute a Section-Group on its own.

4.8 Article 5 of the Order prescribes the Council's functions. These are the management on the Common of the agricultural activities, vegetation and the rights of common; the ability to make rules; the preparation and maintenance of a register of the grazing animals on the common; the establishment and maintenance of boundaries on the common; and removing unlawful boundaries, other encroachments and animals unlawfully permitted to graze the common. Article 6 specifies further details for rules relating to the keeping of animals on the Common. Article 7 provides the procedure for making, varying or revoking rules.

4.9 Article 8 of the Order provides for the register to be maintained by the Council, which is to be prepared within one month of the appointed day. The register must record the name and address of each person (whether a commoner or not) who has grazed animals on the common during the preceding year, as well as any other commoner who applies to be included in the register; a description of their right of common (or other right); the number, types and breeds of animals they currently have grazing the common; the period during which the grazing takes place; the details related to the identification of the ownership of the animals; and any other information the Council thinks fit.

4.10 Article 9 concerns the decisions of the Council, the details for which are provided by paragraph 9 of the Standard Constitution as read with Schedule 3 to the Order.

4.11 Article 10 requires an election to be held if any Section has no representatives left on the Council, (while at the same time filling any other vacancies as may exist amongst the Council's membership).

4.12 Article 11 revokes any extant Regulations or arrangements made in respect of the Common, or any part of them, under section 1 of the Commons Act 1908. While there is reason to believe that such Regulations and arrangements have been made, proof of that fact has eluded us, and we have been unable to find a current definitive version of them.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 The Order will apply to many areas of common land on Bodmin Moor, Cornwall, but not all. The relevant commons have been recorded by their register unit number in the register of common land held by Cornwall Council. The name and corresponding register unit for those areas of common that are included are listed in Schedule 1 to the Order.

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 In August 2010, Natural England commissioned work on a proposal to create a Bodmin Moor Commons Council. The proposal was submitted to Defra in April 2011 but was returned for further work which was overseen by Landsense Professional Ltd due to its experience on working on the creation of Brendon Commons Council. The proposal was resubmitted in March 2014 and accepted, so work commenced on finalising the requirements for the Council and the draft establishment order.

7.2 A consultation on the draft Bodmin Moor Commons Council Establishment Order was published⁵ on 13 March and ran until 13 April 2015. The short consultation period, which was originally supposed to be two weeks, was agreed in advance by the commoners, landowners, the Cornwall AONB Partnership and Natural England.

8. Consultation outcome

8.1 The consultation received 202 responses and 195 (96%) responded in favour of the Order and 7 (4%) were against it.

8.2 Regarding persons with a legal interest in the land, responses were received from commoners, landowners, and bodies with statutory management functions on the land. There were 166 such responses, 160 were in favour and 6 were against.

9. Guidance

9.1 The technical guidance on setting up a commons council was published in February 2010 and provides advice to candidates on the legal framework, the role and functions of a commons council, how to set up a commons council and how it operates. A web link to the guidance can be found at footnote 4.

10. Impact

10.1 The impact on business, charities or voluntary bodies is neutral except in relation to the farming businesses related to the Bodmin Moor commons – see 11 below.

10.2 The impact on the public sector is neutral.

10.3 An Impact Assessment has not been prepared for this instrument, but one was prepared for the Standard Constitution⁶ which provides figures on the estimated costs of establishing small and umbrella commons councils and running costs.

⁵ A copy of the consultation can be found here: <https://www.gov.uk/government/consultations/commons-council-establishment-order-bodmin-moor>.

⁶ A copy of the Impact Assessment can be found here: <http://archive.defra.gov.uk/rural/documents/protected/common-land/cc-iasummary.pdf>.

11. Regulating small business

11.1 The Order applies to small farm businesses which have a legal interest in the relevant Bodmin commons.

11.2 The costs imposed by the Order relate to taking out notices in at least one local newspaper to give notice of (a) the first elections, which is a one-off cost, and (b) when applying to the Secretary of State for confirmation of rules, which will seldom be done. Where the gross annual income of the Bodmin Moor Commons Council exceeds £10,000 then the accounts must be audited by an independent examiner, and this may lead to further minimal costs (paragraph 24(1) of the Standard Constitution).

11.3 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep to a minimum the amount of regulation which would result in the Bodmin Commons Council incurring costs.

12. Monitoring & review

12.1 Defra officials will remain in contact with the Bodmin Moor Commons Council.

13. Contact

Grant McPhee at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 6326 or email: grant.mcphee@defra.gsi.gov.uk, can answer any queries regarding the instrument.