

SCHEDULE 2

Article 4(8)

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 of the members of the Council under article 4(1)(a) and (b), the returning officer must, in relation to each Section, compile a list of each of the following—

- (a) persons who appear to the returning officer to be commoners who have lawfully grazed animals in the period of 12 months immediately preceding the date of coming into force of this Order on land registered as common land in that Section;
- (b) persons who appear to that officer to be commoners, not falling within sub-paragraph (a), entitled to exercise rights of common over land registered as common land in that Section.

3. For the purpose of the first appointment of the members of the Council under article 4(1)(c), the returning officer must compile a list of the persons who appear to the returning officer to own any land forming part of the Commons.

4.—(1) Sub-paragraph (2) applies in relation to a commoner who is entitled to exercise rights of common over land in more than one Section.

(2) The commoner must be included on a list compiled under paragraph 2 for at least one Section in which the rights are exercisable (to be that for the Section notified by the commoner to the returning officer or, in the absence of such notification, that for such Section as the returning officer decides), and must also be included on the list for any one or more other Sections in respect of which the rights are exercisable if the commoner so wishes and has notified the returning officer accordingly, and consequently—

- (a) for the purposes of an election under article 4(1)(a), the commoner is entitled to vote in the election held for each of the Sections in respect of which the commoner is listed; and
- (b) for the purposes of an election under article 4(1)(b), the commoner is entitled to vote in the election held for each of the Section-Groups of which the Section in respect of which the commoner is listed forms part, and if the commoner is listed in more than one of the Sections within the same Section-Group the commoner is entitled to vote in respect of each such Section.

5. Before finalising the lists under paragraphs 2 and 3, the returning officer must—

- (a) by notice in one or more local newspapers circulating in the area of the Commons, 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 made about them, giving 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).

6. In compiling and finalising the lists under paragraph 2, the returning officer may presume any declaration of entitlement to a right of common⁽¹⁾ contained in the register of common land kept by Cornwall Council to be accurate.

7. The returning officer may request further information from any person who makes representations under paragraph 5(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 a list under paragraph 2 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 3 as an owner of land forming part of the Commons.

8. In finalising the lists, the returning officer—

- (a) must take account of any representations received within the time specified under paragraph 5(a) and any further information provided pursuant to a request under paragraph 7; and
- (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).

9. 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.

10.—(1) The returning officer must, not less than 28 days before holding a meeting for the purpose of electing the first members of the Council of the categories described in article 4(1)(a) and (b)—

- (a) give notice of the time, date (to be before the appointed day), and place of a meeting for that purpose;
- (b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received; and
- (c) instruct the owners of land forming part of the Commons to appoint four members of the Council.

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

- (a) notice in writing to every person on a list compiled under paragraph 2 or 3; and
- (b) advertisement in one or more local newspapers circulating in the area of the Commons.

11. In relation to each list compiled under paragraph 2, only persons included on the list are entitled to vote to elect members of the Council of the category listed.

12. The only persons eligible for election or appointment as members of the Council are—

- (a) in respect of persons to be elected under article 4(1)(a) in relation to each Section, the persons included on the relevant list compiled pursuant to paragraph 2(a) for that Section (but no person included on more than one such list may be elected for more than one Section);

(1) Regulation 43 of the Commons Registration (England) Regulations 2014 ([S.I. 2014/3038](#)) provides for the making of declarations of entitlement to a right of common.

- (b) in respect of persons to be elected under article 4(1)(b) in relation to each Section-Group, the persons included on the relevant list or lists compiled pursuant to paragraph 2(b) for the Section or Sections which constitute that Section Group (but no person included on lists relating to more than one Section-Group may be elected for more than one Section-Group); and
- (c) in respect of persons to be appointed under article 4(1)(c), the persons included on the list compiled pursuant to paragraph 3, or any other person nominated by a person included on that list.

13. The owners of land forming part of the Commons must, before the date of the meeting notified under paragraph 10(1)(a), notify the returning officer in writing of the names of the four persons whom they have chosen to appoint as members of the Council pursuant to article 4(1)(c).

14. At the meeting notified under paragraph 10(1)(a)—

- (a) the returning officer must announce—
 - (i) the names of any validly appointed members of the Council; and
 - (ii) any valid nominations received for membership of the Council; and
- (b) in relation to each 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 and appointment of subsequent members

15.—(1) For each subsequent occasion on which 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) in the case of an active grazier, a person may only be elected as a member or vote in an election if the person is entered under article 8(1)(a) or pursuant to an application under article 8(2) in the register maintained by the Council;
- (b) in the case of any other commoner, a person may only be elected as a member or vote in an election if the person is entered under article 8(1)(c) in the register maintained by the Council; and
- (c) while a commoner entitled to exercise rights in more than one Section is entitled to a vote in respect of each such Section, no person may be elected for more than one Section or, as the case may be, Section-Group.

16. 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

17. In any election of members of the Council—

- (a) in any one Section (whether or not relevant to that Section's forming part of a Section-Group) 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 held in the Section in question, the greater the weight of the vote), and the candidate elected is to be that with the largest weight of votes.

18. 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.

Changes to legislation:

There are currently no known outstanding effects for the The Bodmin Moor Commons Council Establishment Order 2015, SCHEDULE 2.