



# Greenham and Crookham Commons Act 2002

## 2002 CHAPTER i

### PART 3

#### PUBLIC ACCESS

#### 11 Rights of public access

- (1) Subject to the following provisions of this Act and compliance with all rules, regulations or byelaws relating to the Common and any additional open space and for the time being in force, the public shall have a right of access to the Common and any additional open space on foot for the purpose of open-air recreation; and a person—
  - (a) who enters upon such land for that purpose without breaking or damaging any fence or hedge; or
  - (b) who is on such land for such purpose after having so entered on the land, shall not be treated as a trespasser on that land or incur any other liability by reason only of entering or being on the land.
- (2) Subject as mentioned in subsection (1) above, the public shall have a right of access on horseback or bicycle on such defined paths or tracks over the Common and any additional open space as the Council may from time to time determine in consultation with the Commission.
- (3) Subsections (1) and (2) above shall not apply to a person who, in or upon any such land—
  - (a) without lawful authority or written authority from the Council—
    - (i) rides any horse or bicycle except on such a defined path or track as is mentioned in subsection (2) above; or
    - (ii) drives or rides any other vehicle;
  - (b) hinders or obstructs—
    - (i) any officer or other person authorised by the Council; or

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- (ii) any commoner or any other person in the exercise of any right or power vested in that person.
- (4) Subsections (1) and (2) above shall have effect subject to the restrictions contained in paragraphs 1 and 2 of Schedule 2 to the 2000 Act (general restrictions to be observed by persons having access to land by virtue of that Act) but with the following modifications to paragraph 1—
  - (a) the reference to section 2(1) of the 2000 Act shall have effect as if it were a reference to those subsections;
  - (b) paragraph (a) shall be omitted;
  - (c) paragraph (c) shall not preclude a person riding a horse on such a defined path or track as is mentioned in subsection (2) above; and
  - (d) paragraph (1) shall have effect as if after “plant”, in both places where it occurs, there were inserted “, fungus”.
- (5) Subsections (1) and (2) above shall not apply to land which for the time being is excepted land within the meaning of section 1(2) of the 2000 Act.
- (6) Nothing in this section shall affect the exercise of powers under any enactment whereby access to the Common or additional open space may be regulated or prohibited.
- (7) Subsections (4) and (5) above have effect subject to section 42 (Transitional provisions) below.

## **12 Effect of public access on owners' rights and liabilities**

- (1) The Occupiers' Liability Act 1957 (c. 31) shall have effect as if in section 1 each reference to a right conferred by section 2(1) of the 2000 Act included a reference to a right conferred by section 11 (Rights of public access) of this Act.
- (2) Any restriction arising under a covenant or otherwise as to the use of any land comprised in the Common or any additional open space shall have effect subject to the provisions of this Part of this Act and any liability of a person interested in such land in respect of such a restriction shall be limited accordingly.
- (3) For the purposes of any enactment or rule of law as to the circumstances in which the dedication of a highway or the grant of an easement may be presumed, or may be established by prescription, the use by the public or by any person of a way across any land at any time while it is comprised in the Common or any additional open space shall be disregarded.
- (4) Subsection (1) above has effect subject to section 42 (Transitional provisions) below.

## **13 Map of land subject to public access**

- (1) The Council shall prepare and keep up-to-date a map on a scale not less than 1:5000 showing—
  - (a) the Common;
  - (b) any additional open space for the time being designated under section 6 (Designation of additional open space) above; and
  - (c) any highways over the Common or any additional open space.
- (2) The Council shall—

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- (a) send a copy of the map (and every subsequent revision of the map) to Ordnance Survey; and
  - (b) make a copy of the map available for inspection by the public at each principal public library in the area of the Council and at such other place or places as the Council may determine.
- (3) The Council shall display at places where the public obtain access to the land—
- (a) reproductions of the map on an appropriate scale; and
  - (b) notices specifying any restrictions on access to the land or any part of the land, whether the restrictions have effect by virtue of any of the provisions of this Part of this Act or otherwise.

#### **14 Power to restrict public access**

- (1) The Council may regulate or prohibit for such a period as, in their opinion is reasonably necessary, public access to any part of the Common or any additional open space (including any path or track) if they think it reasonably necessary in the interests of public safety or for the purpose of—
- (a) the restoration or conservation of the natural beauty of the Common or any additional open space;
  - (b) the restoration or conservation of the suitability for grazing or recreation of that part of the Common or any additional open space;
  - (c) the preservation of trees or shrubs planted on that part;
  - (d) the protection of animals pastured on the Common or any additional open space;
  - (e) the protection of ground nesting birds; or
  - (f) the prevention of the risk of fire.
- (2) During the currency of any such regulation or prohibition, the right of access of the public and the exercise of rights of common over the land concerned and all other interests affected shall be subject to the regulation or prohibition.
- (3) Before exercising any power under subsection (1) above, the Council shall obtain the consent of the Commission except in emergency or where—
- (a) the area of the land concerned is less than two hectares; or
  - (b) the duration of the regulation or prohibition is for a period not exceeding 30 days.
- (4) Where the Council regulate or prohibit public access to any land—
- (a) they may fence the land for the purpose of securing compliance with the regulation or prohibition; and
  - (b) they shall display on the land such notices as they consider are reasonably required to inform members of the public of the regulation or prohibition and the duration of, and the reason for, the regulation or prohibition.
- (5) Nothing in this section shall authorise the Council—
- (a) to close, or restrict the right of members of the public to pass along, any highway; or
  - (b) to regulate or prohibit access to any land by the owner of the land or by any person acting on behalf of the owner.

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## **15 Power to make byelaws**

- (1) The Council may make and enforce byelaws for any of the following purposes—
  - (a) the conservation of the natural beauty of the Common and any additional open space;
  - (b) the preservation of order and the prevention of nuisances on that land;
  - (c) the good management of that land;
  - (d) to secure that persons on the land will so behave themselves as to avoid undue interference with the enjoyment of the land by other persons or the exercise of rights of common; and
  - (e) to secure public safety.
- (2) Without prejudice to the generality of subsection (1) above, byelaws under this section may—
  - (a) regulate or prohibit the lighting of fires;
  - (b) regulate or prohibit the use of the Common and any additional open space for any particular purpose;
  - (c) make provision for the control of dogs and other animals;
  - (d) make provision that a person contravening the byelaws shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Byelaws under this section—
  - (a) may relate to the whole or any part of the Common;
  - (b) may relate to specified additional open space or to all additional open space for the time being designated (whether before or after the making of the byelaws) under section 6 (Designation of additional open space) above (subject to such exceptions as may be specified); and
  - (c) may make different provision for different cases and in relation to different parts of such land.
- (4) Before making any byelaws under this section the Council shall consult with the Commission and with any body appearing to them to be representative of persons who may be affected by the byelaws.
- (5) Sections 236 and 238 of the 1972 Act (which respectively relate to the procedure for making byelaws and provide for the proof of byelaws in legal proceedings) shall apply to byelaws made under this section; and the confirming authority for the purposes of section 236 of that Act shall be the Secretary of State.
- (6) The Council may appoint such number of persons as may appear to them to be necessary or expedient to act as rangers as respects the Common and any additional open space; and subsections (3) and (4) of section 92 of the 1949 Act (which confer certain powers on wardens for the enforcement of byelaws under that Act) shall apply in relation to rangers appointed under this section as they apply in relation to wardens appointed under that Act.

## **16 Power to provide parking spaces**

- (1) Subject to subsection (3) below, to facilitate the exercise of public access to the Common and any additional open space, the Council may—

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- (a) on any such land secure the provision (whether by the Council or by any other person) of parking spaces and means of access to and egress from parking spaces; and
  - (b) for that purpose carry out such work as may appear to them to be necessary or expedient.
- (2) Subject to subsection (3) below but without prejudice to section 20 (Ancillary provisions relating to Council’s functions) below, the Council may make such charges for the use of parking spaces provided by them under this section, and may erect such devices for the collection of charges and controlling such use, as they think fit.
- (3) The Council shall not make any provision for parking spaces, or make charges for the use of parking spaces, under this section except with the consent of the Commission.

## **17 Power to provide other facilities**

- (1) Subject to subsection (2) below, the Council may, with the consent of the Commission, on the Common or any additional open space—
- (a) provide, maintain, alter, improve or remove cattle grids;
  - (b) lay out tracks and paths suitably surfaced in gravel or other material which is in keeping with the Common or any additional open space—
    - (i) for use by persons on horseback or on bicycles,
    - (ii) to facilitate access to the Common and any additional open space by disabled persons and other members of the public, or
    - (iii) to facilitate access over the Common and any additional open space to adjoining land;
  - (c) provide receptacles for refuse or litter;
  - (d) provide picnic sites;
  - (e) provide public sanitary conveniences.
- (2) The facilities specified in subsection (1)(d) or (e) above shall not be provided on the Common.
- (3) For the purposes set out in section 8(1)(a) to (c) (General duty of Council and Commission) above (but not otherwise) the Council may, with the consent of the Commission, make provision for the construction of such other works on the Common or any additional open space as the Council think fit.

## **18 Exchange of common land**

- (1) If the Council consider that it will be conducive to the attainment of all or any of the purposes set out in section 8(1) (a) to (c) (General duty of Council and Commission) above, the Council may, subject to the provisions of this section, exchange for any land forming part of the Common (“the land disposed of”) other land (“the exchange land”).
- (2) The Council may not exercise the power under subsection (1) above, unless it is satisfied that the requirement of subsection (3)(a) or (b) below is met.
- (3) The requirement of this subsection is—
- (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons entitled to

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- rights of common and to the public and that the land given in exchange has been or will be vested in the Council; or
- (b) that the effect of the exchange will be to improve the conservation and management of the Common as a whole and benefit the neighbourhood.
- (4) Upon the exchange of any land under this section—
- (a) the land disposed of shall cease for all purposes to form part of the Common and shall be freed from all rights and obligations whatsoever attaching to the land by virtue of its having been common land (whether under this Act, any other enactment or otherwise) but shall remain subject to any other rights to which it was subject before the exchange; and
- (b) the exchange land shall become part of the Common and subject to all rights and obligations under this Act and any other enactment or rule of law to which the land disposed of was subject.
- (5) The Council may only exercise the power under subsection (1) above—
- (a) where the area of the land to be disposed of is less than five hectares, with the prior approval of either the Secretary of State or the Commission; or
- (b) in any other case, with the prior approval of the Secretary of State.
- (6) Before making an application to the Secretary of State or the Commission for approval under subsection (5) above, the Council shall publish the required notice in a local newspaper circulating in the area of the Common.
- (7) The required notice is a notice—
- (a) stating that the Council proposes to apply to the Secretary of State or the Commission for consent to exchange land under subsection (5) above;
- (b) naming the Council's offices or another place in the area of the Council where a plan showing the location of the land to be disposed of and the exchange land can be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours; and
- (c) specifying the period of time (not being less than 21 days from the date of the notice) within which, and the manner in which, any person may serve on the Council any written representations with respect to the proposed exchange.
- (8) The Council—
- (a) shall consider any written representations duly made under subsection (7) above; and
- (b) may withdraw the proposal, or make any modifications to it, in the light of any such representations.
- (9) If the Council do not withdraw the proposal, they may apply to the Secretary of State or the Commission for consent under subsection (5) above to the proposed exchange (whether as originally made or as modified under subsection (8) above) and shall send to the Secretary of State or the Commission with the application a copy of any written representation duly made under subsection (7) above which has not been withdrawn.
- (10) Neither the Secretary of State nor the Commission shall give an approval to the exchange of any land under subsection (5) above unless the Secretary of State or, as the case may be, the Commission—
- (a) is satisfied that the requirement of subsection (3)(a) or (b) above is met; and
- (b) has considered any written representations duly made under subsection (7) above.

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- (11) The provisions of section 123 of the 1972 Act (disposal of land by principal councils) shall not apply in relation to any disposal of land by the Council as part of an exchange of land under this section.

## **19 Special events and activities**

- (1) The Council may, with the consent of the Commission, authorise the holding on the Common or any additional open space of any festival or sporting or other special event which would otherwise be contrary to byelaws made under section 15 (Power to make byelaws) above if the Council considers that the holding of the festival or event will be conducive to the attainment of all or any of the purposes set out in section 8(1) (a) to (c) (General duty of Council and Commission) above.
- (2) Any such authorisation may be given on such terms (including the payment of a fee) and subject to such conditions and restrictions as the Council may determine.
- (3) Any fee received by the Council under subsection (2) above in respect of the holding of a festival or event, after deduction of such amount as the Council may determine to be reasonably necessary to reimburse the Council for any expenditure incurred by the Council in respect of the holding of the festival or event, shall be paid by the Council to the Commission.
- (4) Subject to subsection (5) below, the Council may set aside any part of the Common and any additional open space for the exclusive use for any specified form of, or any specified, recreational or educational activity; and land may be so set aside for such use for such period or periods, or during such time or times of the day, as the Council may determine.
- (5) The power in subsection (4) above may only be exercised with the prior approval of the Commission in any case where—
- (a) the area of the land set aside exceeds two hectares; or
  - (b) the land is set aside for a period of more than 7 consecutive days.

## **20 Ancillary provisions relating to Council's functions**

- (1) Notwithstanding section 101 of the 1972 Act (discharge of any of the functions of a local authority by a committee, sub-committee, an officer of the authority or by any other local authority), the Council shall not delegate their functions under section 1(2) (Short title and commencement), section 6 (Designation of additional open space), section 8 (General duty of Council and Commission) or section 9(1) and (4) (Greenham and Crookham Common Management Plan) above.
- (2) Without prejudice to section 101 of the 1972 Act but subject to subsection (1) above, the Council may arrange for the discharge of any of their functions under this Act—
- (a) by the Commission; or
  - (b) by such other person as the Council may think fit,
- and different functions may be discharged by different persons.
- (3) The Council may provide services relating to or connected with the management of the Common to the Commission.
- (4) The Council shall have power to make reasonable charges for any facilities or services provided by them under this Act to the Commission or any other person and may

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arrange for any such facilities or services to be provided by some other person, and, where they have made arrangements for such facilities or services to be provided by some other person, may authorise that person to make reasonable charges.

- (5) Services and facilities for which charges may be made under subsection (4) above include the use of any picnic site and the use of any part of the Common or any additional open space set aside under section 19(4) (Special events and activities) above for any specified form of, or specified, recreational or educational activity.
- (6) Any power of the Council under this Act to provide any services or facilities shall include power to enter into agreements with any other person for the use, on such terms as may be agreed, of any services or facilities provided by, or under the control of, that other person.