



# Greenham and Crookham Commons Act 2002

## 2002 CHAPTER i

### PART 6

#### MISCELLANEOUS AND SUPPLEMENTARY

#### **30 Power to modify constitution of Commission**

- (1) The Council, after consulting the Commission, may make a scheme altering the constitution of the Commission.
- (2) The Council shall if so requested by an appointing body, make a scheme which—
  - (a) discharges the appointing body from its functions under this Act; and
  - (b) alters the constitution of the Commission by the removal of the member or members appointed by the appointing body;and such a scheme may make such other provision altering the constitution of the Commission, as the Council, after consulting the Commission, think necessary or expedient in consequence of paragraphs (a) and (b) above.
- (3) A scheme under this section —
  - (a) may make new provision in place of section 7 (Establishment of Greenham and Crookham Common Commission) above and Schedule 1 (Appointment and election of Commissioners), Schedule 2 (Rules applicable to election of Commissioners) and Schedule 3 (Incidental provisions with respect to Commission) to this Act, or
  - (b) may make any amendment to those provisions.
- (4) A scheme under this section shall not have effect unless it is confirmed by the Secretary of State by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Before making an application to the Secretary of State for confirmation of a scheme under this section, the Council shall—

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- (a) publish the required notice in a local newspaper circulating in the area of the Common; and
  - (b) serve the required notice with a copy of the scheme and of this section on—
    - (i) the Commission;
    - (ii) each of the appointing bodies; and
    - (iii) such other bodies as appear to the Council to represent interests likely to be concerned.
- (6) The required notice is a notice—
- (a) stating that the scheme has been made and is about to be submitted to the Secretary of State for confirmation;
  - (b) in the case of a scheme made under subsection (2) above, naming the appointing body and stating that the body has requested the Council to make a scheme discharging the body from its functions under the Act and altering the constitution of the Commission by the removal of the member or members appointed by the appointing body;
  - (c) explaining the general effect of the scheme;
  - (d) naming the Council’s offices or another place in the area of the Common where a copy of the scheme can be inspected free of charge, and copies may be obtained at a reasonable charge, at all reasonable hours; and
  - (e) specifying the period of time (not being less than 42 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 scheme.
- (7) The Council—
- (a) shall consider any written representations duly made under subsection (4) above; and
  - (b) may withdraw the scheme, or make any modifications to it, in the light of any such representations.
- (8) If the Council do not withdraw the scheme, they may apply to the Secretary of State for confirmation of the scheme (whether as originally made or as modified under subsection (5) above) and shall send to the Secretary of State with the application a copy of any written representation duly made under subsection (4) above which has not been withdrawn.
- (9) The Secretary of State shall take account of any such representation in deciding whether to confirm the scheme.

### **31 Power to grant easements over Common, etc.**

- (1) The Council may, over any relevant land, grant to the owner or occupier of any land on or adjacent to the Common or any additional open space such easements or other rights for access (with or without vehicles) or services to or in connection with the land as the Council may think fit.
- (2) Any such easements or rights may be granted on such terms (including the payment of charges, whether periodic or otherwise) and subject to such conditions as the Council may think fit.
- (3) In subsection (1) above “relevant land” means the Common and any additional open space owned by the Council.

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### **32 Power to authorise vehicles to enter Common, etc.**

- (1) The Council may authorise an officer of the Council or any other person to enter the Common or any additional open space with a vehicle subject to such conditions and restrictions as the Council may think fit.
- (2) An authority under this section may only be exercised for the purposes of the discharge of functions under this Act, emergency purposes or another purpose consistent with section 8(1)(a) to (c) (General duty of Council and Commission) above.
- (3) Except in the case of emergency, an authority under this section shall be given in writing.

### **33 Disposals of rights of common**

- (1) Notwithstanding any enactment or rule of law, a right of common upon any part of the Common shall not be severable from any land or tenement with which it was held on the appointed day except as provided in this section.
- (2) A person entitled to exercise a right of common upon any part of the Common may transfer the right without the land or tenement to which it is appurtenant to another person if, and only if, the transferee holds the legal fee simple in a relevant residence; and the right shall attach to the relevant residence.
- (3) A person entitled to exercise a right of common upon any part of the Common may let or license the right on an annual basis (without the land or tenement to which it is appurtenant).
- (4) In the case of a transfer of a right of common under subsection (2) above—
  - (a) the transferor shall give notice of the transfer to the secretary of the Commission who shall record the name and address of the transferee, in place of the transferor, as the person entitled to exercise the right; and
  - (b) subject to section 26(7) and (8) (Register to be maintained by Commission) above, the transferee shall be entitled to vote for the purposes of Schedule 1 (Appointment and election of Commissioners) to this Act.
- (5) In the case of the letting or licensing of a right of common under subsection (3) above—
  - (a) the registered commoner shall give notice of the letting or licensing to the secretary of the Commission for noting in the register, and
  - (b) no changes shall be made to the name and address of the person shown in the register as entitled to graze or exercise any other right of common or to the name of the person recorded as the person entitled to vote for the purposes of Schedule 1 (Appointment and election of Commissioners) to this Act.
- (6) In this section “relevant residence” has the same meaning as in section 5 (Restoration of extinguished rights of common) above.

### **34 Provisions of Act to replace 1983 Scheme**

- (1) Subject to subsections (2) and (3) below, on the appointed day the scheme dated 26 July 1983 (“the 1983 Scheme”) made under the Commons Act 1899 (c. 30) by the Newbury District Council (which is superseded by the provisions of this Act) shall cease to have effect.

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- (2) Notwithstanding the repeal of the 1983 Scheme, the byelaws made in pursuance of that Scheme on 10 August 1983 (which were confirmed by the Secretary of State on 7 November 1983)—
- (a) shall continue in force as if made under section 15 (Power to make byelaws) above until revoked and replaced by byelaws made under that section; and
  - (b) while so in force shall be extended so as to have effect in relation to the whole of the Common and any additional open space.
- (3) Nothing in this section shall affect the 1983 Scheme, or the byelaws made in pursuance of that Scheme, in their application to the land known as Stroud Green in the parish of Greenham in the district of West Berkshire.

### **35 Application of section 194 of Law of Property Act 1925**

- (1) Subject to subsection (2) below, the provisions of section 194 of the Law of Property Act 1925 (c. 20) (which prohibit the carrying out of certain works on commons without the consent of the Secretary of State) shall apply to the Common as they apply to land which is subject to rights of common.
- (2) The provisions of that section shall not apply in relation to the erection of any fence under section 14(4) (Power to restrict public access) above.

### **36 Local inquiries**

- (1) The Secretary of State may cause such local inquiries to be held as the Secretary of State may consider to be necessary for the purposes of any of the Secretary of State's functions under this Act.
- (2) Subsections (2) to (5) of section 250 of the 1972 Act shall apply in relation to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Commission were a local authority.

### **37 Service of notices**

- (1) A notice or other document required or authorised to be served for the purposes of this Act may be served by post.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Act is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of the body.
- (3) For the purposes of section 7 of the Interpretation Act 1978 (c. 30) as it applies for the purpose of this section, the proper address of any person in relation to the service on the person of a notice or document under subsection (1) above is, if the person has given an address for service, that address, and otherwise—
- (a) in the case of the secretary or clerk of the body corporate, the registered or principal office of that body;
  - (b) in the case of a commoner who is entered in the register, the address for the time being recorded in the register as the commoner's address; and
  - (c) in any other case the person's last known address at the time of service.
- (4) This section shall not be taken to exclude the employment of any method of service not expressly provided for by it.

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### **38 Saving for certain statutory undertakers**

(1) Nothing in this Act, or in any byelaw or regulation made under this Act, shall prejudice or affect—

- (a) the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system;
- (b) the rights of any undertakers to lay, erect, maintain, inspect, repair, renew or remove any apparatus or works in, under, over, across, along or upon the Common or any additional land;

or prohibit or regulate the use by the operator of a telecommunications code system, or by any undertakers, of equipment or the erection of structures required in connection with the exercise of their respective rights.

(2) In this section—

- (a) “telecommunications code”, “telecommunications code system” and “operator” have the meanings given to them in paragraph 1(1) of Schedule 4 to the Telecommunications Act 1984 (c. 12);
- (b) “undertakers” means any person authorised to carry on in the area of which the Common or any additional open space forms part—
  - (i) an undertaking for the supply of gas;
  - (ii) an undertaking for the supply of water;
  - (iii) an undertaking for the generation, transmission or supply of electricity;
  - (iv) a sewerage undertaking; or
  - (v) an oil undertaking; and
- (c) “apparatus” means—
  - (i) in the case of gas, water or sewerage undertakers, any sewer, mains, pipes or other apparatus belonging to or maintained by such undertakers;
  - (ii) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989 (c. 29)) belonging to or maintained by such undertakers; or
  - (iii) in the case of oil undertakers, any pipes or other apparatus belonging to or maintained by such undertakers.

### **39 Saving for areas of special scientific interest**

Nothing in this Act shall prejudice the operation of sections 28 to 33 of the Wildlife and Countryside Act 1981 (c. 69) or any other enactment relating to areas of special scientific interest under sections 28 and 29 of that Act.

### **40 Saving for town and country planning**

Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) (or any general order superseding that order made under section 59 of the Town and Country Planning Act 1990 (c. 8), or any corresponding provision of an Act repealing that section), to be development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out.

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#### **41 Relationship with Countryside and Rights of Way Act 2000**

The Greenham and Crookham Common and any additional open space shall, for the purposes of the 2000 Act, be treated by section 15 of that Act (rights of access under other enactments) as being accessible to the public apart from that Act.

#### **42 Transitional provisions**

- (1) Until the coming into force of section 2 of, and Schedule 2 to, the 2000 Act—
  - (a) subsections (1) and (2) of section 11 (Rights of public access) above shall have effect subject to the restrictions contained in Schedule 2 to the 1949 Act (general restrictions to be observed by persons having access to land by virtue of that Act) as if the reference in that Schedule to section 60(1) of that Act were a reference to those subsections; and
  - (b) section 11(4) above shall not have effect.
- (2) Until the coming into force of section 13 of the 2000 Act, subsection (3) below shall have effect instead of section 12(1) (Effect of public access on owners' rights and liabilities) above.
- (3) A person entering upon any land in accordance with section 11 above is not, for the purposes of the Occupiers' Liability Act 1957 (c. 31), a visitor of any occupier of the land; and the exercise of any right under that section in relation to any land shall not increase the liability, under any enactment not contained in this Act or under any rule of law, of a person interested in that land or adjoining land in respect of the state of the land or of things done or omitted to be done on the land.