



# Commons Act 2006

## 2006 CHAPTER 26

### PART 1

#### REGISTRATION

##### *Introductory*

#### **1 Registers of common land and greens**

Each commons registration authority shall continue to keep—

- (a) a register known as a register of common land; and
- (b) a register known as a register of town or village greens.

#### **2 Purpose of registers**

- (1) The purpose of a register of common land is—
  - (a) to register land as common land; and
  - (b) to register rights of common exercisable over land registered as common land.
- (2) The purpose of a register of town or village greens is—
  - (a) to register land as a town or village green; and
  - (b) to register rights of common exercisable over land registered as a town or village green.

#### **3 Content of registers**

- (1) The land registered as common land in a register of common land is, subject to this Part, to be—
  - (a) the land so registered in it at the commencement of this section; and
  - (b) such other land as may be so registered in it under this Part.
- (2) The land registered as a town or village green in a register of town or village greens is, subject to this Part, to be—

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- (a) the land so registered in it at the commencement of this section; and
  - (b) such other land as may be so registered in it under this Part.
- (3) The rights of common registered in a register of common land or town or village greens are, subject to this Part, to be—
  - (a) the rights registered in it at the commencement of this section; and
  - (b) such other rights as may be so registered in it under this Part.
- (4) The following information is to be registered in a register of common land or town or village greens in respect of a right of common registered in it—
  - (a) the nature of the right;
  - (b) if the right is attached to any land, the land to which it is attached;
  - (c) if the right is not so attached, the owner of the right.
- (5) Regulations may—
  - (a) require or permit other information to be included in a register of common land or town or village greens;
  - (b) make provision as to the form in which any information is to be presented in such a register.
- (6) Except as provided under this Part or any other enactment—
  - (a) no land registered as common land or as a town or village green is to be removed from the register in which it is so registered;
  - (b) no right of common registered in a register of common land or town or village greens is to be removed from that register.
- (7) No right of common over land to which this Part applies is to be registered in the register of title.

#### **4 Commons registration authorities**

- (1) The following are commons registration authorities—
  - (a) a county council in England;
  - (b) a district council in England for an area without a county council;
  - (c) a London borough council; and
  - (d) a county or county borough council in Wales.
- (2) For the purposes of this Part, the commons registration authority in relation to any land is the authority in whose area the land is situated.
- (3) Where any land falls within the area of two or more commons registration authorities, the authorities may by agreement provide for one of them to be the commons registration authority in relation to the whole of the land.

#### **5 Land to which Part 1 applies**

- (1) This Part applies to all land in England and Wales, subject as follows.
- (2) This Part does not apply to—
  - (a) the New Forest; or
  - (b) Epping Forest.
- (3) This Part shall not be taken to apply to the Forest of Dean.

- (4) If any question arises under this Part whether any land is part of the forests mentioned in this section it is to be referred to and decided by the appropriate national authority.

### *Registration of rights of common*

## **6 Creation**

- (1) A right of common cannot at any time after the commencement of this section be created over land to which this Part applies by virtue of prescription.
- (2) A right of common cannot at any time after the commencement of this section be created in any other way over land to which this Part applies except—
- (a) as specified in subsection (3); or
  - (b) pursuant to any other enactment.
- (3) A right of common may be created over land to which this Part applies by way of express grant if—
- (a) the land is not registered as a town or village green; and
  - (b) the right is attached to land.
- (4) The creation of a right of common in accordance with subsection (3) only has effect if it complies with such requirements as to form and content as regulations may provide.
- (5) The creation of a right of common in accordance with subsection (3) does not operate at law until on an application under this section—
- (a) the right is registered in a register of common land; and
  - (b) if the right is created over land not registered as common land, the land is registered in a register of common land.
- (6) An application under this section to register the creation of a right of common consisting of a right to graze any animal is to be refused if in the opinion of the commons registration authority the land over which it is created would be unable to sustain the exercise of—
- (a) that right; and
  - (b) if the land is already registered as common land, any other rights of common registered as exercisable over the land.

## **7 Variation**

- (1) For the purposes of this section a right of common is varied if by virtue of any disposition—
- (a) the right becomes exercisable over new land to which this Part applies instead of all or part of the land over which it was exercisable;
  - (b) the right becomes exercisable over new land to which this Part applies in addition to the land over which it is already exercisable;
  - (c) there is any other alteration in what can be done by virtue of the right.
- (2) A right of common which is registered in a register of common land or town or village greens cannot at any time after the commencement of this section be varied so as to become exercisable over new land if that land is at the time registered as a town or village green.

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- (3) A right of common which is registered in a register of town or village greens cannot at any time after the commencement of this section be varied so as to extend what can be done by virtue of the right.
- (4) The variation of a right of common which is registered in a register of common land or town or village greens—
  - (a) only has effect if it complies with such requirements as to form and content as regulations may provide; and
  - (b) does not operate at law until, on an application under this section, the register is amended so as to record the variation.
- (5) An application under this section to record a variation of a right of common consisting of a right to graze any animal is to be refused if in the opinion of the commons registration authority the land over which the right is or is to be exercisable would, in consequence of the variation, be unable to sustain the exercise of—
  - (a) that right; and
  - (b) if the land is already registered as common land, any other rights of common registered as exercisable over the land.

## **8 Apportionment**

- (1) Regulations may make provision as to the amendments to be made to a register of common land or town or village greens where a right of common which is registered in a register of common land or town or village greens as attached to any land is apportioned by virtue of any disposition affecting the land.
- (2) Regulations under subsection (1) may provide that a register is only to be amended when—
  - (a) a disposition relating to an apportioned right itself falls to be registered under this Part; or
  - (b) the register falls to be amended under section 11.
- (3) Where at any time—
  - (a) a right of common which is registered in a register of common land or town or village greens as attached to any land has been apportioned by virtue of any disposition affecting the land, and
  - (b) no amendments have been made under subsection (1) in respect of the apportionment of that right,the rights of common subsisting as a result of the apportionment shall be regarded as rights which are registered in that register as attached to the land to which they attach as a result of the apportionment.

## **9 Severance**

- (1) This section applies to a right of common which—
  - (a) is registered in a register of common land or town or village greens as attached to any land; and
  - (b) would, apart from this section, be capable of being severed from that land.
- (2) A right of common to which this section applies is not at any time on or after the day on which this section comes into force capable of being severed from the land to which it is attached, except—

- (a) where the severance is authorised by or under Schedule 1; or
  - (b) where the severance is authorised by or under any other Act.
- (3) Where any instrument made on or after the day on which this section comes into force would effect a disposition in relation to a right of common to which this section applies in contravention of subsection (2), the instrument is void to the extent that it would effect such a disposition.
- (4) Where by virtue of any instrument made on or after the day on which this section comes into force—
- (a) a disposition takes effect in relation to land to which a right of common to which this section applies is attached, and
  - (b) the disposition would have the effect of contravening subsection (2),
- the disposition also has effect in relation to the right notwithstanding anything in the instrument to the contrary.
- (5) Where by virtue of any instrument made on or after the day on which this section comes into force a right of common to which this section applies falls to be apportioned between different parts of the land to which it is attached, the instrument is void to the extent that it purports to apportion the right otherwise than rateably.
- (6) Nothing in this section affects any instrument made before, or made pursuant to a contract made in writing before, the day on which this section comes into force.
- (7) This section and Schedule 1 shall be deemed to have come into force on 28 June 2005 (and an order under paragraph 2 of that Schedule may have effect as from that date).

## **10 Attachment**

- (1) This section applies to any right of common which is registered in a register of common land or town or village greens but is not registered as attached to any land.
- (2) The owner of the right may apply to the commons registration authority for the right to be registered in that register as attached to any land, provided that—
- (a) he is entitled to occupy the land; or
  - (b) the person entitled to occupy the land has consented to the application.

## **11 Re-allocation of attached rights**

- (1) Where—
- (a) a right of common is registered in a register of common land or town or village greens as attached to any land, and
  - (b) subsection (2), (3) or (4) applies in relation to part of the land (“the relevant part”),
- the owner of the land may apply to the commons registration authority for the register to be amended so as to secure that the right does not attach to the relevant part.
- (2) This subsection applies where the relevant part is not used for agricultural purposes.
- (3) This subsection applies where planning permission has been granted for use of the relevant part for purposes which are not agricultural purposes.
- (4) This subsection applies where—

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- (a) an order authorising the compulsory purchase of the relevant part by any authority has been made in accordance with the Acquisition of Land Act 1981 (c. 67) (and, if the order requires to be confirmed under Part 2 of that Act, has been so confirmed);
  - (b) the relevant part has not vested in the authority; and
  - (c) the relevant part is required for use other than use for agricultural purposes.
- (5) Regulations may for the purposes of subsections (2) to (4) make provision as to what is or is not to be regarded as use of land for agricultural purposes.
- (6) Regulations may provide that an application under this section is not to be granted without the consent of any person specified in the regulations.

## **12 Transfer of rights in gross**

The transfer of a right of common which is registered in a register of common land or town or village greens but is not registered as attached to any land—

- (a) only has effect if it complies with such requirements as to form and content as regulations may provide; and
- (b) does not operate at law until, on an application under this section, the transferee is registered in the register as the owner of the right.

## **13 Surrender and extinguishment**

- (1) The surrender to any extent of a right of common which is registered in a register of common land or town or village greens—
- (a) only has effect if it complies with such requirements as to form and content as regulations may provide; and
  - (b) does not operate at law until, on an application under this section, the right is removed from the register.
- (2) The reference in subsection (1) to a surrender of a right of common does not include a disposition having the effect referred to in section 7(1)(a).
- (3) A right of common which is registered in a register of common land or town or village greens cannot be extinguished by operation of common law.

### *Registration, deregistration and exchange of land*

## **14 Statutory dispositions**

- (1) Regulations may make provision as to the amendment of a register of common land or town or village greens where by virtue of any relevant instrument—
- (a) a disposition is made in relation to land registered in it as common land or as a town or village green; or
  - (b) a disposition is made in relation to a right of common registered in it.
- (2) Regulations may provide that, where—
- (a) by virtue of any relevant instrument a disposition is made in relation to land registered as common land or as a town or village green,
  - (b) by virtue of regulations under subsection (1) the land ceases to be so registered, and

(c) in connection with the disposition other land is given in exchange, the land given in exchange is to be registered as common land or as a town or village green.

- (3) In this section, “relevant instrument” means—
- (a) any order, deed or other instrument made under or pursuant to the Acquisition of Land Act 1981 (c. 67);
  - (b) a conveyance made for the purposes of section 13 of the [New Parishes Measure 1943 \(No. 1\)](#);
  - (c) any other instrument made under or pursuant to any enactment.
- (4) Regulations under this section may require the making of an application to a commons registration authority for amendment of a register of common land or town or village greens.
- (5) Regulations under this section may provide that a relevant instrument, so far as relating to land registered as common land or as a town or village green or to any right of common, is not to operate at law until any requirement for which they provide is complied with.

## 15 Registration of greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
  - (b) they continue to do so at the time of the application.
- (3) This subsection applies where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the time of the application but after the commencement of this section; and
  - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the commencement of this section; and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).
- (5) Subsection (4) does not apply in relation to any land where—
- (a) planning permission was granted before 23 June 2006 in respect of the land;

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- (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
  - (c) the land—
    - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
    - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.
- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—
- (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
  - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.
- (8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.
- (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.
- (10) In subsection (9)—
- “relevant charge” means—
- (a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);
  - (b) in relation to land which is not so registered—
    - (i) a charge registered under the Land Charges Act 1972 (c. 61); or
    - (ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20), which is not registered under the Land Charges Act 1972;
- “relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

## 16 Deregistration and exchange: applications

- (1) The owner of any land registered as common land or as a town or village green may apply to the appropriate national authority for the land (“the release land”) to cease to be so registered.
- (2) If the release land is more than 200 square metres in area, the application must include a proposal under subsection (3).



- (3) A proposal under this subsection is a proposal that land specified in the application (“replacement land”) be registered as common land or as a town or village green in place of the release land.
- (4) If the release land is not more than 200 square metres in area, the application may include a proposal under subsection (3).
- (5) Where the application includes a proposal under subsection (3)—
  - (a) the replacement land must be land to which this Part applies;
  - (b) the replacement land must not already be registered as common land or as a town or village green; and
  - (c) if the owner of the release land does not own the replacement land, the owner of the replacement land must join in the application.
- (6) In determining the application, the appropriate national authority shall have regard to—
  - (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
  - (b) the interests of the neighbourhood;
  - (c) the public interest;
  - (d) any other matter considered to be relevant.
- (7) The appropriate national authority shall in a case where—
  - (a) the release land is not more than 200 square metres in area, and
  - (b) the application does not include a proposal under subsection (3),have particular regard under subsection (6) to the extent to which the absence of such a proposal is prejudicial to the interests specified in paragraphs (a) to (c) of that subsection.
- (8) The reference in subsection (6)(c) to the public interest includes the public interest in—
  - (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
- (9) An application under this section may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over—
  - (a) the release land;
  - (b) any replacement land.
- (10) In subsection (9) “relevant charge” and “relevant leaseholder” have the meanings given by section 15(10).

## **17 Deregistration and exchange: orders**

- (1) Where the appropriate national authority grants an application under section 16 it must make an order requiring the commons registration authority to remove the release land from its register of common land or town or village greens.
- (2) Where the application included a proposal to register replacement land, the order shall also require the commons registration authority—

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- (a) to register the replacement land as common land or as a town or village green in place of the release land; and
  - (b) to register as exercisable over the replacement land any rights of common which, immediately before the relevant date, are registered as exercisable over the release land.
- (3) A commons registration authority must take such other steps on receiving an order under this section as regulations may require.
- (4) Where immediately before the relevant date any rights of common are registered as exercisable over the release land, those rights are on that date extinguished in relation to that land.
- (5) Where immediately before the relevant date any rights are exercisable over the release land by virtue of its being, or being part of, a town or village green—
  - (a) those rights are extinguished on that date in respect of the release land; and
  - (b) where any replacement land is registered in its place, those rights shall become exercisable as from that date over the replacement land instead.
- (6) Where immediately before the relevant date the release land was registered as common land and any relevant provision applied in relation to it—
  - (a) the provision shall on that date cease to apply to the release land; and
  - (b) where any replacement land is registered in its place, the provision shall on that date apply to the replacement land instead.
- (7) An order under this section may contain—
  - (a) provision disapplying the effect of subsection (5)(b) or (6)(b) in relation to any replacement land;
  - (b) supplementary provision as to the effect in relation to any replacement land of—
    - (i) any rights exercisable over the release land by virtue of its being, or being part of, a town or village green;
    - (ii) any relevant provision;
  - (c) supplementary provision as to the effect in relation to the release land or any replacement land of any local or personal Act.
- (8) In subsections (6) and (7) “relevant provision” means a provision contained in, or made under—
  - (a) section 193 of the Law of Property Act 1925 (c. 20);
  - (b) a scheme under the Metropolitan Commons Act 1866 (c. 122);
  - (c) an Act under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners;
  - (d) a scheme under the Commons Act 1899 (c. 30);
  - (e) section 1 of the Commons Act 1908 (c. 44).
- (9) In this section, “relevant date” means the date on which the commons registration authority amends its register as required under subsections (1) and (2).
- (10) Regulations may make provision for the publication of an order under this section.

### *Conclusiveness and correction of the registers*

#### **18 Conclusiveness**

- (1) This section applies to land registered as common land, or as a town or village green, which is registered as being subject to a right of common.
- (2) If the land would not otherwise have been subject to that right, it shall be deemed to have become subject to that right, as specified in the register, upon its registration.
- (3) If the right is registered as attached to any land, the right shall, if it would not otherwise have attached to that land, be deemed to have become so attached upon registration of its attachment.
- (4) If the right is not registered as attached to any land, the person registered as the owner of the right shall, if he would not otherwise have been its owner, be deemed to have become its owner upon his registration.
- (5) Nothing in subsection (2) affects any constraint on the exercise of a right of common where the constraint does not appear in the register.
- (6) It is immaterial whether the registration referred to in subsection (2), (3) or (4) occurred before or after the commencement of this section.

#### **19 Correction**

- (1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2).
- (2) Those purposes are—
  - (a) correcting a mistake made by the commons registration authority in making or amending an entry in the register;
  - (b) correcting any other mistake, where the amendment would not affect—
    - (i) the extent of any land registered as common land or as a town or village green; or
    - (ii) what can be done by virtue of a right of common;
  - (c) removing a duplicate entry from the register;
  - (d) updating the details of any name or address referred to in an entry;
  - (e) updating any entry in the register relating to land registered as common land or as a town or village green to take account of accretion or diluvion.
- (3) References in this section to a mistake include—
  - (a) a mistaken omission, and
  - (b) an unclear or ambiguous description,and it is immaterial for the purposes of this section whether a mistake was made before or after the commencement of this section.
- (4) An amendment may be made by a commons registration authority—
  - (a) on its own initiative; or
  - (b) on the application of any person.

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- (5) A mistake in a register may not be corrected under this section if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.
- (6) Regulations may make further provision as to the criteria to be applied in determining an application or proposal under this section.
- (7) The High Court may order a commons registration authority to amend its register of common land or town or village greens if the High Court is satisfied that—
  - (a) any entry in the register, or any information in an entry, was at any time included in the register as a result of fraud; and
  - (b) it would be just to amend the register.

#### *Information etc*

### **20 Inspection**

- (1) Any person may inspect and make copies of, or of any part of—
  - (a) a register of common land or town or village greens;
  - (b) any document kept by a commons registration authority which is referred to in such a register;
  - (c) any other document kept by a commons registration authority which relates to an application made at any time in relation to such a register.
- (2) The right in subsection (1) is subject to regulations which may, in particular—
  - (a) provide for exceptions to the right;
  - (b) impose conditions on its exercise.
- (3) Conditions under subsection (2)(b) may include conditions requiring the payment of a fee (which may be a fee determined by a commons registration authority).

### **21 Official copies**

- (1) An official copy of, or of any part of—
  - (a) a register of common land or town or village greens,
  - (b) any document kept by a commons registration authority which is referred to in such a register, or
  - (c) any other document kept by a commons registration authority which relates to an application made at any time in relation to such a register,is admissible in evidence to the same extent as the original.
- (2) Regulations may make provision for the issue of official copies and may in particular make provision about—
  - (a) the form of official copies;
  - (b) who may issue official copies;
  - (c) applications for official copies;
  - (d) the conditions to be met by applicants for official copies.
- (3) Conditions under subsection (2)(d) may include conditions requiring the payment of a fee (which may be a fee determined by a commons registration authority).

*Transitory and transitional provision*

**22 Non-registration or mistaken registration under the 1965 Act**

Schedule 2 (non-registration or mistaken registration under the Commons Registration Act 1965 (c. 64)) has effect.

**23 Transitional**

- (1) Schedule 3 (transitional provision) has effect.
- (2) Nothing in Schedule 3 affects the power to make transitional provision and savings in an order under section 56; and an order under that section may modify any provision made by that Schedule.

*Supplementary*

**24 Applications etc**

- (1) Regulations may make provision as to the making and determination of any application for the amendment of a register of common land or town or village greens under or for the purposes of this Part.
- (2) Regulations under subsection (1) may in particular make provision as to—
  - (a) the steps to be taken by a person before making an application;
  - (b) the form of an application;
  - (c) the information or evidence to be supplied with an application;
  - (d) the fee payable on an application (which may be a fee determined by the person to whom the application is made);
  - (e) the persons to be notified of an application;
  - (f) the publication of an application;
  - (g) the making of objections to an application;
  - (h) the persons who must be consulted, or whose advice must be sought, in relation to an application;
  - (i) the holding of an inquiry before determination of an application;
  - (j) the evidence to be taken into account in making a determination and the weight to be given to any evidence;
  - (k) the persons to be notified of any determination;
  - (l) the publication of a determination;
  - (m) the amendments to be made by a commons registration authority to a register of common land or town or village greens pursuant to a determination;
  - (n) the time at which any such amendments are to be regarded as having been made.
- (3) In the case of an application made for the purposes of any of—
  - (a) sections 6 to 8, 12 and 13,
  - (b) paragraph 1 or 3 of Schedule 1,
  - (c) paragraph 2 or 3 of Schedule 2, and
  - (d) paragraph 2(5)(a) of Schedule 3,

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regulations under subsection (1) may make provision as to the persons entitled to make the application.

- (4) An application made for the purposes of any of—
- (a) sections 6, 7, 10, 11, 12, 13 and 15, and
  - (b) paragraph 1 or 3 of Schedule 1,
- shall, subject to any provision made by or under this Part, be granted.
- (5) Regulations under subsection (1) may include provision for the appropriate national authority to appoint a person to discharge any or all of its functions in relation to an application made to it under section 16.
- (6) Regulations may make provision as to the making and determination of any proposal by a commons registration authority to amend a register on its own initiative pursuant to section 19, Schedule 2 or paragraph 2(5)(b) of Schedule 3.
- (7) Regulations under subsection (6) may in particular make provision as to—
- (a) the persons to be notified of a proposal;
  - (b) the publication of a proposal (and the information or evidence to be published with a proposal);
  - (c) the making of objections to a proposal;
  - (d) the persons who must be consulted, or whose advice must be sought, in relation to a proposal;
  - (e) the holding of an inquiry before determination of a proposal;
  - (f) the evidence to be taken into account in making a determination and the weight to be given to any evidence;
  - (g) the persons to be notified of any determination;
  - (h) the publication of a determination;
  - (i) the amendments to be made by a commons registration authority to a register of common land or town or village greens pursuant to a determination.
- (8) Regulations under this section may include provision for—
- (a) the appropriate national authority to appoint persons as eligible to discharge functions of a commons registration authority in relation to applications made to, or proposals made by, the commons registration authority; and
  - (b) the appointment of one or more of those persons to discharge functions of the commons registration authority in the case of any description of application or proposal.
- (9) Regulations under this section may provide for the Church Commissioners to act with respect to any land or rights belonging to an ecclesiastical benefice of the Church of England which is vacant.

## **25 Electronic registers**

- (1) Regulations may require or permit the whole or any part of a register kept under this Part to be kept in electronic form.
- (2) Regulations under subsection (1) may include provision as to—
- (a) requirements to be complied with in relation to the recording of information in electronic form;

- (b) the certification of information recorded in electronic form (including the status of print-outs of such information).
- (3) Regulations under subsection (1) may also include provision as to the process of converting a register, or part of a register, into electronic form.
- (4) The provision referred to in subsection (3) includes in particular provision—
  - (a) as to the publicity to be given to such a conversion;
  - (b) requiring a provisional electronic version to be made available for inspection and comment;
  - (c) as to the holding of an inquiry in relation to any question arising as a result of the conversion.

## PART 2

### MANAGEMENT

#### *Commons councils*

#### **26 Establishment**

- (1) The appropriate national authority may, for any area or areas of land to which this section applies, establish a body corporate to carry out functions conferred under this Part.
- (2) This section applies to any land that—
  - (a) is registered as common land; or
  - (b) is registered as a town or village green and is subject to rights of common.
- (3) A body corporate established under this section is to be known as a “commons council”.
- (4) A commons council is to be established by order.
- (5) An order establishing a commons council must specify—
  - (a) the name of the council;
  - (b) the area or areas of land for which the council is established.

#### **27 Procedure for establishment**

- (1) This section applies where the appropriate national authority proposes to make an order under section 26 establishing a commons council.
- (2) The appropriate national authority must—
  - (a) publish a draft of the proposed order in such manner as it thinks fit; and
  - (b) invite representations about it.
- (3) The appropriate national authority may cause a local inquiry to be held.
- (4) The appropriate national authority may not make the proposed order unless, having regard to—
  - (a) any representations received pursuant to subsection (2)(b), and

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- (b) the result of any local inquiry held under subsection (3),  
 it is satisfied that there is substantial support for the making of the order.
- (5) For the purposes of subsection (4) the appropriate national authority must have particular regard to representations received pursuant to subsection (2)(b) from—
- (a) persons having rights (other than rights of common) in relation to, or occupying, land specified in the draft order;
  - (b) persons who are entitled to exercise rights of common (and in particular persons exercising rights of common) over any such land; and
  - (c) persons with functions under an enactment which relate to the maintenance or management of any such land.

*Status and constitution of commons councils*

**28 Status**

- (1) A commons council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The property of a commons council is not to be regarded as the property of, or as property held on behalf of, the Crown.
- (3) A commons council is not to be regarded as an authority to which section 28G of the Wildlife and Countryside Act 1981 (c. 69) applies.

**29 Constitution**

- (1) The appropriate national authority must by regulations prescribe standard terms as to the constitution and administration of commons councils (in this Part, the “standard constitution”).
- (2) The terms of the standard constitution apply to every commons council, subject as follows.
- (3) An order under section 26 may also make provision as to the constitution and administration of a commons council.
- (4) Provision which may be made under subsection (3) includes in particular—
  - (a) provision supplementary to any term of the standard constitution;
  - (b) provision disapplying any such term;
  - (c) provision replacing any such term.
- (5) Where in relation to a commons council—
  - (a) provision is made under subsection (3) that is inconsistent with any term of the standard constitution, and
  - (b) any such term has not been expressly disappplied under that subsection,
 the provision made under subsection (3) prevails, to the extent of the inconsistency, over the term of the standard constitution.
- (6) Terms of the standard constitution prescribed by regulations under subsection (1) may be amended by further regulations under that subsection; and this section applies in relation to such terms as amended as it applies in relation to the terms as first prescribed.



### **30 Constitution: supplementary**

- (1) This section applies in relation to terms as to the constitution and administration of a commons council contained in—
  - (a) the standard constitution; or
  - (b) an order under section 26.
- (2) The terms may in particular include terms as to—
  - (a) the membership of the council;
  - (b) participation in the council by persons other than members;
  - (c) the proceedings of the council;
  - (d) the keeping and publication of accounts, annual reports and other information relating to the council.
- (3) The terms referred to in subsection (2)(a) include in particular terms as to—
  - (a) the appointment of members (by election or otherwise);
  - (b) the term for which members are appointed;
  - (c) co-option of members;
  - (d) the conduct of members;
  - (e) resignation and disqualification of members;
  - (f) termination and renewal of membership;
  - (g) payment of allowances to members.
- (4) The terms referred to in subsection (2)(b) include in particular terms as to—
  - (a) entitlement to elect members;
  - (b) entitlement to attend meetings.
- (5) The terms referred to in subsection (2)(c) include in particular terms as to—
  - (a) the frequency of meetings;
  - (b) voting procedures at meetings;
  - (c) committees and sub-committees.
- (6) The terms referred to in subsection (2)(d) include in particular terms as to—
  - (a) the appointment of auditors;
  - (b) the preparation and publication of accounts;
  - (c) the preparation and publication of annual reports.
- (7) Subject to any terms made of the kind referred to in subsection (2)(c), a commons council may regulate its own proceedings.

#### *Functions of commons councils*

### **31 Functions**

- (1) An order under section 26 is to confer on a commons council functions relating to any one or more of the following—
  - (a) the management of agricultural activities on the land for which the council is established;
  - (b) the management of vegetation on the land;
  - (c) the management of rights of common on the land.

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- (2) The functions conferred on a commons council under subsection (1) must be those the appropriate national authority considers appropriate in the case of that council.
- (3) The functions which may be conferred on a commons council under subsection (1) include in particular functions of—
  - (a) making rules relating to agricultural activities, the management of vegetation and the exercise of rights of common on the land for which the council is established;
  - (b) making rules relating to the leasing or licensing of rights of common;
  - (c) preparing and maintaining a register of grazing;
  - (d) establishing and maintaining boundaries;
  - (e) removing unlawful boundaries and other encroachments;
  - (f) removing animals unlawfully permitted to graze.
- (4) Rules made by virtue of subsection (3)(a) may have the effect of—
  - (a) limiting or imposing conditions on the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established;
  - (b) requiring the provision of information to the commons council in relation to the exercise of those rights.
- (5) In exercising a function conferred under subsection (3)(f), a commons council may—
  - (a) dispose of any animal it removes; and
  - (b) recover from the owner of the animal the costs that it may reasonably incur in removing and disposing of it.
- (6) A commons council must discharge its functions having regard to—
  - (a) any guidance given by the appropriate national authority; and
  - (b) the public interest in relation to the land for which it is established.
- (7) The reference in subsection (6)(b) to the public interest includes the public interest in—
  - (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.

## **32 Ancillary powers**

- (1) A commons council has the power to do anything which it considers will facilitate, or is conducive or incidental to, the carrying out of its functions.
- (2) The power conferred by subsection (1) includes power to—
  - (a) enter into agreements;
  - (b) prepare and adopt management plans;
  - (c) raise money (including by applying for funds from any source);
  - (d) acquire or dispose of land;
  - (e) employ staff.
- (3) The power of a commons council to raise money as specified in subsection (2)(c) includes power to require the payment of fees in connection with—

- (a) the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established, and
  - (b) participation in the council,
- and any such fees owed to the council may be recovered as a debt due to it.

### **33 Consent**

- (1) Subject to subsections (2) and (3), nothing in this Part authorises a commons council to do anything on the land for which it is established without the consent of a person with an interest in the land, where that person's consent would otherwise be required.
- (2) A commons council does not need the consent of a person who has a right of common over the land for which it is established in order to do anything on the land.
- (3) A commons council does not need the consent of any other person with an interest in the land for which it is established in order to do anything on the land where what is proposed to be done could be done without that person's consent by any person who has a right of common over the land.
- (4) Where a commons council wishes to obtain the consent of any person with an interest in the land for which the council is established in respect of anything it proposes to do on the land, it may serve a notice on him.
- (5) A notice under subsection (4) must specify—
  - (a) what the commons council proposes to do;
  - (b) the time within which the person on whom it is served may object (which may not be less than 28 days after service of the notice); and
  - (c) the manner in which he may object.
- (6) If the person on whom a notice under subsection (4) is served does not object within the time and in the manner specified in the notice, he is to be regarded as having given his consent in relation to the proposal specified in the notice.
- (7) Where a commons council proposes to serve a notice on a person under subsection (4) but is unable after reasonable enquiry to ascertain his name or proper address—
  - (a) the council may post the notice on the land; and
  - (b) the notice is to be treated as having been served on the person at the time the notice is posted.
- (8) An order under section 26 may make further provision as to the form and service of notices under subsection (4).
- (9) For the purposes of this section, a person with an interest in any land is a person who—
  - (a) owns the land; or
  - (b) is entitled to exercise any right over the land.

### **34 Enforcement of rules**

- (1) A person who breaches a rule to which subsection (2) applies is guilty of an offence.
- (2) This subsection applies to a rule which—
  - (a) is made with the consent of the appropriate national authority pursuant to a function of making rules conferred on a commons council under section 31; and

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- (b) specifies that a person who contravenes it is guilty of an offence under this section.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 4 on the standard scale; and
  - (b) in the case of a continuing offence, to a further fine not exceeding one half of level 1 on the standard scale for each day during which the offence continues after conviction.
- (4) A commons council may bring proceedings in relation to an offence under subsection (1) in respect of breach of any rule made by it to which subsection (2) applies.
- (5) A commons council may apply to a county court for an order to secure compliance with any rule that it has made pursuant to a function of making rules conferred on it under section 31.
- (6) But a commons council may only make an application under subsection (5) for the purpose of securing compliance with a rule to which subsection (2) applies if it is of the opinion that proceedings for an offence under subsection (1) would provide an ineffectual remedy against the person who has failed to comply with the rule.
- (7) On an application under subsection (5) the court may make such an order as it thinks fit.

### **35 Rules: supplementary**

- (1) Any power to make rules conferred on a commons council under section 31 includes power to vary or revoke the rules made by the council.
- (2) An order under section 26 conferring a power to make rules may provide for the procedure to be followed in the exercise of the power (and may in particular require the consent of the appropriate national authority to be obtained before rules are made).
- (3) The appropriate national authority may by direction revoke any rule made by a commons council.
- (4) A direction under subsection (3) must set out the reason why the rule is being revoked.
- (5) Before revoking any rule under subsection (3) the appropriate national authority must consult—
  - (a) the commons council; and
  - (b) any other person it thinks appropriate.

*Commons councils: supplementary*

### **36 Consequential provision**

- (1) The appropriate national authority may by order under section 26 make any provision specified in subsection (2) if it appears to the authority desirable to do so in consequence of functions conferred on a commons council in relation to any land.
- (2) The provision referred to in subsection (1) is provision to—

- (a) vary or abolish the jurisdiction so far as relating to the land of any court of a description referred to in Part 1 of Schedule 4 to the Administration of Justice Act 1977 (c. 38) (certain ancient courts);
  - (b) vary or revoke any regulations or arrangement made under the Commons Act 1908 (c. 44);
  - (c) vary or revoke any scheme made under the Commons Act 1899 (c. 30), or any arrangement arising under such a scheme;
  - (d) vary or revoke any Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners or any arrangement arising under such an Act;
  - (e) vary or revoke any local or personal Act, or any scheme or arrangement under such an Act, which relates to the management or maintenance of, or the exercise of rights of common over, the land.
- (3) The appropriate national authority may not under subsection (1) make provision specified in subsection (2)(c) to (e) to the extent that to do so would have the effect of abolishing or restricting a right of access of whatever nature exercisable by members of the public generally or by any section of the public.

### **37 Variation and revocation of establishment orders**

- (1) The appropriate national authority may by order under section 26 revoke a previous order under that section establishing a commons council only if it is satisfied that—
- (a) the council has ceased to operate;
  - (b) the council is failing to discharge its functions in an effective manner; or
  - (c) the council is, in discharging its functions, failing to have sufficient regard to the public interest as required by section 31.
- (2) An order under section 26 revoking a previous order under that section may include—
- (a) provision for the transfer of rights, property and liabilities of the commons council;
  - (b) provision amending any enactment previously amended under section 36 in relation to the council.
- (3) Section 27 applies to an order under section 26 varying or revoking a previous order under that section as it applies to an order under that section establishing a commons council (but as if the references in section 27 to land specified in the order were to land affected by the variation or revocation).

## **PART 3**

### **WORKS**

### **38 Prohibition on works without consent**

- (1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.
- (2) In subsection (1) “restricted works” are—
- (a) works which have the effect of preventing or impeding access to or over any land to which this section applies;

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- (b) works for the resurfacing of land.
- (3) The reference to works in subsection (2)(a) includes in particular—
  - (a) the erection of fencing;
  - (b) the construction of buildings and other structures;
  - (c) the digging of ditches and trenches and the building of embankments.
- (4) For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).
- (5) This section applies to—
  - (a) any land registered as common land;
  - (b) land not so registered which is—
    - (i) regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners; or
    - (ii) subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
  - (c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.
- (6) The prohibition in subsection (1) does not apply to—
  - (a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;
  - (b) works on any land where the works are carried out under a power conferred by or under any enactment applying to common land;
  - (c) works authorised under a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899 without any requirement for any person to consent to the works;
  - (d) works for the installation of electronic communications apparatus for the purposes of an electronic communications code network.
- (7) In subsection (6)(a) the reference to an enactment does not include Part 2 of this Act.
- (8) For the purposes of subsection (6)(b), an enactment applies to common land if it is expressed to apply (generally) to—
  - (a) registered common land;
  - (b) common land; or
  - (c) any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.
- (9) Subject to the following provisions of this Part, consent given to works under subsection (1) of this section constitutes consent for the purposes of that subsection only.

### **39 Consent: general**

- (1) In determining an application for consent under subsection (1) of section 38 in relation to works on land to which that section applies, the appropriate national authority shall have regard to—

- (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - (b) the interests of the neighbourhood;
  - (c) the public interest;
  - (d) any other matter considered to be relevant.
- (2) The reference in subsection (1)(c) to the public interest includes the public interest in—
- (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
- (3) Consent may be given under section 38(1)—
- (a) in relation to all or part of the proposed works;
  - (b) subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.
- (4) In considering the effect in relation to any land of proposed works under this section, the appropriate national authority may consider that effect in conjunction with the effect in relation to that land of any other works for which consent has previously been given under section 38(1) above or section 194 of the Law of Property Act 1925 (c. 20).
- (5) Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.
- (6) Regulations may specify a time limit for the making of applications under subsection (5).
- (7) Consent may be given under section 38(1) in relation to works which have been commenced or completed; and any consent so given has effect from the time of commencement of the works.

#### **40 Consent: procedure**

- (1) Regulations may make provision as to the procedure to be followed in the making and determination of applications under sections 38(1) and 39(5).
- (2) Regulations under this section may in particular include provision—
- (a) as to the steps to be taken by an applicant before submitting an application;
  - (b) as to the form and content of an application;
  - (c) as to the procedure to be followed in making an application;
  - (d) as to the evidence to be supplied in support of an application;
  - (e) as to the fees payable in relation to an application;
  - (f) as to the steps to be taken by the appropriate national authority upon receipt of an application;
  - (g) for the appointment by the appropriate national authority of a person to discharge any (or all) of its functions in relation to the determination of an application;
  - (h) for the making of representations or objections in relation to an application;

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- (i) for the holding of a hearing or local inquiry in relation to an application;
- (j) for the publication of a determination of an application and the notification of interested persons.

#### **41 Enforcement**

- (1) Where any works are carried out on land to which section 38 applies in contravention of subsection (1) of that section, any person may apply to the county court in whose area the land is situated.
- (2) On an application under this section the court may make an order—
  - (a) in any case, for removal of the works and restoration of the land to the condition it was in before the works were carried out;
  - (b) in a case where consent has been given under section 38(1) but the works have not been carried out in accordance with any term of that consent, for the works to be carried out in such manner and subject to such conditions as the order may specify.

#### **42 Schemes**

- (1) This section applies in relation to works on relevant land where, by virtue of section 38(1), the works may not be carried out without the consent of the appropriate national authority.
- (2) In subsection (1) “relevant land” means land which is subject to—
  - (a) a scheme under the Metropolitan Commons Act 1866 (c. 122) which is in force at the commencement of this section; or
  - (b) a scheme under the Commons Act 1899 (c. 30) which is in force at the commencement of this section.
- (3) Where—
  - (a) any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of the works, and
  - (b) the scheme does not allow for any person to consent to the works to be carried out,the works do not contravene that provision if they are carried out with (and in accordance with the terms of) the consent of the appropriate national authority under section 38(1) and of any owner of the land (if not the person carrying out the works).
- (4) Regulations may make provision as to the procedure to be followed in obtaining the consent of an owner under subsection (3) (and may include provision for the consent of an owner to be regarded as having been given where he has not objected within a period of time specified in the regulations).
- (5) Where any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of the works without the consent of the appropriate national authority—
  - (a) consent given under section 38(1) is to be regarded as consent given under the scheme; and
  - (b) consent may not be sought separately under the scheme.



### **43 Power to exempt**

- (1) The appropriate national authority may by order provide that section 38 is not to apply to—
  - (a) the carrying out by a specified person of specified works on specified land; or
  - (b) the carrying out by a specified person, or a person of a specified description, of works of a specified description on—
    - (i) any land; or
    - (ii) land of a specified description.
- (2) The appropriate national authority may only make an order under subsection (1)(a) if it is satisfied that the works specified in the order are necessary or expedient for any of the purposes in subsection (4).
- (3) The appropriate national authority may only make an order under subsection (1)(b) if it is satisfied that works of the description specified in the order are likely to be necessary or expedient on any land, or on land of the description specified in the order, for any of the purposes in subsection (4).
- (4) The purposes referred to in subsections (2) and (3) are—
  - (a) use of land by members of the public for the purposes of open-air recreation pursuant to any right of access;
  - (b) the exercise of rights of common;
  - (c) nature conservation;
  - (d) the protection of archaeological remains or features of historic interest;
  - (e) the use of the land for sporting or recreational purposes.
- (5) Where—
  - (a) any land was at any time before the commencement of this section land to which section 194 of the Law of Property Act 1925 (c. 20) applied, but
  - (b) at any such time that section ceased to apply to the land by virtue of subsection (3)(a) of that section,the appropriate national authority may by order provide that section 38 is not to apply to the carrying out of works, or works of a description specified in the order, on that land.
- (6) Where any land is the subject of a resolution under section 194(3)(b) of the Law of Property Act 1925 (c. 20) immediately before the commencement of this section, the appropriate national authority may by order provide that section 38 is not to apply to the carrying out of works, or works of a description specified in the order, on that land.
- (7) An order under this section may provide that section 38 is not to apply only if the works to which the order relates are carried out in accordance with the terms of the order.
- (8) In subsection (1) “specified” means specified in an order under that subsection.

### **44 Supplementary**

- (1) Schedule 4 (which makes supplementary provision relating to works on common land) has effect.
- (2) A national authority may for any purpose specified in subsection (3) by order amend—

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- (a) any local or personal Act passed before this Act which contains provision for that authority to consent to works on land which is common land; and
  - (b) any Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners which contains provision for that authority to consent to works on land to which the Act applies.
- (3) The purposes referred to in subsection (2) are—
- (a) that of securing that sections 39 and 40 apply to an application for the consent referred to in paragraph (a) or (b) of subsection (2) as they apply to an application for consent under section 38(1);
  - (b) that of securing that section 41 applies in relation to the carrying out of works in contravention of the provision referred to in paragraph (a) or (b) of subsection (2) as it applies to works carried out in contravention of section 38(1).
- (4) In subsection (2)—
- “national authority” means—
    - (a) the Secretary of State; and
    - (b) the National Assembly for Wales;
  - “common land” means—
    - (a) any land registered as common land; and
    - (b) any land not so registered which is subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30).

## PART 4

### MISCELLANEOUS

#### *Intervention powers*

#### **45 Powers of local authorities over unclaimed land**

- (1) This section applies where—
- (a) land is registered as common land or a town or village green;
  - (b) no person is registered in the register of title as the owner of the land; and
  - (c) it appears to a local authority in whose area the land or any part of it is situated that the owner cannot be identified.
- (2) The local authority may—
- (a) take any steps to protect the land against unlawful interference that could be taken by an owner in possession of the land; and
  - (b) institute proceedings against any person for any offence committed in respect of the land (but without prejudice to any power exercisable apart from this section).
- (3) In this section “local authority” means—
- (a) a county, district or parish council in England;
  - (b) a London borough council; and

- (c) a county, county borough or community council in Wales.

#### **46 Powers relating to unauthorised agricultural activities**

- (1) This section applies where it appears to the appropriate national authority that—
  - (a) a person is carrying out, or causing to be carried out by virtue of any arrangements, an agricultural activity on land which—
    - (i) is registered as common land; or
    - (ii) is registered as a town or village green and is subject to rights of common;
  - (b) the activity is unauthorised; and
  - (c) the activity is detrimental to—
    - (i) the interests of persons having rights in relation to, or occupying, the land; or
    - (ii) the public interest.
- (2) The appropriate national authority may, subject to the following provisions of this section, serve a notice on the person requiring him to do any one or more of the following—
  - (a) within such reasonable period as may be specified in the notice to stop carrying out the activity, or stop causing it to be carried out, to the extent that it is unauthorised;
  - (b) not to carry out, or cause to be carried out, any other unauthorised agricultural activity on the land which would be detrimental to the matters specified in subsection (1)(c)(i) and (ii);
  - (c) to supply the authority with such information relating to agricultural activities on the land carried out, or caused to be carried out, by him as it may reasonably require.
- (3) Before serving a notice under this section the appropriate national authority must, to the extent that it is appropriate and practicable in all the circumstances to do so—
  - (a) notify the persons specified in subsection (4) of its intention to serve the notice; and
  - (b) publicise its intention to do so (in such manner as it thinks fit).
- (4) The persons referred to in subsection (3)(a) are—
  - (a) any commons council for the land;
  - (b) any other person with functions under any enactment which relate to the maintenance or management of the land; and
  - (c) any person appearing to the authority to own or occupy the land.
- (5) Any notification or publication under subsection (3) may specify a period within which representations about the proposed notice may be made.
- (6) In deciding whether to serve a notice under this section the appropriate national authority must have regard to—
  - (a) any criminal or civil proceedings that have been or may be commenced in relation to the activity; and
  - (b) any steps taken by a commons council in relation to the activity.
- (7) If a person on whom a notice is served under this section fails to comply with it—

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- (a) the appropriate national authority may apply to a county court for an order requiring him to do so; and
  - (b) the court may make such an order for the purpose of securing compliance with the notice as it thinks fit.
- (8) For the purposes of this section, activity is unauthorised if the person carrying it out or causing it to be carried out—
- (a) has no right or entitlement by virtue of his ownership or occupation of the land, or pursuant to any right of common, to do so; or
  - (b) is not doing so with the authority of the person or persons entitled to give such authority.
- (9) The reference in subsection (1)(c)(ii) to the public interest includes the public interest in—
- (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
- (10) Section 123(1) to (5) of the Environment Act 1995 (c. 25) applies in relation to the service of a notice under this section as it applies in relation to the service of a notice under that Act.

*Abolition of powers of approvement and inclosure etc*

**47 Approvement**

- (1) The Commons Act 1285 (13 Edw 1 c. 46) (power of approvement) shall cease to have effect.
- (2) Any power of approvement of a common which subsists at common law is abolished.

**48 Inclosure**

- (1) Section 147 of the Inclosure Act 1845 (c. 118) (power to exchange common land for other land) shall cease to have effect.
- (2) The following shall cease to have effect—
  - (a) section 2 of the Gifts for Churches Act 1811 (c. 115);
  - (b) in section 2 of the School Sites Act 1841 (c. 38), the words from “Provided also, that where any portion” to “such conveyance;”;
  - (c) in section 1 of the Literary and Scientific Institutions Act 1854 (c. 112), the words from “Provided also” to the end.

**49 Notice of inclosure**

- (1) Section 31 of the Commons Act 1876 (c. 56) (three months' notice of claim to inclose to be given in local papers) shall cease to have effect.
- (2) In section 3 of the Metropolitan Commons Act 1878 (c. 71), for “Sections thirty and thirty-one” substitute “Section 30”.

## Commons Act 1899

### 50 Schemes under the Commons Act 1899

- (1) The Commons Act 1899 (c. 30) is amended as follows.
- (2) In section 1 (power of councils to make schemes for the regulation of commons)—
  - (a) in subsection (1), for the words from “their district” to the end substitute “in the public interest”;
  - (b) after that subsection insert—

“(1A) In subsection (1), the reference to the public interest includes the public interest in—

    - (a) nature conservation;
    - (b) the conservation of the landscape;
    - (c) the protection of public rights of access to any area of land; and
    - (d) the protection of archaeological remains and features of historic interest.”
- (3) In that section, in subsection (3), omit the words from “, and for” to the end.
- (4) In that section, after subsection (3) insert—

“(4) Regulations under subsection (3) may—

  - (a) prescribe alternative forms;
  - (b) permit exceptions or modifications to be made to any prescribed form.”
- (5) In section 2 (procedure for making scheme)—
  - (a) for subsections (1) to (3) and the first paragraph of subsection (4) substitute—

“(1) A council is to make and approve a scheme under this Part of this Act in the prescribed manner.”;
  - (b) renumber the second paragraph of subsection (4) as subsection (2).
- (6) For section 9 (power to amend scheme) substitute—

#### “9 Power to amend or revoke scheme

- (1) A scheme under this Part of this Act for any common may, in prescribed circumstances, be amended in the prescribed manner.
  - (2) A scheme under this Part of this Act for any common may, where a new scheme is made under this Part of this Act for the whole of that common, be revoked in the prescribed manner.”
- (7) For section 10 (byelaws) substitute—

#### “10 Byelaws

- (1) A council which has made a scheme under this Part of this Act in relation to any common may make byelaws for the prevention of nuisances and the preservation of order on the common.

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- (2) Sections 236 to 238 of the Local Government Act 1972 (which relate to the procedure for making byelaws, authorise byelaws to impose fines not exceeding level 2 on the standard scale, and provide for the proof of byelaws in legal proceedings) apply to all byelaws under this section.”

*Vehicular access*

**51 Vehicular access**

Section 68 of the Countryside and Rights of Way Act 2000 (c. 37) shall cease to have effect.

**PART 5**

SUPPLEMENTARY AND GENERAL

*Amendments and repeals*

**52 Minor and consequential amendments**

Schedule 5 (minor and consequential amendments) has effect.

**53 Repeals**

Schedule 6 (repeals, including consequential repeals and repeals of spent and obsolete enactments) has effect.

**54 Power to amend enactments relating to common land or greens**

- (1) The appropriate national authority may by order amend any relevant Act so as to secure that—
- (a) a provision of that Act applying to common land does not apply to land to which Part 1 applies and which is not registered as common land;
  - (b) such a provision applies to either or both of the following—
    - (i) land registered as common land, or particular descriptions or areas of such land;
    - (ii) land to which Part 1 does not apply, or particular descriptions or areas of such land.
- (2) The appropriate national authority may by order amend any relevant Act so as to secure that—
- (a) a provision of that Act which is expressed to apply to a town or village green does not apply to land to which Part 1 applies and which is not registered as a town or village green;
  - (b) such a provision applies to either or both of the following—
    - (i) land registered as a town or village green, or particular descriptions or areas of such land;

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(ii) land to which Part 1 does not apply, or particular descriptions or areas of such land.

(3) In this section, “relevant Act” means any public general Act passed before this Act.

(4) For the purposes of subsection (1) a provision applies to common land if it is expressed to apply (generally) to common land, any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.

## **55 Power to amend enactments conferring functions on national authorities**

(1) A national authority may by order amend or repeal any provision of a local or personal Act passed before this Act which applies to common land for any of the following purposes—

- (a) to remove any function of the national authority which relates to the common land;
- (b) to transfer such a function from the national authority to another person;
- (c) to remove a requirement that the national authority be consulted, or that its consent be obtained, in respect of—
  - (i) any act or omission relating to the common land; or
  - (ii) any act or omission of a person concerned with the management of the common land;
- (d) to substitute for a requirement referred to in paragraph (c) a requirement that a person other than the national authority be consulted, or his consent obtained, in relation to the act or omission.

(2) In subsection (1), “common land” means—

- (a) any land registered as common land or as a town or village green;
- (b) any land referred to in section 5(2); and
- (c) any land not falling within paragraph (a) or (b) which is subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30).

(3) A national authority may by order amend or repeal any provision of an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners for any of the following purposes—

- (a) to remove any function of the national authority which relates to land to which the Act applies;
- (b) to transfer such a function from the national authority to another person;
- (c) to remove a requirement that the national authority be consulted, or that its consent be obtained, in respect of—
  - (i) any act or omission relating to land to which the Act applies; or
  - (ii) any act or omission of a person concerned with the management of such land;
- (d) to substitute for a requirement referred to in paragraph (c) a requirement that a person other than the national authority be consulted, or his consent obtained, in relation to the act or omission.

(4) In this section “national authority” means—

- (a) the Secretary of State; and
- (b) the National Assembly for Wales.

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### *Commencement and transitional provision*

#### **56 Commencement**

- (1) The preceding provisions of this Act, except section 9 and Schedule 1 and sections 54 and 55, come into force in accordance with provision made by order by the appropriate national authority.
- (2) Sections 54 and 55 come into force at the end of the period of two months beginning with the day on which this Act is passed.

#### **57 Severance: transitional**

- (1) In relation to any area of England and Wales, the reference in subsection (1) of section 9 to a register of common land or town or village greens shall, during the relevant period in relation to that area, be read as a reference to such a register kept under the Commons Registration Act 1965 (c. 64).
- (2) Sub-paragraph (6) of paragraph 1 of Schedule 1 shall not have effect in relation to a right of common severed (in accordance with that paragraph) from land in any area of England and Wales during the relevant period in relation to that area.
- (3) In this section, the “relevant period”, in relation to an area of England and Wales, is the period which—
  - (a) begins with the coming into force of this section; and
  - (b) ends with the coming into force of section 1 in relation to that area.
- (4) This section is deemed to have come into force on 28 June 2005.

#### **58 Natural England**

Any reference in a provision of this Act to Natural England shall, in relation to any time after the coming into force of that provision but before the coming into force of section 1(4) of the Natural Environment and Rural Communities Act 2006, be read as a reference to English Nature.

### *General*

#### **59 Orders and regulations**

- (1) An order or regulations under this Act may make—
  - (a) transitional, consequential, incidental and supplemental provision or savings;
  - (b) different provision for different purposes or areas.
- (2) An order or regulations under this Act, other than an order under section 17, must be made by statutory instrument.
- (3) A statutory instrument containing regulations under section 29(1) or an order under section 54 or 55 may not be made by the Secretary of State (alone or jointly with the National Assembly for Wales) unless a draft has been laid before and approved by a resolution of each House of Parliament.



- (4) Subject to subsection (3), a statutory instrument containing any order or regulations made under this Act by the Secretary of State (alone or jointly with the National Assembly for Wales) other than an order under section 56 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **60 Crown application**

- (1) This Act (and any provision made under it) binds the Crown.
- (2) This section does not impose criminal liability on the Crown in relation to an offence under section 34(1).
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.

## **61 Interpretation**

- (1) In this Act—
- “appropriate national authority” means—
    - (a) the Secretary of State, in relation to England; and
    - (b) the National Assembly for Wales, in relation to Wales;
  - “commons council” means a commons council established under Part 2;
  - “land” includes land covered by water;
  - “nature conservation” means the conservation of flora and fauna and geological and physiographical features;
  - “regulations” means regulations made by the appropriate national authority;
  - “register of title” means the register kept under section 1 of the Land Registration Act 2002 (c. 9);
  - “right of common” includes a cattlegate or beastgate (by whatever name known) and a right of sole or several vesture or herbage or of sole or several pasture, but does not include a right held for a term of years or from year to year.
- (2) In this Act—
- (a) any reference to land registered as common land or a town or village green is to land so registered in a register of common land or town or village greens;
  - (b) any reference to a register of common land or town or village greens is to such a register kept under Part 1 of this Act.
- (3) In this Act—
- (a) references to the ownership or the owner of any land are references to the ownership of a legal estate in fee simple in the land or to the person holding that estate;
  - (b) references to land registered in the register of title are references to land the fee simple of which is so registered.

## **62 Short title**

This Act may be cited as the Commons Act 2006.

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### **63 Extent**

This Act extends to England and Wales only.