

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Works

Section 42 Schemes

198. Some commons are subject to schemes of regulation and management under the Commons Act 1899 or the Metropolitan Commons Act 1866. Such schemes contain controls on works, but under current law it is unclear how the controls contained in the scheme and those in section 194 of the Law of Property Act 1925 work together. For example, it is often a grey area whether applicants should apply to the Secretary of State (or, in Wales, the National Assembly) for consent under the scheme or under section 194, and equally, it may be unclear whether works not provided for in the scheme, but which have the consent of the Secretary of State (or the National Assembly) under section 194, are lawful.
199. This section is intended to clarify the situation in relation to such commons. It has different effect in relation to three categories of works, described below:
- where the scheme does not provide for (or prohibits) certain works (so that no person could previously consent to the works being carried out), *subsection (3)* provides that the works may be carried out if consent is granted on an application under section 38, and if the works also have the consent of the owner of the common (unless the works are carried out by the owner himself);
 - where the scheme authorises certain works to be carried out with the consent of the appropriate national authority¹, *subsection (5)* provides that the works may be carried out if consent is granted on an application under section 38, but consent may no longer be sought under scheme itself;
 - where the scheme authorises certain works to be carried out without consent, section 38(6)(c) provides that such works are exempt from the requirement for consent under that section.

The section also enables regulations to establish deemed consent where an owner has not objected to proposed works within a prescribed period.

¹ Schemes of management made under Part I of the Commons Act 1899 must be made substantially in accordance with a model scheme prescribed under that Act. The model scheme prescribed in the [Commons Regulations 1935 \(SI 1935/840\)](#) was the first to include a requirement for a minister's consent to be obtained to carry out certain works on the common. It is expected that schemes made under the 1899 Act after that date will include provision to the same or similar effect.