

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Supplementary and General

Amendments and repeals

Section 52 Minor and consequential amendments

225. [Section 52](#) gives effect to the minor and consequential amendments set out in Schedule 5. These change specific existing references to the 1965 Act, or expressions defined in that Act, contained in other enactments so that they relate correctly to the position once the Act comes into force and the 1965 Act is repealed.
226. In paragraph 7 of Schedule 5, sub-paragraphs (2) and (3) repeal section 1(3)(b) and 1(4) of the Countryside and Rights of Way Act 2000. Part I of that Act confers public rights of access to land shown on a conclusive map as registered common land. Section 1(3)(b) and 1(4) ensure that in some cases where land is removed from a register of common land, the statutory public rights of access over that land would nevertheless continue. Given the circumstances in which land may be deregistered under the Act (see section 16) this provision is no longer thought to be necessary.

Section 53 Repeals

227. [Section 53](#) gives effect to the repeals set out in Schedule 6. Many of the provisions repealed by Schedule 6 have become obsolete because of the provisions in this Act.
228. Section 46(1) of the Countryside and Rights of Way Act 2000, which is repealed by Part 1 of the Schedule, included a provision repealing section 193(2) of the Law of Property Act 1925, which confers power on an owner of common land to establish a public right of access to that land by a deed of dedication. That provision (and therefore the repeal) has already been brought into force in Wales, but not in England. The repeal of section 46(1) of the 2000 Act does not revive the effect of section 193(2) of the 1925 Act in Wales, so section 193(2) will therefore remain in force in England only.
229. [Part 2](#) of Schedule 6 repeals section 21 of the Commons Act 1899 and section 21 of the Metropolitan Commons Act 1866. The effect is to abolish the duty on the Secretary of State to include in an annual report to Parliament a statement of proceedings under Part 1 of the 1899 Act and under the Metropolitan Commons Acts 1866 to 1898. This duty is now obsolete as the Secretary of State no longer has any involvement in proceedings under the 1899 Act, and no scheme has been made under the Metropolitan Commons Acts since 1909.
230. The repeal of part of section 30 of the Commons Act 1876 abolishes certain procedural requirements in relation to applications to the county court for orders to deal with unlawful inclosures and encroachments on common land. These matters are now dealt with in rules of court.

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

231. **Section 54** enables the appropriate national authority to amend by order public Acts enacted before the Commons Act for the purposes of modifying their application to common land or town or village greens. In particular, an order may provide that an Act is no longer to apply to certain types of land, and is instead to apply to other land defined in the order. By way of illustration, some Acts are expressed to apply to any ‘common land’ (for example, section 82(4) of the Highways Act 1980 enables a highway authority to construct cattle-grids on “common or waste land...adjoining the highway”). An order might provide that the Act is instead to apply to registered common land, together with land excluded from registration under section 11 of the 1965 Act. The power may not be used to amend a local or personal Act. The section must be read with section 59(3), which provides that the Secretary of State may not make an order under section 54 unless a draft has been laid before and approved by a resolution of each House of Parliament.

Section 55 Power to amend enactments conferring functions on national authorities

232. This section confers a power to amend local or personal Acts, and provisional order confirmation Acts, where they confer functions on the ‘national authority’ in relation to common land, or require consultation of, or the consent of, the national authority in respect of activities relating to common land. The ‘national authority’ is the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales. Sometimes these functions or requirements prove an unnecessary burden on the national authority. Section 55 enables such Acts to be amended so that a function can be removed or transferred to another person, and a requirement for the consultation or consent of the national authority can be repealed or converted into a requirement for the consultation or consent of some other person. An order under this section will be subject to the affirmative resolution procedure (section 59(3)).