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New opportunity to rescue lost commons

1. The Commons Act 2006 provides a new, time-limited, opportunity for you to rescue some of those commons which failed to be registered under the Commons Registration Act 1965. The registers have reopened in seven areas of England so you should start now.
2. The pilot areas, where the registers reopened on 1 October 2008, are: Blackburn with Darwen borough, Cornwall county, Devon county, Herefordshire district, Hertfordshire county, Kent county and Lancashire county. Following the pilot implementation, the registers will then be reopened region by region over a two-year period from October 2010.
3. So residents of the pilot areas need to start now to identify those areas of land which qualify to be registered as commons. This factsheet is for people wishing to register land in these areas, under one of the provisions of the Commons Act 2006, namely section 22 and schedule 2, paragraph 4. Such applications must be submitted by 31 December 2020.

Why should you do this?

4. Once land has been registered as common land, it will be mapped as common in the next review of the access maps under the Countryside and Rights of Way Act 2000, and the public will gain the right to walk over the whole area, subject to any restrictions imposed by the landowner in accordance with the act. If the land is in a former borough or urban district it will immediately become subject to a right of access on foot and horseback, under section 193 of the Law of Property Act 1925.
5. Furthermore, common land cannot be developed or encroached upon without the consent of the Secretary of State for Environment, Food and Rural Affairs (in England), under section 38 of the Commons Act 2006, or without exchange land being provided under section 16 of the Commons Act 2006.
6. The land is therefore protected, and the public wins the right to walk there.

What land is eligible for registration?

7. Land which is waste land of the manor (section 22 and schedule 2, paragraph 4, of the Commons Act 2006). In legal terms, that is 'the open, uncultivated and unoccupied lands parcel of a manor'. So for a start, the land must be

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undeveloped and unimproved. It must also be of manorial origin, although it need not be 'of a manor' at the present date (see paragraph 10).

8. The land then has to pass further tests.
 - (a) It must have been provisionally registered as common land under the Commons Registration Act 1965 (some time between 1967 and 1970).
 - (b) There must have been an objection to that registration, and one or more of the following must apply:
 - (i) the registration was cancelled by the commons commissioner solely because the land had ceased to be connected with the manor,
 - (ii) the registration was cancelled by the commons commissioner because the land was not subject to rights of common, and the commissioner did not go on to consider whether the land qualified instead for registration as waste land of the manor, or
 - (iii) the registration was cancelled at the request, or with the agreement, of the applicant for registration.

How these circumstances came about

Cancelled by the commons commissioner because the land had ceased to be connected with the manor

9. The definition of common land in the Commons Registration Act 1965, which guided people in deciding whether to apply for registration of land, was 'land subject to common rights...or waste land of the manor not subject to rights of common'. (Common rights include grazing animals, collecting wood or digging peat, to name a few, and are normally connected with a property.) Applications for registration (provisional registrations) had to be made during the three-year period between 2 January 1967 and 2 January 1970. There was a period for objections. Any disputed registrations were heard by a commons commissioner, whose decision was final but could be challenged in the courts.
10. In 1978, the Court of Appeal decided, in the *Box Hill* case, that 'waste land of a manor' must still be in the ownership of the lord of the manor at the time the validity of the registration was decided. This caused the commons commissioners to cancel many applications for registration of commons which were not subject to rights but were not still owned by the lord of the manor, or the applicants to withdraw their applications in anticipation of cancellation. However, in 1990, *Box Hill* was overturned by the House of Lords' decision on *Hazeley Heath*. This held that land was waste of the manor provided it had

at one time been part of the manor. This decision came too late for those applications which had been cancelled or withdrawn on the basis of *Box Hill* as the closing date for registrations had passed.

11. The Commons Act 2006 allows another chance for those cases to be added to the register.

Cancelled by the commons commissioner because the land was not subject to rights of common and the commissioner did not consider whether the land qualified instead for registration as waste land of the manor

12. Where none of the parties appearing before the commons commissioner argued that land not subject to rights of common might qualify as waste land, the commissioner often concluded that the registration should fail without further consideration. However, there is authority to support the view that the commissioner ought to have examined the evidence before coming to a decision in such cases.

Cancelled at the request, or with the agreement, of the applicant for registration

13. Some applications for provisional registration were withdrawn after an objection, perhaps because of the *Box Hill* case, or for some other reason, in advance of a hearing before the commons commissioner. Such agreements led to the commissioner cancelling the registration by consent, without the opportunity for the wider public interest to be considered. However, any disputed application that was withdrawn, whether it was referred to a commissioner or not, may qualify for registration. This includes applications that were part-withdrawn ('modified') or only part-confirmed by the commissioner.

How can I get this land onto the register?

14. You should inspect the common-land register which is held by your county or unitary authority (details in appendix 2). The registers are open to public inspection, but it is advisable to make an appointment. You may make copies of the registers, but if you ask the authority to make a copy it will normally charge a fee.
15. You should make a note of all the provisional registrations which did not become final. The application and any objections are recorded in the register itself. You should note the details of these, together with the register-map sheet-number for the common land (CL) unit (which is required to be shown in the land section). Further details of the case and the decision may well be found among the original application papers. This might include the relevant

decision letter(s). It might also include evidence of (past or continuing) manorial status (see paragraph 18).

16. If you cannot find the commons commissioner's decision letter with the application papers, you can see all the decision letters online on the Association of Commons Registration Authorities' website at <http://www.acraew.org.uk/index.php?page=commissioners-decisions>. Paper copies can be obtained from Defra (see appendix 1).
17. The decision letters will tell you whether the registration was (a) cancelled by the commons commissioner because of the *Box Hill* case; (b) dismissed, in the absence of common rights, without the commissioner considering whether the land was waste of a manor; or (c) referred to a commissioner, but withdrawn before it could be considered at a hearing. Note, however, that where the application was withdrawn before referral to a commissioner, there will not be a decision letter.
18. Evidence of manorial status may be found at the Local Record Office. The Manorial Documents Register (MDR) provides a detailed catalogue of existing manorial documents and their location. The register is maintained by the National Archives at Kew and, for some areas of the country, is available online <http://www.nationalarchives.gov.uk/mdr/aboutapps/mdr/about.htm>. As stated above, you need to prove that the land was once part of the manor.
19. Open Spaces Society member Steve Byrne is producing a comprehensive list of eligible areas for each of the commons registers. Details of his work can be seen via our website (from mid January 2009). He will need help with his work, and volunteers will be welcomed.
20. You must be satisfied that the land is still open and uncultivated, so you will need to inspect it. You should also consider whether it is 'occupied'. Note that this is a question of land use (not tenure). For example, the land may be subject to leased or tenants' rights of grazing; but an extensive use of this kind is insufficient to constitute 'occupation'. Provided it is open, uncultivated and unoccupied, the land will be eligible for registration.
21. Once you have gathered your evidence from the various sources that the land qualifies, you can then submit your application

How do I apply to register a piece of land?

22. Obtain the relevant form from your registration authority (for some, this can be downloaded from their websites, see appendix 2).
23. You will need to provide all the information requested on the form, and to submit the evidence that the land is eligible for registration, ie that it is waste

land of the manor which was provisionally registered under the 1965 act, but failed to be registered because it was either cancelled by the commons commissioner or withdrawn by the applicant.

24. You will be required to send a notice of your application to people with an interest in the land.
25. You are not required to pay a fee.
26. The registration authority will advertise your application. You may be asked to supply further information. Any representations will be copied to you for comment. Your application may be referred to the Planning Inspectorate and you may be asked to attend a hearing or public inquiry. You will receive a decision letter and, if your application is granted, the register will be amended.
27. Please inform the Open Spaces Society of your application as we are keen to monitor progress and assist our members in registering land.

Other opportunities for registration, not covered in this factsheet

28. Land may also be added to the registers in the following circumstances:
 - (a) the registration authority made a mistake when making or amending an entry in the register (section 19 (2) (a)),
 - (b) the land was designated as common land or village green by statute but was not registered (schedule 2, paras 2 and 3).
29. Further information about these opportunities is given in our information sheet 'Commons Act 2006, part 1 (registration): implementation in pilot areas, information for applicants'.
30. Please note that this factsheet is being updated as information becomes available. For the latest version, please visit our website www.oss.org.uk.

*Open Spaces Society
January 2009*

While the Open Spaces Society has made every effort to ensure the information obtained in this factsheet is an accurate summary of the subject as at the date of publication, it is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice given.

Appendix 1

Useful information**Commons Act 2006**

http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060026_en_1

Commons Act 2006 explanatory notes

http://www.opsi.gov.uk/ACTS/acts2006/en/ukpgaen_20060026_en_1

Commons Registration (England) (Regulations 2008) Statutory Instrument 2008 no 1961

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081961_en.pdf

Department for Environment, Food and Rural Affairs (Defra)

Common Land (Registration and Protection)

3/C Nobel House

17 Smith Square

London SW1P 3JR

Tel 020 7238 6272, fax 020 7238 4929

Email: commonsandgreens@defra.gsi.gov.uk

Defra fact-sheets and guidance notes on the pilot areas

<http://www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/registration.htm>

Our Common Land, the law and history of common land and village greens,
by Paul Clayden, sixth edition, 2007 (the Open Spaces Society, £19 to
members, £20 to non-members)

Appendix 2

Contact details for registration authorities in the pilot scheme

To obtain further information or to inspect the registers, please contact the following.

Blackburn with Darwen

Commons Registration Officer

Blackburn with Darwen Borough Council

Common Land and Land charges

Town Hall

Blackburn BB1 7DY

Tel: 01254 585242

E-mail: commonsandgreens@blackburn.gov.uk

Website: <http://www.blackburn.gov.uk/server.php?show=ConWebDoc.44890>

Cornwall

Peter Wilson

Commons Registration Officer

Land Searches Office

Cornwall County Council

Room 323

New County Hall

Treyew Road

Truro TR1 3AY

Tel: 01872 322123

Email: pwilson@cornwall.gov.uk, or commonsandgreens@cornwall.gov.uk

Website: <http://www.cornwall.gov.uk/index.cfm?articleid=45695>

Devon

Commons Registration Officer

Devon County Council

Land Charges Department

County Hall

Topsham Road

Exeter, EX2 4QD

Tel: 01392 382937

Email commons@devon.gov.uk

Website: http://www.devon.gov.uk/index/environment/planning-system/local_authority_searches/commons-act-applications.htm

Herefordshire

Commons Registration Office

Herefordshire Council

Franklin House

4 Commercial Road

Hereford

HR1 2BB

Tel: 01432 261991

Email: commonsregistration@herefordshire.gov.uk

Website: <http://www.herefordshire.gov.uk/environment/land/36215.asp>

Hertfordshire

Commons Registration Officer

Hertfordshire County Council

Land Charges Department

County Hall

Hertford SG13 8DE

Tel: 01992 555279

Email: commons&greens@hertscc.gov.uk

Website: www.hertsdirect.org/envroads/environment/countryside/walkingandriding/commonsgreens/

Kent

Commons Registration Officer

Kent County Council

Countryside Access Service

Invicta House

County Hall

Maidstone ME14 1XX

Tel: 0845 3450210

E-mail: commons.villagegreens@kent.gov.uk

Website: <http://www.kent.gov.uk/environment/public-rights-of-way/common-land-village-greens/registers-and-searches.htm>

Lancashire

Commons Registration Officer

Lancashire County Council

County Secretary and Solicitors group (ref LSG4)

PO Box 78

County Hall

Preston PR1 8XJ

Tel: 01772 538007

Email: commonsandgreens@lancashire.gov.uk

Website: <http://www.lancashire.gov.uk/corporate/web/view.asp?siteid=4285&pageid=18791&e=e>