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INFORMATION SHEET NO: A8

**New opportunity to rescue
lost commons in
England's pioneer areas
and in Wales**

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Introduction

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 nine pioneer areas of England, and throughout Wales, so you should start now.

The English pioneer areas where the register re-opened on 1 December 2014 are Cumbria and North Yorkshire

2. The pioneer areas, where the registers re-opened on 1 October 2008, are: Blackburn with Darwen borough, Cornwall county, Devon county, Herefordshire district, Hertfordshire county, Kent county and Lancashire county.
3. An announcement is awaited from the Department for Environment, Food and Rural Affairs as to the timing of national roll-out. It is unlikely to commence before October 2020.

In Wales the opportunity to rescue lost commons commenced on **5 May 2017**.

4. Residents of the English pioneer areas and Wales 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 Schedule 2, paragraph 4.

Why should you do this?

5. 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 we believe that it will immediately become subject to a right of access on foot and horseback, under section 193 of the Law of Property Act 1925.
6. 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), or the Minister for the Environment and Rural Affairs (in Wales), under section 38 of the Commons Act 2006, or without exchange land being provided under section 16 of the Commons Act 2006.
7. The land is therefore protected, and the public wins the right to walk, and in some cases to ride, there.

What land is eligible for registration?

8. Land which is waste land of the manor (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 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).

9. 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). So if the land was never touched by the 1965 Act, it won't be eligible for registration now under paragraph 4.
 - (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

10. 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 the right to graze animals, collect wood or dig 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.
11. In 1978, the Court of Appeal decided, in the *Box Hill* case (see Appendix 1), 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* (see Appendix 1). 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.

12. The Commons Act 2006 allows another chance for those commons to be added to the register, where it can be shown that the land is manorial in origin — even if it has long-since ceased to be owned by the lord of the manor.

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

13. 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

14. 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?

15. 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.
16. For the area which is of interest, 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, which you can ask to see. This might include the relevant decision letter(s). It might also include evidence of (past or continuing) manorial status (see paragraph 19).
17. If you cannot find the commons commissioner's decision letter with the application papers, you can see many of the decision letters online on the Association of Commons Registration Authorities' website at <http://www.acraew.org.uk/index.php?page=commissioners-decisions>

18. 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, and the common will not be eligible.
19. 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/>. As stated above, you need to prove that the land was once part of the manor.
20. Steve Byrne, an Open Spaces Society supporter who has been working closely with us, has produced search sheets of some eligible areas for registration in England. Further information can be found on his website www.commonsreregistration.org.uk.
21. 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.
22. Once you have gathered your evidence from the various sources that the land qualifies, you can submit your application

How do I apply to register a piece of land?

23. Obtain the relevant form from your registration authority (for some, this can be downloaded from their websites, see appendix 2).
24. 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.
25. You will be required to send a notice of your application to people with an interest in the land.
26. You are not required to pay a fee.

27. The registration authority will advertise your application, and you may have to place notices on the land. 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.
28. 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

29. 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)), for example by mistakenly excluding from registration part of the land included in an application for registration of the land under the 1965 Act,
 - (b) the land was designated as common land or village green by statute but was not registered (schedule 2, paras 2 and 3), for example, it is included in a scheme of regulation and management under Part I of the Commons Act 1899.
30. Further information about these opportunities is given in our information sheet 'Commons Act 2006, part 1 (registration): implementation in England's pioneer areas and Wales, information for applicants'.

The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

Appendix 1

Useful information

Commons Act 2006 <http://www.legislation.gov.uk/ukpga/2006/26/contents>

Commons Act 2006 explanatory notes

<http://www.legislation.gov.uk/ukpga/2006/26/notes/contents>

Commons Registration (England) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/3038/contents/made>

Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

<http://www.legislation.gov.uk/wsi/2017/566/contents/made>

Planning Inspectorate (England)

<http://www.planningportal.gov.uk/planning/countryside/commonland/decisions>

Planning Inspectorate (Wales)

<http://planninginspectorate.gov.wales/?lang=en>

The Planning Inspectorate

Crown Buildings

Cathays Park

Cardiff

CF10 3NQ

Email: wales@pins.gsi.gov.uk

Fact-sheets and guidance notes on the pilot areas in England and Wales

<https://www.gov.uk/government/collections/common-land-guidance-for-commons-registration-authorities-and-applicants> (England)

<https://www.gov.uk/guidance/commons-registration-authorities-record-historic-events>
(England)

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/implementation-commons-act-2006/?lang=en> (Wales)

<http://gov.wales/docs/drah/publications/170505-guidance-commons-act-2006-en.pdf>
(Wales)

Open Spaces Society website
Commons Act 2006 in England
<http://www.oss.org.uk/information-hub/#ci>

Commons Act 2006 Wales
<http://www.oss.org.uk/information-hub/#ci>

Our Common Land, the law and history of common land and village greens,
by Paul Clayden, sixth edition, 2007
from the Open Spaces Society, £19 to members, £20 to non-members
<http://www.oss.org.uk/publications/>

Box Hill Case
Box Parish Council v Lacey [1979] 1 All ER 113

Hazeley Heath Case
Hampshire County Council v Milburn and others (1991) AC325.

Successful re-registration applications in Cornwall
<http://www.oss.org.uk/what-we-do/commons/successful-applications-to-re-register-common-land/>

Appendix 2

Cornwall re-registration decisions

Land at Carrine commons, parish of Kea, Cornwall

The application was made on 15 October 2010, under schedule 2, paragraph 4 of the Commons Act 2006, to add land to the register of common land.

The land is approximately 17.35 hectares in area. It is open heathland with gorse, brambles and a few scattered trees.

It is part of a site of Special Scientific Interest (SSSI), and a designated Special Area of Conservation. The land is part of the Cornwall Area of Outstanding Natural Beauty. It has been leased to Natural England since 2003 and it is intended in due course to be declared as a National Nature Reserve.

The tithe map of 1841 and various other deeds were produced to show that the land was waste land of a manor. Ordnance Survey maps from 1880 to the present day had consistently annotated the area as 'Carrine Common'. The inspector found that at the date of application the land had all the character of waste land in that it was open, uncultivated and unoccupied except for the tenancy of Natural England, which did not involve the physical use of the land nor the exclusion of others. In addition there was no substantive evidence that the land was ever significantly different in character. The application was granted on 9 February 2012. Application reference: COM 273:

http://www.planningportal.gov.uk/uploads/pins/common_land/decision/com_273decision.pdf

Land at Chun Downs, Parishes of Morvah, Madron, Sancreed and St Just, Cornwall

The application was made on 5 January 2012, under schedule 2, paragraph 4 of the Commons Act 2006, to add land to the register of common land.

The land is a scheduled ancient monument. It is open moorland, noted for its field systems, round-house sites and burrows, as well as Chun Castle and Chun Quoit. Chun Downs West is owned by Cornwall Wildlife Trust, Chun Down East has six owners, three of whom could not be traced. The land lies within the Cornwall Area of Outstanding Natural Beauty.

The tithe map and Apportionment for the Parish of Morvah in 1841 recorded the application land as 'Chyowne Downs', being used for furze and turf.

The inspector said that while grazing may take place periodically, the land does not cease to qualify as 'unoccupied' in this context unless there is some physical use which requires the exclusion of others. The inspector found that the land was of manorial origin, has the character of waste land and is open, uncultivated and unoccupied.

The application was granted on 11 April 2013. Application reference: COM404:

http://www.planningportal.gov.uk/uploads/pins/common_land/decision/com404_decision.pdf

Cornwall re-registration applications:

<http://www.savepenwithmoors.com/2014%20CHUN%20DOWNS.pdf>

Appendix 3

Contact details for pioneer registration authorities and Welsh registration authorities

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

Blackburn with Darwen

Commons Registration Officer

Commons and Greens

Development Control

Town Hall

Blackburn

BB1 7DY

Tel: 01254 585242

E-mail: commonsandgreens@blackburn.gov.uk

Website: <http://www.blackburn.gov.uk/Pages/Common-land-and-village-greens.aspx>

Cornwall

Common land and towns and village greens

Commons and Greens Office

Circuit House

Truro

TR1 1DT

Tel: 01872 224773

Email: commonsandgreens@cornwall.gov.uk

Website: <https://www.cornwall.gov.uk/environment-and-planning/land-and-property/common-land-and-town-and-village-greens/>

Cumbria

Commons Registration Service

Cumbria County Council

Lady Gillford's House

Petteril Bank Road

Carlisle

CA1 3AJ

Tel: 01228 221026

Email: commons.registration@cumbria.gov.uk

Website: <http://www.cumbria.gov.uk/planning-environment/conservation/commons-registration-service/default.asp>

Devon

Devon County Council

Land Charges

Devon County Council

G15

County Hall

Topsham Road

Exeter

EX2 4QD

Tel: 01392 382937

Email commons@devon.gov.uk

Website: <https://new.devon.gov.uk/environment/common-land-and-town-and-village-greens>

Herefordshire

Commons Registration Office

Herefordshire Council

PO Box 4

Plough Lane

Hereford

HR4 0XH

Tel: 01432 261991

Email: commonsregistration@herefordshire.gov.uk

Website: https://www.herefordshire.gov.uk/downloads/file/1748/commons_and_village_greens_in_herefordshire

Hertfordshire

Commons Registration Officer

Hertfordshire County Council

County Hall

Pegs Lane

Hertford

SG13 8DE

Tel: 01992 555279

Email: commons&greens@hertscc.gov.uk

Website: <https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/countryside-access/common-land-and-town-and-village-applications/common-land-and-town-and-village-green-applications.aspx>

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/waste-planning-and-land/village-greens>

Lancashire

Commons Registration Authority
County Secretary and Solicitor's Group (Ref: LSG4)
Lancashire County Council
P.O. Box 78
County Hall
Preston
PR1 8XJ
Tel: 01772 530541
Email: commonsandgreens@lancashire.gov.uk
Website: <http://www.lancashire.gov.uk/council/transparency/registers/commons-register.aspx>

North Yorkshire

Business and Environmental Services
Common Land & Village Green Registration
County Hall
Northallerton
DL7 8AD
Tel: 0845 241 1307
Email: commons.registration@northyorks.gov.uk
Website: <http://www.northyorks.gov.uk/article/30063/Common-land-and-village-greens>

Welsh Registration Authorities

There are 22 registration authorities in Wales and contact details are available at <http://wlga.wales/welsh-local-authority-links>.