Consultation Response Form

Town and Village Greens

The principle for reforming the town and green system in Wales has already been established through Part 8 of the Planning (Wales) Act 2015, which sets out various amendments to the Commons Act 2006. These reforms are, in essence, intended to restrict the ability of a person to register land as a town or village green simply for the purpose of frustrating or preventing lawful development in Wales.

Powers are also conferred upon the Welsh Ministers for the purpose of making certain specified kinds of procedural provision in relation to those reforms in regulations. We are seeking your views on a range of proposals specific to the content of such regulations.

Please submit your comments by 2 February 2018.

If you have any queries on this consultation, please email:

planconsultations-b@gov.wales or telephone Owain Williams (0300 025 1715).

Data Protection
Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations. The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out. Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Town and Village Greens		
Date of consultation period: 23 October 2017 – 2 February 2018		
Name	**Nicola Hodgson**	
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Type *(please select one from the following)*	Businesses/Planning Consultants	☐
	Local Planning Authority	☐
	Government Agency/Other Public Sector	☐
	Professional Bodies/Interest Groups	☐
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	☒
	Other (other groups not listed above) or individual	☐

Q1	**Do you agree the information required in paragraph 2.4 is appropriate? Should any additional information be included within a statement?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

We agree that a prescribed form should be introduced which includes all the information set out in 2.4. It is essential that a map should be included as a mandatory requirement and be submitted with the form. A six-figure grid reference is an inappropriate requirement to identify the land, as the land identified in the form may vary from a large garden to an estate covering many square kilometres: if the latter, what is the purpose of the grid reference, and to where should it relate?

Q2	**Do you agree it would be reasonable for a landowner to have their statement signed by a representative of their choosing if they are unable to sign the statement themselves? If not, why not?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

We agree that it is reasonable for a landowner to have their statement signed by a professional representative as they will be signing a declaration of truth, if as a matter of law section 15A(1) does permit an agent to sign. Alternatively if an applicant cannot sign because they are unable to read or write, the application must be supported by a certificate made by an authorised person, as required under rule 217(A) of the Land Regulation Rules 2003. The authorised person must certify that the application and statement has been read and understood. It is not acceptable for the landowner to ask a friend or relative to sign the statement.

Q3	**Do you agree commons registration authorities should be able to charge their own fee for the administration and processing of a statement, with the aim of recovering the cost of providing this service? If not, why not?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

There will be a resource impact on commons registration authorities (CRAs) involved in processing landowner statements. It is essential, especially given government budget cuts for local authorities, that CRAs are able to set cost recovery fees. It is vital that the process is carried out efficiently for all parties involved. Para.2.11: We see no reason why an 'acknowledgement of receipt' (actually, a confirmation that the statement is duly made) should not be sent by email, if the landowner provides an email address — even if the statement is deposited by post. This will help minimise costs. Para.2.13: If the omitted information is supplied long after the original deposit, is the authority still required to confirm the application as duly made? Para.2.14: If the land identified in the deposit is extensive (perhaps several square kilometres), where is the notice to be exhibited? We think there should be such number of notices as is consistent with the extent of the land identified in the notice. For example, if a number of discrete parcels are identified in the same statement, one notice should be exhibited on each: there is little point in exhibiting a notice on land near Llandrindod Wells in respect of a deposit which also relates to land near Newtown. The authority should also be able to charge a fee which reflects the number of notices which will be required to be exhibited.

Q4	**Should any further information be contained in the register, in addition to what is proposed in paragraph 2.19?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

In addition to the information set out in paragraph 2.19, the register should include the date that both the statement and map were received by the Commons registration authority (CRA).

The information specified at subpara (e) is not appropriate to larger areas of land identified in a deposit: neither items (i) nor (iii) makes sense in such a

context.

What sort of information does the Government expect that an authority might 'feel is necessary' to be included, which is not specified in regulations?

The register should also include the date on which the statement will cease to have effect.

Subpara.(f) is not necessarily appropriate to an authority which operates a centralised contact and referral system.

How should the contents of the register be indexed under subpara.(h)? The most useful index would be an index map, identifying the land subject to deposits. What other sort of index is envisaged, which would be useful?

The register should also contain a reference, or hyperlink, to any other statement previously deposited which is relevant, espically one where s.15A(5) applies.

We would question whether the intention is to create an entirely new register with all the work this will entail, or will it be integrated with the register of declarations under section 31(6) of the Highways Act 1980 (HA). For instance, in England, the landowner statements go hand in hand with declarations/statements under the HA and it makes sense to deal with these statements together due to their similarities. As local authorities can charge a cost-recovery fee then this is acceptable to most CRAs. This has been confirmed to the society by Martin Wright the Chair and Communications Director of the Association of Commons Registration Authorities (Wales and England). It is odd that the consultation says nothing about combined deposits.

Q5	**Do you agree the register required to be kept and maintained by commons registration authorities should be in both electronic and paper forms? If not, why not?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

We agree that the register should be in electronic and paper form. The register must be held in a such a way as to enable copies of any information held in it to be taken for any person who requests a copy in person, and provided that the copying is done without recourse to the council's facilities, for no charge to be made. The web version must have a search facility that as a minimum allows postcode and keyword searches to be made, but as undeveloped land may have multiple postcodes which are hard to identify it may be better to be able to search a master index map.

Q6	**Do you agree with our proposals to provide a period of 28 days for landowners (or their appointed representative) to submit any revised information or documentation to remedy a material error? If not, why not?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

Yes, but the authority should also be able to correct an error in transcribing the deposited information onto the register. If the authority corrects a material error made by the landowner in the statement, it should be clear that, in relevant cases, the correction has effect only from the date of correction. For example, if additional land is drawn into the deposit by the correction, or it turns out that the landowner did not sign the statement, that land should not attract protection retrospective to the date of the deposit. Is there to be a fee for handling a correction process — after all, the alternative would be for the landowner to make a replacement deposit and pay a new fee? Will a correction require to be notified — particularly if it affects new land?

Q7	**Do you have any additional comments to make on the consultation paper?**	Yes	Yes (subject to further comment)	No
		☐	☒	☐

Comments:

The Open Spaces Society was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them.

OSS gave oral evidence to the Environment and Sustainability Committee in 2014 and supported the Committee's recommendations to restrict the 'trigger events'

and only include where a planning application has been determined or a development consent order/local development order has been made, and to retain the 2-year grace period for making a town or village green application (TVG).

Transitional provisions

It is essential that TVG applicants are not prejudiced, in particular where an application has been made before the commencement date, so they are not affected by the new rules and regulations. It may be that the problem has arisen due to an oversight but we believe it is in the power of Welsh Ministers to put it beyond doubt by using the power in section 58(5)(b) (ii). The serious impact of the wording as it stands is likely to result in a valid application subsequently being thrown out because a pre-commencement planning application has been made and under the new legislation that will become a "trigger event" under schedule 6 of the Planning (Wales) Act 2015, which prohibits a TVG application. It is plainly unfair and unreasonable that the commencement of the provisions could have this effect.

When similar provisions were introduced in England, section 16 of the Growth and Infrastructure Act 2013 (GIA) made clear that the exclusion of applications by virtue of the amendments made by section 16 (and therefore in consequence of a new section 15C and Schedule 1A to the Commons Act 2006) did not apply where an application had been sent before the day on which section 16 came into force.

In Wales the amendments to the Commons Act are achieved by amending section 15C to remove (for the most part) the restriction of the provisions to England. Section 53 of the Planning (Wales) Act 2015 makes only bare enacting provisions to achieve the amendments. There is no equivalent of section 16(5) GIA.

We believe that the absence of any provision replicating section 16(5) of the GIA will have a malign and unfair effect.

Guidance

There should be a new TVG application form and guidance and a prescribed form for landowner statements and guidance for applicants. There needs to be guidance for CRAs on the changes and new process. We would want to be consulted on any guidance.

Highways Act 1980

We question why there is no reference to the similar process under section 31(6) of the Highways Act 1980 (HA). Registers are already required to be kept by local authorities to record the depositing of statements and declarations under this section. If this were utilised it would then only be necessary to create a new part of that existing register to record landowner statements. It makes sense because they may cover the same area of land. The consultation does not even address the possibility of joint deposits under both provisions — even if only to rule out the option.

Schedule 6

This schedule will amend the Commons Act 2006 and introduce for the first time in Wales " trigger events" which will prohibit the making of a TVG application in

certain circumstances and have a detrimental impact on the process. It will mean that some applications which would be entirely valid, where rights have been established over many years by local people to use the land for lawful and sports and pastimes, will not be allowed.

It is essential that no new trigger events are added as this will further undermine the TVG process and make it more more difficult for CRAs to administer the process.

This restriction should be mitigated by the introduction of a statutory designation for the protection of open space and its use by local people. Open space protection in Wales is dependent on the Technical Advice Note (TAN) 16; Sport, Recreation and Open Spaces 2009, as interpreted through local development plans.It is out of date and provides no statutory protection for open space. In view of the seven principles in the Wellbeing of Future Generations (Wales) Act 2015 open space protection is crucial to the economy health and wellbeing of Wales.

CRA requirements
There is no reference to the process that a CRA will need to carry out to determine whether a trigger event has occurred. In England, where trigger events were introduced by the Growth and Infrastructure Act 2013, CRAs are still facing problems and delays in trying to obtain this information from the Planning Inspectorate and local planning authorities. There needs to be a streamlined process put in place to avoid delay and uncertainty. The request for this information needs to be handled by someone who has detailed knowledge and experience.

I do not want my name/or address published with my response (please tick) ☐

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : **planconsultations-b@gov.wales** [Please include **'Town and Village Greens'** in the subject line]
Post

Please complete the consultation form and send it to:

Town and Village Greens
Decisions Branch
Planning Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Additional information

If you have any queries on this consultation, please

Email: **planconsultations-b@gov.wales**

Telephone: Owain Williams (0300 025 1715)