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(registered in England and Wales, limited company number 7846516,
registered charity number 1144840)

**Commons Act 2006
Part 1 (Registration)
Implementation in
England's pioneer areas
and Wales**

**This information sheet is partially revised as at
4 May 2017
and will be further amended to reflect the revised
regulations in Wales**

A pioneer implementation of Part 1 of the Commons Act 2006 commenced in the areas covered by seven commons registration authorities in England on 1 October 2008

- Blackburn with Darwen Borough Council
- Cornwall County Council
- Devon County Council
- County of Herefordshire District Council
- Hertfordshire County Council
- Kent County Council
- Lancashire County Council

and from **1 December 2014**

- Cumbria County Council
- North Yorkshire County Council

and from **5 May 2017**

- Wales – partial implementation of Part 1 to include section 19 (correction) and schedule 2 (non-registration or mistaken registration)

Transitional period in England

The pilot scheme begins with a three-year transitional application period which provides the first opportunity for correction or rectification of mistakes in the registers. During this period, 14 December 2014 until 14 December 2017 for Cumbria and North Yorkshire, applications can be made free of charge to update the commons registers to record events since 1970 which have not yet been registered. The transitional period for the other seven areas has now expired (although it is still possible, for a fee, to apply to record historic events in these seven areas).

Any of the events below, so long as they took place after the land and rights of common were provisionally registered, and before the start of the transitional application period, may be registered:

- the creation, surrender, variation, apportionment, severance, transfer or extinguishment of a right of common,
- legal events affecting registered land or registered rights of common, ie a compulsory purchase order, and the giving of any land in exchange,
- failure to register any qualifying events during the transitional application period may result in:
 - a fee being payable for any application made after the end of the transitional period,
 - refusal to register after the end of the transitional period, if it would be unfair to grant the application as a result of any reliance placed on the registers since the end of the period,
 - the extinguishment of any unregistered rights of common, or the revival of any rights previously surrendered or extinguished.

Applications to amend the registers

Correction of mistakes: England

From 15 December 2014 section 19(2)(a) of and paragraphs 6–9 of schedule 2 to the Commons Act 2006 took effect throughout England to allow for the correction of mistakes made by the authority and the removal of wrongly registered common land or town or village green.

Applications must be made on the relevant form (as set out in the Commons Registration (England) Regulations 2014). <https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes>.

The forms are available from the Department of Environment, Food and Rural Affairs (Defra) website, <https://www.gov.uk/government/collections/commons-registration-application-forms>.

We set out below who may apply in which circumstances. Guidance notes for applicants and the regulations are available from the Defra website:

<https://www.gov.uk/government/collections/common-land-guidance-for-commons-registration-authorities-and-applicants> and on our website at: <http://www.oss.org.uk/what-we-do/commons/commons-act-2006/>.

Correction of mistakes: Wales

From 5 May 2017 section 19 of and paragraphs 6–9 of schedule 2 to the Commons Act 2006 took effect throughout Wales to allow for the correction of mistakes made by the authority and the removal of wrongly registered common land or town/village greens.

Applications must be made on the relevant form by people who are entitled to apply (as set out in the Commons Act 2006 (Corrections, Non-Registration or Mistaken Registration) (Wales) Regulations 2017, <http://www.legislation.gov.uk/wsi/2017/566/regulation/2/made>).

Guidance notes and forms for applications and the regulations are available from the Welsh Government website, <http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/section-19-and-schedule-2/?lang=en>

Correcting the register (section 19)

Applications may be made to correct mistakes in the following circumstances:

- the registration authority made a mistake when making or amending an entry in the register (section 19 (2)(a)),
- correcting mistakes not affecting land or quantification of rights (section 19 (2)(b)),
- removing a duplicate entry (section 19 (2)(c)),
- updating the name and address in an entry (section 19 (2)(d)),
- accretion or diluvion (section 19 (2)(e)).

Rectifying mistakes made under the Commons Registration Act 1965 (schedule 2)

Application can be made to rectify mistakes made during the registration of land under the 1965 act, as follows:

- land that was designated as common land or village green by statute but was not registered (schedule 2, paras 2 and 3),
- waste land of a manor that was registered as common land under the 1965 act but the registration was cancelled or voided in certain circumstances (schedule 2, para 4). See below for details,
- certain wrongly registered common land or greens (schedule 2, para 7 or 9),
- buildings or curtilage wrongly registered as common land or greens (schedule 2, para 6 or 8)

What information do I need?

If you are applying to register or deregister land under any provision in schedule 2 you will be required to show, in your application, details of ***the provisional registration of the land under the 1965 act***. You can find out whether the land was provisionally registered, whether the provisional registration was confirmed or cancelled, the land contained in any registration, and any relevant dates, by referring to the commons registers and records held by each registration authority, and open to public inspection (in England) under section 20 of the Commons Act 2006.

You will need to supply the following:

- your name, address and telephone number,
- the register unit number (or the name or location of the common or village green),
- the name of the parish or district,
- the rights entry number (if you require details about particular rights).

Ownership

You may need to provide evidence of ownership or serve a notice on the owner. To obtain information you can apply to the appropriate District Land Registry to obtain an official copy of the register and plan relating to a title. It is also possible to search the Land Registry's index map to see whether or not land has a registered title. See the Land Registry's website: eservices.landregistry.gov.uk/wps/portal/Property_Search which also gives details of fees payable. You should not rely on ownership information contained in the ownership section of the commons registers, unless the title is not registered in the Land Registry.

Maps

You will usually need to supply a map to support your application. The map must be an Ordnance Survey map, with a scale of at least 1:2,500 to show any land you want to add to or remove from the register, unless the land is wholly or predominately moorland in which case you may use a map with a scale of at least 1:10,560.

For other applications, such as identifying land to which a right of common is attached, or to identify a neighbourhood within a locality (section 15 Village Green Applications) you must use a map of at least 1:10,560. You can find out how to obtain an Ordnance Survey maps from: <http://www.ordnancesurvey.co.uk/>

Fees

There is no charge for inspection of the registers or other records. You can make copies using a camera, public photocopying machine or tracing paper, or by transcription, and no fee is payable. If you ask the registration authority to give you copies of the register it may charge a fee. It is usually sensible to arrange an appointment.

Requirements for applications under schedule 2 paras 2 to 5 to correct mistakes by adding land to or removing land from the register.

Anyone can apply. The application must include:

- evidence of which criteria (in paras 2, 3, 4 or 5) are being met,
- if applying under para 2 or 3, a copy of the enactment or scheme by which the land is regulated or allotted (including any map referred to in it) (see para 4.5.5 of Defra's guidance to applicants),
- if applying under para 2 or 3, and the application seeks to register land covered by a building (or curtilage of a building), the consent of the owner (para 14 of schedule 4 to the 2014 regulations),
- a map.

There is no fee (schedule 5 to the 2014 regulations). You will be required to send a notice to the owner or any occupier or lessee of the land.

Requirements for applications under schedule 2 paragraphs 6 to 9 to deregister land or buildings

Anyone can apply. The application must include:

- evidence of which criteria (in para 6, 7, 8 or 9) are being met (regulation 14(6)),
- fee: determined by registration authorities,
- a map.

You will be required to send a notice to the owner or any occupier or lessee of the land.

Requirements for applications under section 19 correcting the register

Anyone can apply. The application must include:

- a statement of purpose (ie whether it is under section 19(2)(a), (b), (c), (d) or (e)),
- the register unit and, where applicable, the register entry to be amended,
- evidence of the mistake which the application seeks to correct,
- a description of the amendment required to be made to the registers (reg 14 (11)),
- a map.

Fees are payable under section 19(2)(b), (c), (d) and (e). You will be required to send a notice to the owner of any affected land.

Fees

You may need to send a fee with your application. Fees may be set by the registration authority. You should check the fee with the commons registration officer before you send your application. Fees are not refundable, even if you decide to withdraw your application. There is no fee for certain applications, in general those where there is a wider public interest.

Next steps in the application process

The steps are as follows

- You will be required to send a notice of your application to people with an interest in the land.
- Your application will be advertised by the registration authority.
- You may be asked to supply further information.
- Representations will be copied to you for comment.
- Your application may be referred to the Planning Inspectorate.
- You may be asked to attend a hearing or public inquiry. If there is a public inquiry into an application under Schedule 2, and the inspector decides you have behaved unreasonably, a costs order can be made against you.
- You will receive a written decision.
- If your application is granted, the register will be amended.

Role of the Planning Inspectorate

The registration authority must refer your application to the Planning Inspectorate if:

- it is made under section 19(4) and affects the extent of any land registered as common land or green, or what can be done in respect of a right of common,
- it is made under paragraphs 4 to 9 of schedule 2, to register land as waste land of a manor, to transfer land from the register of greens to the register of common land, or to deregister wrongly registered land,
- if the registration authority has an interest in the outcome, where there is unlikely to be confidence in the authority's ability impartially to determine it (regulation 27).
England and Wales (regulation 15).

Correction and rectification of the registers (schedule 2 paras 2 or 3, statutorily recognised land)

To apply you need to meet one of the criteria

- the land is regulated by an order of regulation made under the Commons Act 1876 and confirmed by a provisional order confirmation act. A full list is available from <https://www.gov.uk/guidance/commons-registers-apply-to-rectify-them>
- the land is subject to a scheme made under the Metropolitan Commons Act 1866-1898 or part 1 of the Commons Act 1899 (for England, Defra has a list of schemes prior to 1980, information about schemes made after 1981 can be obtained from the relevant district council or national park authority),
- the land is regulated as common land under a local or personal act,
- the land is recognised or designated as common land by or under any other enactment.

Additional requirements (schedule 4 para 14 (3) of the regulations):

- if the land (or any part of the land) is covered by a building or its curtilage, the land may only be registered with the consent of the owner.

Waste land of the manor (schedule 2, para 4)

An application can only be made if the land is 'waste land of the manor' at the date of application ie 'open, uncultivated and unoccupied land, part of the manor'.

The criteria are as follows:

- the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965,
- there was an objection to its provisional registration, and one or more of the following applies:

- the registration was cancelled by the commons commissioners solely because the land had ceased to be connected with the manor (para 4 (3)),
- the registration was cancelled by the commons commissioners 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 (para 4 (4)), or
- the registration was cancelled at the request of or with the agreement of the applicant (para 4 (5)).

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.

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://discovery.nationalarchives.gov.uk/manor-search>. As stated above, you need to prove that the land was once part of the manor. For further information obtain our factsheet 'New opportunity to register lost commons'

Steve Byrne has produced a comprehensive list of eligible areas for each of the commons registers in England. Details of his work can be seen via our website or <http://www.commonsreregistration.org.uk/>.

You must be satisfied that the land is still open and uncultivated, so you will need to inspect it. You should also research whether the land is 'occupied', ie subject to leased or tenants' rights of grazing. Provided it is open, uncultivated and unoccupied, it is eligible for registration.

Commons Commissioners' decision letters

These can be found on the website of the Association of Commons Registration Authorities: <http://www.acraew.org.uk/index.php?page=commissioners-decisions>

Future plans in England

The pilot was initially reviewed in 2009 and extended until September 2010. A decision on how and when to go ahead with national commencement has been delayed but it will not be commenced before 2020 at the earliest.

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.

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Appendix 1

Definition of terms

Creation of new rights (section 6)

It is possible to register new rights of common over unregistered or registered land provided the right is created by express grant and is attached to land. A right cannot be created by prescription (but it is possible that rights acquired by prescription before the commencement of the transitional period may be eligible for registration).

Variation of rights (section 7)

Existing rights of common may be varied in accordance with the regulations. A right may be varied if:

- new land replaces some or all of the existing land over which the right was exercisable,
- new land is added to the existing land over which the right is exercisable,
- there is some other alteration to the right (eg if a right to graze ten cattle is amended to become a right to graze 60 sheep).

Severance of rights (section 9 and schedule 1, para 3)

There are three ways a right may be severed from land to which it is attached:

- transferred permanently to Natural England or a commons council,
- temporarily severed or leased in accordance with requirements specified by order made by the Secretary of State for Environment, Food and Rural Affairs (England)
- transferred permanently to a third party where severance in relation to that common is authorised by order made by the Secretary of State.

Attachment of rights held in gross to land (section 10)

The owner of a right held in gross can apply to attach the right to land. The owner or person entitled to occupy the land must consent to the application. The result will be a right of common which is attached to the land specified in the application.

Re-allocation of rights attached to land (section 11)

Application may be made to 'concentrate' a right of common attached to a dominant tenement (the land to which the benefit of a right is attached) onto a part of that tenement where another part of the same tenement is to be developed for non-agricultural use.

Transfer of rights held in gross (section 12)

Application may be made (as now) to register the transfer of a right held in gross.

Statutory disposition (section 14)

Application may be made, or notice given, to amend the register in consequence of a statutory disposition, such as an exchange of land under a compulsory purchase order.

Registration of town and village greens (section 15)

Application may be made to register land as a town or village green under section 15. The applicant must show, as now, that the land in question was used 'as of right' by a significant number of local inhabitants for lawful sports and pastimes for at least 20 years (see *Getting Greens Registered*, Open Spaces Society 2007).

Accretion or diluvion (section 19 (2)(e))

Where the boundaries have changed because of the natural displacement of a river or sea shore.

Appendix 2

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

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/>

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-ropey/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>

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>

North Yorkshire

Common Registration

Highways North Yorkshire

County Hall

Northallerton

North Yorkshire

DL7 8AH

Tel: 0845 8727374

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>.

Appendix 3

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 commissioners' decisions

Available from the website of the Association of Commons Registration Authorities

<http://www.acraew.org.uk/commissioners-decisions>

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)

<http://www.oss.org.uk/what-we-do/publications/>

Open Spaces Society's factsheet 'new opportunity to rescue lost commons'

<http://www.oss.org.uk/information-hub/#ci>

Cornwall Commons reregistration:

<http://www.commonsreregistration.org.uk/>

Maps

- Digital historical OS maps are available from Landmark Information Group
<https://www.landmark.co.uk/>
- Certain statutory and other datasets, including the 'moorland' map
<http://www.magic.gov.uk/>
- Ownership
<https://www.gov.uk/get-information-about-property-and-land>

Wales

- Common land

For information and queries on the Commons Act 2006 contact:

The Animal Policy Delivery Branch

1st Floor

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

E-mail: commonsact2006@wales.gsi.gov.uk.

Website:

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/?lang=en>

Regulations and guidance

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/?lang=en>

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/section-19-and-schedule-2/?lang=en>