

The Commons Act 2006 and voluntary dedication of land as a town or village green

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Paragraph 26: interpretation of 'disposal' revised such that dedication of land by local authorities is in Defra's view a disposal and is subject to the controls under 123 and 127 of the Local Government Act 1972.

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Introduction

This guidance provides advice to landowners in England on dedicating land as a town or village green and on alternative mechanisms to provide public access to land. It does not attempt to provide a comprehensive explanation of every issue. The guidance is non-statutory and has no legal effect.

Part 1

Dedication of land as a new town or village green

1. New powers are available under section 15(8) of the Commons Act 2006 which for the first time allows you, the owner of land, to voluntarily dedicate your land as a town or village green by applying to have it included in the register of town or village greens. It is open to any landowner — including a private individual, organisation, or public body — to make use of this new power. Specific guidance for local authorities and charities appears at the end of this note.

2. Town and village greens derive from customary law. They were originally areas of land used by local people for sports and pastimes and where this long-standing use created legally recognised recreational rights over the land. These rights are not defined in law but can include activities such as dog-walking, blackberry-picking, picnicking, and playing games such as cricket or football.

3. In Defra's view, once a green has been registered voluntarily it will be subject to the same statutory protections as all other registered greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Generally speaking, causing damage to village greens is a criminal offence under two 19th century Acts: greens are protected by section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment, and by section 29 of the Commons Act 1876 against encroachment or inclosure of a green. Registration as a town or village green is irrevocable and so land must be kept free from development or other encroachments. Subject to certain statutory exceptions for compulsory purchase or exchange of land, once registered, land cannot be removed from the register. Therefore, before embarking on the registration of land as a town or village green, you are advised to consider carefully the implications.

4. You may particularly wish to consider voluntary registration of land as a new green where:

- a. You own land that is already used by local people, perhaps with your permission, for recreation, and you wish to formalise the position and protect the land for their use in the future. Or you may wish to allocate land for this purpose which has not previously been used for recreation.

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- b. You are an organisation promoting or funding the provision or improvement of an open space or recreational area, and would like the land registered as a condition of your support.
- c. You want to create a lasting public memorial or put something back into the community by providing an open space.
- d. You are a developer who is required to provide a recreational area on part of a development site as a planning condition or planning obligation — or a planning authority that considers it appropriate to require such registration as part of the agreement.

5. If land you intend to dedicate voluntarily is designated as a site of special scientific interest, you should consult Natural England to see whether voluntary dedication is compatible with the special status of the land. It is an offence for owners and occupiers of SSSIs to carry out any operation specified in the notification of the site without the consent of Natural England. Contact Natural England for more details.

New procedures

6. Section 15 of the 2006 Act changes the legal definition of a town or village green and sets out the qualifying circumstances in which land may be newly registered. Anyone can apply to have land registered as a green if it has been used by local people for recreation 'as of right' (*i.e.* without permission, force or secrecy) for at least 20 years. But under section 15(8), you, as the landowner, can apply to register without meeting these criteria.

7. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007¹ set out how registration applications can be made, and how they are dealt with and determined by the commons registration authority (usually the county council or unitary authority). The regulations prescribe a new application form and are accompanied by detailed non-statutory guidance notes for applicants. These documents can all be obtained via Defra's common land website at: www.defra.gov.uk/wildlife-countryside/issues/common/town-villagegreens.

Application to register

8. The application process for voluntary dedication can be completed very simply if you are the sole owner — that is, you own the freehold of the land, and the land is not subject to any lease, tenancy, mortgage *etc.* Otherwise you must obtain the consent of any lease or charge holder of the land, including a tenant or mortgagee. You will need to apply to the commons registration authority using the new application form 44. The authority is not required to advertise the application and does not have to examine the merits of registering the land; it need only be satisfied that you are legally entitled to apply to register.

9. You will need to consult any lease or charge holder in advance of the application to inform them you intend to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a

¹ SI 2007/457: available on the internet at: www.opsi.gov.uk/si/si2007/20070457.htm

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statement of the nature of their relevant interest in the land, and their formal consent to the application.

10. The application must include a map and description of the land claimed for registration as a town or village green. It also needs to identify the locality or neighbourhood within a locality where local people live who will have a right to use the green. For example, this may be identified by reference to a recognised administrative area, such as a civil parish or electoral ward, or an obvious geographical characteristic such as a village or housing estate. In cases of voluntary registration, it is up to you to decide what locality or neighbourhood should have recreational rights over the land. Defra's view is that, in relation to any land registered as a green, only the inhabitants of the defined locality or neighbourhood will have the legal right to indulge in sports and pastimes over the green.

11. You will need to confirm in the statutory declaration that you are the owner of the land and are applying to register it as green and, if required, that you have obtained all the necessary consents. In some cases the registration authority may decide to ask you for further evidence of ownership before it accepts your application. If the authority is satisfied that your application is properly made, the land will be registered as a town or village green. An application cannot be rejected, but it may be returned if there is any doubt about your ownership of the land or you have not obtained the necessary consents.

Public space secured through the planning system

12. The planning system may be used to secure an area of public open space in accordance with Local Development Framework policies through the use of planning conditions or planning obligations ('section 106 agreements'). The new power in the Commons Act 2006 for a landowner to dedicate a new green may be appropriate where you are required to provide an area of public open space as part of a development. In such cases the authority may wish to require that you dedicate the area as a town or village green to ensure it is protected in perpetuity.

13. More information on planning obligations and planning conditions, including Circular 5/05: *Planning Obligations* and Circular 11/95: *Use of conditions in planning permission*, is available via the Department for Communities and Local Government website at: www.communities.gov.uk.

Lottery funded projects

14. Lottery funded projects which are aimed at acquiring or improving land and providing new or better recreation facilities can make use of the new opportunity for dedication of land as a green under the 2006 Act. Further information on the distribution of lottery money to natural heritage and environmental projects can be found on the Heritage Lottery Fund website at: www.hlf.org.uk and the Big Lottery Fund website at www.nof.org.uk.

15. Natural England will consider whether formerly publicly funded land-based schemes, aimed at improving green spaces in both the countryside and urban areas, can take advantage of the new dedication provision. For example, this may enable the owners of some Millennium and Doorstep Greens which were established in the past under special grant schemes to register them now as town or village greens.

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Dedicating common land as a green

16. The Commons Act 2006 enables you to dedicate your land as a town or village green even if it is already registered as common land. Any rights of common registered over the common land will be preserved on registration as a green.

Part 2

17. There are some alternatives to dedicating land as a town or village green which can provide long-term protection for the land or public access. These are explained in more detail below.

Dedication of new common land

18. You can create new common land. You may grant a new right of common over the land, and you (or the new commoner) can then apply to the commons registration authority to register the land as common land. A new right of common must comprise a right for one person to take the product of the soil of land belonging to another person: for example, a right to graze animals on the land. It is possible to limit the right of common so that it does not have a significant impact — for example to graze one sheep on one day each year, or to gather fallen wood.

19. Currently the registration procedure is set out in the Commons Registration Act 1965 until a new system under Part 1 of the Commons Act 2006 is introduced at a later date. An application to register land as common land can be made by any person, but it is best if the application is made by you, as the landowner, because you will be able to provide the necessary evidence. The application should be submitted to the commons registration authority (usually the county council or unitary authority) for the area in which the land is located. The commons registration authority will provide a copy of the application form — form 29 for registration of new common land and form 31 for the registration of a right — and provide advice on the procedure for registration. Until the 2006 Act is brought into force, forms 29 and 31 will need to be accompanied by a formal document, known as a deed, which shows how the land has become common land subject to rights of common: you may need to consult a solicitor to help you execute the necessary deed.

Dedication of access to common land

20. Registered common land is generally subject to public access rights on foot for open-air recreation under the Countryside and Rights of Way Act 2000 (CROW). If you own common land already subject to CROW access rights, you have the option to give others, such as horse riders, legal rights to enjoy the land too. You can do this:

- a. by dedicating rights for other users over the land: see paragraph 23 below; or
- b. by making a deed under section 193(2) of the Law of Property Act 1925 and depositing it with the Planning Inspectorate (acting on behalf of the Secretary of State). The effect of the deed is to disapply the CROW rights and instead apply the access rights under the 1925 Act, which include rights for horse riders. You must decide whether to make the deed revocable or irrevocable. The form of section 193 deed is not

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prescribed in statute but the Planning Inspectorate can advise on a model form which can be used.

21. The second approach is also suitable if you want to grant access over common land which is excepted from the rights under CROW, such as a golf course. Where section 193 has been applied to land by deed, it becomes an offence to drive on any part of the land, or to camp on the land. You may also apply to the Planning Inspectorate for 'an order of limitation' (similar to byelaws), which can create criminal offences to deal with particular problems occurring on that land. The Planning Inspectorate will make an order only if it is satisfied that the limitations on public access are necessary to protect your or commoners' interests in the common, or for the protection of flora, fauna or geographical or physiographical features of the land.

22. You can ask the Planning Inspectorate for advice about deeds and orders of limitation under section 193 of the Law of Property Act 1925, at:

Common Land Casework
The Planning Inspectorate
Rm 4/05 Temple Quay House
The Planning Inspectorate
2 The Square, Bristol
BS1 6PN
Email: commonlandcasework@pins.gsi.gov.uk
Tel: 0117 372 6210

Dedication of access land under CROW

23. CROW introduced a new right of access on foot throughout England to mapped areas of mountain, moor, heath, down and registered common land. CROW also gave landowners and long leaseholders a new option voluntarily to dedicate their land permanently for public access if they wish to do so. Making a dedication under section 16 of the Act does not prevent you from changing use of the land, or prevent its development, but it:

- gives the public a legal right of access to land that would not otherwise be covered by CROW, such as woodland;
- offers you the opportunity to share public access to the land forever, and also offers landowners the opportunity to demonstrate their commitment to public access; and
- ensures that the right of access to such land remains in force if the land changes hands.

24. Where land is already mapped under CROW as open country or registered common land, dedicating it will help to ensure that the right of access continues even if the land loses those characteristics at some point in the future. It can also (at your discretion) create higher rights over the land than normally apply under CROW — for example to ride a horse, or to use a canoe on water.

25. If you are interested in making a dedication you can find out more information from the guidance available on the Defra website at www.defra.gov.uk/wildlife-countryside/cl/accessopen/accessopen07.htm. This sets out further information and the steps you need to take to register the dedication.

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Dedication of local authority land and charity land

26. Local authorities are able to dedicate land in their ownership for public access as a town or village green under the Commons Act 2006 (part 1 above), under section 193 of the Law of Property Act 1925 (paragraph 20 above), or under section 16 of CROW (paragraph 23 above). The dedication of land under the Commons Act 2006 as common land by the grant of new rights of common (paragraph 18) or as a town and village green would, in Defra's view, be a disposal² (of an interest in the land, to the extent of the interest/right now given to the inhabitants of the locality/neighbourhood), and a local authority contemplating creating new common land or a green must act in accordance with section 123 (in relation to county and district councils) or section 127 (in relation to parish councils). Circular 06/93 on disposal consent under the Local Government Act 1972 is available via the Department for Communities and Local Government website at: www.communities.gov.uk.

27. Charities and their trustees can also dedicate land as a town or village green, or under the alternative provisions set out in Part 2 above, so long as any new right granted to the public (or in the case of a new green, to local people) in this way is either directly or indirectly a way of furthering the purposes of the charity and that such a dedication is in the best interests of the charity. In making this decision, regard must be had to those who are the beneficiaries of the charity. If trustees are in doubt whether a dedication is in the interests of the charity, they should take advice from the Charity Commission. The normal statutory constraints on disposal by charities do not apply to such dedications because they are not considered to amount to a disposal. Guidance is available on the Charity Commission website at www.charity-commission.gov.uk.

² Section 270(1) of the Local Government Act 1972 defines 'land' as "includes any interest in land and any easement or right in, to or over land".