

Part 1 of the Commons Act 2006 (changes to the commons registers)

Guidance to applicants in the pio-
neer implementation areas

September 2011

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Version Control

This guidance will be updated from time to time. A record of significant changes will appear in this section.

Version 1.22 (September 2011)

Paragraph 9.2.14: for waste land of the manor, suggested sources of information to determine whether the land is in fact formerly of a manor.

Version 1.2 (September 2010)

Paragraph 7.11.8: for new greens applications under section 15(1), advice that in order to understand the registration criteria the applicant should read the further information set out in the guidance to commons registration authorities, and modification of the subsequent guidance to remove out-of-date guidance.

Version 1.11 (March 2010)

Paragraph 3.3.1: a new guidance note on the registration procedure under the Commons Registration Act 1965.

Paragraph 4.3.4: updated plans for the national implementation of Part 1.

Version 1.1 (July 2009)

Chapter 2: new chapter explaining how to use the guidance, including flowcharts for registering either common land or town and village greens.

Chapter 3: this chapter has been moved to its present position.

Paragraph 2.3.23: clarification that a successful application to deregister land will not necessarily mean that all rights of access will immediately cease. Paragraph 4.2.8: explains how future legislation makes it essential that unregistered historic events are now registered.

Paragraph 6.3.6: applications by unincorporated bodies, such as voluntary associations.

Paragraph 6.4.14: guidance on when Stamp Duty Land Tax may be due in connection with an application.

Paragraph 6.3.4: explanation of an application which is 'not duly made'.

Paragraph 8.10.1: explanation of meaning of 'statutory disposition'.

Paragraph 10.1.3: websites with further information about registering land as common land.

Chapter 10.3: new entries in glossary, including for 'relevant leaseholder' and 'relevant charge'.

Annexe B: specimen representation of a register unit for the register of common land added.

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Chapter 1 : Foreword

1.1.1 The Commons Act 2006 is the first ever omnibus legislation to deal with common land. It is only the second piece of Government legislation to deal with common land in nearly 100 years. The Act radically changes the landscape for the registration, management and protection of common land.

1.1.2 Until the 1960s, the extent of common land was a matter of local knowledge and conjecture. The Commons Registration Act 1965 introduced a new requirement for a permanent, conclusive record of the extent of common land and town or village greens and rights of common exercisable over any such land. Local authorities were charged with drawing up the commons registers. Part 1 of the Commons Act 2006 will enable these commons registers to be brought up-to-date, so that they once again become a reliable record of extent of land and rights, but also ensure that they are kept that way, so that, for the future, any event which ought to be entered in the registers must be registered.

1.1.3 This guidance is directed to those wishing to apply for changes to the commons registers under the Commons Act 2006. It explains how the registers are maintained, in what circumstances applications may be made, how to make an application, and what will happen to the application after it is made.

1.1.4 This guidance applies for the time being only in relation to the pilot implementation areas (see chapter 4.3 below) in England. We hope to be able to improve and expand the guidance during the pilot implementation, so that we can publish updated editions from time to time. We can only do this with feedback from those who use the guidance. If you have any comments, we would be glad to receive them: for details on how to contact us, please see paragraph 10.2.3 below.

Chapter 2 : How to use this guidance

2.1 Introduction

2.1.1 You are unlikely to need to read the whole of this guidance. However it is important that you read and understand the parts which relate to your application. This chapter of the guidance will help you decide what type of application to make in order to amend the register, and what parts of the guidance are relevant.

Making an application

2.1.2 In order to make an application to amend the register there are four important steps to take:

- Step 1: decide what type of an application you want to make using the guidance, tables and flowcharts below,
- Step 2: contact your commons registration authority to obtain the relevant application form,
- Step 3: complete your application using the relevant guidance in Chapter 7, Chapter 8 or Chapter 9,
- Step 4: submit your application to your commons registration authority.

2.1.3 You can find out more about how to make an application in Chapter 6.

2.2 Deciding what type of an application you want to make

2.2.1 Part 1 of the Commons Act 2006 enables you to make applications to amend the registers of common land and of town and village greens. Applications can be made to amend the registers to record new events (a 'new event' application), or to record events which have already taken place (an 'historic event' application), or to rectify the register because of a previous mistake (a 'rectification' application).

Will your application relate to a new event, an historic event or a rectification of the register?

2.2.2 New event applications enable you to amend the register in accordance with your application (such as to extinguish a right of common shown in the register), but should not relate to an event which has already happened 'off-register' (e.g. if a right has already been extinguished by a deed drawn up by a solicitor). Historic event applications are those intended to record events which occurred generally between 1970 (the precise date may vary) and 30 September 2008, but which were not recorded in the register at the time when they occurred. Rectification applications enable you to correct a mistake made in the registers in the past (such as the wrongful registration of land, or the mistaken cancellation of a registration).

2.2.3 The rest of this chapter gives some more detail of each type of application. You can find out more about these different types of application, and how to decide what sort of application you need to make, in chapter 4.2 below.

New event applications

2.2.4 New event applications are made under Sections 6 to 15 of the Act. For example, if a landowner has agreed to grant you a right of common to graze sheep on his land, you (or the landowner) would apply under Section 6 to register the right. If you have recently bought a right of common in gross from someone else, you

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should apply under section 12 to register your ownership of that right. Most commons registration authorities use the following forms for new event applications; please ask them for a form and for further advice.

Amendment sought in the register	Application form required	Relevant chapter of the guidance
Creation of a new right	CA1	See guidance in chapter 7.2
Variation of an existing right	CA2	See guidance in chapter 7.3
Apportionment of existing rights	CA3	See guidance in chapter 7.4
Attach a right of common in gross to a particular piece of land	CA4	See guidance in chapter 7.6
Re-allocation of an attached right	CA5	See guidance in chapter 7.7
Transfer of a right in gross	CA6	See guidance in chapter 7.8
Surrender and extinguishment of a right	CA7	See guidance in chapter 7.9
Statutory disposition relating to registered common land or green	CA8	See guidance in chapter 7.10
Registration of land as a green	CA9	See guidance in chapter 7.11
Severance and transfer of rights to Natural England or a commons council	CA11	See guidance in chapter 7.5
Severance and transfer of rights to any persons or body ordered by the Secretary of State to be regarded as a commons council for the purpose	CA12	See guidance in chapter 7.5
Declaration of entitlement to rights	CA15	See guidance in Chapter 5

Historic event applications

2.2.5 All historic event applications (except an application to record a new right of common) relate to existing entries in the register. You may apply to update the register to reflect historic events provided they occurred generally between 1970 and 30 September 2008 (please see the specific guidance for the exact starting dates). Most commons registration authorities use the same application form CA14 for all historic event applications: please ask them for a form and for further advice.

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Amendment sought in the register	Application form required	Relevant chapter of the guidance
creation or acquisition of a right of common (including by prescription)	CA14	See guidance in chapter 8.4
variation of a right of common		See guidance in chapter 8.5
apportionment of a right of common		See guidance in chapter 8.6
severance of a right of common		See guidance in chapter 8.7
transfer of a right of common in gross		See guidance in chapter 8.8
surrender or extinguishment of a right of common		See guidance in chapter 8.9
statutory disposition		See guidance in chapter 8.10

Rectification applications

2.2.6 Rectification applications relate to the non-registration and mistaken registration of land under the Commons Registration Act 1965. This includes the failure to register land that was eligible for registration as common or green; the mistaken registration of land as common land instead of as a green; and the wrongful registration of land as common or green. Most commons registration authorities use the same application form CA13 for the purposes of all rectification applications: please ask them for a form and for further advice.

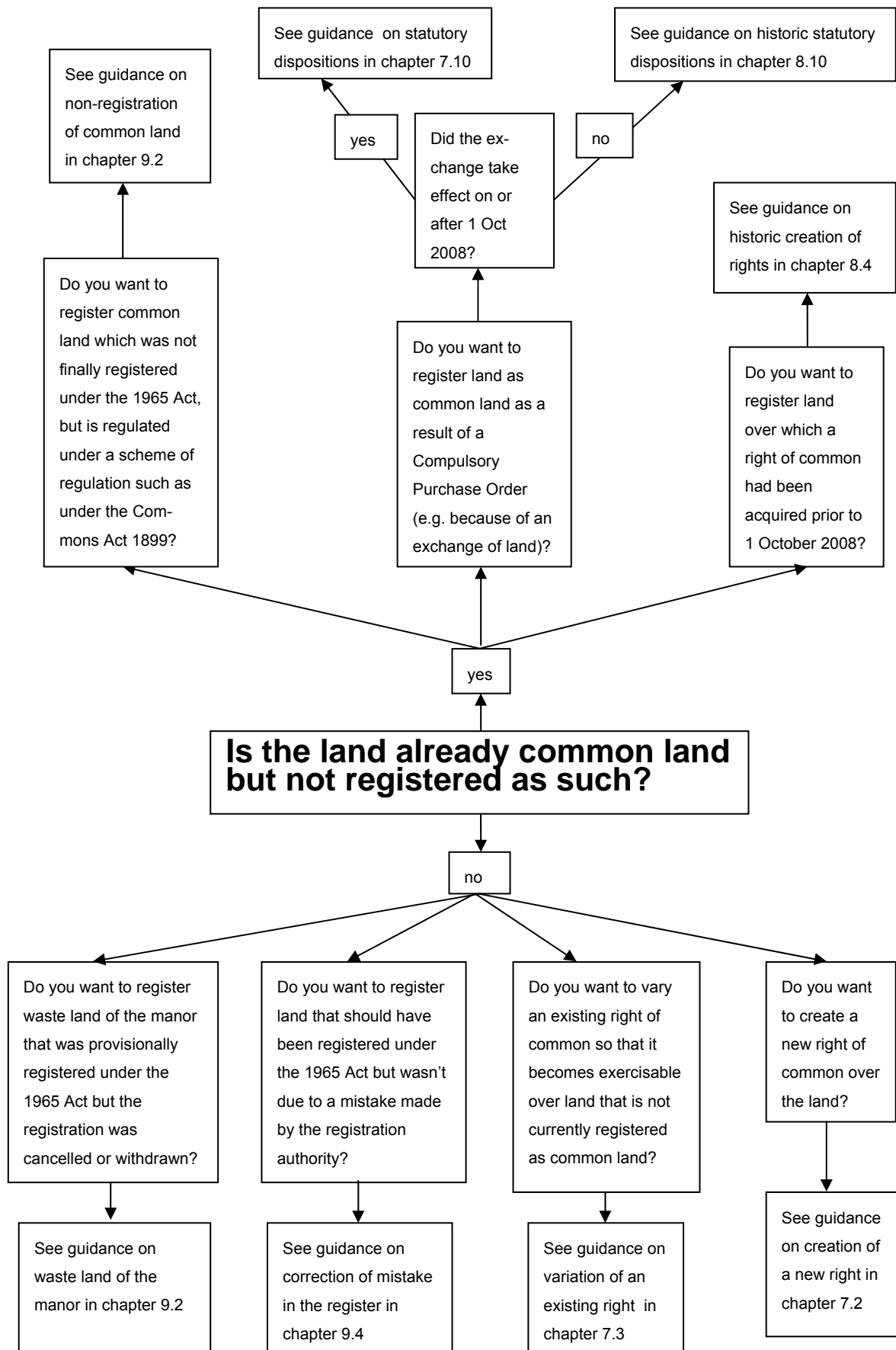
Amendment sought in the register	Application form required	Relevant chapter of the guidance
Registration of land that was eligible for registration as common land or green under the Commons Registration Act 1965, but was not registered	CA13	See guidance on Schedule 2, paragraphs 2 and 3, in chapter 9.2
Registration of waste land of the manor as common land		See guidance on Schedule 2, paragraph 4, in chapter 9.2
Correcting the registration of land that was incorrectly registered as common land but should have been registered as town or village green		See guidance on Schedule 2, paragraph 5, in chapter 9.2
Deregistration of buildings wrongly registered as common land		See guidance on Schedule 2, paragraphs 6 and 8, in chapter 9.3
Deregistration of land wrongly registered as common land		See guidance on Schedule 2, paragraph 7, in chapter 9.3

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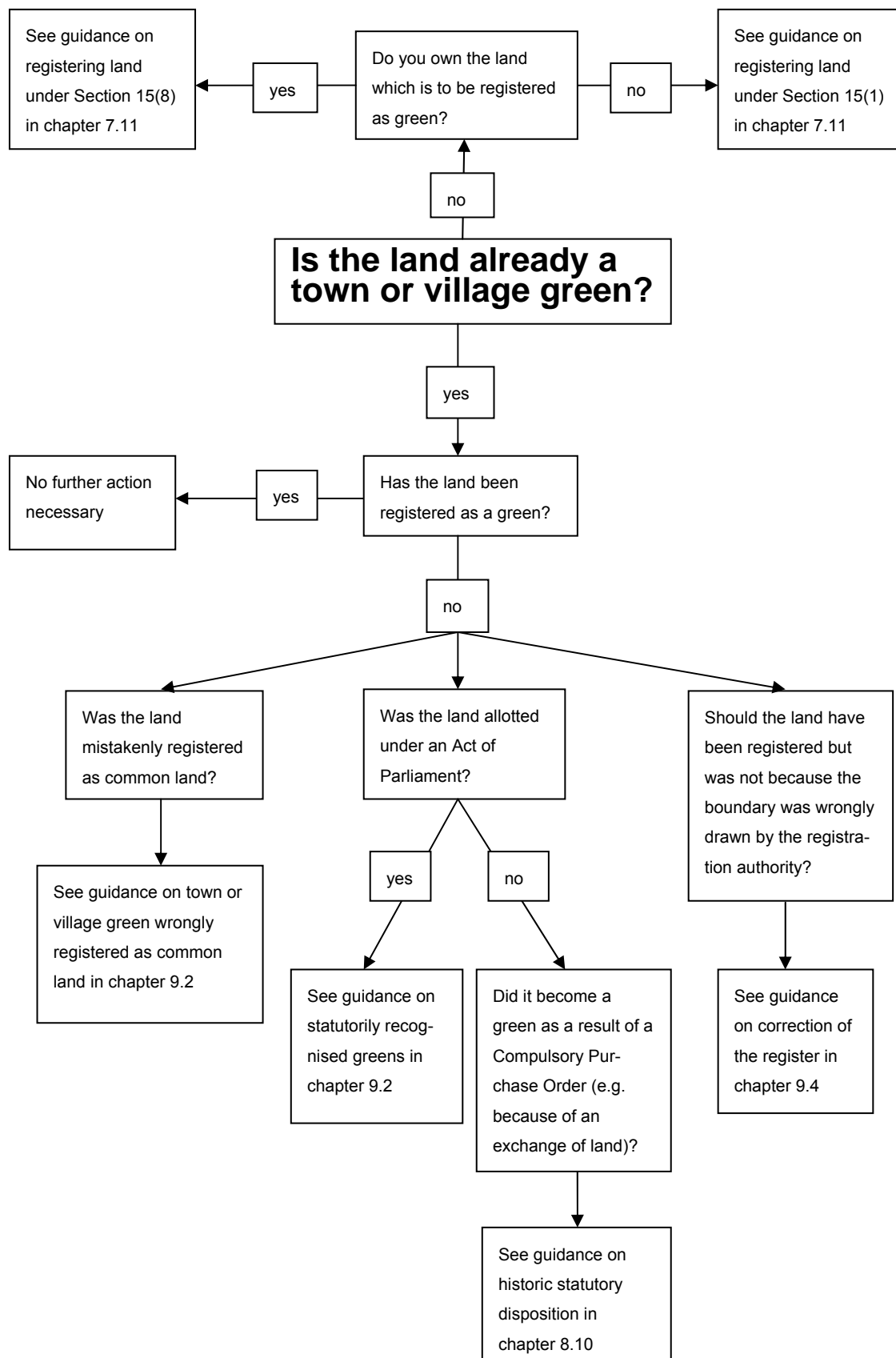
		9.3
Deregistration of buildings wrongly registered as town or village green		See guidance on Schedule 2, paragraphs 6 and 8, in chapter 9.3
Deregistration of land wrongly registered as town or village green		See guidance on Schedule 2, paragraph 9, in chapter 9.3
Correction of mistake in register	CA10	See guidance on Section 19, in chapter 9.4

2.2.7 Alternatively, if you want to register land as either common land or town or village green but are unsure what type of application you need to make then you can use either of the flowcharts below.

Flowchart 1: Registering land as common land



Flowchart 2: Registering land as a green



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If, after reviewing the information above, you are unsure which application form you need then speak to your commons registration authority who should be able to assist in selecting the right application form.

2.3 Deciding your application path: removing land from the registers

Introduction

2.3.1 If you want to remove land from the commons registers, there are several options which may be available to you. It is important that you decide on the right application path: if you make an application under the wrong provision, it will probably be refused, you may need to apply again under another provision, and you may have to pay a fee or a further fee.

2.3.2 In order to make a successful application under any of the available options, you will need to show that your application meets the relevant criteria for that option. The criteria in each case are quite specific: it will not be enough to convince the registration authority that you have a morally persuasive case. For example, you may be able to show convincingly that the land should never have been registered as common land during the 1960s, or that all the commoners' rights were withdrawn by agreement in the 1970s, but these arguments are not relevant to secure deregistration under the 2006 Act. So, in deciding which application path to follow, you should consider very carefully how your circumstances relate to the criteria set out in the Act.

Section 16

2.3.3 You may apply under Section 16 to the Secretary of State for deregistration of land and registration of replacement land in exchange. If your application relates to land less than 200m² in area, you need not include a proposal for replacement land, but the Secretary of State is only likely to grant an application for deregistration without replacement land in limited circumstances, having particular regard as to whether the application is prejudicial to: the interests of persons having rights over, or who occupy, the released land; the interests of the neighbourhood; and the public interest. In considering an application under Section 16, the Secretary of State will assume that the land sought to be deregistered is properly registered — in other words, the Secretary of State will consider an application on the merits of the proposed exchange, and will not normally take into account the history of how the land sought to be deregistered came to be registered in the first place.

2.3.4 You will need to pay a fee for an application under Section 16: the fee is currently £4,900.

2.3.5 Section 16 is already in force throughout England (not just in the pilot areas). You must make an applications under Section 16 to the Planning Inspectorate acting on behalf of the Secretary of State, and not to your registration authority. For more information about an application under Section 16, please see the guidance available on the website of the Planning Inspectorate¹. You can also see the Secretary of State's policy guidance in relation to consents under Section 16².

¹ www.planning-inspectorate.gov.uk/pins/common_land/index.htm.

² www.defra.gov.uk/rural/documents/protected/common-land/consent-policy-guide.pdf.

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Schedule 2, paragraphs 6 or 8

2.3.6 You may apply under paragraphs 6 or 8 of Schedule 2 to the registration authority for deregistration of land occupied by a building or which has been part of the curtilage of a building ever since the land was provisionally registered under the 1965 Act (which would have taken place between 1967 and 1970). You must apply under paragraph 6 in relation to registered common land, and under paragraph 8 in relation to a registered town or village green, but the criteria which you will need to meet in either case are essentially the same.

2.3.7 You may particularly want to apply under paragraphs 6 or 8 of Schedule 2 where your home or garden, in existence in the 1960s, and still in existence today, was mistakenly included in a registration under the 1965 Act. It is not, however, necessary for you to show that the land was mistakenly registered, only that the criteria in the relevant paragraph are met. You cannot apply under paragraph 6 or 8 if you believe that the land was wrongly registered, but the land was not occupied by a building, or the curtilage of a building, at the time of the provisional registration, even if those requirements were met at a later date, or are met now.

2.3.8 You will need to pay a fee for an application under paragraph 6 or 8 of Schedule 2: the fee is £600, or such other amount (not exceeding £1,000) as may have been set by the registration authority.

2.3.9 For more information about applying under paragraphs 6 or 8 of Schedule 2, please see chapter 9.3 below.

Schedule 2, paragraph 7

2.3.10 You can apply under paragraph 7 of Schedule 2 to the registration authority for deregistration of registered common land where the provisional registration of the land was not referred to the Commons Commissioners (and so there was no inquiry into the original registration) and you can show that the land was not (at the time of the provisional registration) common land of any description.

2.3.11 You may particularly want to apply under paragraph 7 of Schedule 2 where land was unexpectedly registered as common land under the 1965 Act, the then owner was perhaps unaware of its registration (and so did not make an objection), and you can show that the land should never have been registered as common land. But you can only apply under paragraph 7 if the provisional registration of the land as common land was not referred to the Commons Commissioner for determination.

2.3.12 You will need to pay a fee for an application under paragraph 7 of Schedule 2: the fee is £600, or such other amount (not exceeding £1,000) as may have been set by the registration authority.

2.3.13 For more information about applying under paragraph 7 of Schedule 2, including on how to find out whether the original registration was referred to the Commons Commissioner, please see chapter 9.3 below.

Schedule 2, paragraph 9

2.3.14 You may apply under paragraph 9 of Schedule 2 to the registration authority for deregistration of a town or village green where the provisional registration of the land was not referred to the Commons Commissioners (and so there was no inquiry into the original registration) and you can show that the land was neither (at the time of the provisional registration) common land, nor a town or village green (in the latter

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case, by reason of its both not being physically capable of having been a green, and its not having been allotted as a recreational area under an Act).

2.3.15 You may particularly want to apply under paragraph 9 of Schedule 2 where land was unexpectedly registered under the 1965 Act, the then owner was perhaps unaware of its registration (and so did not make an objection), and you can show that the land was not physically capable of having been a green in the twenty years leading up to the time of the provisional registration (for example, because the land had been regularly cultivated). But you can only apply under paragraph 9 if the provisional registration of the land as a town or village green was not referred to the Commons Commissioner for determination.

2.3.16 You will need to pay a fee for an application under paragraph 9 of Schedule 2: the fee is £600, or such other amount (not exceeding £1,000) as may have been set by the registration authority.

2.3.17 For more information about applying under paragraph 9 of Schedule 2, including on how to find out whether the original registration was referred to the Commons Commissioner, please see chapter 9.3 below.

Section 19

2.3.18 You may apply under Section 19 to the registration authority for the correction of a mistake made by the registration authority which caused land to be wrongly registered as common land or a town or village green.

2.3.19 You may particularly want to apply under Section 19 where a registration authority made a mistake in wrongly transcribing the boundaries of a common (or green), shown in an application for registration of that common, onto the register map, so that your land was wrongly included within the land registered as common land (or green).

2.3.20 For the purpose of removing land from the register, you can only apply under Section 19 if the mistake was made by the registration authority: if the mistake was made by someone else (such as the applicant for registration), you cannot apply under Section 19, and you should consider an alternative application path.

2.3.21 You will not need to pay a fee for an application under Section 19 for the purpose of making a correction originally owing to a mistake made by the registration authority.

2.3.22 For more information about an application under Section 19, please see chapter 9.4 below.

Removing land from the registers and public access rights

2.3.23 In relation to land with public access rights, the deregistration of that land will not immediately result in the loss of those access rights. The 2006 Act does not, in itself, confer any public rights of access to registered common land. However, most such land is subject to rights of access conferred under Part I of the Countryside and Rights of Way Act 2000 (“the CROW Act”) or earlier legislation. The CROW Act confers a public right of access to land shown on maps of open country and regis-

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tered common land published by Natural England. The maps show all land registered as common land in England at the date of preparation³.

2.3.24 Natural England is required to review its maps every ten years⁴. The next review will take place between 2011 and 2015.

2.3.25 An amendment of the register to remove wrongly registered land will cause the deregistered land to cease to be registered common land, or registered town or village green, from the date of the amendment to the register. However, amendment may not bring to an end any public rights of access to the land. Where land is added to or removed from the common land register under the 2006 Act — for example under the deregistration and exchange provisions in Section 16–17, or under Schedule 2 — there may be an expectation that the CROW Act maps will immediately be updated to reflect these changes. But the maps will not be updated until the next decadal review. Were the maps to be amended every time there were a change to the register, this would in effect require continual modification and remodification of these maps, rather than the decadal cycle set out in the CROW Act.

³ The maps do not show registered common land in East Sussex, owing to the non-availability of the registers in that county at that time, nor Inner London, to which Part I of the CROW Act does not apply.

⁴ The interval between reviews may be varied by regulations made under section 10(3) of the CROW Act.

Chapter 3 : About the commons registers

3.1 Introduction

3.1.1 This chapter explains about the commons registers, which are the background to this guidance. It will help you understand the purpose of the commons registers: what they are, how they were originally drawn up, how they are managed by local authorities, and how you can inspect the commons registers or obtain a copy from them.

3.1.2 If you already know about the commons registers, or just want to know about the new legislation and how to make an application, you may want to skip this chapter, and go straight to Chapter 4.

3.2 The commons registers

3.2.1 The commons registers comprise two separate, but very similar, registers: the register of common land, and the register of town or village greens (in this guidance, we refer to them collectively as ‘the commons registers’).

3.2.2 The commons registers are held by commons registration authorities (‘registration authorities’). In England, registration authorities are county councils, metropolitan borough councils, London borough councils and all unitary authorities.

3.2.3 Each register contains a number of register units (typically a common or green), with its own number. And each register unit consists of two sections:

- the land section: this describes the land that is the subject of the registration, and a reference to the register map, which is also part of the register,
- the rights section: this sets out the nature and extent of the rights of common registered over the land.

In addition, there may be a third section:

- the ownership section: this gives details of the claimed owner of the land (but you should not rely on any entry in the ownership section, as it may be out of date).

Sometimes, a common or green may comprise two or more register units adjacent to each other, or neighbouring units may be registered one as common land and the other as a town or village green. You can see a specimen commons register unit in Annexe B on page 100.

3.2.4 The register map is an important part of the register unit. It shows the land which has been registered as common land or town or village green. It may also include other information, such as details of where the registration of land was cancelled, or areas of land within a registered common over which specific rights of common are exercisable. There should be a key to the map available, explaining the different colours and symbols used.

3.3 The origin of the commons registers

3.3.1 The Commons Registration Act 1965 Act (in this guidance, we refer to it as ‘the 1965 Act’) was intended to establish definitive registers of common land and of

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town and village greens in England and Wales and to record details of rights of common. Registration authorities were appointed to draw up the registers. Applications were invited between 2 January 1967 and 2 January 1970 for the provisional registration of common land, greens, and rights of common, and registration authorities were also able to register land on their own initiative. The registers remained open for objection until 31 July 1972. Disputed provisional registrations were referred to a Commons Commissioner for determination, but unopposed provisional registrations became final automatically⁵.

3.3.2 The 1965 Act provided that, where land was eligible for registration under the Act (whether as common land or a town or village green), a failure to register it resulted in the land being deemed not to be common land or a green (as the case may be) after 31 July 1970⁶. Similarly, a failure to register rights of common which were eligible for registration caused the rights to cease to be exercisable⁷ after the same date. So the sanction for not registering land, or rights of common, was harsh: unregistered land could no longer be regarded as common land or a green, and unregistered rights were, in effect, extinguished.

3.3.3 In practice the task of establishing registers was difficult and complicated, and the 1965 Act had shortcomings. For example, some land provisionally registered under the Act was wrongly cancelled, and other common land was overlooked and never registered. Many greens became registered as common land. Some grazing rights were registered far in excess of the capacity of the common to sustain them. The scope for correcting errors was limited. Unfortunately, regulations made under the 1965 Act did not require very widespread notice of applications made for provisional registration of common land and rights of common, so that many provisional registrations became final without any objections and thus without independent examination of the claim made in the application. The Court of Appeal decided that even where land had clearly been wrongly registered as common land, the Act provided no mechanism to enable such land to be removed from the register once the registration had become final⁸.

3.3.4 Moreover, although the 1965 Act made provision for amendments (such as the surrender and extinguishment of a right of common) to be made to the registers to deal with events which occurred after 1970, there was no obligation on anyone to seek an amendment. Many events which in principle affected entries in the registers have not been registered, and the registers have become significantly out-of-date since 1970. Accordingly, the need for reforming legislation was, by the turn of the century, pressing.

⁵ Further information about the registration process under the 1965 Act can be found in a separate guidance note entitled *The Commons Registration Act 1965: how the commons registers were prepared*: www.defra.gov.uk/rural/protected/commonland/reg-authority.htm.

⁶ Section 1(2) of the 1965 Act, as prescribed by the Commons Registration (Time Limits) Order 1966 (SI 1966/1470), as amended.

⁷ Section 1(2)(b) of the 1965 Act states that such rights are rendered not 'exercisable'. In *Central Electricity Generating Board v. Clwyd County Council* [1976] 1 All ER 251, Goff J. concluded that the fact that rights of common were no longer exercisable meant that they were extinguished, and this finding is now generally accepted.

⁸ *Corpus Christi College, Oxford v. Gloucestershire County Council* [1982] 3 All ER 995.

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3.3.5 The *Common Land Policy Statement 2002*⁹ set out in broad terms the Government's intentions for future legislation relating to common land and town and village greens. Finally, in 2005, the Commons Bill was introduced into Parliament, and in July 2006, it received Royal Assent and became the Commons Act 2006 (we refer to the Act in this guidance as 'the 2006 Act').

3.4 Copies and inspection of the commons registers

Introduction

3.4.1 You can ask to see the commons registers, and records held in connection with applications for registration under Part 1 of the 2006 Act or under the 1965 Act. There is no charge for inspection of the registers, or other records.

3.4.2 You may also make copies of the registers, or other records, by using, for example, a public photocopying machine, a camera, tracing paper, or by transcription, and the registration authority must not charge you a fee for that purpose (other than any charges for using a public photocopying machine). However, if you ask the registration authority to give you copies of the registers, or other records, it may charge you a fee for the copies.

Procedure

3.4.3 If you wish to inspect the commons registers at the offices of your registration authority, you are not required to make an appointment as the commons registers should be readily available. However, it is sensible to telephone ahead to make an appointment, especially if you wish to inspect the register and be able to speak to someone who can advise you. This is because many registration authorities have only one person who deals with commons registration, and they may not be available if you visit unexpectedly.

3.4.4 If you want to inspect any other records, such as past application papers, that the registration authority may hold, you should always contact your registration authority to arrange an appointment. The Department for Communities' guidance "*Personal searches of the local land charges register and other records held by local authorities*" published in 2008¹⁰, recommends that appointments made within office hours should have a turnaround of 24 hours. However, a longer period of notice may be required for requests to see ancillary papers to the commons registers because:

- the correct records may need to be identified;
- the records may need to be retrieved from storage; and
- there may be data protection issues, which will need to be resolved before the records are made available.

3.4.5 If you wish to ask the registration authority to send you a copy of the register, you will need to supply the authority with the following information (or as much of it as is possible):

- your name, address and contact telephone number;

⁹ Defra, July 2002. Available on the internet via: www.defra.gov.uk/rural/protected/commonland/about-act.htm.

¹⁰ www.communities.gov.uk/publications/housing/personalsearchguide.

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- the register unit number (CL or VG number): if you cannot provide this information then you must provide the name or location of the common or village green;
- the name of the parish or district;
- if asking details about particular rights of common, then it is helpful if you can give the rights entry number.

3.4.6 You should say whether you want an 'official copy' (certified by the registration authority as a true copy of the register), as a higher fee may be charged for official copies. Your registration authority's charging policy for copies should be available from its website or on request.

Chapter 4 : About the Commons Act 2006

4.1 Part 1 of the Commons Act 2006

4.1.1 Part 1 of the 2006 Act is about the commons registers. Part 1 retains but updates the commons registers established by the 1965 Act (see Chapter 3 for more information about the commons registers), and introduces new provisions for people to apply to amend the commons registers, both to correct past mistakes, and to help keep the registers up-to-date.

4.1.2 Part 1 of the 2006 Act enables people to make applications to amend the register, and enables registration authorities themselves to make proposals to amend the register. The purposes for which applications and proposals can be made can be grouped into the following three classes — you can find out more about each class by following the links below:

- [new event applications](#) to amend the register because of a new event which the applicant wants to record (e.g. an application to extinguish rights of common) — see paragraph 4.2.1 below;
- [historic event applications and proposals](#) to reflect events (roughly speaking which took place after 1970 but before 1 October 2008: the exact starting date may vary) that could have been registered at the time they occurred, but were not (e.g. an application to delete from the register rights of common which were extinguished by deed in 1980). These events should be registered during the initial transitional application period — see paragraph 4.2.6 below, and
- [rectification applications and proposals](#) to put right certain mistakes and omissions made when the registers opened for the first wave of registrations in the late 1960s (e.g. an application to deregister wrongly registered common land) — see paragraph 4.2.12 below.

4.1.3 This guidance is intended to help you to make an application to amend the commons registers under Part 1 of the 2006 Act in the pilot registration areas (see paragraph 4.3.5 below) from 1 October 2008, and to guide you through the steps which will take place after you have made an application.

4.1.4 This guidance does not deal with applications to amend the commons registers outside the pilot registration areas. Part 1 of the 2006 Act will be brought into force in other parts of England at a later date: please see paragraph 4.3.4.

4.1.5 Nor does this guidance deal with applications to the Secretary of State for an order for the deregistration and exchange of land under Sections 16 and 17 of Part 1 of the 2006 Act. Guidance for applications under Sections 16 and 17 can be seen on the website of the Planning Inspectorate¹¹.

4.1.6 This guidance note is non-statutory and has no legal effect, and does not provide a comprehensive explanation of every issue. If you need assistance in making an application, you should contact your registration authority for advice in the first instance. Defra cannot provide advice on individual circumstances. Anyone needing this should consider taking independent expert advice, such as from a solicitor with experience in this area of law.

¹¹ www.planning-inspectorate.gov.uk/pins/common_land/guidance/index.htm.

4.2 Applications

New event applications

4.2.1 You can make new event applications under Sections 6 to 15 to amend one (or both) of the commons registers to show changes which have not yet occurred, but which you want to happen and formally to record: examples are the creation of new rights of common, the variation of existing rights of common, or the registration of a new town or village green.

4.2.2 New event applications generally relate to events which occur from the commencement date of the pilot implementation (1 October 2008) onwards. They are not usually retrospective: you cannot apply to amend a register under Sections 6 to 15 in respect of events which took place before 1 October 2008. Exceptionally, you can apply to register a new town or village green under Section 15(1) where the use of the green was challenged before the date of the application for registration.

4.2.3 Sections 6 to 15 are also intended to work in 'real time'. For example, previously, it was possible to vary a right of common by arrangement between the owner of the common and the commoner: this was generally done by a legal instrument known as a 'deed'. The variation was effective in law, whether or not the commons registers were amended to record the variation. But under the 2006 Act, a right of common can only be amended by way of an application to amend the register, so that a deed of variation will of itself be of no legal effect.

4.2.4 As well as intending to ensure that all events giving rise to amendments to the registers are captured, Sections 10 and 11 (attachment, and re-allocation of attached rights) provide for new amendments to rights of common which could not previously be achieved under the common law or under the 1965 Act.

4.2.5 You can find out more about new event applications in Chapter 7 below.

Historic event applications

4.2.6 The second strand involves applications to update the registers during the 'transitional application period', and you must apply within the first two years of the pilot (*i.e.* between 1 October 2008 and 30 September 2010).

4.2.7 Many unrecorded events have taken place for some private purpose between the date on which the commons registers were first drawn up and the start of the pilot: for example, the surrender of a right of common by agreement between the commoner and the owner of the common. You can and should apply to update the register to record any such event which affects your interests. So, for example, if you are the owner of a common, and you (or a previous owner of the common) agreed with a commoner for the surrender of his right of common in 1985, but the surrender of the right was never recorded in the commons registers, then it is in your interests to apply to amend the registers now.

4.2.8 If you do not apply to register an unrecorded event during the transitional application period, you may find that it becomes invalid. In the example above, the surrendered right will be revived¹², and the surrender of the right in 1985 will be ineffective in law. When Part 1 of the 2006 Act has been brought into force through-

¹² See Section 18(2), (5) and (6).

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out England, Defra plans to amend Acts of Parliament¹³ so that references in legislation to rights of common, common land and town or village greens will mean references to only to rights and land as are registered: so, for example, in relation to a compulsory purchase order for a new road across common land, only those commoners whose rights were registered would be eligible for compensation.

4.2.9 Some unrecorded events may well have a public interest element (*e.g.* an exchange of land under a compulsory purchase order, involving land ceasing to be common land in return for other land given ‘in exchange’). In such cases, registration authorities are expected to work with other relevant bodies (such as the highways authority, the Highways Agency and Defra) to identify outstanding unrecorded events, and to promote proposals for amendments to the commons registers. But if you have a private interest in such an event (*e.g.* if you have a right of common exercisable over the exchange land), you can apply to record the exchange yourself.

4.2.10 You can find out more about historic event applications in Chapter 8 below.

Rectification applications

4.2.11 There are two strands to the task of updating the registers. You can apply to rectify mistakes made when land was registered under the 1965 Act (and in some cases, add land to the register which was mistakenly excluded from registration under the 1965 Act). Secondly, you can apply to update the registers to reflect events that have happened since the introduction of the 1965 Act but which had not been registered.

4.2.12 The first strand will involve rectification applications under paragraphs 2 to 9 of Schedule 2, and the correction of errors in the registers under Section 19. Most such applications will be required to be referred to an inspector appointed by the Planning Inspectorate for determination, and the role of the registration authority will be limited to receiving applications, publicising and consulting on them, and forwarding them to the Inspectorate with any relevant evidence.

4.2.13 You can make a rectification application at any time from the start of the pilot on 1 October 2008 up to and including 31 December 2020¹⁴, but you can apply under Section 19 at any time. You can find out more about rectification applications in Chapter 9 below.

4.3 Pilot areas

4.3.1 Part 1 of the 2006 Act seeks to deliver updated commons registers which may be relied upon. But the path to this outcome is not straightforward: regulations must be made, guidance published, registration authorities must be given training, funding and assistance, the public must be informed, lawyers and other advisers must be informed of the changes, and those with a private interest in the registers must be well aware of their time-limited opportunity to secure vital modifications.

4.3.2 The commons registers have seen little activity or investment since they closed to the first wave of registrations in 1970. Even so, it is difficult to gauge the scale of the work which will be imposed on local authorities, landowners and others in navigating the transitional application periods in each registration authority area.

¹³ Powers are available to the Secretary of State for this purpose, under Section 54.

¹⁴ Paragraph 14(1) of Schedule 4 to the Regulations.

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4.3.3 In order to plan effectively for the implementation of Part 1 generally, implementation of Part 1 is taking place in a small number of pilot registration authorities' areas. The pilot scheme begins on 1 October 2008, concluding for the purposes of historic event applications on 30 September 2010, but pilot authorities will remain open for rectification applications until at least 2020, and for new event applications for the foreseeable future. Review of the pilot implementation during the transitional application period will be used to help decide the plans for implementation in the rest of the country.

4.3.4 A decision on how and when to implement the registration provisions in the Act in the rest of England will be made after the completion of the transitional application period in the pilot areas (*i.e.* after September 2010).

4.3.5 The pilot registration authorities are as follows:

- Blackburn with Darwen Borough Council
- Cornwall Council
- Devon County Council (but not including Plymouth or Torbay)
- County of Herefordshire District Council
- Hertfordshire County Council
- Kent County Council (but not including Medway)
- Lancashire County Council (but not including Blackpool)

4.3.6 Although the implementation of Part 1 will bring into force the whole of Part 1 in each of the pilot authority areas, exceptionally, Section 15 (and some other provisions) of the 2006 Act, which deals with the registration of new town or village greens, was brought into force throughout England on 6 April 2007.

4.4 Understanding the legislation

4.4.1 This guidance seeks to explain the law which applies to applications to amend the commons registers under Part 1 of the 2006 Act. Legislation is often complicated and difficult to understand. If you are considering an application under Part 1, then it is up to you to decide whether and how to make an application, and to provide sufficient evidence to enable your application to be properly considered. If you do not understand what you need to do, you should seek advice. Your registration authority may be able to provide assistance in general terms (for example, in explaining which form you need to use, or in providing copies of entries from the commons registers), but is unlikely to be able to help you fill in the forms and will not be able to tell you whether your application will be successful.

4.4.2 You should consider consulting a solicitor if you need detailed advice on the law in relation to your particular circumstances (we recommend that you select a solicitor who has experience in this area of law). You may also be able to seek assistance from a body which represents the interests of people in a similar position: for example, the National Farmers' Union and the Country Land and Business Association (*e.g.* in relation to a registration of land which interferes with normal use of the land), or the Open Spaces Society (*e.g.* in relation to the registration of previously unregistered land). Representative bodies like these may be unable to provide assistance unless you are or become a member.

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4.4.3 The 2006 Act, and particularly Part 1, provides the legal framework for the pilot implementation. Explanatory notes are available to help explain the background and purpose of the provisions in the 2006 Act.

4.4.4 Most Acts of Parliament do not come into force automatically, but only when an order is made for that purpose, usually by the Minister responsible for implementation of the legislation. Some provisions of Part 1 of the 2006 Act are already in force throughout England by virtue of previous commencement orders: further information about commencement is available on the Defra website¹⁵. The whole of Part 1 has been brought into force only in the pilot implementation areas¹⁶. That means that you can make an application under Part 1 in the pilot areas, but you cannot yet make an application under Part 1 (except Section 15) elsewhere in England.

4.4.5 This guidance applies only to the pilot implementation areas in England (see paragraph 4.3.5 above). In Wales, the Welsh Ministers are responsible for the implementation of the 2006 Act.

4.4.6 Part 1 enables the Minister to make regulations which set out the procedures and other matters of detail in relation to the implementation of Part 1. So the 2006 Act must be read together with the regulations which have been made under it. The regulations are the Commons Registration (England) Regulations 2008¹⁷ (in this guidance, we refer to them simply as ‘the Regulations’).

4.4.7 In this guidance, reference to provisions should be interpreted as follows, unless the context requires otherwise:

the 2006 Act	the Commons Act 2006
the 1965 Act	the Commons Registration Act 1965
the Regulations	the Commons Registration (England) Regulations 2008
Regulation <i>n</i>	Regulation <i>n</i> within the Regulations
Section <i>n</i>	Section <i>n</i> of the 2006 Act
chapter <i>n.n</i>	chapter <i>n.n</i> of this guidance
paragraph <i>n</i> of Schedule <i>n</i>	paragraph <i>n</i> of Schedule <i>n</i> to the 2006 Act
paragraph <i>n</i> of Schedule <i>n</i> to the Regulations	paragraph <i>n</i> of Schedule <i>n</i> to the Regulations
paragraph <i>n.n.n</i>	paragraph <i>n.n.n</i> of this guidance

4.4.8 Details of how to obtain copies of the 2006 Act, the explanatory notes to the Act, and statutory instruments, are in chapter 10.1 below.

¹⁵ See www.defra.gov.uk/rural/protected/commonland/implement.htm.

¹⁶ The Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008 (SI 2008/1960).

¹⁷ SI 2008/1961, as amended by the Commons Registration (Amendment) Regulations 2009.

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4.4.9 A glossary of some of the terms used in this guidance is in chapter 10.3 below.

Applying to register new town or village greens

4.4.10 Exceptionally, Section 15, which deals with the registration of new town or village greens, was brought into force throughout England on 6 April 2007, and you can apply to register a new green in any part of England under Section 15. If you are applying to register a new town or village green in one of the pilot registration areas, you should read this guidance, and particularly chapter 7.11 below. For more information about registering a new green in England other than in the pilot registration areas, please see the special guidance on the Defra website¹⁸.

4.4.11 If you applied to register a new town or village green under Section 15 in one of the pilot registration areas before 1 October 2008, your application will now be dealt with following the procedures described in this guidance, but it should not be necessary to repeat any steps already taken on your application, and your application must be determined by the registration authority itself (it cannot be referred to the Planning Inspectorate for determination).

¹⁸ www.defra.gov.uk/rural/protected/commonland/tvg.htm.

Chapter 5 : Declarations of entitlement to rights of common

5.1 Introduction

5.1.1 The rights section of the commons register shows the rights of common exercisable over each register unit. For each right, the register shows the nature of the right, the person who applied to register or last amend the right, and the land to which the right is attached (that is, the 'dominant tenement': the owner for the time being of the dominant tenement is the commoner entitled to exercise the right of common attached to it).

5.1.2 Exceptionally, some rights of common are held 'in gross'; these are not attached to land, but belong directly to, and are exercisable by, the owner of the right. This section does not apply to rights held in gross.

5.1.3 For each right of common shown as attached to land, the register records only the details of the person who applied to register or last amend those rights rather than the person who is currently actually entitled to exercise the rights. Very often, both persons will be the same. But sometimes, the ownership of all or part of the dominant tenement will have changed since the register entry was made or last amended.

5.1.4 Regulation 44 enables commoners to include in the rights section of the commons registers a declaration of their entitlement to exercise rights of common, by virtue of their ownership or occupation of the land to which the right is shown as attached. This will mean that for the first time commoners can put their name to particular rights which in turn will help make the rights section of the commons registers more user-friendly and more informative.

5.1.5 The benefits of making a declaration to show your entitlement to exercise a registered right of common are:

- You will be notified of applications to amend the register unit over which the declared rights are exercisable;
- You will be given notice of any application made under Section 16 or Part 3 of the 2006 Act which affects the register unit;
- Your entitlement to the right will be confirmed for the purposes of participating in any commons council established under Part 2 of the 2006 Act;
- Any other person interested in the common will be able to identify your own interest as a commoner, and will be able to contact you if necessary (e.g. Natural England, or a body contemplating compulsory purchase of part of the common).

5.2 Procedure

5.2.1 You can make a declaration only if both the following conditions apply:

- you are the owner or tenant of land, and
- a registered right of common is attached to that land (*i.e.* the dominant tenement).

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You cannot make a declaration if you are the owner of a right held in gross, because the commons registers already show the ownership of the right, and no declaration is therefore necessary.

5.2.2 You must be either the freehold owner of the dominant tenement, or a leaseholder with a lease granted for at least three years. You cannot make a declaration if you have a short term let of the dominant tenement, or a grazing licence.

5.2.3 In order to make a declaration, you must obtain form CA15 from your registration authority. You will also need to obtain details of the register unit number and the rights entry number. If you do not have this information, it can be obtained by either inspecting the commons registers at, or obtaining a copy of the relevant entry from, your registration authority.

5.2.4 The application form will also require you to calculate the number of rights you are entitled to. If you own the whole of the dominant tenement to which the right is attached, then you may claim entitlement to all of the rights shown in the register entry. However, if you own only part of the dominant tenement, then you may claim entitlement to only part of the rights shown in the entry (because you only own or occupy part of the land to which the rights are shown as attached), and you will need to calculate the number of rights you are entitled to by using the following formula:

$$\frac{\text{Total number of rights over the dominant tenement}}{\text{Total area of dominant tenement}} \times \text{Area of applicant's portion of dominant tenement}$$

5.2.5 You will need to support your application by supplying evidence of your entitlement to the rights. You must supply evidence that you either own (all or part of) the dominant tenement or that you have a lease of it. The evidence must be:

- (if the property is registered) a copy of the proprietorship section and map for the individual registration of that land (whether as freehold or leasehold) in the register of title held by the Land Registry¹⁹;
- (if the property is unregistered) other evidence of ownership, showing a good root of title²⁰; or
- (if you are a tenant with an unregistrable leasehold estate) a copy of the lease.

5.2.6 You will then need to send your application, along with the appropriate fee, to your registration authority, which will process your application. If your application is granted, it will send you a copy of the declaration recorded in the register.

¹⁹ A copy of the register of title costs £3 on-line. See paragraph 10.1.14 for more information.
²⁰ A copy of conveyances of the land, identifying the purchaser and the land which is conveyed, going back at least 15 years.

Chapter 6 : Making an application

6.1 Introduction

6.1.1 You can find guidance on applications in Chapter 7 to Chapter 8 below. However, this Chapter provides general guidance which applies to all applications, and you should read this Chapter before reading the guidance relevant to your particular type of application.

6.2 Do you need to make an application?

6.2.1 Before you make an application, you should decide whether you need to make one. You should consider the following points:

- How likely are you to achieve the outcome you want? Is the application likely to be opposed, perhaps stirring up local feelings for and against the application? Would a successful application enable you to achieve your objective, or would there be other constraints (e.g. a requirement for planning permission) which might get in the way?
- How much will the application cost? You may need to pay a fee (see paragraph 6.3.10 below): please ask the registration authority for details of the fee. You may need to research the background and produce evidence to support your application. You may decide to employ a solicitor or expert witnesses (e.g. someone with knowledge of local history, or a surveyor) to help you present your case. In some cases, you may be at risk of having an order for costs awarded against you if the inspector at a public inquiry decides you have behaved unreasonably. An objector may decide to seek judicial review of a decision on your application, and if you ask to become a party to the judicial review, you may be at risk of costs.
- Could the registration authority propose an amendment to the register, to achieve the same outcome? The registration authority can in certain cases itself put forward proposals for amendments to the register, which are dealt with in a similar way as applications²¹. This may reduce the burden placed on you to research and present your case, although you may still need to take part, and it may be in your interest to be as helpful as possible towards the authority's case. If the authority makes a proposal, you will not have to pay a fee (but you could be required to pay another party's costs if you behaved unreasonably at a public inquiry). A registration authority will not normally put forward a proposal to amend the register unless the outcome would provide some benefit to the wider public (e.g. the registration of land as common land may provide new recreational opportunities to local people).
- Could someone else apply? If several people have an interest in amending the register (e.g. if a compulsory purchase order extinguished commoners' rights of common over one piece of land, and vested new rights exercisable over another piece of land), it may be possible for one person to apply to amend the register on behalf of everyone, or someone else may be willing or under a duty to apply (such as the local authority or other body responsible for the compul-

²¹ A registration authority may make a proposal under Schedule 3 before 30 September 2010, and under Section 19 or paragraphs 2 to 9 of Schedule 2 before 31 December 2020.

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sory purchase order). Alternatively, a parish or district council, or the National Park authority (in a National Park) may be willing to apply if there is a public benefit to the registration.

6.2.2 So you should consider carefully whether to make an application: if you pay a fee with an application, it will not be refunded, even if you subsequently decide not to proceed with the application.

6.3 How to make an application

6.3.1 Applications must normally be made using a form. You should check with your registration authority which form you need to use. You can obtain a copy of the form from your registration authority. Do not use a form supplied by another authority: the authority to which you make the application may refuse to accept it. If the authority is unable to provide the appropriate form for you to use, ask the authority to contact Defra for advice.

6.3.2 Unless your registration authority advises otherwise, you should send your application to the 'commons registration officer' at your registration authority. You can check the name of the commons registration officer by 'phoning the authority, and asking for the name of the person dealing with the registration of commons and town or village greens.

6.3.3 You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

6.3.4 Your registration authority can process your application only when it has been duly made, which will happen only if your application contains all the information and evidence needed and, where relevant, a fee (see below). It is your responsibility to ensure that your application has been correctly completed and includes evidence to support your application. Any application not duly made will not be considered by the registration authority and will returned to you so that you can put things right.

6.3.5 The checklist below sets out the steps to be followed when making your application:

Step 1	Read 'Deciding what type of an application you want to make' at chapter 2.2 above of the guidance to help decide which is the correct provision under which you should to apply.
Step 2	Contact your registration authority to request a copy of the relevant application form (e.g. CA1 to register a new right of common).
Step 3	Complete the application form using this guidance to help you.
Step 4	Obtain the consent from every person listed in the regulations and guidance specific to your application.
Step 5	Obtain copies of all evidence necessary to support your application, this may include maps of the land relating to the right (e.g. the land/property to which the right is attached or the land over which the right is or will be exercisable) or title deeds.
Step 6	Read your application form to ensure that all parts have been completed and contain as much relevant information as possible. Check that you have

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	signed and dated the form.
Step 7	Submit your application to the registration authority for your area. Remember to enclose a fee (if relevant) and copies of all documents you have listed as evidence relevant to your application, except any documents the registration authority already has in its possession (but you should nevertheless identify these in your application form).

Applications from incorporated and unincorporated bodies

6.3.6 Applications may be made by either an individual, or by an incorporated or unincorporated body, such as a local authority, a limited company or a partnership. Where an application includes the name of such a body, it must be signed as having been made by that body or by an authorised representative of it, rather than by an individual.

6.3.7 Failure to make clear that the person or persons who sign the application are doing so on behalf of a body will give the registration authority the impression that the application is made by an individual. This could result in problems later in the application procedure.

For example, the Walnut Grove Residents Group submitted an application under Section 15 to register land as a green. Their application was signed by the secretary of the Group, Mr Smith, who failed to indicate that he made the application as a representative of the Group. Mr Smith, who was replaced as secretary, opposed the Group's subsequent attempt to withdraw its application. However, as the application was made in Mr Smith's name only, the Group had no authority to seek withdrawal. (Note that the registration authority may refuse to allow withdrawal of an application: please see chapter 6.6 below.)

6.3.8 Some applications, particularly those to secure the registration of new land under Section 15 or under paragraphs 2 to 5 of Schedule 2, may be submitted by an unincorporated association. Defra suggests that, because such an association has no particular status in law, the application should be signed by the key members of the body such as, for example, secretary, treasurer or chairperson. In the case of incorporated bodies it will be sufficient for a single authorised representative to sign the application provided it makes clear that the application is behalf of the body which is applying.

6.3.9 There is no guarantee that a registration authority will accept a withdrawal of, or amendment to, such an application, particularly as people who have not signed the application form may nevertheless have a strong interest in the outcome of the application. But see the specific guidance on withdrawal and amendment of applications in chapters 6.6 and 6.7 below.

Fees

6.3.10 You may need to send a fee with your application. Fees are as specified in Schedule 5 to the Regulations, or such other amount (not exceeding £1,000) as may have been set by the registration authority. You will need to check the fee with the commons registration officer before you send off your application. You may find details of fees on the registration authority's website. If you need to pay a fee, your application cannot be considered until the registration authority has received the fee

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as well as the application. Fees are not refundable, even if you decide to withdraw your application, or the application is refused.

6.3.11 You will not need to pay a fee for certain types of application (generally those which fulfil a wider public interest): these types of application are listed in Schedule 5 to the Regulations as ones for which ‘no fee’ is recorded in column 3 of the table. The registration authority cannot set its own fees for these types of application²².

Land straddling two authorities’ areas

6.3.12 If you wish to make an application under Part 1 in relation to an area of registered land which straddles the boundary between a pilot registration area and a neighbouring registration authority’s area, you should check with one of the registration authorities to see whether the two authorities have in place a ‘straddling agreement’ for that area of land. If so, one of the two registration authorities will take responsibility for the registration of all that land, and any application in respect of the registration must be made to that authority.

6.3.13 If a straddling agreement means that responsibility for registration of a common which lies within a pilot authority’s area has been transferred to a neighbouring authority which is not part of the pilot, that means that you cannot yet make an application under Part 1 of the 2006 Act — please see paragraph 4.3.4 for the timetable for national implementation.

6.4 Supporting your application

6.4.1 You should try to enclose with your application as much evidence as will help support your application.

6.4.2 Sometimes, the information which you write into the application form itself may be sufficient. More often, the Regulations will require that you enclose additional evidence with your application (the relevant part of this guidance and the application form will explain what you need to do).

Supporting documents

6.4.3 If you are making an application which needs to include historical supporting evidence (for example, if you are trying to show that the land was not common land at the time it was originally registered), then you should enclose this evidence with your application. You may not necessarily be given an opportunity to offer further evidence at a later date. If you are unable to research the evidence you need yourself, you should consider employing a historical researcher to gather this evidence for you. No-one else has an obligation to supply this evidence to support your application, even if you consider that the application is only necessary because someone else is or was at fault.

6.4.4 You must include with your application a copy of every document which might be relevant to the application which is in your possession (even if it would not be helpful to your application). You are recommended not to forward the original of any deed or other private document. Instead, you should enclose a copy, preferably indorsed with a certificate signed by a solicitor that it has been examined against the original: in such a case, you should indicate, either on the copy itself or on the appli-

²² Paragraph 3 of Schedule 5 to the Regulations.

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cation form, who has the original and where it may be inspected. If any related document is believed to exist, but neither the original nor a copy can be produced, this should be mentioned in your application, where you should describe the missing document and explain why it cannot be produced. Any inquiry or hearing into the application may ask that the original document be produced.

6.4.5 You do not need to include with your application a copy of any document which was issued by the registration authority, or to which the authority was a party, or which was formally deposited with the authority under any enactment (e.g. inclosure awards made under the Inclosure Act 1845). But you should always include such a document in a list of relevant documents on your application form.

Maps

6.4.6 You will often need to supply one or more maps to support your application. The map may show the land which is the subject of your application, or the dominant tenement to which a right of common is attached, or have some other purpose. In any case, a map must be an Ordnance Survey map, and must be at least of the following scale ('at least' means that you can use a larger scale map, which shows the land in more detail, if you want):

- you must use a map at a scale of at least 1:2,500 to show any land which you want to add to, or remove from, the register, unless the land is wholly or predominantly moorland (see below), in which case, you may use a map at a scale of at least 1:10,560;
- you must use a map at a scale of at least 1:10,560 (six inches to the mile) for any other purpose, such as identifying land to which a right of common is attached, or the extent of a neighbourhood, or locality within a neighbourhood, in connection with an application under Section 15.²³

6.4.7 You can find out whether land is classified as 'moorland' by looking at Defra's moorland map: see paragraph 10.1.12 below. Land is 'wholly or predominantly moorland' if the land is wholly or mainly within the area identified as moorland on the moorland map.

6.4.8 You should try to use an up-to-date map. Do not use an out-of-date map if physical features on the land (such as field boundaries) have changed since it was published. You can find out how to obtain Ordnance Survey maps from www.ordnancesurvey.co.uk, or by telephoning 08456 05 05 05.

Ownership

6.4.9 You may need to supply evidence of ownership of land in connection with your application. For example, you may be asked to demonstrate that you, as the person entitled to a right of common, own the dominant tenement to which the right is attached, or that you are the owner of the common.

6.4.10 If the ownership of your land is registered by the Land Registry, then evidence of your ownership may be shown by production of an office copy of the individual register for your registered title held by the Land Registry²⁴. The name of

²³ Regulation 19.

²⁴ Registration of land in the register of title is quite different from registration of common land and town or village greens: the register of title is held by the Land Registry, and contains information about the title, such as the owner. The commons registers are held by registration authorities, and contain information about the status of land as common land or green, and the rights of common exercisable over the land. The register of title is also

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the owner will be shown in the proprietorship section of the register, and the filed plan will show the land to which the title relates. If an application must be made by the owner of land, or have the consent of the owner of land, then the person shown as owner in the register must be the same as the person claiming to be owner in the application: for example, if the owner is a registered limited company, then an authorised representative will need to apply (or give consent) on behalf of the company; if there are two or more owners as tenants in common (*i.e.* each of whom owns a share of the land as a whole), then all the owners will need to apply (or give consent).

6.4.11 If your land is not registered by the Land Registry, you may need to supply a good root of title: that is, a copy of conveyances of the land, identifying the purchaser and the land which is conveyed, going back at least 15 years.

6.4.12 A registration of ownership of common land recorded in the ownership section of the commons registers cannot be treated as conclusive evidence of ownership, and your registration authority will normally ask for further evidence of ownership.

6.4.13 Ownership is defined in Section 61(3)(a) as the “ownership of a legal estate in fee simple in the land”, and owner means the person holding that estate. In effect, ownership means the freehold ownership of land. A lease or tenancy does not qualify as ownership, and therefore, where an application must be made by the owner of land, or the owner of land must consent to an application, you cannot apply (or consent) if you are only a lessee or tenant of the land.

Stamp Duty Land Tax

6.4.14 If you are applying to amend the register affecting a right of common, your application may be liable to Stamp Duty Land Tax (SDLT), but only if the value of the transaction is greater than the ‘zero-rating threshold’ of £150,000 (this amount may be varied by the Government at short notice).

6.4.15 You should consider whether SDLT is due if you are applying (under Section 6, 7, 10, 12 or 13, or under paragraph 1 of Schedule 1) to create, vary, attach, transfer, extinguish, or sever a right of common and you or anyone connected with the application is giving or receiving more than £150,000 for the purposes of the application. SDLT will not normally be due if you are applying under Schedule 3 to update the commons registers to register a historic event which took place before 1 October 2008.

6.4.16 If you think that SDLT may be due in connection with an application, you will need to complete a Stamp Duty Land Tax Return and pay the tax due within 30 days of the date of the transaction. The following example helps illustrate when SDLT may be due:

Mr A is a commoner entitled to exercise a right of common to graze 600 sheep on Sheepwalk Common. Sheepwalk Common is owned by B Ltd. In order to improve control over the common for sporting use, B Ltd offers Mr A £160,000 to surrender his rights of common. Mr A agrees, and (in accordance with a contract agreed between Mr A and B Ltd) applies to the registration authority under Section 13 to extinguish his rights.

distinct from the Rural Land Register, which is maintained by the Rural Payments Agency for the purposes of agricultural subsidy payments.

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When his application is accepted by the authority, and the register is amended to remove the right from the register, B Ltd pays Mr A £160,000, in accordance with the contract. Because the value of the extinguished right is more than £150,000, B Ltd also completes a SDLT return to Her Majesty's Revenue and Customs, and pays the tax due of £1,500.

6.4.17 If you think that SDLT may be due in connection with an application, or you are uncertain, we recommend that you find out more about SDLT, or consult a legal adviser. Her Majesty's Revenue and Customs has published information about SDLT on its website²⁵: you can also contact the Stamp Taxes Helpline on 0845 603 0135, or you can write to the Stamp Office at:

Birmingham Stamp Office
HM Revenue & Customs
9th floor City Centre House
30 Union Street
BIRMINGHAM
B2 4AR

Please note that your registration authority cannot help with enquiries about SDLT.

6.5 What happens to your application

6.5.1 Your application will be considered initially by the registration authority. If the application is incomplete, or you have not paid any fee which may be due, the authority may return the application to you so that you can put the matter right. If your application is returned to you for one of these reasons, you will not be treated as having made a valid application until you have put the matter right.

6.5.2 If your application is properly made, the next steps to be taken by the registration authority will depend on the type of application which you have made. Typically, the steps may include:

- your application will be advertised by the registration authority, inviting representations,
- you will be required to send notice of your application to certain persons with an interest in the land affected,
- you may be asked to supply further information,
- others' representations will be copied to you for comment, and if necessary, your own comments may be copied to others for their comment in turn,
- your application may be referred to the Planning Inspectorate;
- you may be asked to present your case at a hearing or public inquiry,
- your application will be determined in a written decision,
- if your application is granted, the register will be amended.

Notice of the application

6.5.3 To help the registration authority determine your application, others will be invited to express a view on the merits of your application. The authority will issue public notice of your application, but it is your responsibility to send a copy of the

²⁵ www.hmrc.gov.uk/sdl/ .

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notice to certain people who might have an interest in the application. There is no requirement for your notice to be the exact same as the notice drafted by the registration authority, but it must contain all the details specified in Regulation 24. However you may serve notice at any time after receiving an acknowledgement of your application, even where the registration authority has not yet published a notice: however, we suggest you wait to see whether your application is duly made before publishing any notice.

6.5.4 The people to whom you must send the notice will vary, depending on the application, but as a minimum, you will have to send a copy of the notice to:

- any person who has made a declaration (recorded in the register) of entitlement to a right of common exercisable over any part of the same register unit affected by your own application (even if the rights are exercisable over different parts of the same register unit);
- any commons council or commoners' association for the common or town or village green to which the application relates;
- any registered owner of a right of common held in gross exercisable over the common or town or village green to which the application relates.²⁶

The registration authority may waive the last requirement if it thinks the numbers of owners of rights held in gross makes this requirement impractical²⁷. You can find details of those who have made declarations, and who own rights of common held in gross, from the relevant register unit in the commons registers. If you do not know whether there is a commons council or commoners' association, please ask the registration authority for advice.

6.5.5 Additional requirements apply in relation to each type of application²⁸ (please see the relevant part of the guidance), and further requirements may be directed by the registration authority if it thinks that further publicity is needed²⁹.

6.5.6 The date on which you serve notice affects the period for making representations as it expires 42 days after the last notice is published, posted or served. For example, if the registration authority publishes the notice on its website on 1 January but you do not serve the last notice until 10 January, the 42 day period begins on that day, so the period for making representations ends on 21 February.

6.5.7 You will be asked to write to the registration authority, confirming that you have complied with the requirements to give notice, and with the requirements of any direction³⁰. In the case of a direction to publish your notice in any newspaper, you will be required to submit a copy of the page in any newspaper in which the notice was published. For any direction to post a copy of the notice at any place, you must provide details of where and when the notice was posted. Finally, in the case of a direction to serve notice on persons specified by the authority, you must provide details of the date on which, and the means by which, each such notice was served.

²⁶ Paragraph 1 of Schedule 6 to the Regulations.

²⁷ Regulation 22(2).

²⁸ Paragraph 2 of Schedule 6.

²⁹ Regulation 20.

³⁰ Regulation 20(4).

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Representations

6.5.8 Anyone who has an interest in the application will be able to send their representations to the registration authority. These comments cannot be considered by the authority unless they relate to the criteria by which your application must be assessed. For example:

Mr D is the owner of Blackacre Common. Miss T is a commoner who is entitled to graze 600 sheep on Blackacre Common, because she occupies Whiteacre Farm, to which the right of common is attached. Mr D agrees with Miss T that she should surrender her right of common in return for a payment of £5,000. Mr D applies to the registration authority to extinguish the right of common, under section 13, and his application includes the consent of Miss T to the extinguishment. The registration authority issues a public notice of the application.

Mrs F, another commoner, objects to the application. Her objection is that rights of common on Blackacre Common are too valuable to the local community to be let go, and that the extinguishment of the right will make it more difficult for other commoners to go on exercising their rights. The registration authority cannot take Mrs F's representation into account, because it does not relate to the criteria in the Act.

Mr R, a farmer who occupies Warren Farm near to Whiteacre Farm, also objects. His objection is that part of the land to which the right of common is attached is now part of Warren Farm, and that he has not given his consent to the extinguishment of the relevant part of the rights. The registration authority concludes that Mr R's objection is well-founded and refuses the application accordingly.

6.6 Withdrawing your application

6.6.1 There is no provision in Part 1 for you to withdraw your application. This means that, if you decide to make an application, you must be prepared for it to be determined, so that the application is either granted or refused.

6.6.2 Nevertheless, a registration authority or (if the application is referred to the Planning Inspectorate) the Planning Inspectorate may be willing to allow you to withdraw your application — particularly, if it would be fair, in all the circumstances, to allow you to do so. The determining authority is still required to consider whether the application should be granted or refused. If you ask to withdraw your application, because it emerges that you have not supplied sufficient evidence, or there is some legal difficulty with it, it may not be difficult for the determining authority to decide to refuse it. Equally, if there is no objection, and the evidence is persuasive, it may decide to grant it. If the position is somewhere in between, the authority may decide to publicise your application and consider representations, and then make a decision on the evidence available.

6.6.3 The important thing is that others who have an interest in the application are given an opportunity to say whether their interests would be affected by the application being withdrawn. The following example helps illustrate this:

Mrs S makes an application to register some new land as waste land of the manor (under paragraph 4 of Schedule 2). She includes evidence

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that the land was waste land of the manor, and that the Commons Commissioner refused to register the land under the 1965 Act because of the *Box Hill* case. After making the application, Mrs S concludes that the application is unlikely to succeed, because the land is now used as a golf course, and therefore does not meet the criteria for 'waste land of the manor'. She asks to withdraw her application.

The registration authority, before deciding whether to agree to the application being withdrawn, consults (among others) the owner of the land. The owner asks that the application is formally determined by the council, so that it can be put beyond doubt that the land is not eligible for registration under paragraph 4 of Schedule 2. The council decides that there is no uncertainty about the status of the land, and that it would not serve anyone's interest to proceed to a formal determination. It therefore allows Mrs S to withdraw her application, and takes no further action on it.

6.6.4 Remember that, if you ask to withdraw your application, and your withdrawal is accepted, you will not be entitled to the return of any fee which you originally paid.

6.7 Amending your application

6.7.1 You may decide, after you have made an application, that you wish to amend it. For example, you may decide that the area of land you specified in your application was mistaken, and wish to include further land, or to remove part of the land.

6.7.2 There is no provision in Part 1 for you to amend your application. This means that, if you decide to make an application, you must be prepared for it to be determined in that form, so that the application is either granted or refused — even though the determining authority might have come to a different conclusion if you had been able to amend the application.

6.7.3 In the *Trap Grounds* case the House of Lords concluded that in considering a proposed amendment to an application, the "registration authority should be guided by the general principle of being fair to those whose interests may be affected by its decision"³¹. So, the determining authority may be willing to allow you to amend your application — particularly, if it would be fair, in all the circumstances, to allow you to do so. The determining authority may agree to an amendment if that would put right in the application something which were otherwise clearly wrong (for example, if you have wrongly included a house in a map showing land you want to be registered).

6.7.4 On the other hand, the determining authority may refuse to agree to an amendment, particularly if its consideration of the application is nearing a determination, or if the amendment could affect other people who would not otherwise have had an interest in the application, and so did not object to the original application. For example, if the amendment would include new land previously unaffected by the original application, the authority may conclude that it cannot accept the amendment, because the application might have attracted additional objections if the nature of the amendment had been known earlier.

³¹ *Oxfordshire County Council v Oxford City Council and Robinson* [2006] (the *Trap Grounds* case): www.bailii.org/uk/cases/UKHL/2006/25.html; see para. 111, see also para 61.

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6.7.5 If the determining authority refuses your amendment, it may insist that the existing application should continue to a determination, and you will have to consider whether to make a further new, amended or different, application (but even if you do, the registration authority may not be required to consider it, if the authority considers that your new application is not significantly different from the old one). If your request to amend your application is refused, and you decide to make a further application, you will have to pay any new fee for that application.

6.8 Referral to the Planning Inspectorate

The role of the Planning Inspectorate

6.8.1 Your application to the registration authority may be referred to the Planning Inspectorate for determination. Your registration authority will be required to refer your application to the Planning Inspectorate if your application:

- is made under Section 19(4) and affects the extent of any land registered as common land or green, or what can be done by virtue of a right of common;
- is made under any of paragraphs 4 to 9 of Schedule 2, to register land as waste land of the manor, to transfer land from the register of greens to the register of common land, or to deregister certain types of wrongly registered land; or
- is one in which the registration authority itself has an interest in the outcome, where there is unlikely to be confidence in the authority's ability impartially to determine it.³²

6.8.2 The registration authority must refer your application if it passes any of the tests above. In relation to the third test, in Defra's view, an authority should not refer a case simply because it has an interest in the outcome, but only where that interest would seriously call into question the authority's ability impartially to determine the matter. So, for example, the test would not necessarily be satisfied if your application seeks to vary a right of common in relation to common land owned by the registration authority: in such a case, the registration authority's role is to determine your application in accordance with the criteria in the 2006 Act. Nor should the authority refer your application simply because it has discharged a function or expressed views on a related matter in a different context (regardless of whether the decision was taken by an officer, Member, committee or executive). So, for example, the test would be unlikely to be satisfied in relation to an application to register land as a new town or village green solely because the authority had granted planning permission for development of the land or expressed support for the development.

6.8.3 But, in the latter example, if the registration authority itself owned the land, there might not be confidence in the authority's ability to determine the application. However, an authority will need to have regard to all the circumstances: if, for example, its practice is to appoint an independent inspector to inquire into the application, and to act on the recommendations of the inspector's report, it may nevertheless be possible for the registration authority to determine the application itself, and for there to be confidence in its ability to do so impartially on the basis of the inspector's report.

³² Regulation 27.

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The Planning Inspectorate's power to require further evidence

6.8.4 The Planning Inspectorate has the power to require you to provide it with further evidence or information to allow it to determine your application. It is possible that the Inspectorate could require you to supply any such information even though your registration authority did not prior to the referral of your application.

The role of your registration authority prior to referral

6.8.5 In any case which is to be referred to the Planning Inspectorate, the registration authority will process your application in the usual way, and invite representations on your application to be sent to the authority within the specified period of time.

6.8.6 After the closing date for receipt of representations has passed, and after seeking your views on any representations, the registration authority will then refer the case to the Planning Inspectorate, enclosing any documents which are relevant to the case (including your application, any supporting documents, other documents which are relevant and which are in the possession of the authority, and any representations received).

The role of your registration authority following determination

6.8.7 When the Planning Inspectorate has determined your application, it will notify your registration authority of its decision. The registration authority must notify you and those who made representations about your application, of the decision, and publish the decision, and the reasons for it, on its website.

6.8.8 Where the Inspectorate decides to grant your application, the registration authority must make the appropriate amendment to the register, in accordance with your application and determination, as soon as practicable after the decision has been received.³³

6.9 Hearings and public inquiries

6.9.1 Many applications under Part 1 will be routine, and will not attract significant interest. In such a case, where the registration authority intends to grant your application, there is no need for the authority to hold a hearing or inquiry into the matter. However, where an authority is minded to refuse your application, the authority must give you an opportunity to be heard before reaching a final decision. An opportunity to be heard means that you are able to present your case, to explain orally the key aspects of your application, and to address any points of contention. If the authority considers that the civil rights of any third party are brought into question by your application (e.g. if your application relates to the registration of land as common land, and the owner objects to the application), the authority should afford a similar opportunity to be heard to that person.³⁴ But it need not arrange for you, as the applicant, and any objector, to be present at the same time, nor need it allow you to question any objectors or any representative of the authority.

6.9.2 Sometimes, your application may generate considerable controversy, particularly if it seeks to register new land (e.g. under Section 15(1), or under paragraph 4 of Schedule 2). Some applications of this kind may be referred to the Planning Inspectorate for decision (see chapter 6.8 above), and the Inspectorate may decide to hold

³³ Regulation 37.

³⁴ Regulation 28(7).

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a hearing or an inquiry. But if your application is not required to be referred to the Planning Inspectorate, it is open to the registration authority to decide to hold a public inquiry, if it thinks that would be helpful or necessary in reaching a decision on the case.

6.9.3 In such cases an independent inspector may be asked to conduct a public inquiry. Some registration authorities engage the services of a barrister for this purpose or use an inspector provided by the Planning Inspectorate. Where a registration authority decides to hold a public inquiry, you may be asked to assist the smooth running of the inquiry by assisting the inspector in various ways (e.g. by supplying a statement of your case in advance, or by attending a pre-inquiry hearing to agree arrangements for the inquiry itself). You can find out more about the arrangements for an inquiry in Regulations 29 to 32 and 35.

6.10 Site inspections

6.10.1 A registration authority or the Planning Inspectorate may wish to conduct a site inspection of the land affected by your application. If an inspector is appointed to hold a public inquiry into an application or proposal, then the inspector must inspect the land unless any permission necessary to do so is refused.³⁵

6.11 Challenging a determination

6.11.1 The 2006 Act makes no provision for a statutory appeal against the determination of your application by the registration authority or the Planning Inspectorate, as the case may be.

6.11.2 You can ask the High Court to judicially review the actions of a registration authority or the Planning Inspectorate, but court action can be very costly, and you should seek legal advice before proceeding.

6.11.3 Section 19(7) confers a limited power for the High Court to order the register to be amended where an entry, or any information in an entry, has been secured by fraud and it would be just to amend it. Again, you should seek legal advice before proceeding with a challenge under Section 19(7).

³⁵ Regulation 34.

Chapter 7 : New event applications under sections 6 to 14

7.1 Introduction

7.1.1 This chapter provides guidance on making new event applications to amend the register because of something which has not yet happened, but which you want to change: for example, if you want to vary a right of common (but not if the variation had already taken place before 1 October 2008).

7.1.2 Other chapters provide guidance in relation to other types of application. You can also make historic event applications during the transitional application period, to amend the register because of something which happened before 1 October 2008 (but after the commons registers were first opened to registration in the late 1960s), but which was not registered at the time. To do this, please refer to *Historic event applications under Schedule 3* in Chapter 8 below. Alternatively, you can make rectification applications during and after the transitional application period to rectify some types of error, omission or incorrect registrations in the commons registers (these will usually have occurred when the commons registers were first opened to registration in the late 1960s). To do this, please refer to *Rectification applications for correction and rectification of the registers* in Chapter 9 below.

7.1.3 Please read this chapter of the guidance with the general guidance on making applications in Chapter 6 above.

7.2 Section 6: creation of new rights of common

Introduction

7.2.1 You can apply to create a new right of common under Section 6. The new right must be attached to land (*i.e.* there must be a dominant tenement to which the right is attached), and the right will then be exercisable by the owner of the land to which it is attached.

7.2.2 You cannot create new rights of common over an existing registered town or village green, but you may be able to create a new right over existing registered common land.

7.2.3 Section 6 prohibits the creation of a right by reservation or prescription, or the creation of a new right in gross. So you can only create a new right of common by means of an application under Section 6. If you apply to create a new right of common over unregistered land, that land will become registered as common land in consequence of your application.

7.2.4 The land over which a new right of common is to become exercisable is registered as common land (technically, it is known as the servient tenement). The land to which the new right of common must be attached is known as the dominant tenement. The owner of the new dominant tenement will be entitled to exercise the new right of common, but the new dominant tenement will not be registered as, and will not qualify as, common land. You cannot apply to register a new right of common as exercisable over the same land as the land to which it is to be attached (in other words, land cannot be both dominant and servient tenement for the purposes of an application under Section 6).

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7.2.5 If your application is to create a new right of common to graze animals, the registration authority must reject your application if in its opinion the land over which the right is to be exercisable would be unable to sustain the exercise of that right together with existing rights registered as exercisable over that land. The registration authority must consult with Natural England on the sustainability of your application before making a decision³⁶. If your application is to create a new right of common to graze animals over land which is not already registered as common land, the registration authority will still apply the sustainability test to see whether the land can support the new right of grazing.

Procedure

7.2.6 You can apply under Section 6 only if you are either:

- the owner of the land over which the right of common will be exercisable;
- the owner of the land (the dominant tenement) to which the right of common will be attached.³⁷

7.2.7 If your application relates to the creation of a new right over an existing area of registered common land, you may, if convenient, describe the land over which the new right will be exercisable by reference to the existing commons register unit. However, if the right will be exercisable over only part of that unit, your application must include a map which identifies the relevant part of that unit. In any other case, you must supply a map (see paragraph 6.4.6 above) which describes the land over which the right will be exercisable (*i.e.* the new common).

7.2.8 Your application, which must be made using form CA1 available from your registration authority, will need to include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as owner of what will become (or is already) the common, or as owner of the dominant tenement);
- evidence that the following people have consented to the application: the owner of what already is or what will become the common (unless you as applicant are that owner), any relevant leaseholder of that land, and any other person who has a relevant charge over the land; and the owner of the dominant tenement to which the new right is to be attached (unless you as applicant are that owner);
- a description of the right to be created (*e.g.* 'a right to graze ten sheep at any time of the year');
- a description of the common or intended common (including a map, unless the right is to be exercisable only over the whole of an existing register unit);
- a description of the dominant tenement (including a map);
- where the application is to create a new right of grazing, evidence that the land can sustain the new right taken with any existing rights of common.³⁸

7.2.9 Before proceeding to determine your application, the registration authority is required to consult Natural England, where an application under Section 6 relates to the creation of a right to graze animals of any kind, to determine whether the land can

³⁶ Regulation 36.

³⁷ Paragraph 1(1) of Schedule 4 to the Regulations.

³⁸ Paragraph 1(2) and (3) of Schedule 4 to the Regulations.

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sustain the new right alongside any other rights which exist over that land. Although Natural England will provide its view on the common's ability to sustain the new right, the registration authority must make the final decision as to whether to grant the application.

Notices

7.2.10 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the new right of common is to be attached, and
- the owner of the land over which the right of common is to be exercisable.

FAQs

Q: Must a new right be created over existing common land?

7.2.11 Not necessarily. A new right of common can be created over existing common land, over new land (not currently registered), or over both. The result of registering a right of common over new land would see such land becoming registered as common land.

Q: If, in the case of a new grazing right to be created over an existing common, Natural England takes the view that the common cannot sustain the existing rights plus the right to be created, can the registration authority still grant the application.

7.2.12 Yes, it can. Though the registration authority must consult Natural England, it is the authority who makes the final decision. However the registration authority must consider very carefully the advice given by Natural England, and, if it resolved not to accept that advice, should explain (in its decision) why it preferred to adopt a different conclusion.

Q: Can I register a right acquired through prescription or create a new right in gross?

7.2.13 No. From 1 October 2008, a new right of common can be created only by means of an application under Section 6, where the right is attached to land. Furthermore the new right will operate at law only when the application has been granted, and the new right is registered. You may be able to register a right acquired by prescription before 1 October 2008: please refer to chapter 8.4.

7.3 Section 7: variation of an existing right

Introduction

7.3.1 You can apply to vary an existing right of common under Section 7. The right may be varied so as:

- to become exercisable over new land instead of all or part of the land over which it was previously exercisable;
- to become exercisable over a piece of land which is in addition to the existing area of land; or
- otherwise to be altered in what can be done by virtue of the right.

So a variation includes an alteration in the quantification of the right (for example, the number of animals that may be grazed by virtue of a right), as well as an alteration in

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respect of the land over which the right is exercisable so as to introduce new land in addition to or in substitution for all or part of the land over which it was formerly exercisable. But a variation cannot, for the purposes of an application under Section 7, include an alteration in the dominant tenement.

7.3.2 You cannot apply to vary a right of common so as to become exercisable over new land if the proposed new land is already registered as a town or village green.

7.3.3 If your application is to vary a right of common to graze animals, the registration authority must reject your application if in its opinion the land over which the right is to be exercisable following the variation would be unable to sustain the exercise of that right either on its own or, if applicable, together with existing rights registered as exercisable over that land. The registration authority must consult with Natural England on the sustainability of your application before making a decision³⁹.

7.3.4 You cannot apply to vary a right of common so as to reduce the extent of the land over which a right of common is exercisable (unless you provide for the right to become exercisable over new land in its stead) — but you may be able to effect such an alteration by applying to surrender a right of common under Section 13.

Procedure

7.3.5 You can apply under Section 7 only if you are:

- the owner of any part of the land over which the right to be varied was exercisable prior to the variation (the owner of the common);
- the owner of any land over which the right to be varied becomes exercisable as a result of the variation (*i.e.* where the varied right becomes exercisable over new land); or
- the owner of either the land to which the right to be varied is attached (the dominant tenement) or, as the case may be, the registered owner of a right in gross.⁴⁰

7.3.6 Your application, which must be made using form CA2 available from your registration authority, will need to include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as owner of the existing or new common, the dominant tenement or right held in gross);
- evidence that the following people have consented to the application: the owner of what already is or what will become the common (unless you as applicant are that owner); any relevant leaseholder of that land, and any other person who has a relevant charge over the land; the owner of the dominant tenement to which the right is attached or, as the case may be, the owner of the right held in gross (unless you as applicant are that owner);
- the numbers of the register unit and rights section.
- a description of the variation to be registered;
- a description of the dominant tenement (including a map), except where the right is held in gross;

³⁹ Regulation 36.

⁴⁰ Paragraph 2(1) of Schedule 4 to the Regulations.

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- where the application is to vary a right of grazing, evidence that the land can sustain the variation taken with any other rights of common;
- where your application relates to only part of a right of common attached to land, identification of the part of the land to which the right is attached and an accompanying application to apportion rights under Section 8.⁴¹

7.3.7 Before proceeding to determine your application, the registration authority is required to consult Natural England, where an application under Section 7 relates to the variation of a right to graze animals of any kind, to determine whether the land can sustain the varied right alongside any other rights which exist over that land. Although Natural England will provide its view on the common's ability to sustain the new right, the registration authority must make the final decision as to whether to grant the application.

Notices

7.3.8 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the right of common is attached, or the owner of the right of common held in gross (as the case may be), and
- the owner of the common or town or village green over which the right of common was exercisable prior to the variation, and the owner (if different) of any land over which the right is to be exercisable following the variation.

7.4 Section 8: apportionment

Introduction

7.4.1 You can apply to apportion a right of common under Section 8. Apportionment occurs where land to which rights of common are attached (the dominant tenement) is divided into two or more parcels in separate ownership (e.g. where the owner sells only part of the land and retains the remainder). Apportionment relates to a change in ownership of part of the dominant tenement, and not to a change in ownership of part of the common (a change in ownership of part of the common would not give rise to any requirement for apportionment.)

7.4.2 You can apply to register apportionment jointly with any other owner of part of the historic dominant tenement. But you do not need to apply jointly with any other such owner. If you apply on your own, then the register will be amended to show your share of the rights attached to your share of the historic dominant tenement, and the entry relating to the remainder of the historic dominant tenement will be unaffected.

7.4.3 You may, but do not generally need, to register apportionment of rights of common. Rights are shown in the registers as attached to the historic dominant tenement with which they were associated when an entry in respect of those rights was last made in the register. Subsequent changes to the historic dominant tenement may be, but need not be, recorded. But you will need to make an application to register apportionment if you wish to amend the register relating to only part of the historic dominant tenement, in which case, the apportionment must be registered first — see paragraph 7.4.5 below.

⁴¹ Paragraph 2(2) to (4) of Schedule 4 to the Regulations.

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7.4.4 This is best illustrated by an example.

Blackacre common is subject to rights to graze 100 sheep, where the register shows that the rights are divided equally between farms A and B, each dominant tenement having the right to graze 50 sheep attached to it. The owner of Farm A dies and the farm is divided equally between that owner's two children. Two new dominant tenements A1 and A2 come into being and the operation of section 8(3) will ensure that to each is attached the right to graze 25 sheep, without any requirement to modify the register. Farm B is sold to a developer who in turn sells it off in 50 plots of equal size, each with a house built on it. Each of those plots will have the right to graze one sheep. The register will show a common subject to two separate rights to graze sheep attached to the two 'historic' dominant tenements, A and B. The register would in each case identify the rights and identify the land to which they were attached. At the conclusion of the events described above, the owners of the new dominant tenements formerly comprised in farms A and B will be able to trace their entitlement to exercise their rights of common by reference to the historic dominant tenements subsisting in the register. For example, each owner of a house built on farm B will be able to show that they occupy 1/50th part of the area of the historic dominant tenement B, and (applying the rules of *pro rata* apportionment) therefore each has attached to it 1/50th of the rights recorded as attached to historic dominant tenement B. It will be possible to show that each owner is entitled to exercise the rights by virtue, firstly, of the attachment of the rights to their house and curtilage (the attachment of the rights to dominant tenement B will still be shown in the commons register), and, secondly, ownership of the house and curtilage (which information is likely to be registered in the register of title to land kept by the Land Registry).

The common law principle is that a right of common attached to land belongs to the owner for the time being of that land.

7.4.5 Where the rights attached to land which forms part of a historic dominant tenement are to be surrendered, varied or severed, it will be necessary to amend the register to record the previous apportionment of the rights. In these cases only, you must apply to the registration authority to register the apportionment as a pre-requisite to a further application (known as the 'primary application') in relation to part of the historic dominant tenement, so that the rights in relation to the balance of the historic dominant tenement remain unaffected.

Procedure

7.4.6 You must apply for the purposes of Section 8 if you are making an application under Section 7, 11, 13, paragraphs 1 or 3 of Schedule 1, or for the purposes of Section 14, in respect of only part of a right of common attached to a historic dominant tenement. In any other case, you may apply for the purposes of Section 8 only if you are the owner of any part (but not all) of the land to which the right of common is attached.⁴²

⁴² Paragraph 3(3) of Schedule 4 to the Regulations.

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7.4.7 Your application, which must be made using form CA3 available from your registration authority, will need to include:

- evidence of the capacity in which you are required or entitled to apply (*i.e.* because you want to make a primary application in relation to part of the historic dominant tenement, or as owner of part, or joint owners of parts, of the historic dominant tenement);
- the numbers of the register unit and rights section.
- a description of the historic dominant tenement (including a map), showing the part which is the subject of the primary application or the part belonging to you the applicant (or if an application is made jointly, the parts belonging to each of the joint applicants);
- your calculation of the share of the rights attached to your part of the historic dominant tenement (or if an application is made jointly, the shares attaching to each of the applicants' parts of the historic dominant tenement) and that attaching to any remaining part of the historic dominant tenement.⁴³

7.4.8 In calculating your share of the rights attached to your share of the historic dominant tenement, you must follow the rules of *pro rata* apportionment. This means that the apportionment of the right must be proportionate to the area of the historic dominant tenement. So, for example, if a right of common to graze 100 sheep is attached to a historic dominant tenement of area 40 hectares, the purchaser of 5 hectares of that tenement will be entitled to an apportioned right of:

$$\frac{\text{total number of rights over the historic dominant tenement}}{\text{total area of historic dominant tenement}} \times \text{area of applicant's part of dominant tenement}$$

i.e.

$$\frac{100 \text{ sheep}}{40} \times 5$$

= 12.5 sheep⁴⁴.

7.4.9 The MAGIC service offers a facility to measure the approximate area of a defined parcel of land (see paragraph 10.1.12 below). You may also know the area of your own part of the historic dominant tenement from farm plans, conveyances, maps or other documents in your possession.

Notices

7.4.10 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of any land to which the right of common is attached, and
- if you are making a primary application in relation to part of the historic dominant tenement, any person to whom you are also required to send notice of the primary application.

⁴³ Paragraph 3(4) of Schedule 4 to the Regulations.

⁴⁴ See paragraph 7.4.11 for guidance on the treatment of fractional rights.

Interpretation

7.4.11 An apportionment of rights may give rise to a potential fractional quantity of rights: for example, if a right to graze four cattle attached to a dominant tenement of one hectare were apportioned between three parcels each comprising one-third of the historic dominant tenement, that would give rise to a notional apportionment attached to each parcel of a right to graze $1\frac{1}{3}$ cattle. In Defra's view, such a right is not recognised in law, and you should round down any such fractional right (so that, in this case, the register would be amended to show three rights to graze 1 animal each). In effect, the balance of any fractional rights will be considered extinguished.

7.4.12 You can apply to apportion a right of common only if it is quantified, and attached to land. You cannot apply to apportion a right which is unquantified, or which is attached to a dwelling-house, because apportionment of such rights would be likely to increase the burden on the common. For example, the following rights cannot be apportioned, and any application for that purpose must be refused:

- a right of turbary
- an unquantified right of estovers (e.g. firewood for the hearth)
- an unquantified right of piscary

7.5 Section 9 and Schedule 1: severance

Introduction

7.5.1 Section 9 prohibits the severance of rights of common, with the exceptions specified in Schedule 1.

7.5.2 In 2001, the House of Lords determined in *Bettison v Langton*⁴⁵ that a consequence of the quantification of grazing rights on registration under the 1965 Act was to enable a commoner to dispose of rights of common independently from the land to which they were traditionally attached (or, alternatively, to sell the land and retain the rights). This is known as 'severance'. Severance causes management difficulties for common land where some right holders have no close contact with the common and those who manage it.

Severance by transfer to public bodies

7.5.3 Schedule 1 sets out the exceptions to the prohibition on severance contained in Section 9. Paragraph 1 of Schedule 1 contains a limited exception to the prohibition in relation to rights acquired by a commons council (established under Part 2 of the 2006 Act) (or an equivalent body designated by order under paragraph 1(5) of Schedule 1) or Natural England, provided that the transfer of the severed rights to such a body is duly registered in accordance with paragraph 1(6) of Schedule 1.

7.5.4 Where rights are to be acquired by Natural England, paragraph 1(2) of Schedule 1 provides that notice must be given of its intention to the owner of the land over which the rights are exercisable and (where there is no commons council established under Part 2 of the Act, or a body ordered to be regarded as such) to such persons (if any) as are considered to represent the interests of the commoners. The notice must be given at least 2 months before the intended transfer, and must include the information required in paragraph 1(3) of Schedule 1, and Regulation 46 pre-

⁴⁵ *Bettison and another v. Langton and others* [2001] 1 AC 27: www.bailii.org/uk/cases/UKHL/2001/24.html.

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scribes additional requirements. A commons council (if one has been established), or a body ordered to be regarded as such for the purpose of paragraph 1(4) of Schedule 1) must give its consent to the severance, but Natural England need only take into account any other representations received in response to the notice, before deciding whether to proceed.

7.5.5 The Secretary of State has made the Dartmoor Commons (Authorised Severance) Order 2008⁴⁶ under paragraph 1(5) of Schedule 1, ordering the Dartmoor Commoners' Council to be regarded as a commons council for all purposes of Schedule 1, and thereby enabling it, in relation to the Dartmoor commons, to acquire rights of common by severance from the land to which they are currently attached; and to deny its consent (and thus effectively to veto) any such acquisition of rights by Natural England. In relation to the Dartmoor commons, the Dartmoor Commoners' Council must therefore give its consent to any severance in favour of Natural England.

Procedure

7.5.6 You can make an application under paragraph 1 of Schedule 1 only if you are applying on behalf of either:

- Natural England; or
- a commons council.⁴⁷

In addition, where a body having statutory management functions over a common has been appointed to be regarded as a commons council for that purpose, by order made under paragraph 1(5) of Schedule 1, an application may also be made by that body: at present, such an application may be made by the Dartmoor Commoners' Council.

7.5.7 Your application, which must be made using form CA11 available from your registration authority, will need to include:

- evidence that the owner of the dominant tenement to which the right of common is attached has consented to the application, and if appropriate that the commons council (or equivalent body) has also consented pursuant to paragraph 1(4) of Schedule 1;
- the register unit numbers and entries in the rights section;
- a description of the dominant tenement (including a map), and evidence of its ownership;
- evidence that notice has been given in accordance with paragraph 1(2) and (3) of Schedule 1 and Regulation 46;
- where your application relates to only part of a right of common attached to land, identification of the part of the land to which the right is attached and an accompanying application to apportion rights under Section 8.⁴⁸

Notices

7.5.8 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

⁴⁶ SI 2008/1962.

⁴⁷ Paragraph 12(1) of Schedule 4 to the Regulations.

⁴⁸ Paragraph 12(2) to (4) of Schedule 4 to the Regulations.

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- the owner of the common or town or village green over which the right of common is exercisable.

7.6 Section 10: attachment

Introduction

7.6.1 You can apply to attach to land a right of common held in gross under Section 10, so that the right becomes exercisable by the owner (for the time being) of the land to which it becomes attached. The origin of the right held in gross does not matter — it may previously have been severed from a dominant tenement, or have always existed in gross.

Procedure

7.6.2 You can apply under Section 10 only if you are owner of the right of common held in gross⁴⁹.

7.6.3 As the applicant, you must also either occupy the land to which the right is to be attached, or have the occupier's consent to the application. If you own the land to which the right is to be attached, that will be sufficient, unless someone else is in occupation (such as a tenant or squatter).

7.6.4 Your application, which must be made using form CA4 available from your registration authority, will need to include:

- the register unit numbers and the rights section entries to which the application relates;
- a description (and map) of the land to which the right is to be attached;
- If you, the applicant, are not entitled to occupy the land to which the right is to be attached, the consent of person who is entitled to occupy that land, and evidence of that person's entitlement;
- evidence that you are the registered owner of the right in gross.⁵⁰

Notices

7.6.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- anyone (other than yourself) entitled to occupy the land to which the right of common is to be attached, and
- the owner of the common or town or village green over which the right of common is exercisable.

FAQs

Q: I am the registered owner of a right of common held in gross. Am I required to attach my right to land?

7.6.6 No, it is a matter for your discretion whether to attach your right to land.

⁴⁹ Section 10(2).

⁵⁰ Paragraph 4(2) of Schedule 4 to the Regulations.

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Q: I want to attach my right of common held in gross to my land, but my tenant will not give his consent? Can I proceed without his consent?

7.6.7 No, where the person entitled to occupy the land does not consent to an application under Section 10, the application cannot proceed.

7.7 Section 11: re-allocation of attached rights

Introduction

7.7.1 You can apply under Section 11 to alter a right of common attached to a dominant tenement, where part of the dominant tenement is to be developed for non-agricultural use. If your application is granted, the right of common will be attached only to the remaining part of the dominant tenement.

7.7.2 For example, suppose you own a dominant tenement to which a right to graze 100 sheep is attached. If one tenth of your land is acquired by the Government and developed for a new road, the effect of the *pro rata* rules of apportionment would be that a right to graze 10 sheep would attach to land now owned the Highways Agency. The effect of your application under Section 11, if granted, will be that the developed land will cease to have any rights attached to it, and the remaining part of the dominant tenement, which remains undeveloped, will enjoy all of the rights which formerly attached to the whole of the dominant tenement.

7.7.3 The part of the dominant tenement from which the rights of common are excluded is referred to in Section 11 as 'the relevant part'. You may apply under Section 11 where the relevant part is not used for agricultural purposes, or has planning permission for use other than for an agricultural purpose. Use of land for agricultural purposes is defined as use for:

- growing crops,
- pasture or grazing,
- forestry,
- keeping of land as woodland or scrubland,
- any purpose in respect of which a payment is made under the EC Single Payment Scheme.⁵¹

7.7.4 You may also apply where the relevant part is subject to a compulsory purchase order which has been confirmed, but before the land is vested in the acquiring authority, and where it is required for use other than for agricultural purposes. So you must not delay your application in these circumstances: if you wait until the relevant part has become vested in the acquiring authority, it will be too late to apply. If you are not sure when the relevant part becomes vested, please ask your adviser or the compulsory purchase authority.

Procedure

7.7.5 You can apply under Section 11 only if you are the owner of the dominant tenement (including the relevant part)⁵².

⁵¹ Paragraph 5(4) of Schedule 4 to the Regulations.

⁵² Section 11(1).

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7.7.6 Your application, which must be made using form CA5 available from your registration authority, will need to include:

- evidence of consent from any relevant leaseholder of, or charge holder over, the dominant tenement;
- the register unit numbers and entries in the rights section;
- a description of the land to which the right of common is attached;
- evidence of your ownership of the dominant tenement;
- identification of the relevant part;
- where your application relates to only part of a right of common attached to land, identification of the part of the land to which the right is attached and an accompanying application to apportion rights under Section 8.⁵³

Your application will also need to show evidence that one of the qualifications described in paragraph 7.7.3 or 7.7.4 above (which are also set out in Section 11(2) to 11(4)) is satisfied in relation to the relevant part. For example, you may be able to supply a copy of planning permission for development, a statement supported by evidence of the use of the relevant part for non-agricultural purposes, or a copy of the confirmed compulsory purchase order and evidence that the relevant part has not yet been vested in the compulsory purchase authority.

Notices

7.7.7 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land over which the right of common is exercisable, and
- where relevant, the compulsory purchase authority.

7.8 Section 12: transfer of rights in gross

Introduction

7.8.1 You can apply to transfer a right of common held in gross under Section 12. The effect of the application, if granted, is to change the ownership of the right.

7.8.2 The transfer of a right of common held in gross is not legally effective until it has been registered. So if you are the registered owner of a right of common held in gross, and you agree that someone else should acquire it from you, you, or the person acquiring it, must apply under Section 12 to register the transfer.

Procedure

7.8.3 You can apply under Section 12 only if you are either:

- the registered owner of the right of common held in gross, or
- the transferee of that right, meaning the person to whom the right in gross will be transferred.⁵⁴

7.8.4 If you are the current owner of the right, but you are not the registered owner, then you must first apply under paragraph 2 of Schedule 3⁵⁵ to update the register to

⁵³ Paragraph 5(2) and (3) of Schedule 4 to the Regulations.

⁵⁴ Paragraph 6(1) of Schedule 4 to the Regulations.

⁵⁵ As read with Regulation 39 and paragraph 20 of Schedule 4 to the Regulations.

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show your ownership, during the transitional application period (see chapter 8.8 below). If you did not apply in time during the transitional application period, you may still be able to apply under paragraph 4 of Schedule 3 in certain circumstances. Alternatively, the person acquiring the right may be able to apply under Section 12 if he can obtain the consent of the “former”, but still registered, owner to the application (in effect, cutting out the current unregistered owner).

7.8.5 Your application, which must be made using form CA6 available from your registration authority, will need to include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as the present registered owner of the right, or as the transferee);
- (where you, the applicant, are the transferee) the consent of the registered owner of the right;
- the register unit numbers and the rights section entries to which the application relates.⁵⁶

Notices

7.8.6 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the registered owner of the right of common held in gross, or
- the transferee of the right,

whichever is not you the applicant.

FAQs

Q: If a registered holder of a right in gross sells his right to somebody else, is it really necessary for the new owner of the right to register the transfer since he will have proof (e.g. a deed) that he is the holder of the right?

7.8.7 Yes, because the transfer does not operate at law until it has been registered. The registered owner owns the right until such time as his name is replaced in the register by another person's. It is essential that anyone who claims to have acquired a right of common held in gross, applies to register the transfer as soon as possible.

7.9 Section 13: surrender and extinguishment

Introduction

7.9.1 At common law, a right of common could cease to exist by being surrendered by its owner (usually by a deed of release) or by being extinguished by operation of law. You can apply under Section 13 to surrender a right of common, and if the application is granted, the right is extinguished when it has been removed from the commons registers.

Procedure

7.9.2 You can apply under Section 13 only if you are either:

- the owner of the dominant tenement to which the right of common is attached or, in the case of a right of common held in gross, the owner of the right, or

⁵⁶ Paragraph 6(2) and (3) of Schedule 4 to the Regulations.

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- the owner of at least part of the common over which the right is exercisable.⁵⁷

7.9.3 If you, the applicant, are the owner of all or part of the common over which the right is exercisable, then your application must include the consent of the owner of the land to which the right of common is attached, or the owner of the right in gross, as the case may be⁵⁸.

7.9.4 Your application, which must be made using form CA7 available from your registration authority, will need to include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as owner of the dominant tenement, the right held in gross, or (part of) the common over which the right is exercisable, as the case may be;
- details of the register entry which identifies the common or town or village green over which the right is exercisable, and the right to be extinguished;
- (save where it is a right in gross), a description (including a map) showing the extent of the land to which the right is attached
- Where your application relates to only part of a right of common attached to land, it should also include an identification of the part of the land to which the right is attached and be accompanied by an application to apportion rights under Section 8.⁵⁹

7.9.5 For example, if a right to graze 30 cattle is registered as attached to three fields of equal size, A, B and C; only field C has passed into the ownership of the applicant; and the applicant wishes to extinguish his right to graze 10 cattle, his application to extinguish those rights must be accompanied by a separate application under Section 8 for apportionment of the rights between field C, and fields A and B. The application for apportionment will ensure that the right of common which is available to the owner of field C is registered as a separate right in the register, which can then be extinguished on application under Section 13.

Notices

7.9.6 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the right of common is attached, or the owner of the right of common held in gross (as the case may be), and
- the owner of the common land or town or village green over which the right of common is exercisable,

whichever of you is not the applicant.

Interpretation

7.9.7 Section 13(3) provides that any other common law mechanism by which registered rights of common might have ceased to exist is abolished. Defra believes these mechanisms comprise:

- Unity of ownership (or unity of seisin): where the common land and the right of common come into the same ownership (typically, where the dominant tene-

⁵⁷ Paragraph 7(1) of Schedule 4 to the Regulations.

⁵⁸ Paragraph 7(2) of Schedule 4 to the Regulations.

⁵⁹ Paragraph 7(3) and (4) of Schedule 4 to the Regulations.

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ment to which a right is attached is acquired by the owner of the common), then the right is extinguished. The effect of Section 13(3) is that rights acquired by the owner of the common will be exercisable by that person in the same way as the rights were exercisable by their former owner.

- Abandonment: where the owner of the rights can be shown to have irrevocably turned away from the use of the rights.
- Implied release: where a collective release of rights can be inferred over part of the common, typically where that part is inclosed by encroachment and the commoners acquiesce in the loss.
- Alteration to the common, comprising destruction of the common land (such as where the land is reclaimed by the sea) or exhaustion of the product (such as peat which is subject to rights of turbarry).
- Alteration to the dominant tenement, comprising the demolition (without replacement) of a building to which rights (particularly rights of turbarry) are attached, or the conversion of land to which rights (such as grazing) are attached to a use incapable of benefiting from the right (such as a reservoir).

7.9.8 Defra considers that these mechanisms are either redundant or of doubtful relevance where the existence of common land, and rights of common, is recorded in statutory registers. The powers in Section 13 provide a mechanism to extinguish rights of common on the application of certain persons. An application under Section 13 need not be accompanied by any evidence that the right has already ceased to exist by operation of these common law mechanisms, because they will be irrelevant to the registration authority's determination of the application.

7.10 Section 14: statutory dispositions

Introduction

7.10.1 Certain people can apply pursuant to Section 14⁶⁰ to amend the commons registers because of a disposition arising under or pursuant to statute. There are a number of statutory powers by which common land or town or village greens may be acquired (generally compulsorily) and removed from the commons register, sometimes in exchange for other land being added to the register. Similarly, rights of common may be acquired and extinguished, sometimes becoming exercisable instead over land given in exchange. In each case, the statute will provide for a person to employ these powers using a particular procedure, and by producing a record of the procedure, which we refer to here as a 'relevant instrument'. A relevant instrument may, for example, be a deed or conveyance. Sometimes, the person employing these powers may also have to obtain the consent of the Secretary of State.

7.10.2 Paragraph 8 of Schedule 4 to the Regulations places a duty, generally on the person making, or having the benefit of, a relevant instrument, to apply to the registration authority to make amendments to the commons registers consequent on the disposition made by the relevant instrument. For example, in relation to a compulsory purchase order, the obligation falls on the compulsory purchase authority. Similarly, where application must be made under a local Act to the Secretary of State for consent to an exchange of land, the obligation will fall on the applicant.

⁶⁰ As read with paragraph 8 of Schedule 4 to the Regulations.

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7.10.3 Paragraph 8(5) and (6) of Schedule 4 to the Regulations provides that on an exchange of land, any land given in exchange must be registered, and that the disposition is not to have effect until its effect is registered. In particular, a compulsory purchase order may provide for the acquisition of common land, and the discharge of all rights of common over the land. The order may also provide for other land to be given in exchange for the taken land, and for the rights of common to be vested so that they become exercisable over that land. For example, one commonly used form of compulsory purchase order⁶¹ provides for vesting to take effect on a particular date after the date on which the compulsory purchase order is made or confirmed, and it is on this date when the taken land would otherwise cease to be common land, and the replacement land would become common land. However, Regulation 45 provides that the consequences of a disposition as to the status of common land, a town or village green, a right of common or a right to indulge in lawful sports and pastimes, *etc.*, are not to operate at law until the disposition by which those consequences would be brought about is registered in the commons registers. It is therefore particularly important that prompt application is made to secure registration of the effect of the order, so that those consequences may take effect in law.

Procedure

7.10.4 Applications for the purposes of Section 14 can only be made by the person on whom the duty to apply is imposed by the Regulations⁶². The table contained at the end of paragraph 8 of Schedule 4 to the Regulations gives details of who must apply in relation to each specified “relevant instrument”.

7.10.5 Your application, which must be made using form CA8 available from your registration authority, will need to include:

- the instrument cited in the application, being one of those specified in the table set out in paragraph 8 of Schedule 4 to the Regulations;
- the capacity in which you, the applicant, are entitled to apply (*i.e.* that you are the person identified in column 4 of the table);
- a copy of the relevant instrument, and any consent, authorisation, approval or certificate which has been given for the purposes of the instrument;
- details of the register unit and, where applicable, register entry to be amended;
- a description of the amendment required to be made to the commons registers;
- where your application relates to only part of a right of common attached to land, identification of the part of the land to which the right is attached and an accompanying application to apportion rights under Section 8.⁶³

Notices

7.10.6 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of any land affected by the application.

⁶¹ See article 4(2) of Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004/2595): www.opsi.gov.uk/si/si2004/20042595.htm.

⁶² Paragraph 8(7) of Schedule 4 to the Regulations.

⁶³ Paragraph 8(8) and (9) of Schedule 4 to the Regulations.

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Other relevant legislation

7.10.7 The table contained at the end of paragraph 8 of Schedule 4 to the Regulations is believed to be comprehensive to the pilot areas of all statutory powers by which land may cease to become common land or green, land may become common land or green, rights of common may be extinguished, or rights may be vested over other land. Please contact Defra for advice if you think that any statutory power (whether local or national in effect) is omitted.

7.10.8 The table requires that applications must be made to the registration authority for the purposes of Section 14 where an instrument is made under any of the following enactments:

- The Lands Clauses Consolidation Act 1845, sections 99 and 107, or the Compulsory Purchase Act 1965, section 21 and Schedule 4⁶⁴, which authorise the taking of common land and green (compulsorily if required) for particular purposes, where one or other statute is incorporated in another 'special' Act for that purpose. The acquisition of common land under the 1845 Act is generally subject to the approval of the Secretary of State under section 22 of the Commons Act 1899.
- Inclosure Act 1845, sections 147 and 149, which enable the exchange of land, or of a recreational allotment remote from a village, for another more convenient, by order of the Secretary of State⁶⁵.
- Inclosure Act 1846, section 11, which enables the exchange of stinted rights of common between two commons, by order of the Secretary of State.
- Malvern Hills Act 1930, section 8, which confers on the Malvern Hills Conservators a power to exchange or dispose of land regulated as part of the Malvern Hills, subject to the consent of the Secretary of State, and section 9, which confers powers on the Conservators to sell or exchange land regulated as part of the Malvern Hills for the purpose of adjusting, defining or improving their boundaries, subject to the consent of the Secretary of State.
- A conveyance of registered land made for the purpose of sections 13 and 15 of the New Parishes Measure 1943, which enables the Church Commissioners to acquire land for various purposes connected with the Church of England⁶⁶.
- Greater London Parks and Open Spaces Order 1967⁶⁷, articles 7, 8 and 12, which enable the erection of buildings or permanent inclosure of common land or green; article 15, which confers on London borough councils powers to exchange parts of common land or green for land adjoining; and article 17, which confers on such councils powers to use portions of common land for street improvements.

⁶⁴ Part I of the Compulsory Purchase Act 1965 applies to compulsory purchase orders subject to the Acquisition of Land Act 1981, but the 1965 Act is also applied for certain purposes to which the 1981 Act does not apply.

⁶⁵ An order under section 149 of the Inclosure Act 1845 would give rise to a requirement to amend the registers only where the allotment was registered as a town or village green.

⁶⁶ For example, to improve access to a church, or to provide parking spaces in connection with a church hall (see section 13(1)(e) and (f) of the New Parishes Measure 1943).

⁶⁷ The Order was confirmed by the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967.

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- The Countryside Act 1968, sections 6 and 9 and Schedule 2, which confer powers exercisable by local authorities over common land open to public access, in the interests of persons resorting to that land for open-air recreation⁶⁸.
- The Acquisition of Land Act 1981, section 19: a compulsory purchase order in respect of any land forming part of a common other than where the Secretary of State issues a certificate under section 19(1)(aa)⁶⁹. (See also paragraph 8.10.7 below.)
- The Acquisition of Land Act 1981, Schedule 3: a compulsory purchase order in respect of any common land other than where the Secretary of State is satisfied that paragraph 6(1)(a) or (aa) applies and certifies accordingly⁷⁰. See notes above.
- New Towns Act 1981, paragraph 13 of Schedule 4, which enables the compulsory purchase of registered common land or of a registered town or village green.
- Town and Country Planning Act 1990, section 229 enables the appropriation of land forming part of a common or of a town or village green by a local authority.

7.10.9 Where a compulsory purchase order is made under the Acquisition of Land Act 1981, the order will provide for a vesting of rights of common in the replacement land, and the cessation of rights over the taken land⁷¹. It may often be found that the vesting takes effect on a particular date after the date on which the compulsory purchase order is made or confirmed, and it is on this date when the taken land ceases to be common land, and the replacement land becomes common land, and paragraph 8(2) of Schedule 4 provides that application to register the effect of the instrument must be made after (but not before) this date.

7.11 Section 15: town or village greens

Introduction

7.11.1 You can apply to register land as a town or village green under Section 15(1) or 15(8).

7.11.2 Section 15 replaces and updates older legislation. The new legislation makes the following changes:

- it provides a period of grace after use ‘as of right’⁷² has been ended by the landowner, during which you can still make an application to register the land

⁶⁸ For example, to provide a visitor centre or parking spaces (see section 9(3) of the Countryside Act 1968).

⁶⁹ A certificate may be given under section 19(1)(aa) of the Acquisition of Land Act 1981 where the Secretary of State is satisfied “that the land is being purchased in order to secure its preservation or improve its management”; in such a case, the compulsory purchase order will not make any provision affecting its registered status (see the proviso to section 19(3)).

⁷⁰ A certificate may be given under paragraph 6(1)(a) or (aa) where the Secretary of State is satisfied either: “(a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before”, or “(aa) that the right is being acquired in order to secure the preservation or improve the management of the land”, and in either such case, the compulsory purchase order will not make any provision affecting the right (see paragraph 6(4)).

⁷¹ See, for example, article 4(2) of Form 2 in the Schedule to The Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004: www.opsi.gov.uk/si/si2004/20042595.htm.

⁷² *I.e.* without permission, force or secrecy.

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as a green (under the old legislation, an application had to be made immediately after use 'as of right' had been ended);

- it ensures that, where a landowner grants permission for use of his land when there has already been 20 years' use of the land 'as of right', then use continues to be regarded 'as of right' (so there is no time limit by which you must make an application for registration, unless the landowner takes other steps to challenge use);
- it requires any period of statutory closure (e.g. during a foot-and-mouth disease outbreak) to be disregarded when deciding whether there has been 20 years' use 'as of right'; and
- it allows for the owner of land to register it voluntarily as a green.

Procedure

7.11.3 Anyone may apply to register land as a green under the criteria in section 15(1) of the Act. If you are a landowner you may register your land voluntarily as a green under Section 15(8). The procedure for registration is simpler if you are applying voluntarily as a landowner, because the registration authority will not require evidence of the use of the land.

Qualifying criteria for registration where the application is under Section 15(1)

7.11.4 In preparation for your application you will need to assess whether the recreational use of the land by local people meets the strict test for registration. This extends to establishing whether use of the land has been 'as of right' (i.e. without permission, force or secrecy) rather than 'by right'⁷³. Your application must show that use of the land meets one of the criteria set out in Section 15(2), Section 15(3) or Section 15(4). These criteria are alternatives, so you will need to see which one of them (if any) applies to your particular circumstances.

7.11.5 Whether you apply under Section 15(2), 15(3) or 15(4), your application must show that a significant number of local people have indulged in lawful sports or pastimes 'as of right' on the land for at least 20 years. These requirements reflect the ancient law of custom, where such a pattern of use created a presumption that the local inhabitants had established recreational rights over the land. You should look very carefully at the criteria for registration in Section 15. It will help your case if you are able to find a range of witnesses who can provide detailed statements about the qualifying use of the land.

Period of use 'as of right'

7.11.6 Your application will be examined by the registration authority against the criteria in Section 15(2), 15(3) or 15(4) as you have indicated on the form. It must meet one of these tests:

⁷³ The terms 'as of right' and 'by right' are interpreted in detail in the Guidance to registration authorities and the Planning Inspectorate for the pioneer implementation. The interpretation applies to all of England irrespective of whether the land in question is in a pioneer area: www.defra.gov.uk/rural/documents/protected/common-land/craguide.pdf

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- **Use continuing** — Section 15(2) applies where the land has been used ‘as of right’ for lawful sports and pastimes for 20 years or more before the application is made, and this use continues⁷⁴ at the date you apply.
- **Use ended no more than two years ago** — Section 15(3) applies where recreational use ‘as of right’ for 20 years or more ended on or after 6 April 2007 but no more than two years before the date you apply.
- **Use ended before 6 April 2007** — Section 15(4) makes a special transitional provision where recreational use ‘as of right’ for 20 years or more ended before 6 April 2007. In such a case, you must apply within five years of the date the use ‘as of right’ ended. The special transitional provision does not apply, in this situation only, where construction works under a planning permission affecting the land began before 23 June 2006 and such works have rendered, or will render, the land permanently unusable for lawful sports and pastimes.

The deadlines for making an application under Section 15 are not flexible so if you do intend to apply for registration, you must keep to them.

7.11.7 The registration authority will also look for evidence of:

- the other criteria in Section 15(2), (3) or (4) having been met, namely that:
 - a significant number of
 - the inhabitants of any locality, or any neighbourhood within a locality
 - indulged...in lawful sports and pastimes
 - as of right
 - on the land
 - for a period of at least twenty years;
- where relevant, the date of cessation of such use;
- where relevant, any interruption of such use owing to statutory periods of closure;
- where relevant, any planning permission affecting the land.

7.11.8 In order to understand the meaning of the elements described above you should read the additional information about these criteria in Chapter 8.10 of the *Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation*⁷⁵.

Grounds of application and evidence

7.11.9 If your application is made under Section 15(1) of the Act, you will need to ensure that all of the evidence you have to support the nature and extent of use of the land ‘as of right’ is provided to the registration authority so that it can consider that evidence to see whether the land qualifies for registration. Witness statements, witness forms of evidence and photographs are likely to be helpful to your case. A

⁷⁴ For this purpose, recreational use ‘as of right’ is deemed to continue if, after 20 years or more of such use, permission is given for local people to use the land. This is explained in more detail in the section on ‘Permission to use the land’ below.

⁷⁵ www.defra.gov.uk/rural/protected/commonland/registration.htm#guidance.

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sample of an evidence questionnaire to use in support of your claim can be obtained from the Open Spaces Society (see paragraph 10.2.2 below).

7.11.10 You should set out in your application, as briefly as possible, a summary of the case for registration and provide, on separate paper, a fuller statement of the facts supporting the claim. Your application must be made using form CA9 available from your registration authority. You should include information on the nature of the recreational activities that have taken place on the land, an estimate of the number of people undertaking these activities and of their frequency, and explain how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application.

Voluntary registration where the application is under Section 15(8)

7.11.11 If you are the owner of land, you may apply under Section 15(8) to register it voluntarily as a green. You cannot do this unless you have first obtained the consent of any leaseholder of, or charge holder over, the land, such as a tenant, or a mortgagee. You must provide evidence that any 'relevant leaseholder', and the proprietor of any 'relevant charge' over the land, consent to the application. These terms are defined in Section 15(9) and 15(10) of the Act. In such cases you will need to consult these people in advance of the application to inform them of your intention to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a statement of the nature of their relevant interest in the land, and their formal consent to the application.

7.11.12 You will need to confirm in your application, which must be made using form CA9 available from your registration authority:

- that you are the owner of the land and are applying to register the land as green; and either
- that you have obtained and included with the application all necessary consents from any relevant leaseholder of, or proprietor of any relevant charge over, the land; or
- that no such consents are required.

7.11.13 In some cases the registration authority may decide to ask you for further evidence of your ownership before it accepts your application.

Notices

7.11.14 In addition to the standard requirements (see paragraph 6.5.4 above), and whether you are applying under either Section 15(1) or (8), you will additionally be required to send a copy of the notice to:

- the owner of any land affected by the application (this will not apply to such an owner who is also the applicant under Section 15(8));
- any occupier or lessee of that land;
- any local authority (other than the registration authority) in whose area that land lies (including a parish council, the chairman of a parish meeting, or a National Park authority).

FAQs

Q: How are registered greens protected?

7.11.15 Town and village greens, including those newly registered, are protected by:

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- section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Causing injury to village greens is a criminal offence.
- section 29 of the Commons Act 1876 makes encroachment or inclosure of a green, and interference with or occupation of the soil a criminal offence unless it is with the aim of improving the enjoyment of the green.

Q: What happens if an offence has been committed?

7.11.16 Where an offence has occurred, action in respect of section 12 of the 1857 Act can be brought by a churchwarden, owner, or a parish or district council. Any parishioner can bring an action under section 29 of the 1876 Act.

Q: How can greens be maintained?

7.11.17 The owner of a green cannot do anything that interferes with the lawful recreational activities of the local inhabitants. Greens in local authority ownership are generally managed by the authority under the Open Spaces Act 1906 or by a scheme of regulation under the Commons Act 1899, but the law makes no provision regarding the maintenance of privately owned greens.

Chapter 8 : Historic event applications under Schedule 3

8.1 Introduction

8.1.1 The 1965 Act required all common land, greens, and rights of common, to be provisionally registered under that Act between 1967 and 1970. But, once the initial wave of provisional registrations were concluded, the legislation imposed no requirement on anybody to keep the registers up-to-date. Provision was made to register some types of event affecting the registers, but there was no obligation to comply. For example, once registered, a right of common could be extinguished by a deed of surrender made by the commoner in favour of the owner of the common, but the entry relating to the right would remain in the register unless an application were made for its deletion. In such a case, the register entry had no continuing validity because the right had been extinguished 'off-register'.

8.1.2 Many events affecting entries in the registers (or calling for new entries), have occurred since the registers were compiled under the 1965 Act, but a significant proportion of these are thought not to have been captured in consequential amendments to the registers. These 'missing' events are described in the 2006 Act, and in this guidance, as 'historic events'. Such a historic event must have occurred before 1 October 2008 (in relation to land for the registration of which a pilot area authority is responsible).

8.1.3 Under Schedule 3 to the 2006 Act, every registration authority will operate a transitional application period of two years when it will be open to applications to capture 'historic events'. This section provides advice on applications to update the commons registers during the transitional application period, only in relation to historic events.

8.1.4 Other chapters provide guidance in relation to other types of application. You can also make new event applications during and after the transitional application period, to amend the register because of something which has not yet happened, but which you want to change: for example, if you want to vary a right of common (but the variation did not take place before 1 October 2008). To do this, please refer to *New event applications under sections 6 to 14* in Chapter 7 above. Alternatively, you can make rectification applications during and after the transitional application period to rectify some types of error, omission or incorrect registrations in the commons registers (these will usually have occurred when the commons registers were first opened to registration in the late 1960s). To do this, please refer to *Rectification applications for correction and rectification of the registers* in Chapter 9 below.

8.2 Responsibility to act during the transitional application period

8.2.1 During the transitional application period, both the registration authority and members of the public with interests in the commons registers may need to take action to update the registers. It is your responsibility to apply to amend the commons registers to take account of any historic event which affects your personal interests. So, for example, if you are the owner of a common, and you arranged in 1984 to buy out the commoners' rights exercisable over the common, it is in your interests to apply to ensure that the surrendered rights are deleted from the com-

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mons registers (in this example, if you do not apply, the rights may be revived and again become exercisable by the commoners originally entitled to them).

8.2.2 If there are other parties with an interest in the same historic events, you should not assume that those other parties will apply to update the commons registers. You should always either apply yourself for that purpose, or apply jointly with the other parties. It is a good idea if you are able to agree with the other parties how to act. So, in the example given in paragraph 8.2.1 above, it would be open to both the common owner and the former commoner to apply to ensure that a surrendered right were deleted from the commons registers, but the common owner would be unwise to rely on an application made by the former commoner, because the commoner's interests might best be served by doing nothing.

8.2.3 Equally, you should not expect the registration authority to make a proposal to amend the register on your behalf. The registration authority will conduct a review of the information contained in its commons registers, and consider what proposals should be brought forward to amend the register to reflect historic events which should be recorded in the public interest. Examples of such events are likely to include a compulsory purchase order which has caused land to cease to be common land or green (and therefore eligible for deregistration), in exchange for other land which has become common land or green (and therefore eligible for registration).

8.2.4 Defra's view is that the registration of any historic event which affects the extent of registered land should be regarded as affecting the public interest. Where a registration authority makes a proposal to amend the commons registers to reflect such an event, it should ensure that full effect is given to the event — so that if, for example, a compulsory purchase order made provision both for the extinguishment of rights of common and for land to cease to be common land, a proposal should be made to record the full effect of the order, including the deletion of the rights from the register, notwithstanding that the extinguishment of rights in isolation might be regarded as a matter only of private interest.

8.2.5 If you are in any doubt whether the registration authority intends to make a proposal to register a historic event in which you have a personal interest, you should discuss this with the registration authority. Do not miss your opportunity to apply during the transitional application period because you are waiting for someone else to act: an application to amend the register after the end of the transitional application period must satisfy a stricter test, and you may have to pay a fee.

8.3 Duration of the transitional application period

8.3.1 The Regulations provide that the transitional application period is to last two years, beginning on 1 October 2008, and concluding on 30 September 2010⁷⁶. This means you can make an application to register a historic event at any time between these dates. The registration authority may not be able to determine your application before the closing date: this does not matter, as your application can be determined at any time up until 30 September 2011, provided it was submitted before the closing date.

⁷⁶ Regulation 39, as amended by regulation 2(g) of the Commons Registration (England) (Amendment) Regulations 2009 (SI 2009/2018).

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8.3.2 In Defra's view, an application may reasonably be treated as made before 1 October if it is consigned to the post (as evidenced by a postmark) on or before 30 September. If an application arriving after 1 October does not bear a postmark, or the postmark is illegible, the evidential burden rests with you, the applicant, to show that the application was consigned to the post before 1 October.

8.3.3 You may be able to apply to record a historic event after 30 September 2010: please see chapter 8.11 below.

8.4 Historic creation of right of common

Introduction

8.4.1 You can apply to register a right of common created after 2 January 1970 but before 1 October 2008, pursuant to paragraph 2(2)(a) of Schedule 3⁷⁷. The right may have been created by any lawful means: this includes a creation by grant, but also the acquisition of a new right of common by prescription. You may be able to claim a right of common has been acquired by lost modern grant if it has been asserted for a period of 20 years as of right: you should seek legal advice if you are unsure of the basis of any claim under the law of prescription.

8.4.2 The right of common need not be attached to land, but in Defra's view, a right of common held in gross could only have been created by express grant.

Procedure

8.4.3 You can apply only if you are either:

- the owner of any part of the land over which the right of common is exercisable; or
- the owner of either the land to which the right is attached (the dominant tenement) or the owner of the right in gross.⁷⁸

8.4.4 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as owner of any part of the common, or owner of the dominant tenement or right in gross);
- a description of the right to be registered;
- a description of the common over which the right is exercisable (including a map);
- if the right of common is attached to land, a description of the dominant tenement (including a map);
- where the right was created by an instrument (such as a grant), evidence of that instrument — or if the right was created by other means, evidence of the creation of the right.⁷⁹

Notices

8.4.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

⁷⁷ As read with paragraph 15 of Schedule 4 to the Regulations.

⁷⁸ Paragraph 15(1) of Schedule 4 to the Regulations.

⁷⁹ Paragraph 15(2) and (3) of Schedule 4 to the Regulations.

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- the owner of the land to which the new right of common is attached, or the owner of the right held in gross, as the case may be, and
- the owner of the land over which the right of common is exercisable.

Interpretation

8.4.6 There is considerable uncertainty whether a right of common can be acquired over land which is already registered (whether as common land or town or village green). This is because the 1965 Act provided that “no rights of common shall be exercisable over [land capable of being registered under the Act] unless they are registered...”⁸⁰. In Defra’s view, these words had effect on 31 July 1970, the end of the period referred to in section 1(2) of the 1965 Act⁸¹, and did not prevent the acquisition of new rights of common by prescription after that date, although regulations made under the 1965 Act prohibited the registration of a new right of common over existing registered land⁸². The 2006 Act therefore leaves the door open to the possibility that rights of common can be acquired by prescription under the 1965 Act even in relation to existing registered land, but does not explicitly provide that they can be. In Defra’s view, a new right may be asserted over registered land provided that it was not in existence on 2 January 1970⁸³, but the matter cannot be regarded as settled, and will need to be determined by the registration authority if it arises.

8.4.7 Equally, it may also be possible to assert the validity of a grant of a right of common over existing registered land, where the right was granted after 2 January 1970 but before 1 October 2008. In such cases, however, the registration authority will need to consider whether the owner of the common was capable of granting a new right having regard to its impact on the exercise of any existing rights of common. For example, where the number of registered rights exercisable over a common under the 1965 Act exceeds the capacity of the common to sustain those rights, then in Defra’s view, any new grant would have been invalid at common law, and should not be registered on an application for the purposes of paragraph 2(2)(a) of Schedule 3. It is seldom likely that a new right of common could be acquired over a registered town or village green, without interfering with the neighbourhood’s right to use the green for sports and pastimes, and in Defra’s view, any application for that purpose will need to be scrutinised very carefully.

8.4.8 Where an application relates to a new right of common, exercisable over unregistered land, the registration authority must, in registering the new right, also register as common land the land over which the right is claimed to be exercisable. You do not need to apply separately to register the land as common land, but you will need to supply a map of the land with your application to register the new right.

⁸⁰ See section 1(2)(b) of the 1965 Act.

⁸¹ See article 2 of the Commons Registration (Time Limits) Order 1966 (SI 1966/1470), as amended by the Commons Registration (Time Limits) (Amendment) Order 1970 (SI 1970/383).

⁸² See regulation 3(2) of the Commons Registration (New Land) Regulations 1969 (SI 1969/1843).

⁸³ See article 3 of the Commons Registration (Time Limits) Order 1966 (SI 1966/1470). A period of prescription beginning after 3 January 1950 may therefore be eligible for registration.

8.5 Historic variation of a right of common

Introduction

8.5.1 You can apply to register a variation of a right of common occurring after the date of registration of the right but before 1 October 2008, pursuant to paragraph 2(2)(b) of Schedule 3⁸⁴.

Procedure

8.5.2 You can apply only if you are:

- the current owner of any part of the common over which the right was exercisable prior to the variation;
- the owner of any part of the common over which the right is exercisable in consequence of the variation; or
- the owner of either the land to which the right is attached (the dominant tenement) or, as the case may be, the registered owner of the right in gross⁸⁵.

If the current owner of a right held in gross which was varied is not the registered owner, a separate and preceding application must be made to register the transfer of ownership of the right from the registered owner to the current owner (see chapter 8.8 below).

8.5.3 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the capacity in which you are entitled to apply (*i.e.* as owner of any part of the common, the dominant tenement or right in gross);
- the register unit number and entry number in the rights section of the register;
- a description of the variation to be recorded;
- a description of the dominant tenement (including a map), except where the right is held in gross;
- where the right was varied by an instrument (such as a deed of variation), evidence of that instrument — or if the right was varied by other means, evidence of the variation of the right.⁸⁶

Notices

8.5.4 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the right of common is attached, or the owner of the right of common held in gross (as the case may be), and
- the owner of the common or town or village green over which the right of common was exercisable prior to the variation, and the owner (if different) of any land over which the right is exercisable following the variation.

Interpretation

8.5.5 A variation may relate to any aspect of the registered right, but most typically will comprise a variation in what may be done under the right (*e.g.* a variation of a

⁸⁴ As read with paragraph 17 of Schedule 4 to the Regulations.

⁸⁵ Paragraph 17(1) of Schedule 4 to the Regulations.

⁸⁶ Paragraph 17(2) and (3) of Schedule 4 to the Regulations.

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right to graze 100 cattle so as to substitute a right to graze 600 sheep), but may also enable the right to be exercised over new or different land, or adjust the dominant tenement to which the right is attached.

8.5.6 A variation cannot cause land to cease to be registered as common land or green, because no provision is made in paragraph 2(2)(b) for the registration of such an outcome: so, for example, if your application relates to a variation that rights of common are to cease to be exercisable over part of an area of registered common land and to become exercisable instead over an unregistered piece of land, it is not possible for your application pursuant to paragraph 2(2)(b) to bring about the deregistration of any part of the registered common land. Conversely, where the effect of a variation is to cause the right to become exercisable over land which was not previously registered land, then that land must be registered as common land in consequence of the variation.

8.6 Historic apportionment of a right of common

Introduction

8.6.1 You can apply to register an apportionment of a right of common occurring after the date of registration of the right but before 1 October 2008, pursuant to paragraph 2(2)(b) of Schedule 3⁸⁷, but only where the apportionment is a prerequisite to the registration of any other historic event which relates to only part of a right of common registered as attached to land.

Apportionment — example 1: A right of common to graze 100 sheep on Blackacre Moor is registered as attached to land described (in column 5 of the register entry) as parcel numbers 101, 102, 103 and 104 on the relevant OS map. In 1980, parcels 101 and 102 were conveyed into separate ownership from parcels 103 and 104, but the apportionment was not registered at the time. The owner of parcels 101 and 102 then entered into a deed of surrender (with the owner of Blackacre) to extinguish the right attached to his land (*i.e.* that part of the right attached to parcels 101 and 102, amounting to a right to graze 45 sheep). Paragraph 18(1)(b) of Schedule 4 to the Regulations requires that an application for apportionment must accompany an application to register the extinguishment (the primary application) during the transitional application period, so that the register is amended to show two separate rights of common, one (to graze 45 sheep) attached to parcels 101 and 102 (which is then to be deregistered), and one (to graze 55 sheep) attached to parcels 103 and 104.

8.6.2 You cannot apply to register apportionment under Schedule 3 unless the application paves the way to register another historic event. However, you may be able to apply to register apportionment under Section 8, but you will need to pay a fee for such an application: please see chapter 7.4 above.

Procedure

8.6.3 You can only apply to apportion rights for the purposes of Schedule 3 as a consequence of another application to amend to the register, known as the primary

⁸⁷ As read with paragraph 18 of Schedule 4 to the Regulations.

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application. The purpose of the primary application must be to make one of the following changes to the register: extinguishment, surrender, variation or severance of a right of common as a historic event under Schedule 3. Additionally, a primary application may be made as a result of a statutory disposition as a result of a relevant instrument being a historic event. You must submit your application to apportion rights at the same time as the primary application, and both applications must be made by the same person.⁸⁸

8.6.4 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the primary application, and that you are the same applicant in both cases;
- the register unit number and entry number in the rights section of the register;
- a description of both the whole of the dominant tenement before its apportionment and of the part of the land to which, following any apportionment, the right which is the subject of the primary application is attached;
- the name and address of the owner of the land to which is attached the part of the right of common which is the subject of the primary application;
- your calculation of the apportioned rights between the part of land subject to the primary application and the remainder of that land;
- (only where your claim indicates the rights have been apportioned otherwise than rateably) an explanation of the basis of that claim, a copy of the instrument effecting the apportionment, and in any other case, evidence that the right has been apportioned otherwise than rateably.⁸⁹

Notices

8.6.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of any land to which the right of common is attached, and
- any person to whom you are required to send notice of the primary application.

Interpretation

8.6.6 An application to register an apportionment, where the apportionment arises from an instrument (such as a conveyance) made on or after 28 June 2005, must be in accordance with Section 9(5), which requires that the apportionment be *pro rata* (*pro rata* apportionment is explained in paragraph 7.4.8 above).

8.6.7 Where the apportionment arises from an instrument made after the date of registration of the land, but before 28 June 2005, the effect of paragraph 18(4) of Schedule 4 to the Regulations is that you cannot seek to apportion the rights other than *pro rata* unless you can supply contemporary evidence that the parties to the instrument intended some other outcome: such evidence is most likely to be found in the instrument itself (e.g. a clause in a conveyance of part of the dominant tenement providing that the rights are not conveyed with the land and are reserved to the part of the dominant tenement retained by the vendor). A declaration or other statement by you the applicant, or by the parties to the instrument made after the date of the

⁸⁸ Paragraph 18(1) of Schedule 4 to the Regulations.

⁸⁹ Paragraph 18(3) and (4) of Schedule 4 to the Regulations.

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instrument itself, will not be sufficient to indicate another outcome, and cannot satisfy the requirements of the regulation.

8.7 Historic severance of a right of common

Introduction

8.7.1 You can apply to register a severance of a right of common, so that a right of common registered as attached to land is transferred on its own to another person, occurring after the date of registration of the right but before 1 October 2008, pursuant to paragraph 2(2)(b) of Schedule 3⁹⁰.

8.7.2 You cannot apply to register a severance, where the severance arises from an instrument (such as a conveyance) made on or after 28 June 2005, because Section 9(2)–(4) provides that such an instrument is void⁹¹.

Procedure

8.7.3 You can apply only if you are:

- the person to whom the right of common was transferred on severance;
- the owner of the right of common at the date of application; or
- the owner of the land to which the right is registered as being attached (*i.e.* the owner of the former dominant tenement).⁹²

8.7.4 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the capacity in which you are entitled to apply;
- the register unit number and entry number in the rights section of the register;
- a description of the dominant tenement (including a map), to which the right was attached and evidence of ownership;
- where the right was severed by an instrument, evidence of that instrument — or if the right was severed by other means, evidence of the severance (but see *Interpretation* below).⁹³

Notices

8.7.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land over which the right of common is exercisable.

Interpretation

8.7.6 Section 9 prohibits further severance of rights of common, whether the severance is temporary (*e.g.* where the rights are let by the commoner to a third party) or permanent (*e.g.* where the rights are sold to one person, and the dominant tenement is sold to another). Section 9 takes effect from 28 June 2005. The section applies only to rights of common which are both attached to land, and which could have been

⁹⁰ As read with paragraph 19 of Schedule 4 to the Regulations.

⁹¹ Section 9 applies only to rights of common which, apart from the Act, would be capable of being severed. It follows that you also cannot apply to register a severance, where the severance is contrary to common law (such as the severance of a right of turbary attached to a dwelling).

⁹² Paragraph 19(1) of Schedule 4 to the Regulations.

⁹³ Paragraph 19(2) and (3) of Schedule 4 to the Regulations.

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severed under the law as it stood before enactment of the Act (*i.e.* following the ruling of the House of Lords in *Bettison v Langton*⁹⁴). It therefore does not apply to rights of common held in gross (such as those already severed), nor to rights which cannot be severed. Such rights include unquantified rights, typically most rights to take fuel or collect firewood, and rights appendant: in such cases, the common law continues to apply, and the rights may not be severed either temporarily or permanently.

8.7.7 If your application is supported by good evidence of severance, such as a conveyance under which the land to which the rights are registered as attached is conveyed to one party and the rights are conveyed in gross to another party, the severance took effect before 28 June 2005, and the severance was lawful⁹⁵, that is likely to be sufficient to support an application to register the severance as a historic event.

8.7.8 But Regulation 42(3) provides that, unless the instrument or other contemporary evidence showed an intention that the rights should be severed from the land, the registration authority must not grant an application to register a purported severance as a historic event.

Severance — example 1: An application is received from Mr A, who formerly owned the whole of Blackacre Farm, a dominant tenement to which rights of common are attached. Mr A asserts that a conveyance in 1980, which transferred part of Blackacre Farm to Mr B's ownership, but purported to retain all the rights of common attached to the remainder of Blackacre Farm for his own use, in fact had the effect at common law of severing the rights of common. The registration authority refuses to register the rights of common as having been severed and held in gross by Mr A, because the instrument (the conveyance) clearly shows that the intention was that all the rights were retained attached to the part of Blackacre Farm retained by Mr A.

8.7.9 A right of common may nevertheless be treated as having been severed, even in the absence of contemporary written evidence, if the application shows that the right was subsequently treated as severed, and there is no other explanation for that treatment but that the right must have been severed at that time.

8.8 Historic transfer of a right held in gross

Introduction

8.8.1 You can apply to register a transfer of a right of common in gross occurring after the date of registration of the right but before 1 October 2008 pursuant to paragraph 2(2)(b) of Schedule 3⁹⁶.

8.8.2 A transfer of a right held in gross must be in writing⁹⁷, generally by conveyance, made by the owner of the right (the vendor), in favour of the purchaser. Where the transfer is made by a person other than the person who is registered as the

⁹⁴ See footnote 45.

⁹⁵ See paragraph 8.7.6 for the circumstances in which severance is unlawful, notwithstanding the judgement in *Bettison v Langton*.

⁹⁶ As read with paragraph 20 of Schedule 4 to the Regulations.

⁹⁷ See section 52 of the Law of Property Act 1925 and section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

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owner of the right, you will need to include with your application a chain of conveyances between the original registered owner and the person who is to be registered as owner.

Procedure

8.8.3 You can apply only if you are:

- the person registered as the owner of the right of common; or
- the owner of the right of common at the date of application⁹⁸.

8.8.4 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the capacity in which you are entitled to apply;
- the register unit number and entry number in the rights section of the register which are to be amended;
- a copy of the instrument in writing by which the right of common was transferred to the owner at the date of the application (but see *Interpretation* below).⁹⁹

Notices

8.8.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the registered owner of the right of common held in gross, or
- the current owner of the right,

whichever is not you the applicant.

Interpretation

8.8.6 An instrument in writing would include a deed confirming the legal transfer of the right of common. But a right of common held in gross cannot be transferred by an oral agreement. If you believe you have acquired a right of common, but you do not have written evidence of the transfer of the right to you, you should ask the registered owner of the right to apply to transfer the right to you under Section 12 (see chapter 7.8 above).

8.9 Historic surrender or extinguishment of a right of common

Introduction

8.9.1 You can apply to register a surrender or extinguishment of a right of common occurring after the date of registration of the right but before 1 October 2008, pursuant to paragraph 2(2)(b) of Schedule 3¹⁰⁰.

8.9.2 The outcome of an application relating to a surrender or an extinguishment as a historic event will be the same: the cancellation of the right from the register. But, in general, a surrender will arise from a documented arrangement for extinguishment of the right agreed between the commoner and the common owner, whereas extinguishment may have arisen in consequence of a common law event.

⁹⁸ Paragraph 20(1) of Schedule 4 to the Regulations.

⁹⁹ Paragraph 20(2) and (3) of Schedule 4 to the Regulations.

¹⁰⁰ As read with paragraph 16 of Schedule 4 to the Regulations. The extinguishment of a right of common is referred to in paragraph 2(2)(b) of Schedule 3, and is not, therefore, a 'relevant disposition' defined in paragraph 2(3), whereas a surrender is a relevant disposition.

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Procedure

8.9.3 You can apply only if you are:

- if the right was attached to land (the dominant tenement), the current owner of any part of that land;
- if the right was held in gross, the owner of the right in gross before it was surrendered or extinguished; or
- the current owner of any part of the common over which the right was exercisable.¹⁰¹

8.9.4 In your application, which must be made using form CA14 available from your registration authority, you must include:

- evidence of the capacity in which you are entitled to apply;
- the register unit number and entry number in the rights section of the register which are to be amended;
- if the right was attached to land, a description of the land to which it was attached; and
- if the right was surrendered or extinguished by an instrument in writing, a copy of the instrument, or by any other evidence of the extinguishment.¹⁰²

Notices

8.9.5 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the right of common was attached, or the owner of the right of common held in gross (as the case may be), and
- the owner of the common land or town or village green over which the right of common was exercisable,

but not including to you, the applicant.

Interpretation

8.9.6 A surrender generally takes place by deed, executed by the person entitled to exercise the right, in favour of the owner of the common.

8.9.7 An extinguishment of a right of common may occur at common law. The mechanisms by which rights of common may be extinguished at common law are set out in paragraph 7.9.7 above. The common law mechanisms of extinguishment of rights of common were abolished (in the pilot areas) with effect from 1 October 2008 by Section 13(3), but Section 13 does not affect the operation of the common law before that date, and in particular, after the date of registration of any right under the 1965 Act¹⁰³. There remains some uncertainty as to whether the registration of rights of common under the 1965 Act modified (to any extent) the operation of the common law mechanisms, and these questions have not been considered by the courts: for example, it is unclear whether an application to remove a right of common from the register because it is alleged to have been abandoned, can succeed, because the very act of registration of the right under the 1965 Act might be said to have pre-

¹⁰¹ Paragraph 16(1) of Schedule 4 to the Regulations.

¹⁰² Paragraph 16(2) and (3) of Schedule 4 to the Regulations.

¹⁰³ That is, between the dates specified in paragraph 2(2)(b)(i) and (ii) of Schedule 3 to the 2006 Act.

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served a right from the intention to abandon it. In Defra's view, the matter cannot be regarded as settled, and will need to be determined by the registration authority if it arises.

8.9.8 In Defra's view, an application to amend the register arising from any of these mechanisms cannot cause any land to cease to be registered as common land or green, because no provision is made in paragraph 2(2)(b) of Schedule 3 for the registration of such an outcome. So, for example, where an application is made to amend the register to remove a right of common because the land over which the right is exercisable has been destroyed by the sea, the registration authority may grant the application, but it has no power to amend the register so as to remove the common land from the register (even though the rights formerly exercisable over the land have been extinguished, and, in the example given, the land no longer exists).

8.10 Historic statutory disposition

Introduction

8.10.1 A 'statutory disposition' occurs when registered common land or green, or a registered right of common, has been affected by a statutory scheme, usually involving powers of compulsory purchase¹⁰⁴. The scheme may have provided for land to cease to be common land or green (for example, so as to construct a new road on the land), and for other land to be given in exchange; it may also have provided for rights of common to be extinguished, or for the rights to be transferred to the land given in exchange. Where the statutory disposition came into effect before 1 October 2008, you can apply to record the disposition yourself, whether you wish to act in the public interest, or because you have a private interest in the event (e.g. if you have a right of common which is now exercisable over the exchange land). However, statutory dispositions can be very complicated, and it may normally be better to first ask the registration authority to use its powers to make a proposal to amend the registers.

8.10.2 You can apply to register a disposition affecting registered land occurring before 1 October 2008, pursuant to paragraph 2(2)(c) of Schedule 3¹⁰⁵, if it is by virtue of a relevant instrument. A relevant instrument may comprise a disposition arising under any of the enactments mentioned in paragraph 7.10.8 above¹⁰⁶.

8.10.3 Unlike for the purposes of Section 14, and regulations made under that section, there was and remains no duty on any party to a statutory disposition occurring before 1 October 2008 to register the effect of the disposition. Equally, however, there is no restriction on who may apply to register a statutory disposition. So you can apply to register a disposition which is a historic event if you are a party to the disposition, or a person with an interest in the land or rights of common affected (such as a commoner), or a member of the public. A registration authority may make a proposal for the same purpose, and is encouraged to do so if there is a public interest in registering the disposition (see chapter 8.2 above).

Procedure

8.10.4 Anyone can apply to amend the register, in consequence of:

¹⁰⁴ You can see a list of statutory dispositions in paragraph 8 of Schedule 4 to the Regulations.

¹⁰⁵ As read with paragraph 21 of Schedule 4 to the Regulations.

¹⁰⁶ A relevant instrument is one defined in paragraph 2(4) of Schedule 3, as then specified in paragraph 21(3)(b) of Schedule 4 to the Regulations by reference to the table in paragraph 8 of that Schedule.

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- a disposition by virtue of any relevant instrument which is a historic event by virtue of paragraph 2(2)(c) of Schedule 3; or
- the giving of land in exchange for any land subject to a disposition (but see *Interpretation* below).¹⁰⁷

8.10.5 In your application, which must be made using form CA14 available from your registration authority, you must include:

- a copy of the instrument effecting the disposition or exchange and any consent, authorisation, approval or certificate given for that instrument (but see *Interpretation* below);
- the register unit number and (if relevant) the entry number in the rights section of the register which are to be amended;
- a description of the amendment to be made to the register.¹⁰⁸

Notices

8.10.6 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of any land affected by the application.

Interpretation

8.10.7 If you wish to apply to register a statutory disposition pursuant to paragraph 2(2)(c) of Schedule 3, you should make sure that the relevant instrument has come into effect insofar as it affects registered land, or rights of common. For example, in the model form of a compulsory purchase order which provides for the vesting of land given in exchange¹⁰⁹, the vesting takes effect on a specified date which is later than the date on which the compulsory purchase order itself is confirmed. It is only after this later date when application can be made to the registration authority to deregister the taken land, and to register the replacement land. In such a case, you should make sure that the vesting provided for in the order has indeed taken place, as in certain circumstances, the vesting may not occur until many years after the date of confirmation of the order.

8.10.8 In any case where an application relates to taken land which is to be deregistered in exchange for replacement land, paragraph 21(1)(b) of Schedule 4 to the Regulations provides that there must be an application in respect of any land given in exchange for the purposes of paragraph 2(2)(d) of Schedule 3. So you cannot apply only to deregister the taken land (for which the exchanged land is a replacement) in isolation, but should include in your application details of the replacement land given in exchange.

8.10.9 Some enactments mentioned in paragraph 7.10.8 above have been repealed and replaced previous enactments to similar effect. A statutory disposition under any such repealed and replaced enactment may also be registered¹¹⁰. The principal such enactments are believed to be:

¹⁰⁷ Paragraph 21(1) of Schedule 4 to the Regulations.

¹⁰⁸ Paragraph 21(2) of Schedule 4 to the Regulations.

¹⁰⁹ Pursuant to section 19 of, or paragraph 6 of Schedule 3 (commons, open spaces *etc.*) to, the Acquisition of Land Act 1981: see article 4(2) of Form 2 in the Schedule to [The Compulsory Purchase of Land \(Prescribed Forms\) \(Ministers\) Regulations 2004](#).

¹¹⁰ Paragraph 21(3) and (4) of Schedule 4 to the Regulations.

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- the Acquisition of Land (Authorisation Procedure) Act 1946, paragraph 11 of the First Schedule (which was re-enacted in section 19 of the Acquisition of Land Act 1981), and
- the Town and Country Planning Act 1971, section 121 (which was re-enacted in section 229 of the Town and Country Planning Act 1990).

8.11 Late amendments after the close of the transitional application period

8.11.1 You can apply to amend the register in consequence of a historic event, even though your application is made after the end of the transitional application period (*i.e.* 30 September 2010). But you may have to pay a fee, and your application will only be granted if it would be fair to amend the register as your application proposes.

8.11.2 Regulation 42(4) and (5)¹¹¹ requires the registration authority to undertake a 'fairness' test in relation to any proposed modification in an application made after the end of that period. Registration authorities are required to consider whether a modification to the register on an application made after the end of the transitional application period would be fair having regard to the extent to which other persons may have placed reliance on the registers without the amendment having been made. So the registration authority must balance the interests of the applicant with those of others with an interest in the registration (which may include both those with a private interest, and the public interest).

8.11.3 If your application seeks to record the creation or variation of a right of common, any extinguishment of rights by virtue of paragraph 3 of Schedule 3 is deemed not to have occurred¹¹². This provision is valuable for enabling out-of-time amendments to be made where the requirement to act during the transitional period was overlooked.

8.11.4 Moreover, if you apply after the end of the transitional application period, you may have to pay a fee. The fee will be the amount set out in the relevant part of Schedule 5 to the Regulations, or such other sum (not exceeding £1,000) as may have been set by the registration authority.

8.11.5 An application after the end of the transitional application period is made in the same way as one during that period: please refer to chapters 8.4 to 8.10 above.

¹¹¹ As read with Regulation 43(1).

¹¹² Regulation 43(2).

Chapter 9 : Rectification applications for correction and rectification of the registers

9.1 Introduction

9.1.1 This chapter provides guidance on making rectification applications to rectify some types of error, omission or incorrect registrations in the commons registers, which usually will have occurred when the commons registers were first opened to registration in the late 1960s.

9.1.2 Other chapters provide guidance in relation to other types of application. You can also make new event applications during and after the transitional application period, to amend the register because of something which has not yet happened, but which you want to change: for example, if you want to vary a right of common (but the variation did not take place before 1 October 2008). To do this, please refer to *New event applications under sections 6 to 14* in Chapter 7 above. Alternatively, you can make historic event applications during the transitional application period, to amend the register because of something which happened before 1 October 2008 (but after the commons registers were first opened to registration in the late 1960s), but which was not registered at the time. To do this, please refer to *Historic event applications under Schedule 3* in Chapter 8 above.

Provisional registration

9.1.3 If you are applying to register or deregister land under paragraphs 4 to 9 of Schedule 2, you will need to show in your application details of the provisional registration of the land under the 1965 Act. Applications were invited between 2 January 1967 and 2 January 1970 (31 July 1970 in relation to land registered on the initiative of the registration authority) for the provisional registration of land, but the registration did not become final unless no objections were made to the registration, any such objections were withdrawn before a cut-off date, or on referral to the Commons Commissioner, the Commissioner decided to confirm the registration. 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 held by the registration authority, and any ancillary documents (such as old applications) open to public inspection (see chapter 3.4 above).

9.2 Schedule 2, paragraphs 2 to 5: adding land to, or changing the status of land on, the register

Scope of paragraphs 2 to 5

9.2.1 You can apply under paragraphs 2 to 5 of Schedule 2 to add land to the register in recognition of past mistakes or omissions. In summary, you can apply to register common land or a town or village green which is recognised as common land or green by or under any statute, to reinstate waste land of the manor as common land where its provisional registration was cancelled in certain circumstances under the 1965 Act, and to transfer common land to the register of town or village greens where you can show that it was incorrectly recorded in the wrong register.

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9.2.2 You cannot apply under paragraph 4 of Schedule 2 to register land as common land, if it was eligible to be registered under the 1965 Act, but (for whatever reason) it was not provisionally registered under that Act. You may, however, be able to register such land under paragraph 2 or 3 of Schedule 2 (if it is recognised as common land or green by or under any statute), or under Section 19 (if an application was made to register the land under the 1965 Act, but owing to an error of the registration authority, the land was not in fact registered — or the wrong land was registered).

9.2.3 In some cases, you may be able to apply to register or deregister land both under Schedule 2 and under Section 19: for example, if land was registered under the 1965 Act because of an error made by the registration authority, and that land has been covered by a building ever since its provisional registration. You will not have to pay a fee to apply under Section 19 to correct a mistake made by the registration authority, but your application will need to show convincing evidence of the mistake, and the Planning Inspectorate may refuse your application if it fails the fairness test in Section 19(5) (see paragraph 9.4.3 below). Alternatively, if you apply under Schedule 2, you may have to pay a fee (depending on whether your application seeks to register or to deregister land), and your application will need to show that it meets the criteria set out in the relevant paragraph of Schedule 2. You should consider carefully in such cases under which provision you wish to apply, having particular regard to the evidence which you will need to supply. Please see chapter 2.3 above for a fuller discussion on *Deciding your application path: removing land from the registers*.

Paragraphs 2 and 3: statutorily recognised common land and greens

9.2.4 You can apply under paragraphs 2 or 3 of Schedule 2 to register land which was specifically recognised by or under an earlier statute as being common land or a town or village green, but which was not registered under the 1965 Act. The key criteria for registration as common land under paragraph 2 are set out in paragraph 2(2) of Schedule 2. You will need to meet at least one of these criteria:

- the land is regulated by an order of regulation made under the Commons Act 1876 and confirmed by a provisional order confirmation Act¹¹³;
- the land is subject to a scheme made under the Metropolitan Commons Acts 1866–1898 or Part I of the Commons Act 1899¹¹⁴;
- the land is regulated as common land under a local or personal Act¹¹⁵; or
- the land is otherwise recognised or designated as common land by or under any other enactment¹¹⁶.

¹¹³ A list of commons and greens regulated by such orders is available at: www.defra.gov.uk/rural/protected/commonland/acts.htm.

¹¹⁴ A list of commons and greens subject to schemes made before 1980 under Part I of the Commons Act 1899 is available from the Defra casework database — see paragraph 10.1.13. Defra has no information about schemes made since 1981, and enquiries should be directed to the relevant district council or National Park authority which made the scheme.

¹¹⁵ For an example, see Part XV of the County of Kent Act 1981, in relation to the Tunbridge Wells and Rusthall Commons.

¹¹⁶ For an example, see the reference to land specified as common land in the Second Schedule to the Broxbourne and Hoddesdon Open Spaces and Recreation Grounds Act 1890 (ch. xlvii).

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9.2.5 For example, a local Act may have defined the extent of a common in a plan deposited with the House authorities during the passage of the corresponding Bill through Parliament, but part (or all) of the lands defined in the plan were overlooked and not registered under the 1965 Act. You may be able to register such land under paragraph 2, subject to the additional criterion in paragraph 9.2.7 below.

9.2.6 The key criteria for registration as a green under paragraph 3, which you will need to meet, are that the land was on 31 July 1970 land allotted by or under any Act for the exercise or recreation of the inhabitants of any locality, and continues to be so allotted, and has not at any time been finally registered as town or village green or as common land under the 1965 Act. For example, most inclosure awards made after 1845 under the general authority of the Inclosure Act 1845 (and many awards made before that date) provided for recreational allotments. Some of these allotments were subsequently registered as town or village greens under the 1965 Act, but where they were not registered under the 1965 Act (and so paragraph 3 does not apply to them), a new opportunity now arises to register the land under paragraph 3, provided the allotment remains in force today, and subject to the additional criterion in paragraph 9.2.7 below.

9.2.7 Paragraph 14(3) of Schedule 4 to the Regulations imposes an additional criterion in relation to any application under paragraph 2 or 3: if the land (or any part of the land) is (at the time of the application) covered by a building, or the curtilage of a building, then the land may only be registered if your application includes the consent of the owner of that land. This criterion is intended to ensure that land is not registered if it is no longer characteristic of common land or of a green. However, if the application includes land over which there is an encroachment from neighbouring landowners, the land may not belong to the person responsible for the encroachment, unless that person can show their title to the land. In order to establish ownership of the land, you may need to carry out a search of the register of title held by the Land Registry (see paragraph 10.1.14 below for contact details). You may also find helpful our guidance note on adverse possession in relation to common land and greens¹¹⁷.

9.2.8 It may be possible for you to register under paragraph 2 or 3 common land and greens exempted from registration under section 11(3) of the 1965 Act (a list of which appears in Annexe A).

Paragraph 4: waste land of the manor

9.2.9 You can apply under paragraph 4 to register land as common land if it is waste land of the manor at the date of the application. Waste land of the manor is “the open, uncultivated and unoccupied lands parcel of the manor”¹¹⁸. So you will not be able to apply under paragraph 4 to register land which has been developed, improved and brought in hand, or otherwise fails to fulfil the character of waste land of the manor.

9.2.10 The criteria for registration of land under paragraph 4, which are set out in paragraph 4(2) to (5) and which you will have to meet, are that:

- the land is waste land of a manor,

¹¹⁷ www.defra.gov.uk/rural/protected/commonland/guidance.htm#5.

¹¹⁸ See the entry in the glossary in section 10.3.

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- the land was provisionally registered as common land under section 4 of the 1965 Act,
- there was an objection to its provisional registration, and
- one (or more) of the following applies:
 - the registration was cancelled by the Commons Commissioner solely because the land had ceased to be connected with the manor (paragraph 4(3)),
 - 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 (paragraph 4(4)), or
 - the registration was cancelled at the request or with the agreement of the applicant for registration (paragraph 4(5)).

9.2.11 You can apply to register land, on a ground set out in paragraph 4(3) or 4(5), where the provisional registration of the land under the 1965 Act was rejected because the land had ceased to be owned by the lord of the manor (or because the applicant withdrew the provisional registration in anticipation of such a decision). The Court of Appeal decided in 1978 in the *Box Hill* case¹¹⁹ that ‘waste land of a manor’ — one of the grounds on which common land could be registered under section 22(1)(b) of the 1965 Act — must still be in the ownership of the lord of the manor at the time the validity of the registration was decided, but the court’s decision was subsequently overruled in 1990 by the House of Lords in the *Hazeley Heath* case¹²⁰. Between 1978 and 1990, many provisional registrations of common land were cancelled by the Commons Commissioner solely on the grounds of the *Box Hill* judgment, or were withdrawn by the applicant for registration in anticipation of cancellation. Nothing could subsequently be done in these cases, because they were out of time or ineligible for appeal following the decision in *Hazeley Heath*. You can now apply, based on a ground set out in either paragraph 4(3) or (5) to register land affected by such cases.

9.2.12 You can apply to register land, on the ground set out in paragraph 4(5), where an application for provisional registration of that land under the 1965 Act was withdrawn after an objection, whether or not the reason for withdrawal was the decision in the *Box Hill* case. This is intended to enable fresh consideration to be made in respect of cases where applications for registration of a common were withdrawn by agreement between the several applicants, often in advance of a hearing before the Commons Commissioner. Such agreements generally led to the Commissioner cancelling the registration by consent, without the opportunity for the wider public interest to be considered in relation to the application.

9.2.13 You can apply, on the ground set out in paragraph 4(4), in cases where the Commons Commissioner concluded, on an objection to the provisional registration of land under the 1965 Act as common land, that the land was not subject to rights of common, but did not consider whether the land might yet qualify for registration as waste land of the manor. Where none of the parties appearing before the Commissioner argued that the land might also qualify as waste land, the Commissioner often

¹¹⁹ *Box Parish Council v. Lacey* [1979] 1 All ER 113.

¹²⁰ *Hampshire County Council and others v. Milburn* [1990] 2 All ER 257.

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concluded that the registration should fail without further consideration. However, there is a public interest aspect to the registration of common land and whether land should or should not be registered should not be treated solely as a matter of dispute between the parties to the application. So application under this provision will enable fresh consideration of the circumstances.

9.2.14 It is not necessary that the land is still part of a manor (*i.e.* that the land remains in the ownership of the lord or lady of the manor). But you will need to show that the land was formerly manorial land — that is, that it was at one time part of the lands owned by the lord of the manor. The vast majority of land in England is formerly of a manor with notable exceptions being Crown land and boroughs. In terms of determining whether the land in question is formerly of a manor, there are a number of possible sources of information:

- The A2A (Access to Archives www.nationalarchives.gov.uk/a2a/advanced-search.aspx?tab=1) website is likely to be helpful. It's possible to search the name of the location or village and the word manor. This will show whether manorial records are held (manors held regular courts, the records of which have often persisted), and whether maps of the manors, or relevant estate maps may be available.
- Local records offices will be able to advise on how to research local areas.
- The National Archives hold a manorial documents register www.nationalarchives.gov.uk/mdr/help/mdr/manorname.htm
- Research can also be undertaken from entering search terms on British History online: www.british-history.ac.uk/place.aspx
- The Victoria County History of England (which was started in Victorian times and which remains incomplete) gives a painstaking analysis of manors and estates in each county where the work has been completed.

It is seldom possible to definitively prove that a particular parcel of land is of a manor. But it should be sufficient to show that, on the balance of probabilities, the land lies in an area which is recognised to have been, or still be, manorial, and that there is no convincing evidence to the contrary.

9.2.15 If you are applying under paragraph 4 of Schedule 2, you will probably find it helpful to refer to copies of the Commissioner's decision letters which are held by Defra in both bound and electronic form, and paragraph 10.1.10 below gives further information about where you can see them.

9.2.16 Where land is registered under paragraph 4, it will not be possible to claim or register any rights of common which were formerly exercisable over that land. Such rights were extinguished for want of registration, under section 1(2)(b) of the 1965 Act¹²¹.

Paragraph 5: town or village green wrongly registered as common land

9.2.17 You can apply under paragraph 5 so that land which is registered as common land can instead be registered as a town or village green. Registration of common land as a green instead will ensure that the protection afforded to greens by nineteenth century legislation (notably section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876) extends to such land, and will confer on the

¹²¹ See footnote 7.

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local inhabitants a right to use the green for all lawful sports and pastimes. It will not affect any rights of common registered as exercisable over the land.

9.2.18 Some greens were mistakenly registered under the 1965 Act as common land, typically because the land was subject to rights of common, and the applicants believed that such land was required to be, or wished to have it, registered as common land, or because the land was provisionally registered as common land by commoners, and no-one thought it necessary to register it instead as a town or village green.

9.2.19 You can apply under paragraph 5 to transfer the registration of the land to the correct register. You will need to show that, immediately before the provisional registration of the land under the 1965 Act as common land, the land was in fact a town or village green within the meaning of the 1965 Act as originally enacted, so that one of the following criteria is met:

- (a) land that has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality;
- (b) land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes;
- (c) land on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.

9.2.20 Because your application must show that one of these criteria were met at the date of provisional registration (a date which will be at least 40 years ago), it will be easiest if you can show that the land meets test (a): for example, you may be able to supply evidence that the land was allotted as a town or village green under an inclosure award. However, you may be able to meet test (b) or test (c) if sufficient evidence is still available from local people as to the use of the land for lawful sports and pastimes during a period of at least 20 years ending with the date of provisional registration.

9.2.21 You cannot apply under paragraph 5 if you are only able to supply evidence as to the use of the land for lawful sports and pastimes later than the date of provisional registration. However, you should instead consider whether you could apply to register the land as a town or village green under Section 15 (an application can be made under Section 15 in respect of land which is already registered as common land): please see chapter 7.11 above.

9.2.22 If the land was allotted as a town or village green under an inclosure award, but is not already registered as common land nor as a town or village green, then you should instead consider applying under paragraph 3 of Schedule 2: please see paragraph 9.2.4 above.

Procedure under paragraphs 2 to 5

9.2.23 Anyone can apply under paragraphs 2 to 5: you do not need to be the owner of the land.

9.2.24 Your application, which must be made using form CA13 available from your registration authority, will need to include:

- evidence of which criteria, in paragraph 2, 3, 4 or 5, are being met in relation to your application;

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- in relation to an application under paragraph 2 or 3, a copy of the enactment or scheme by which the land is regulated or was allotted (including any map referred to in it)¹²²;
- if you are applying under paragraph 2 or 3, and your application seeks to register land which is covered by a building or the curtilage of a building, the consent of the owner of that land.¹²³

Notices

9.2.25 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the application relates, and
- any occupier or lessee of that land.

9.3 Schedule 2, paragraphs 6 to 9: removing land from the register

Scope of paragraphs 6 to 9

9.3.1 You can apply under paragraphs 6 to 9 of Schedule 2 to remove from the register certain land which is registered as common land or town or village green. In summary, you can apply to deregister land which was covered by a building or the curtilage of a building at the time of provisional registration and has remained so up to the time of your application. You can also apply to deregister common land which you can show was not common land of any description, nor a town or village green, at the date of provisional registration, if the provisional registration of the land as common land was not inquired into by a Commons Commissioner at that time. And you can apply to deregister town or village green which you can show was not physically capable of being used for lawful sports and pastimes for a period of 20 years preceding its provisional registration, which was not allotted under any enactment, and if the provisional registration of the land as a town or village green was not inquired into by a Commons Commissioner at that time.

9.3.2 You cannot apply under Schedule 2 to remove land from the register only on the basis that it was 'wrongly registered': your application will need to show that it meets the criteria in at least one of paragraphs 6 to 9 of Schedule 2. For example, if the provisional registration of land as common land was confirmed by a Commons Commissioner after a public hearing, any objection to the registration should have been (and may have been) maintained at that hearing, and no application may be brought under paragraph 7 — but you may be able to apply under paragraph 6 (if the land has been covered by a building or its curtilage during the requisite period), or you may be able to apply under Section 19, if the registration was a result of an error made by the registration authority.

Paragraphs 6 and 8 (buildings registers as common land or town or village green)

9.3.3 You can apply under paragraphs 6 or 8 of Schedule 2 to remove from the register land which was covered by a building or the curtilage of a building at the time of provisional registration and has remained so up to the time of your application.

¹²² But see paragraph 6.4.5.

¹²³ Paragraph 14 of Schedule 4 to the Regulations.

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The key criteria for an application under paragraph 6 or 8 are set out in paragraph 6(2) or 8(2), as the case may be.

9.3.4 A successful application under paragraph 6 or 8 will need to show that all of the following criteria are met:

- “The land was provisionally registered as [common land or a town or village green] under section 4 of the 1965 Act”. This means that the registration must have been made in the first wave of registrations made under the 1965 Act, between 2 January 1967 and 31 July 1970. Some land (mainly new town or village greens) was registered after 31 July 1970, under section 13 of the 1965 Act (or under Section 15 of the 2006 Act), and an application cannot be made under paragraphs 6 or 8 in these cases. You can find out when land was provisionally registered by inspecting the relevant entry in the commons registers.
- “On the date of the provisional registration the land was covered by a building or was within the curtilage of a building”. This criterion must be met at the date of the provisional registration (between 2 January 1967 and 31 July 1970) — it is not enough that it was met at some later date, however soon afterwards, so you will need to produce evidence (such as a photograph, reliable maps, or convincing witness testimony) that shows that the criterion was met on or before the date of provisional registration.
- “The provisional registration became final”. Generally, any provisional registration made under the 1965 Act and which remains registered today, became final, and this test will therefore be met in nearly all cases.
- “Since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.” This means that the criterion must have been met since the date of the provisional registration (between 2 January 1967 and 31 July 1970) right up to the date on which your application is determined. In Defra’s view, it is not necessary that the land has remained unchanged during that time, merely that the criterion has been satisfied throughout. For example, if the land was covered by a barn in 1965, was registered as common land in 1968, but the barn was demolished and the land incorporated into the garden of an adjoining house in 1984 (and remains so today), then the criterion is likely to be satisfied.

Schedule 2, paragraph 7 (other land wrongly registered as common land)

9.3.5 A successful application under paragraph 7 will need to show that all of the following criteria are met:

- “The land was provisionally registered as common land under section 4 of the 1965 Act”. This means that the registration must have been made in the first wave of registrations made under the 1965 Act, between 2 January 1967 and 31 July 1970. Very little common land was registered other than under section 4, but you can find out when land was provisionally registered by inspecting the relevant entry in the commons registers.
- “The provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act”. Where a provisional registration was referred to the Commons Commissioner, an inquiry was usually held, and any questions about the correctness of the registration should have been raised at that time. However, where no objection was made to the registration of the land, or where any objection was withdrawn before 17 De-

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ember 1971 (in relation to a first period provisional registration) or 31 July 1973 (in relation to second period provisional registrations), the registration became final automatically, and no inquiry was made into the correctness of the registration. You can usually find out whether the provisional registration was referred to a Commons Commissioner by inspecting the relevant entry in the commons registers: an entry which was confirmed without objection will normally be referred to as 'undisputed'. Additionally, you should check whether a record exists in the Commons Commissioners' decisions for the land: see paragraph 10.1.10 below. Neither source should be considered conclusive on its own. Some provisional registrations were referred to the Commons Commissioners for determination only in relation to an objection to the registration of some or all rights of common¹²⁴, or in relation to the determination of ownership¹²⁵: a referral only for one or both of these purposes does not prevent an application being made under paragraph 7.

- “The provisional registration became final”. Generally, any provisional registration made under the 1965 Act and which remains registered today, became final, and this test will therefore be met in nearly all cases.
- “Immediately before its provisional registration the land was not any of the following—
 - land subject to rights of common;
 - waste land of a manor;
 - a town or village green within the meaning of the 1965 Act as originally enacted;
 - land of a description specified in section 11 of the Inclosure Act 1845”.

You will need to show that the land did not meet any of these tests at the date of the provisional registration (between 2 January 1967 and 31 July 1970). The first three tests are those which were required to be met for registration under the 1965 Act (but, because there was no objection to the original registration, you the applicant are now given the opportunity to question whether those requirements were in fact satisfied at the time). The fourth test introduces a broader definition of common land, so that land which may not strictly have qualified for registration under the 1965 Act, but which was nevertheless common land in a broader sense, cannot be removed from the register on application under paragraph 7. Section 11 of the Inclosure Act 1845 is reproduced in the glossary to these guidance notes in chapter 10.3 below. The definition includes ‘regulated pastures’ (land held and grazed by tenants in common), and any land held in severalty by joint tenants.

¹²⁴ A decision in relation only to rights of common will usually begin with words similar to: “This dispute relates to the registration ... in the rights section of the register unit no. ...”, without any corresponding reference to a dispute in relation to the registration in the land section of the register, and will make provision only as to the determination of the disputed rights (without ruling on the question as to whether the land is correctly registered as common land).

¹²⁵ A decision in relation to ownership will usually begin with words similar to: “This reference relates to the question of ownership of land...”, and will make provision only as to the registration of any person as the owner of the land.

Schedule 2, paragraph 9 (other land wrongly registered as town or village green)

9.3.6 A successful application under paragraph 9 will need to show that all of the following criteria are met:

- “The land was provisionally registered as a town or village green under section 4 of the 1965 Act”. This means that the registration must have been made in the first wave of registrations made under the 1965 Act, between 2 January 1967 and 31 July 1970. Many town or village greens were registered after 31 July 1970, under section 13 of the 1965 Act (or under Section 15 of the 2006 Act), and an application cannot be made under paragraph 9 in these cases. You can find out whether, and if so when, land was provisionally registered by inspecting the relevant entry in the commons registers.
- “The provisional registration of the land as a town or village green was not referred to a Commons Commissioner under section 5 of the 1965 Act”. Where a provisional registration was referred to the Commons Commissioner, an inquiry was usually held, and any questions about the correctness of the registration should have been raised at that time. However, where no objection was made to the registration of the land, or where any objection was withdrawn before 17 December 1971 (in relation to a first period provisional registration) or 31 July 1973 (in relation to second period provisional registrations), the registration became final automatically, and no inquiry was made into the correctness of the registration. You can usually find out whether the provisional registration was referred to a Commons Commissioner by inspecting the relevant entry in the commons registers: an entry which was confirmed without objection will normally be referred to as ‘undisputed’. Additionally, you should check whether a record exists in the Commons Commissioners’ decisions for the land: see paragraph 10.1.10 below. Neither source should be considered conclusive on its own. Occasionally, provisional registrations of greens were referred to the Commons Commissioners for determination only in relation to an objection to the registration of rights of common, or in relation to the determination of ownership¹²⁶: a referral only for one or both of these purposes does not prevent an application being made under paragraph 9.
- “The provisional registration became final”. Generally, any provisional registration made under the 1965 Act and which remains registered today, became final, and this test will therefore be met in nearly all cases.
- “Immediately before its provisional registration the land was not—
 - common land within the meaning of [the 1965] Act;
 - a town or village green.”

You will need to show that the land did not meet either of these tests at the date of the provisional registration (between 2 January 1967 and 31 July 1970). However, in relation to the second test (whether the land was a town or village green), the Act recognises the difficulty in deciding such a question on the same basis as it might have been determined at the time (for example, by hearing evidence of long use as of right by local inhabitants for sports and pastimes), because witnesses may have moved away or died. Instead, paragraph 9(3)

¹²⁶ See footnotes 124 and 125 above for advice about interpreting decisions of the Commons Commissioners in this respect.

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provides that: “land is taken not to have been a town or village green immediately before its provisional registration if (and only if)—

- throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes; and
- immediately before its provisional registration the land was not, and at the time of the application under this paragraph still is not, allotted by or under any Act for the exercise or recreation of the inhabitants of any locality.”

This means that you will need to show that the land could not have been used for sports and pastimes for the 20 years before its provisional registration (for example, if the land was provisionally registered on 1 August 1968, you will need to provide evidence in relation to the period from 2 August 1948 up to the date of provisional registration). This might include evidence that:

- the land was cultivated for arable purposes throughout this period (such as Agricultural Committee notices, photographs, witness testimony);
- the land was used in any other way that physically excluded the possibility of use for sports and pastimes (such as maps showing the presence of withy beds or fishponds, photographs showing continuous use for storing machinery);
- the land was inaccessible to the public throughout this period (such as evidence of inclosure — but it will be necessary for the evidence to show that the land was “by reason of its physical nature, unusable”, rather than that it was merely inconvenient to gain access).

Procedure under paragraphs 6 to 9

9.3.7 Anyone can apply under paragraphs 6 to 9: you do not need to be the owner of the land.

9.3.8 Your application, which must be made using form CA13 available from your registration authority, will need to include

- evidence of which criteria, in paragraph 6, 7, 8 or 9, are being met in relation to your application¹²⁷.

Notices

9.3.9 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of the land to which the application relates, and
- any occupier or lessee of that land.

¹²⁷ Regulation 14(6).

9.4 Section 19: correction of the register

Scope of Section 19

9.4.1 You can apply under Section 19 to correct certain types of errors and mistakes in the commons registers. Section 19(2) sets out the purposes for which a correction may be made, and these are described in the following paragraphs.

9.4.2 You cannot necessarily apply under Section 19 to correct any mistake in the registers, whatever its origin. For example, you cannot apply to correct an error in the quantification of rights shown in the register, unless the error is attributable to a mistake originally made by the registration authority.

For example, Joe Farmer applied in October 1968 to provisionally register a right to graze 500 sheep on Sheepwalk Down. When the registration authority entered the application in the register, it mistakenly entered a right to graze 500 geese. Mr Farmer did not notice the error until it was too late to correct it. The provisional registration was not challenged, and it became final automatically.

Andy Farmer applies to the registration authority under Section 19 to correct the register. The application is accepted, because the error is attributable to a mistake originally made by the registration authority.

9.4.3 Section 19(5) provides that the registration authority may not correct mistakes in the register if it would be unfair to do so. For example, if land had been acquired by a person reliant on an inspection of the register which showed it not to be registered common land, but the registration authority had mistakenly excluded that land from the register, it should not correct the mistake if it would, in all the circumstances, be unfair to do so (having regard, for example, to the interests of the person acquiring the land, as well as the interests of others interested in correcting the error).

9.4.4 You can apply under Section 19 to correct a mistake, whether the mistake originates from a registration made under the 2006 Act or under the 1965 Act, and references to mistakes include mistaken omissions and unclear or ambiguous descriptions. In some cases, an error may meet the criteria for correction both under Section 19 and under Schedule 2 — see paragraph 9.2.3 above. Please see chapter 2.3 above for a fuller discussion on Deciding your application path: removing land from the registers.

9.4.5 A registration authority may itself put forward a proposal to amend the register for any of the purposes in Section 19. However, you should not expect a registration authority to put forward a proposal unless amending the register would convey a public benefit (rather than a purely private benefit to the persons affected by the amendment).

Section 19(2)(a): mistakes made by the registration authority

9.4.6 You can apply for the purposes of Section 19(2)(a) to deal with any mistake made in making or amending an entry in the register (including an ambiguous description of, for example, rights of common), but only where the mistake was made by the registration authority.

9.4.7 Such a mistake may arise, for example, where an error was made by the registration authority in transposing onto the register map a plan supplied by an

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applicant for provisional registration of common land, or where the authority erroneously added a zero to (or deleted a zero from) the number of rights registered.

9.4.8 It does not matter when the error was made by the registration authority (for example, the error could have been made during the first wave of registrations under the 1965 Act, or it could have been made on an application to register a town or village green under Section 15).

9.4.9 An error made in a map supplied by an applicant for registration (at any time) defining the area of common land intended to be registered, which was faithfully reproduced in the register entry, could not be corrected under this provision (but it may be possible to correct such an error under the provisions in Schedule 2: see chapter 9.2 above).

9.4.10 Your application will need to show that the registration authority itself was responsible for the error in the register. You cannot hold the authority responsible solely because it failed to identify and resolve a mistake in anything done by another party to a registration, unless the authority had a duty at that time to identify and correct such mistakes. In practice, many applications for provisional registration of land, and of rights of common, received by registration authorities during the first wave of registration under the 1965 Act were defective, doubtful or ill-conceived, but the registration authority was obliged to register them regardless, provided that the application complied with the requirements of the legislation. So, for example, if an applicant for registration of a right of common submitted a map which claimed to show the dominant tenement to which the right of common was attached, but the dominant tenement overlapped the common itself, the registration authority did not make an error in registering the dominant tenement exactly as it was marked on the submitted map.

Section 19(2)(b): other mistakes not affecting land or quantification of rights

9.4.11 You can apply for the purposes of Section 19(2)(b) to deal with any other mistake, whether made by the registration authority or another person, provided that the amendment you seek would neither affect the extent of land registered as common land or as a town or village green, nor what can be done by virtue of right of common (such as the number of animals which may be grazed by virtue of the right).

9.4.12 So you could apply for these purposes to correct:

- the definition or mapping of a dominant tenement,
- the attachment of a right of common to land, to show that it should instead have been recorded as held in gross, or *vice versa*,
- the definition of an internal grazing boundary (where a right of common is recorded as exercisable over only part of a register unit),
- a private right or easement noted in the register (but not to note such a right not previously noted in the register),
- the name of a register unit,

but these examples should not be taken as a complete list.

9.4.13 For example, a mistake may have been made by an applicant for registration of a right of common attached to land by which the dominant tenement was wrongly defined. The authority would be able to correct such a mistake, provided that the

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applicant could show how the mistake was made. Similarly, a mistake may have been made in identifying the land over which the right was exercisable (so that the right should have been exercisable over the whole of a register unit, rather than a particular part).

9.4.14 You can only apply for the purposes of Section 19(2)(b) to correct a mistake in the register, where the mistake was made because of a flaw in the information provided (or omitted) at the relevant time, or because the proper procedures were not followed at that time. Some entries in the registers may be misleading or out-of-date, but that does not mean that you can apply for the purposes of Section 19(2)(b) to correct such entries. For example, the register may show in column 3 of the rights section of the register that a right of common was registered on the application of a person who has since died, and the right of common is now exercised by a descendant: however, there is no procedure for updating such an entry, and it cannot be considered a mistake which can be corrected on an application under Section 19.

9.4.15 You may be able to apply to correct an error in the ownership section of the commons registers, but only if an error was made in the original registration. However, if the ownership of any registered land is disputed, the registration authority otherwise has no power to amend any entry in the ownership section of the commons register. If you are not satisfied with an entry in the ownership section of the commons registers, Defra recommends that you seek first registration of title in the register of title held by the Land Registry. A successful application to the Land Registry for first registration should in due course generate a notice from the Land Registry to the registration authority requiring it to delete any existing entry in the ownership section of the commons registers.

Section 19(2)(c): duplicate entries

9.4.16 You can apply for the purposes of Section 19(2)(c) to remove a duplicate entry in the register (whether caused by the error of the authority or another person).

9.4.17 Duplicate entries sometimes occurred where application was made for provisional registration of a right of common under the 1965 Act, both by the tenant of a farm entitled to exercise the right, and the landlord of the farm, and no objection was made to either registration, so that they both became final. You can apply for the purposes of Section 19(2)(c) to resolve such anomalies.

Section 19(2)(d): updating names and addresses

9.4.18 You can apply for the purposes of Section 19(2)(d) to update any name or address in the register.

9.4.19 An application for these purposes will generally be made to update details of the registered owner of a right held in gross, where the owner of the right has changed his or her name (*e.g.* on marriage) or address. An application should not be made under Section 19 if a right held in gross is transferred to another person (see chapter 7.8 above), or if the right was previously transferred to another person, and the register needs to be amended to bring the entry up-to-date (see chapter 8.8 above).

9.4.20 You cannot apply under Section 19 to update the details of any name or address entered in column 3 of the rights section of the register only because those details relate to the person who applied for registration of the right, and not to any successor in title. The details in column 3, if correct at the time the registration was

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made, remain correct subsequently, and cannot be amended for the purpose described in Section 19(2)(d).

Section 19(2)(e): accretion or diluvion

9.4.21 You can apply for the purposes of Section 19(2)(e) to update an entry in the register to take account of the common law principles of accretion and diluvion.

9.4.22 The principles apply to all land where the boundary of ownership follows a body of water — whether river, lake or sea shore. They provide that, if by gradual and imperceptible accretions in the ordinary course of nature, land is added on one side, it falls into the ownership of the person owning the rest of the land on the same side, and the boundary line correspondingly advances, and similar principles apply *vice versa* in the case of diluvion. If, in such a case, one side of the body of water is also subject to rights of common, then the rights of the commoners and the boundary of the common land (or town or village green) will adjust along with the rights of the owners.

Procedure under Section 19

9.4.23 Anyone can apply under Section 19: you do not need to have a particular interest in the land.

9.4.24 Your application, which must be made using form CA10 available from your registration authority, will need to include:

- a statement of the purpose for which your application is made — *i.e.* whether it is made for the purposes of section 19(2)(a), (b), (c), (d) or (e);
- the register unit and, where applicable, 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 commons registers.¹²⁸

Notices

9.4.25 In addition to the standard requirements (see paragraph 6.5.4 above), you will additionally be required to send a copy of the notice to:

- the owner of any land affected by the application.

¹²⁸ Paragraph 11 of Schedule 4 to the Regulations.

Chapter 10 : Bibliography and contacts

10.1 Bibliography

10.1.1 Information about the implementation of Part 1 of the 2006 Act is available on the Defra website, at: www.defra.gov.uk/rural/protected/commonland/registration.htm

10.1.2 For further information about the 2006 Act, see:

- *The Commons Act 2006*, The Stationery Office, ISBN–13: 9780105426066
- *Explanatory Notes to the Commons Act 2006*, The Stationery Office, ISBN–13: 9780105626060

and at: www.opsi.gov.uk/acts/acts2006a.htm.

10.1.3 You can find out further information about registering land under Part 1 of the 2006 Act from the following websites.

- Open Spaces Society: www.oss.org.uk/commons/the-commons-act-2006/
- Steve Byrne: www.commonsreregistration.org.uk

Defra cannot vouch for the accuracy of information available from these websites, or the persons or organisations responsible for the websites.

10.1.4 If you are making an application to register a new town or village green under section 15 of the 2006 Act, you may wish to obtain *Getting Greens Registered*, published by the Open Spaces Society.

- *Getting Greens Registered: a guide to law and procedure for town and village greens*, John Riddall, 2nd edition 2007, ISBN–13: 9780946574223

10.1.5 The Regulations, the Commencement Order for Part 1 of the 2006 Act and the Dartmoor Severance Order are available as follows:

- Commons Registration (England) Regulations 2008 (SI 2008/1961), The Stationery Office, ISBN–13: 9780110836423 £12.00;
- Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008 (SI 2008/1960), The Stationery Office, ISBN–13: 9780110835907 £3.00;
- Dartmoor Commons (Authorised Severance) Order 2008 (SI 2008/1962), The Stationery Office, ISBN–13: 9780110835891 £3.00.

and at: www.opsi.gov.uk/si/si200819.

10.1.6 Sometimes, reports of cases decided by the courts may be relevant to your application (or objectors may use them in opposing your application). Nearly all the important cases decided by the courts since 2000 (and some before that date) are published on the British and Irish Legal Information Institute website¹²⁹, and you can find a list of the relevant cases on the Defra website¹³⁰. If you cannot find the case you need there, you will need to consult one of the published law reports: you can sometimes find these at major reference libraries, you can obtain copies through your

¹²⁹ www.bailii.org.

¹³⁰ www.defra.gov.uk/rural/protected/commonland/court.htm.

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local library, or you may be able to make an appointment to see them at the law libraries of some universities.

10.1.7 Several books have been published in relation to common land since the 2006 received Royal Assent. They are:

- *Law of Commons and of Town and Village Greens*, Navjit Ubhi & Barry Denyer Green, 2nd edition 2006, ISBN–13: 9781846610448
- *Commons and Village Greens: The Modern Law*, Angela Sydenham, 1st edition 2006, ISBN–13: 9780955283413
- *Our Common Land: The law and history of common land and village greens*, Paul Clayden, 6th edition, ISBN–13: 9780946574216

10.1.8 The following text books remain authoritative, particularly on the common law relating to commons and town or village greens, but must be considered out of date in many respects:

- *The Law of Commons*, G D Gadsden, 1st edition 1988 (out of print)
- *An Outline of the Law Relating to Common Land and Public Access to the Countryside*, Bryan Harris and Gerard Ryan, 1st edition 1967 (out of print)

10.1.9 Relevant articles are published from time to time in the *Rights of Way Law Review*: www.rwlr.co.uk.

10.1.10 Copies of the decisions of the Commons Commissioner are held by Defra (in relation to both England and Wales) in both bound and electronic form¹³¹ (for enquiries relating to the bound volumes, please see paragraph 10.2.3 below).

10.1.11 Digital historical OS maps are available from Landmark Information Group: www.landmarkinfo.co.uk.

10.1.12 Certain statutory and other datasets relating primarily to rural areas, including land identified as moorland on the 'moorland map', may be seen on-line at: www.magic.gov.uk

10.1.13 Defra publishes on its website a copy of its casework database, containing details of most casework decisions made in relation to common land and greens by Defra and its predecessor departments, dating back to around the beginning of the twentieth century. The database includes, in some cases, references to files which are now held by the National Archives. The database may be downloaded as an Excel or pdf file from: www.defra.gov.uk/rural/protected/commonland/protect-consent.htm.

10.1.14 Information about the register of title, held by the Land Registry, is available at: www.hmlr.gov.uk. An on-line service to obtain copies of individual register titles is available at: www.landregisteronline.gov.uk.

10.2 Contacts

10.2.1 If you have a question about the 2006 Act, please ask your registration authority for advice. The registration authority is your county council, metropolitan district council or unitary authority. If in doubt, please phone the council's enquiries

¹³¹ Electronic copies are available on the internet, at: www.acraew.org.uk/index.php?page=commissioners-decisions.

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office and ask for the person who keeps the commons registers or who deals with registering new town or village greens (usually it will be the same person).

10.2.2 The Open Spaces Society is Britain's oldest conservation society, founded in 1865, and protects common land and public rights of way. The Society provides advice, particularly to members, regarding the registration of new common land and town or village greens. The Society can be contacted at:

Open Spaces Society
25a Bell Street
HENLEY-ON-THAMES
RG9 2BA

Telephone: 01491 573535

Fax: 01491 573051

www.oss.org.uk

hq@oss.org.uk

10.2.3 Enquiries and comments relating to this guidance should be directed to:

Department for Environment, Food & Rural Affairs

Commons Team
Area 3C
Nobel House
17 Smith Square
LONDON
SW1P 3JR

Tel: 020 7238 4492

Fax: 020 7238 4929

commonsandgreens@defra.gsi.gov.uk

10.2.4 Enquiries relating to applications which have been referred to the Planning Inspectorate should be directed to:

Common Land Casework Team
The Planning Inspectorate
Rm 4/05, Temple Quay House
2 The Square, Temple Quay
BRISTOL
BS1 6PN

Tel: 0117 372 6210

Fax: 0117 372 6241

commonlandcasework@pins.gsi.gov.uk

10.3 Glossary

the 1965 Act: the Commons Registration Act 1965, which (generally) required common land, town or village greens, and rights of common over such land, to be registered by commons registration authorities.

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the 2006 Act: the Commons Act 2006.

Attachment (of rights): rights of common are sometimes described as being ‘attached’ to land. The land to which they are attached is known as the ‘dominant tenement’ (the common over which the rights may be exercised is sometimes referred to as the ‘servient tenement’). Such rights belong to (and may be exercised by) the owner of the dominant tenement. Historically, rights which are attached to land were known as either ‘appurtenant’ or ‘appendant’ to land, but the distinction is for most purposes obsolete. Rights which are not attached to land are ‘in gross’ (*q.v.*).

Commoners: persons with the benefit of a right of common, because they own land to which a right of common is attached, because they are the owner of a right of common held in gross, or because they have acquired entitlement to such rights through a lease or letting.

Commons Commissioners: solicitors or barristers appointed under the 1965 Act to determine disputed provisional registrations of common land, town or village greens and rights of common registered under section 4, and to determine (for the purposes of the 1965 Act) the ownership of common land and greens registered under section 4 where the ownership of the land was disputed or unclaimed. No such registrations remain outstanding.

Commons registers: the registers of common land and town or village greens held by commons registration authorities (see Chapter 3 above).

Curtilage (of a building): the ‘curtilage’ of a building is not defined in the 2006 Act, but it generally means an often small area, forming part and parcel with the house or building to which it is attached. In most cases the extent of curtilage will be clear: typically, an enclosure around a dwelling containing a garden, garage and side passage; a walled enclosure outside a barn, or a collection of buildings grouped around a farm house and farm yard. It may be difficult to show that unenclosed land is part of the curtilage of a building: for example, an area of land beyond a garden enclosure, unless there is evidence that it was managed in the same way as the adjacent enclosed land.

Determining authority: the body which is responsible for deciding an application — either the registration authority or, in certain cases, the Planning Inspectorate to which the application is referred for a decision.

Dominant tenement: the land to which rights of common may be attached (*q.v.*). The owner of the dominant tenement is the commoner and is entitled to exercise the rights.

Inclosure Act 1845, section 11: see end of glossary

In gross: a right which is held personally and is not attached (*q.v.*) to land.

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Prescription: the acquisition of a right to use land or take the produce of land by reason of long use. Prescription may be attributed to the common law, the Prescription Act 1832, or lost modern grant.

Provisional order confirmation Act: an Act which confirms a provisional order, which is generally submitted to Parliament for confirmation after scrutiny by a Government department. The powers to prepare a provisional order, and the procedure for its scrutiny by the relevant department, are contained in specific enabling legislation. A Bill confirming a provisional order is usually subject to a shorter Parliamentary process than Bills in general. In relation to common land, the Commons Act 1876 enabled orders to be submitted to Parliament by the Inclosure Commissioners for the regulation or inclosure of common land. It is believed that 36 orders for regulation and 27 orders for inclosure were confirmed by Parliament¹³² (some orders provide for both regulation and inclosure, and are therefore double counted).

Register of title: the register held by the Land Registry (and under the custody of the Chief Land Registrar), which shows the proprietorship of land. Generally, an entry in the register as to the owner of land is guaranteed by the Land Registry. Provision as to the register of title is contained in the Land Registration Act 2002, and the rules made under that Act.

Regulation: reference to a Regulation (other than a reference to specified Regulations) means a regulation of the Commons Registration (England) Regulations 2008 — see chapter 4.4 above.

Relevant charge: in the Regulations, ‘relevant charge’ has the same meaning as in Section 15(10), that is—

“(a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c 9);

(b) in relation to land which is not so registered—

(i) a charge registered under the Land Charges Act 1972 (c 61); or

(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c 20), which is not registered under the Land Charges Act 1972”.¹³³

Relevant leaseholder: in the Regulations, ‘relevant leaseholder’ has the same meaning as in Section 15(10), and means “a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.”¹³⁴

Registration authority: a commons registration authority — see paragraph 3.2.2 above.

Right of common: a right usually shared with an owner of land to take certain produce of the land. There are many such rights of which pasturage (the right to put animals onto the land to graze) is the most important today. Other rights include

¹³² For details of boards of conservators established under provisional orders, see the Defra website at: www.defra.gov.uk/rural/protected/commonland/acts.htm.

¹³³ Section 15(10) of the 2006 Act and Regulation 2(1).

¹³⁴ See footnote 133.

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pannage, turbary, estovers and piscary. Most rights are attached (*q.v.*) to land but see 'in gross'.

Severance: the disposal of rights of common independently from the land to which they were traditionally attached (or, alternatively, the sale of the land and retention of the rights by the vendor). Severed rights of common become rights of common held in gross (*q.v.*).

Stamp Duty Land Tax (SDLT): SDLT is generally payable on the purchase or transfer of property or land where the amount paid is above a certain threshold. Liability to SDLT may arise in connection with certain transactions relating to rights of common: see paragraph 6.4.14 above.

Waste land of the manor: in the case of *Attorney General v. Hanmer*, waste land of the manor was defined as "the open, uncultivated and unoccupied lands parcel of the manor...other than the demesne lands of the manor". 'Of the manor' was held by the court in the *Hazeley Heath* case to mean land which is or was formerly connected to the manor.¹³⁵

Section 11 of the Inclosure Act 1845 (as amended)

Descriptions of land subject to be inclosed under this Act

10.3.1 XI. ...all such Lands as are herein-after mentioned, (that is to say,) all Lands subject to any Rights of Common whatsoever, and whether such Rights may be exercised or enjoyed at all Times, or may be exercised or enjoyed only during limited Times, Seasons, or Periods, or be subject to any Suspension or Restriction whatsoever in respect of the Time of the Enjoyment thereof; all Gated and Stinted Pastures in which the Property of the Soil or of some Part thereof is in the Owners of the Cattle Gates or other Gates or Stints, or any of them; and also all Gated and Stinted Pastures in which no Part of the Property of the Soil is in the Owners of the Cattle Gates or other Gates or Stints, or any of them; all Land held, occupied, or used in common, either at all Times or during any Time or Season, or periodically, and either for all Purposes or for any limited Purpose, and whether the separate Parcels of the several Owners of the Soil shall or shall not be known by Metes or Bounds or otherwise distinguishable; all Land in which the Property or Right of or to the Vesture or Herbage, or any Part thereof, during the whole or any Part of the Year, or the Property or Right of or to the Wood or Under-wood growing and to grow thereon, is separated from the Property of the Soil; and all Lot Meadows and other Lands the Occupation or Enjoyment of the separate Lots or Parcels of which is subject to Interchange among the respective Owners in any known Course of Rotation or otherwise, shall be Land subject to be inclosed under this Act.

¹³⁵ *Attorney General v. Hanmer* (1858) 2 LJ Ch 837. The effect of the *Hazeley Heath* case (see footnote 120) is that it is not relevant for these purposes whether the land continues to be held by the lord of the manor — but the land must be of manorial origin.

Annexe A: Commons exempted under section 11(1) of the Commons Registration Act 1965

Paragraph 9.2.8

NAME	Area (ha)
West End Road Recreation Ground (Southampton)	0.6
Cassiobridge Common (Watford)	0.7
Victoria Gardens (Portland)	1.7
Cippenham Village Green Common (Slough)	3.9
Otterbourne Hill Common (Hampshire)	8.5
The Links Common (Whitley Bay)	13.4
Shenfield Common (Brentwood)	13.4
Thorpe Green (Egham)	14.6
West Wickham Common, Spring Park (Bromley)	31.2
Downside Common, Old Common, Little Heath Common, Upper and Lower Tilt Commons, Brook Hill Common, Leigh Hill Common (Esher)	35.8
Ley Hill Common, Coleshill Common, Austenwood Common, Gold Hill Common, Hyde Heath (Amersham)	67.0
The Stray (Harrogate)	87.0
Oxshott Heath (Esher)	92.3
Whitley Common, Hearsall Common, Keresley Common, Stoke Commons, Top Green, Greyfriars Green (Coventry)	144.5
Kenley Common, Coulsdon Common, Farthing Down Common, Riddlesdown Common (Croydon)	161.5
Micklegate Stray (York)	170.0
Mitcham Common (Merton)	174.0
Total	1,019.9

Source: *Gadsden, G D, The Law of Commons, 1988*

Annexe B: Specimen commons registers

Specimen commons registers are shown on the following pages, to illustrate how register entries might appear. Please note:

- the registers shown here are entirely fictitious;
- they show a specimen of the register of common land: a register of town or village greens is identical in appearance (except that the register is headed, 'Register of Town or Village Greens'), but the entries may vary;
- the 2006 Act prescribes new forms for the commons registers, but these specimen registers are based on those prepared under the 1965 Act, because most registers will continue to appear in this form unless they are updated.

Register of Common Land

LAND SECTION—Sheet No.1

See Overleaf
for Notes

<i>No. and date of entry</i>	<i>Description of the land, reference to the register map, registration particulars, etc.</i>
1. 10th January 1967 (See entry 2)	The tract of about 62.805 acres called Sheepwash Common in the parishes of Tebay and East Poppington, Cumbria, as marked with a green verge line inside the boundary on sheet 8 of the register map and distinguished by the number of this register unit. Registered pursuant to application No. 14 made 2nd January 1967 by The Commons, Open Spaces and Footpaths Preservation Society, Suite 4, 166, Shaftesbury Avenue, London, W.C.2. (Registration provisional.)
2. 7th October 1970	The registration at entry no. 1 above, being undisputed, became final on 1st October 1970.

<i>No. and date of note</i>	<i>Notes</i>	<i>No. and date of note</i>	<i>Notes</i>

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole of any part of the land described in the land section of this register unit.

Registration authority
Cumbria County Council

Register unit No. CL24

Register of Common Land

Edition No. 1

See Overleaf for Notes

RIGHTS SECTION—Sheet No.1

<i>1</i> <i>No. and date of entry</i>	<i>2</i> <i>No. and date of application</i>	<i>3</i> <i>Name and address of every applicant for registration, and the capacity in which he applied</i>	<i>4</i> <i>Particulars of the right of common, and of the land over which it is exercisable</i>	<i>5</i> <i>Particulars of the land (if any) to which the right is attached</i>
1. 10th March 1967 (See entry 28)	290. 4th March 1967	John Lavery, Raisbank, Old Tebay, Penrith. Owner.	To graze 30 cattle over the whole of the land comprised in the register unit. (Registration provisional)	Raisbank, Old Tebay comprising O.S. Nos. 1497, 1498 and 1499 on the O.S. map (2nd edition 1907) for the parish of Old Tebay, Penrith.
2. 16th June 1967 (See entry 29)	362. 1st May 1967	Hannah McMinn, Bybeck, Old Tebay, Penrith. Owner.	To graze 15 sheep over the whole of the land comprised in the register unit. (Registration provisional)	The land at Bybeck, Old Tebay, Penrith, as shown hatched blue outside the boundary on the supplemental map bearing the number of this registration.
3. 10th July 1967 (See entry 30)	422. 21 June 1967	Charles Allen, The Smithy, Old Tebay, Penrith. Owner.	To graze 40 cattle or 200 sheep over the whole of the land comprised in the register unit. (Registration provisional)	Right of common held in gross. Owner: Charles Allen, The Smithy, Old Tebay, Penrith.
4. 4th August 1967 (See entry 31)	488. 1st July 1967	Michael Garvin, Town Head Farm, Old Tebay, Penrith. Owner.	To graze 20 cattle or 100 sheep or 15 horses or mules over the part of the land comprised in the register unit west of the line marked A - B. (Registration provisional)	Town Head Farm, Old Tebay comprising O.S. Nos. 181 and 195 on the O.S. map (2nd edition 1907) for the parish of Old Tebay, Penrith.

<i>No. and date of note</i>	<i>Notes</i>	<i>No. and date of note</i>	<i>Notes</i>

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole of any part of the land described in the land section of this register unit.

Registration authority
Cumbria County Council

Register unit No. CL24

Register of Common Land

Edition No. 1

See Overleaf
for Notes

RIGHTS SECTION—Sheet No.2

<i>1</i> <i>No. and date of entry</i>	<i>2</i> <i>No. and date of application</i>	<i>3</i> <i>Name and address of every applicant for registration, and the capacity in which he applied</i>	<i>4</i> <i>Particulars of the right of common, and of the land over which it is exercisable</i>	<i>5</i> <i>Particulars of the land (if any) to which the right is attached</i>
28. 6th October 1970	The registration	at entry no.1 above, being	undisputed, became final on	1st October 1970.
29. 6th October 1970	The registration	at entry no.2 above, being	undisputed, became final on	1st October 1970.
30. 6th October 1970	The registration	at entry no.3 above, being	undisputed, became final on	1st October 1970.
31. 6th October 1970	The registration	at entry no.4 above, being	undisputed, became final on	1st October 1970.

<i>No. and date of note</i>	<i>Notes</i>	<i>No. and date of note</i>	<i>Notes</i>

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole of any part of the land described in the land section of this register unit.

Registration authority
Cumbria County Council

Register unit No. CL24

Register of Common Land

Edition No. 1

See Overleaf
for Notes

OWNERSHIP SECTION—Sheet No.1

<i>1</i> <i>No. and date of entry</i>	<i>2</i> <i>No. and date of application</i>	<i>3</i> <i>Name and address of person registered as owner</i>	<i>4</i> <i>Particulars of the land to which the registration applies</i>
1. 10 th January 1967	14. 2nd January 1967	George Cartwright, 36 Queen Anne's Gate, London, S.W. 1	The whole of the land in this register unit.
2. 12 th October 1970		The registration entry at no 1 above, being	undisputed, became final on 1 st October 1970.