



# Commons Act 2006

## 2006 CHAPTER 26

### PART 2

#### MANAGEMENT

##### *Functions of commons councils*

### **31 Functions**

- (1) An order under section 26 is to confer on a commons council functions relating to any one or more of the following—
  - (a) the management of agricultural activities on the land for which the council is established;
  - (b) the management of vegetation on the land;
  - (c) the management of rights of common on the land.
- (2) The functions conferred on a commons council under subsection (1) must be those the appropriate national authority considers appropriate in the case of that council.
- (3) The functions which may be conferred on a commons council under subsection (1) include in particular functions of—
  - (a) making rules relating to agricultural activities, the management of vegetation and the exercise of rights of common on the land for which the council is established;
  - (b) making rules relating to the leasing or licensing of rights of common;
  - (c) preparing and maintaining a register of grazing;
  - (d) establishing and maintaining boundaries;
  - (e) removing unlawful boundaries and other encroachments;
  - (f) removing animals unlawfully permitted to graze.
- (4) Rules made by virtue of subsection (3)(a) may have the effect of—

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- (a) limiting or imposing conditions on the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established;
  - (b) requiring the provision of information to the commons council in relation to the exercise of those rights.
- (5) In exercising a function conferred under subsection (3)(f), a commons council may—
- (a) dispose of any animal it removes; and
  - (b) recover from the owner of the animal the costs that it may reasonably incur in removing and disposing of it.
- (6) A commons council must discharge its functions having regard to—
- (a) any guidance given by the appropriate national authority; and
  - (b) the public interest in relation to the land for which it is established.
- (7) The reference in subsection (6)(b) to the public interest includes the public interest in—
- (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.

### **32 Ancillary powers**

- (1) A commons council has the power to do anything which it considers will facilitate, or is conducive or incidental to, the carrying out of its functions.
- (2) The power conferred by subsection (1) includes power to—
- (a) enter into agreements;
  - (b) prepare and adopt management plans;
  - (c) raise money (including by applying for funds from any source);
  - (d) acquire or dispose of land;
  - (e) employ staff.
- (3) The power of a commons council to raise money as specified in subsection (2)(c) includes power to require the payment of fees in connection with—
- (a) the exercise of rights of common over, or the exercise of rights to use the surplus of, the land for which the council is established, and
  - (b) participation in the council,
- and any such fees owed to the council may be recovered as a debt due to it.

### **33 Consent**

- (1) Subject to subsections (2) and (3), nothing in this Part authorises a commons council to do anything on the land for which it is established without the consent of a person with an interest in the land, where that person's consent would otherwise be required.
- (2) A commons council does not need the consent of a person who has a right of common over the land for which it is established in order to do anything on the land.
- (3) A commons council does not need the consent of any other person with an interest in the land for which it is established in order to do anything on the land where what is

proposed to be done could be done without that person's consent by any person who has a right of common over the land.

- (4) Where a commons council wishes to obtain the consent of any person with an interest in the land for which the council is established in respect of anything it proposes to do on the land, it may serve a notice on him.
- (5) A notice under subsection (4) must specify—
  - (a) what the commons council proposes to do;
  - (b) the time within which the person on whom it is served may object (which may not be less than 28 days after service of the notice); and
  - (c) the manner in which he may object.
- (6) If the person on whom a notice under subsection (4) is served does not object within the time and in the manner specified in the notice, he is to be regarded as having given his consent in relation to the proposal specified in the notice.
- (7) Where a commons council proposes to serve a notice on a person under subsection (4) but is unable after reasonable enquiry to ascertain his name or proper address—
  - (a) the council may post the notice on the land; and
  - (b) the notice is to be treated as having been served on the person at the time the notice is posted.
- (8) An order under section 26 may make further provision as to the form and service of notices under subsection (4).
- (9) For the purposes of this section, a person with an interest in any land is a person who—
  - (a) owns the land; or
  - (b) is entitled to exercise any right over the land.

### **34 Enforcement of rules**

- (1) A person who breaches a rule to which subsection (2) applies is guilty of an offence.
- (2) This subsection applies to a rule which—
  - (a) is made with the consent of the appropriate national authority pursuant to a function of making rules conferred on a commons council under section 31; and
  - (b) specifies that a person who contravenes it is guilty of an offence under this section.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 4 on the standard scale; and
  - (b) in the case of a continuing offence, to a further fine not exceeding one half of level 1 on the standard scale for each day during which the offence continues after conviction.
- (4) A commons council may bring proceedings in relation to an offence under subsection (1) in respect of breach of any rule made by it to which subsection (2) applies.

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- (5) A commons council may apply to a county court for an order to secure compliance with any rule that it has made pursuant to a function of making rules conferred on it under section 31.
- (6) But a commons council may only make an application under subsection (5) for the purpose of securing compliance with a rule to which subsection (2) applies if it is of the opinion that proceedings for an offence under subsection (1) would provide an ineffectual remedy against the person who has failed to comply with the rule.
- (7) On an application under subsection (5) the court may make such an order as it thinks fit.

### **35 Rules: supplementary**

- (1) Any power to make rules conferred on a commons council under section 31 includes power to vary or revoke the rules made by the council.
- (2) An order under section 26 conferring a power to make rules may provide for the procedure to be followed in the exercise of the power (and may in particular require the consent of the appropriate national authority to be obtained before rules are made).
- (3) The appropriate national authority may by direction revoke any rule made by a commons council.
- (4) A direction under subsection (3) must set out the reason why the rule is being revoked.
- (5) Before revoking any rule under subsection (3) the appropriate national authority must consult—
  - (a) the commons council; and
  - (b) any other person it thinks appropriate.