

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Registration

Registration, deregistration and exchange of land

Section 14 Statutory dispositions

85. **Section 14** enables the appropriate national authority to make regulations to provide for amendment of the commons registers consequent on a disposition arising under statute. There are a number of statutes under which common land or 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 over land given in exchange. *Subsection (3)* sets out those instruments which are ‘relevant instruments’ for the purposes of *subsection (1)*, such as orders by which common land is acquired compulsorily, and (usually) other land is given in exchange, on a compulsory purchase under the Acquisition of Land Act 1981.
86. It is expected that regulations made under the powers conferred by *subsection (1)* will place a duty on the persons making or confirming a relevant instrument to notify the appropriate commons registration authority of, or direct it to make, amendments to the commons registers consequent on the disposition made by the relevant instrument. Regulations may also provide, under *subsection (2)*, that on an exchange of land, any land given in exchange is to be registered, and under *subsection (5)*, that the disposition is not to have effect until its effect is registered. For example, where common land is acquired under section 13 of the New Parishes Measure 1943¹ for building a church or similar purposes, regulations may provide that the land is not to cease to be common land until the land and any rights of common are removed from the commons register in accordance with notice given by the Church Commissioners, notwithstanding the effect of section 15(1) of the Measure.

Section 15 Registration of greens

87. **Section 15** sets out the circumstances in which land may be newly registered as a town or village green. It is derived from, but varies in certain respects from, the definition of a town or village green in section 22(1), (1A) and (1B) of the 1965 Act. (There is no substantive distinction in law between a ‘town’ and a ‘village’ green: these terms merely reflect the physical setting of a green.) *Subsection (1)* provides that in qualifying circumstances, any person may apply to the commons registration authority to register land as a green. *Subsections (2), (3) and (4)* set out the three alternative qualifying circumstances.

¹ Under section 15 of the Measure, common land may be acquired free of rights of common, subject to the consent of the Secretary of State. The provision applies only to the Church of England.

88. The first case (*subsection (2)*) is where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, and continue to do so at the time of the application. ‘As of right’ has been defined in case law as meaning openly, without force, and without permission². The reference to “a locality” does not necessarily connote a defined area for administrative purposes, such as a parish, and the phrase “any neighbourhood within a locality” means in effect ‘any neighbourhood within one or more administrative areas’, in line with the judgment of the House of Lords in the *Trap Grounds* case³.
89. The second case (*subsection (3)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased after commencement of section 15, and the application is made within two years of this cessation.
90. The third case (*subsection (4)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased before commencement of section 15, and the application is made within five years of this cessation. Land is not covered by this third case (because of *subsection (5)*) if three conditions are all met:
- planning permission was granted in respect of the land before 23 June 2006;
 - before that date, construction works were commenced in accordance with the permission on that land, or on any other land covered by the permission; and
 - the land either has become, or will become, permanently unusable by the public for lawful sports and pastimes as a result of works carried out in accordance with that planning permission.
91. *Subsections (6) and (7)* amplify how *subsections (2) to (4)* are to work. *Subsection (6)* provides that any period during which access to the land was prohibited by reason of any enactment is to be disregarded in the calculation of the 20 year period. *Subsection (7)* makes provision about when use is to be regarded as continuing for the purpose of *subsection (2)(b)*.
92. *Subsection (8)* enables the owner of any land to apply voluntarily for its registration as a green, without having to show that there has first been 20 years’ qualifying use of it by local inhabitants. *Subsection (9)* requires the consent to such an application of any ‘relevant leaseholder’, and of the proprietor of any ‘relevant charge’ over the land, thereby protecting these parties’ interests in the land. Both of these terms are defined in *subsection (10)*.

Section 16 Deregistration and exchange: applications

93. Section 147 of the Inclosure Act 1845 provides for the ‘exchange’ of land. In recent years, the only use which has been made of this power has been to exchange common land or a town or village green for other land, so that the land given in exchange is substituted for the former common land or green. The Secretary of State (in Wales, the National Assembly) is required to confirm orders of exchange. In deciding whether to confirm the order, the Secretary of State must take account of the interests of the parties to the exchange. Sections 16 and 17 provide a replacement mechanism for the exchange of land which is registered under Part 1. Section 147 of the Inclosure Act 1845, and certain ancillary provisions in the Inclosure Acts 1847 and 1857, are repealed by Part 3 of Schedule 6.

² See the judgment of the House of Lords in *R v. Oxfordshire County Council and others, ex parte Sunningwell Parish Council* [2000] AC 335 *per* Lord Hoffman at paragraph 27.

³ ²⁶ *Oxfordshire County Council v. Oxford City Council and another* [2006] UKHL 25.

94. *Subsection (1)* enables the owner of land registered as common land or a town or village green to apply to the appropriate national authority for the land or part of the land to be released from registration. If the ‘release land’ is more than 200 square metres in area, an application must be made at the same time to register ‘replacement land’ as common land or a green in its stead (*subsections (2) and (3)*). If the release land is smaller than 200 square metres, a proposal for replacement land may (but need not) be included (*subsection (4)*) — but the appropriate national authority must pay particular regard to the extent to which the omission of any proposal for replacement land is prejudicial to the interests specified in subsection (6)(a)–(c) (*subsection (7)*). Any replacement land may not be land already registered as common land or a green, and must be land to which Part 1 applies (see paragraph 4949). Its owner must join in the application, if not also the owner of the release land (*subsection (5)*).
95. *Subsections (6) to (8)* set out the matters that the appropriate national authority must consider in deciding whether or not to consent to an application.
96. *Subsection (9)* ensures that an application under this section may be made only with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the release land and any replacement land.

Section 17 Deregistration and exchange: orders

97. *Subsection (1)* requires the appropriate national authority, if it grants an application under section 16, to make a ‘release order’ to direct the commons registration authority to remove the release land from the register. *Subsection (2)* requires, where appropriate, the registration of the replacement land and of any rights of common previously registered as exercisable over the release land, which are now exercisable over the replacement land.
98. *Subsection (3)* provides for a power to require a commons registration authority to take such other steps on receiving a release order as may be prescribed in regulations.
99. *Subsections (4) and (5)* provide for the extinguishment over the release land of rights of common and any rights exercisable by virtue of the land being a town or village green on its removal from the register. Such rights will generally transfer to the replacement land. Unlike an order under section 147 of the 1845 Act, an order under section 17 has no effect on the title (*i.e.* the ownership) of the release land or of any replacement land, nor on any easement or proprietary rights in the land (other than rights of common).
100. *Subsection (6)* provides that if any relevant provision applied to release land before the relevant date (defined in *subsection (9)* as the date on which the register is amended), it ceases to apply to the release land and applies instead to the replacement land. *Subsection (8)* lists the various enactments and measures which are relevant provisions for the purposes of *subsection (6)*. For example, where the release land is subject to a right of access under section 193 of the Law of Property Act 1925, and limitations (similar to byelaws) have been imposed on the right under that section, both the right and the limitations will cease to apply to the release land, and will normally transfer to the replacement land.
101. There may however be specific circumstances where it would not make sense for recreational rights that apply over an existing green, or specific statutory provisions that apply on an existing common, automatically to transfer to any replacement land. For this reason, *subsection (7)* enables an order to make special provision disapplying or varying these rights or provisions in relation to the replacement land.
102. An order may also vary the effect of any local or personal Act in relation to the release land, the replacement land, or both. For example, where the release land is subject to a local Act regulating the management of the release land and adjoining common land, and the replacement land would not otherwise be subject to that Act, the order may provide that the replacement land is to be deemed to be subject to the Act.