

SCHEDULE 1

Article 2

Works exempt from requiring section 38 consent

<i>Paragraph</i>	<i>Description of works</i>	<i>Description of person carrying out works</i>
1.	<p>The erection of temporary fencing (which may include electric fencing) for a period not exceeding six months, to enclose land for the purpose of restricting the movement of grazing animals which are on the land—</p> <p>(a) in the exercise of a right of common to graze animals; or</p> <p>(b) in the interests of nature conservation.</p> <p>The exemption in respect of works specified in this paragraph only applies if—</p> <p>(a) the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed the lesser of 10 hectares or 10% of the area of the register unit of which it forms part; and</p> <p>(b) no part of the land to be enclosed has, during the period of 6 months immediately before the works are carried out, previously been enclosed without section 38 consent by virtue of this paragraph.</p>	<p>1. The owner of the land.</p> <p>2. Any person entitled to exercise rights of common over the land.</p> <p>3. Any other person acting with the written consent of the owner of the land.</p>
2.	<p>The erection of temporary fencing, for a period not exceeding 3 years if the fence is wholly on moorland or 1 year in any other case, to enclose land for the purpose of—</p> <p>(a) carrying out work which facilitates the growth or restoration of vegetation for the benefit of the common land; or</p> <p>(b) protecting the vegetation during a period of such growth or restoration, in so far as such protection is necessary or expedient to enable the growth or restoration to occur.</p> <p>The exemption in respect of works specified in this paragraph only applies if—</p> <p>(a) the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed 1% of the area of the register unit of which it forms part; and</p> <p>(b) no part of the land to be enclosed has, during the period of 1 year immediately before the works are carried out, previously been enclosed without section 38 consent by virtue of this paragraph.</p>	<p>1. The owner of the land.</p> <p>2. Any person entitled to exercise rights of common over the land.</p> <p>3. Any other person acting with the written consent of the owner of the land.</p>
3	<p>The erection of temporary fencing, for a period not exceeding 5 years, to enclose land in order to restrict</p>	<p>1. The owner of the land.</p>

Status: This is the original version (as it was originally made).

access to it in the interests of nature conservation, where that is required under the terms of a written agreement relating to the management of the land, being—

- (a) an agreement between the owner of the land and Natural England; or
- (b) an agreement between the owner of the land and the Secretary of State, entered into before the commencement of this Order.

- 2. Natural England.
- 3. Any other person acting with the written consent of the owner of the land.

The exemption in respect of works specified in this paragraph only applies if the area to be enclosed does not, either by itself or cumulatively with any other areas within the same register unit enclosed without section 38 consent by virtue of this paragraph, exceed 1% of the area of the register unit of which it forms part.

- 4. The installation of a row, not exceeding 200 metres in length, of obstacles (such as bollards or large stones) which, whether by themselves or together with any existing obstructions interrupting the row, are intended to prevent or restrict vehicular access to common land, where the owner reasonably considers that such access would interfere with or be detrimental to—
 - (a) the use of the land by members of the public for the purpose of open-air recreation pursuant to any right of access;
 - (b) the exercise of rights of common; or
 - (c) nature conservation.

- 1. The owner of the land.
- 2. Any other person acting with the written consent of the owner of the land.

The exemption in respect of works specified in this paragraph only applies if—

- (a) no other row of obstacles is installed without section 38 consent by virtue of this paragraph, and remains in place, on land forming part of the same register unit; or
- (b) the works consist of the extension of an existing row of obstacles which has been installed without section 38 consent by virtue of this paragraph, and the combined length of the existing row and the extension does not exceed 200 metres.