

SCHEDULE 1

Article 4(5)

Election and appointment of members

Election and appointment of first members of the Council

1. The Secretary of State must appoint a returning officer to facilitate the election and appointment of the first members of the Council.

2. For the purpose of the first election or appointment of the members of the Council under article 4(1)(a) to (c), the returning officer must compile in relation to the Common a list of each of the following—

- (a) persons who appear to the returning officer to be commoners who have lawfully grazed animals on any area forming part of the Common in the period of 12 months immediately preceding the date of coming into force of this Order;
- (b) persons who appear to that officer to be commoners not falling within sub-paragraph (a); and
- (c) the person who appears to that officer to be the owner of the Common or of any part of the Common.

3. Before finalising the lists under paragraph 2, the returning officer must—

- (a) by notice in a local newspaper circulating in the area of the Common, specify a period (ending not less than 28 days after the date of publication of the notice) during which the draft lists may be inspected and representations may be made about them, and give details of the dates, times and place at which such inspection may be made, and of the website on which publication is required under sub-paragraph (c);
- (b) make available for inspection a draft of each list during the period and at the dates, times and place specified under sub-paragraph (a); and
- (c) publish on a website both the notice and draft lists throughout the period specified under sub-paragraph (a).

4. In compiling and finalising the lists under paragraph 2, the returning officer may presume any declaration of entitlement to a right of common⁽¹⁾ contained in the register of common land kept by Devon County Council to be accurate.

5. The returning officer may request further information from any person who makes representations under paragraph 3(a), and from any person the subject of such a representation, and in particular may require proof of ownership of, or (as applicable) other title to, land from—

- (a) any person claiming to be entitled to be included on the list under paragraph 2(a) or (b) as the owner of any interest in land to which a right of common is registered as being attached; and
- (b) any person claiming to be entitled to be included on the list under paragraph 2(c) as an owner of land forming part of the Common.

6. In finalising the lists, the returning officer—

- (a) must take account of any representations received within the time specified under paragraph 3(a) and any further information provided pursuant to a request under paragraph 5; and

(1) Regulation 44 of the Commons Registration (England) Regulations 2008 (S.I. 2008/1961, amended by S.I. 2009/2018) provides for the making of declarations of entitlement to a right of common.

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

- (b) must not take account of any matter which is, or was, capable of being registered under Part 1 of the 2006 Act, and which has not been registered (though not so as to exclude any matter on the ground only that it was capable of being the subject of a declaration of entitlement to a right of common but was not thus declared).
7. The decision of the returning officer as to whether or not any person is entitled to be included on any list is conclusive, and the validity of the election or appointment of any member of the Council may not be questioned in any legal proceedings on the ground that any person should have been included in or omitted from any list.
- 8.—(1) The returning officer must, not less than 28 days before the first meeting of the Council—
- (a) give notice of the holding of the initial meeting of the Council;
 - (b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received; and
 - (c) invite the owner to appoint a member of the Council.
- (2) The returning officer must perform his obligations under sub-paragraph (1) by means of—
- (a) notice in writing to every person on a list compiled in accordance with paragraph 2; and
 - (b) advertisement in a local newspaper circulating in the area of the Common.
9. In relation to each list, only persons included on the list are entitled to vote to elect or, as the case may be, to appoint, members of the Council of the category listed.
10. The only persons eligible for election as members of the Council are—
- (a) in respect of persons to be elected under article 4(1)(a), the persons included on the relevant list compiled pursuant to paragraph 2(a); and
 - (b) in respect of persons to be elected under article 4(1)(b), the persons included on the relevant list compiled pursuant to paragraph 2(b).
11. At the first meeting of the Council—
- (a) the returning officer must announce the name of any validly appointed member of the Council and any valid nominations received for membership of the Council; and
 - (b) in relation to either of the categories mentioned in article 4(1)(a) and (b)—
 - (i) where the number of valid nominations does not exceed the number of vacancies to be filled, the returning officer must declare the candidate or candidates to be duly elected unopposed; and
 - (ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

Election of subsequent members

12.—(1) For each subsequent occasion on which new members of the Council are to be elected under article 4(1)(a) or (b), or for the purposes of any election to fill a vacancy caused by a person so elected ceasing to be a member, the secretary of the Council or another member chosen by the Council is to act as returning officer.

(2) On any such subsequent occasion, a person may only be elected as a member or vote in an election if—

- (a) in the case of an active grazier, the person is entered under article 8(1)(a) in the register maintained by the Council;
- (b) in the case of any other commoner, the person is entered under article 8(1)(c) in the register maintained by the Council.

13. Members are to be elected or appointed, and any elections are to be conducted, in accordance with the standing orders of the Council.

General provisions

14. In any election of members of the Council—

- (a) each commoner entitled to vote is entitled to one vote;
- (b) where two or more persons are commoners by virtue of a joint holding, they are not each entitled to vote but may jointly nominate one of them to be entitled to vote;
- (c) the returning officer may allow a person entitled to vote to appoint a proxy in writing to vote on that person's behalf; and
- (d) in the event that any candidates receive an equal number of votes, each vote received must be weighted according to the extent of the rights held by the person casting that vote (the greater the amount of the right, the greater the weight of the vote), and the candidates elected are to be those with the largest weight of votes.

15. In any appointment of a member to the Council where there is more than one owner of the Common, the appointment is to be made—

- (a) by the owner who owns more than half the area of the Common; or
- (b) where no-one owns more than half the area of the Common, by any two or more owners who, acting jointly in the making of the appointment, between them own more than half the area of the Common.

16. A declaration signed by the returning officer as to the election or appointment of a person to the Council is evidence of such election or appointment.