



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

## **Section 15 of the Commons Act 2006**

Guidance notes for the completion of an  
application for the registration of land as a  
Town or Village Green

August 2007

# COMMONS ACT 2006 — SECTION 15

## Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green

### Introduction

1. These non-statutory guidance notes are designed to help you to complete a form to register land in Wales as a town or village green under section 15(1) or 15(8) of the Commons Act 2006 (“the Act”).

**2. The registration of town or village greens is a complex area of law and the courts have been asked to rule on the law on a number of occasions. We expect they will continue to do so and this guidance is not, and should not be regarded as, definitive. All applicants are strongly advised to seek their own independent legal advice before proceeding with an application.**

3. Your application must be made using form 44, as required by The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 [SI 2396 (W198)], and which regulations set out the information required in an application. Your application must be submitted to the commons registration authority (“the registration authority”) for your area and, while that authority will be able to advise you on completing the application form and the procedures involved, it will not be able to advise you on the quality of the evidence or the merits of your application.

4. You can see a copy of section 15 of the Act and the associated explanatory notes in the Annex to these notes. The explanatory notes to the Act will help you understand in what circumstances you may be able to successfully apply to register a new green. Section 15 replaces and updates older legislation and makes the following changes:

- it provides a period of grace, after use ‘as of right’ has been ended by the landowner, during which you can still make an application to register the land 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 further steps to challenge use);
- it requires any period of statutory closure (e.g. during a foot-and-mouth outbreak) to be disregarded when deciding whether there has been 20 years’ ‘use as of right’; and
- it allows, for the first time, the owner of land to register it voluntarily as a green.

5. In this guidance we refer to different provisions contained in section 15. For example, section 15(1) means subsection (or paragraph) (1) of section 15. You can look up these provisions in the Annex.

## **Note 1. Registration authorities**

6. You must apply to the registration authority for the area of land which you want to register as a town or village green. This is the county or county borough council. If the land comes under the jurisdiction of more than one registration authority we suggest that you apply to the registration authority within whose area the majority of the land lies. If that is incorrect the registration authority will advise you.

7. In Wales a number of registration authorities have made arrangements for another neighbouring registration authority to deal with applications for registration of greens in its own area. Where this occurs, your registration authority will pass on your application to the other authority.

## **Note 2. Who may apply for registration**

8. Anyone can apply to register land as a green under section 15(1) of the Act. For the first time, if you are a landowner, section 15(8) will allow you to register your land voluntarily as a green (see note 7 below).

9. You must apply using form 44. The procedure for registration will be simpler if you are applying voluntarily as a landowner to register land as a green because the registration authority will not require evidence of the use of the land.

## **Note 3. Qualifying criteria for registration (applications under section 15(1) only)**

10. Your application must show that use of the land meets the criteria for registration that are set out in one of 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.

11. 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' (i.e. without permission, force or secrecy) 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 the Annex to this guidance.

### Significant number of the inhabitants

12. The criteria require that a 'significant number of the inhabitants' have indulged in lawful sports and pastimes on the land. The courts have previously considered the interpretation of this requirement and in the case of *R v Staffordshire County Council ex parte Alfred McAlpine Homes Ltd* [2002] the High Court provided some useful guidance as to what 'a significant number' might mean. The court did not accept that 'significant' in this context would mean a considerable or substantial number but that the number of people using the land had to be sufficient to signify that the land was in general use by the local community.

### Period of use

13. 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.

14. If you apply under section 15(2) the land must have been used 'as of right' for 20 years or more before the application and the use must be continuing at the time you apply.

15. Under section 15(3) you must apply within two years of the end of recreational use 'as of right' for 20 years or more.

16. Under section 15(4), as a temporary arrangement, you must apply within five years of the end of recreational use 'as of right', providing that it ended before 6 September 2007. In this case only, however, there are special arrangements which apply in the case of planning permission affecting the land which was granted before 23 June 2006 and where subsequent construction works were carried out on the land (see below).

### Statutory closures

17. In deciding whether there has been 20 years' use 'as of right' of the land, you should not take any account of any period of statutory closure of the land (i.e. where access to the land is forbidden because of temporary special restrictions imposed by a local authority or the Government). Examples of this would be where the area of land is closed by order during an outbreak of foot-and-mouth disease. If your application is subject to any period of closure under this provision you will need to state clearly in the application form which period of time is to be disregarded for this purpose.

### Permission for use of land

18. In some cases a landowner may grant permission for use of his land after there has already been 20 years' use of the land 'as of right'. If that happens then section 15(7) says that the grant of permission does not stop continuing use of the land being regarded 'as of right'. There is then no time limit by which you must make an application for registration, unless the landowner takes further steps to challenge use (such as by fencing off the land to prevent access).

19. In other cases where use of the land 'as of right' has ended (such as where the land is fenced off or an injunction is obtained against trespassers) you must seek registration within the time limits in section 15(3) or 15(4), otherwise the land will no longer be eligible for registration. We recommend that you apply to register land as a green as soon as reasonably practicable in all cases. If it becomes clear during the course of the registration authority's investigation of the application that it is necessary for you to rely on different qualifying criteria, then it is Welsh Assembly Government's view that the application may be amended to reflect the alternative criteria.

### Planning permission

20. Sometimes your application for registration may relate to land over which planning permission exists for development. The planning permission is not normally relevant to the registration authority's decision on your application.

21. Exceptionally, however, the Act recognises that it would be unacceptable for land to be registered as a green where it had already been developed before the new criteria for registration had been published by Parliament. So, if your application relates to land in respect of which, before 23 June 2006, planning permission has been granted and on which, under that permission, construction works have begun on the land, or on any other land covered by the permission, registration of the land may not be possible. In such cases your application will be rejected where the land has, or will become, permanently unusable for

public recreation because of these works. It may be possible, however, for you to register any part of the land which is not affected by the works.

22. The Welsh Assembly Government's informal view is that outline planning permission merely establishes the principle that development is acceptable but actual construction works are not permitted on site until full planning permission is obtained. If, however, works are undertaken in advance of full consent eventually being granted, the registration authority will need to decide in each particular case whether they are recognised construction works within the terms of section 15(5).

#### **Note 4. Land descriptions and plans**

23. You must include a map and description of the land claimed for registration as a town or village green with your application. (Exceptionally, if your application relates to the whole of an area of land already registered as common land, your application need not include a map of the land but you must include the register unit number). You must use an Ordnance Survey map, on a scale of not less than 1:2,500, and you must show the land which you want to register by means of distinctive colouring sufficiently to enable it to be identified by the registration authority (a coloured edging inside the boundary of the land may be the best method). The map must also be marked as an exhibit to the statutory declaration which accompanies the application (see Note 9 below). Further information about how to obtain Ordnance Survey large scale maps can be found on the internet at [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk) or by calling 08456 050505.

#### **Note 5. Locality or neighbourhood within a locality**

24. You will need to provide a statement or map to identify the locality or neighbourhood within the locality to which the local use of the claimed green relates. In the House of Lords ruling in *Oxfordshire County Council v Oxford City Council and Robinson* (the *Trap Grounds* case) Lord Hoffman expressed the view that any 'locality or neighbourhood within a locality' need not be wholly within a single locality and concluded that it means 'within a locality or localities'.

25. You may sometimes find it difficult to precisely define the neighbourhood or locality and you will need to consider all of the evidence you have to support your case very carefully. You may not be able to specify the neighbourhood or locality by reference to a recognised administrative area, such as a community or electoral ward, and there may not be an obvious geographical characteristic, such as a geographically self-contained village or a particular street. If that is the case then you should instead include a map showing what you believe to be the neighbourhood or locality.

26. If you are applying to register your land voluntarily as a green it is up to you to decide how to define the locality or neighbourhood.

27. In either case, the Welsh Assembly Government's view is that, in relation to any land registered as a green, only the inhabitants of the defined locality or neighbourhood will have the legal right to indulge in sports and pastimes over the green.

#### **Note 6. Grounds of application and evidence**

28. 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 sample of an evidence questionnaire to use in support of your claim can be obtained from the Open Spaces Society (see note 13 below).

29. 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 - including information on the nature of the activities that have taken place on the land, an estimate of the number of people undertaking these activities, and how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application if it considers this reasonable.

30. Remember that the registration authority may decide to hold a hearing or inquiry into your application. The purpose of the inquiry will be to establish and test the evidence for and against registration of the land. It may be helpful to your case if people are able to attend the hearing or inquiry to give evidence in person (even if similar evidence has been given in writing). Anybody attending the hearing or inquiry may be questioned about their evidence by the person in charge or by objectors to the application (this is known as cross-examination).

#### **Note 7. Voluntary registration (applications under section 15(8) only)**

31. 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 lease or charge holder of the land, such as a tenant or a mortgagee. You must provide evidence that any 'relevant leaseholder' and proprietor of any 'relevant charge' over the land consent to the application. These terms are defined in section 15(9) and (10) of the Act (see Annex to these notes). 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.

32. You will need to confirm in the statutory declaration that:

- you, the applicant, are the owner of the land and are applying to register the land as a green; and

either

- you have obtained and included with the declaration all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land;

or

- where no such consents are necessary, that no such consents are required.

33. In some cases the registration authority may decide to ask you for further evidence of your ownership before it accepts your application to register the land as a green.

## **Note 8. Supporting documents**

34. You must include with your application the original or (preferably) a copy of every document which might be relevant to the application which is in your possession or control (even if it would not be helpful to your application) or which you can require to be produced. You are recommended not to forward the original of any deed or other private document but should, instead, enclose a copy, preferably endorsed 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 application 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 part 12 of the 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 is produced.

## **Note 9. Statutory Declaration**

35. The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public. (You may be asked to pay a fee for this service.) Each map accompanying the application and referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A map is marked by writing on the face in ink an identifying symbol such as the letter 'A'. If there is more than one map a different identifying letter must be used for each. On the back of the map it must state

*"this is the exhibit marked 'A' referred to in the statutory declaration of (name of declarant) made this (date) before me (signature and qualification)".*

36. You are responsible for telling the truth in presenting the application and accompanying evidence and should be aware that your signature of the statutory declaration is a sworn or affirmed statement of truth to that effect. It is a criminal offence to deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

## **Note 10. Action by the registration authority in deciding an application**

37. The notes in this section provide some guidance on what will happen to your application after you have sent it to the registration authority.

### Where the application is made under section 15(1)

38. The registration authority will give a valid delivery date to your application when you send it to the registration authority. The delivery date may be important because it is the date against which the time limits on applications in section 15(3) and 15(4) apply. The registration authority will formally acknowledge receipt of your application and if a receipt is not received within ten working days you should contact the registration authority. Sometimes the registration authority may decide that the application is incomplete or otherwise unacceptable but consider that it could be put right. If that happens, the registration authority may return the application to you and allow you to amend and resubmit it with the necessary changes.

39. The registration authority will now look carefully at the evidence in your application. It may decide that your application cannot be accepted (because the evidence is clearly insufficient to support the application) and will reject your application without taking any further steps.

40. Otherwise, the registration authority will publicise your application (for example, by sending notice of the application to the landowner and publishing the notice in the local newspaper) and consider it further in the light of any objections received. You will be supplied with copies of all objections which are to be considered and will have a reasonable opportunity of answering them. If you ask to make any significant amendments to your application at this stage, and the registration authority agrees to accept the amendments, it may be necessary for the authority to publicise the case again.

41. The registration authority may decide to inquire into the application. This may take the form of a hearing before an officer of the authority or of a neighbouring authority, or the case may be heard before a committee of the authority. Alternatively, an independent inspector may be asked to conduct a public inquiry. A hearing or inquiry is particularly likely if the registration authority or another local authority owns the land so that the evidence may be tested impartially. The Court of Appeal has ruled that in determining applications where there is a dispute the registration authority should consider convening such a hearing or inquiry

42. Lord Hoffman also expressed the view in the *Trap Grounds* case that the registration authority has no duty to look for evidence or to help present the applicant's case in the best way. It is entitled to deal with the application and the evidence as presented by the parties. The registration authority will inform you whether the application has been accepted or rejected. If it is accepted the land will be registered as a town or village green and you will be supplied with particulars of the registration. If it is rejected you will be notified of the rejection.

#### Where the application is made under section 15(8)

43. The registration authority will formally acknowledge receipt of your application. If a receipt is not received within ten working days you should contact the registration authority. If the registration authority is satisfied that your application is properly made the land will be registered as a town or village green and you will be supplied with particulars of the registration. A properly made application cannot be rejected but it may be returned if you appear not to be the owner of the land, if the necessary consents have not been obtained, or the application is otherwise incomplete.

44. Section 24 of the 2006 Act enables the Welsh Ministers to make regulations setting out further or more detailed steps to be taken by applicants and registration authorities in relation to the making and determination of applications for registration. These will not be introduced until a later date, however, when other changes to the registration system for common land and greens are brought into force.

#### **Note 11. Amendment of an application and part registration**

45. The House of Lords judgment in the *Trap Grounds* case considered a number of procedural questions about the registration of greens. The House concluded that registration authorities can exercise discretion in accepting amendments to an application form or register only part of the area of land claimed if only that part meets the registration criteria.

## **Note 12. Repeated and withdrawn applications**

46. You may decide to resubmit your application for registration should you consider that you have significant new evidence that supports your case or that new legal criteria or case law have changed the position. In our opinion the registration authority is required to consider a revised application but under common law principles it would be able to summarily reject repeated successive applications if they fall outside of the time limits in section 15 or are substantially the same as previous applications and do not raise any new issues for consideration. Registration authorities can also exercise discretion in allowing applicants to withdraw an application and subsequently resubmit an amended case.

## **Note 13. Further guidance**

47. The Open Spaces Society is a source of useful information on town and village greens and produces a number of helpful publications on the subject including *Getting Greens Registered — a guide to the law and procedure for town and village greens*, and *Our Common Land — the law and history of common land and village greens*. The Greens guide also includes an evidence questionnaire to use in support of a claim for registration. The Society can be contacted at 25A Bell Street, Henley-on-Thames, Oxon RG9 2BA, telephone 01491 573535, website: [www.oss.org.uk](http://www.oss.org.uk)

Decisions Branch  
Planning Division  
Welsh Assembly Government  
August 2007

## **Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green**

### **Commons Act 2006 — Text of section 15**

#### **15 Registration of greens**

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where—
  - (a) 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
  - (b) they continue to do so at the time of the application.
- (3) This subsection applies where—
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the time of the application but after the commencement of this section; and
  - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where—
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the commencement of this section; and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).
- (5) Subsection (4) does not apply in relation to any land where—
  - (a) planning permission was granted before 23 June 2006 in respect of the land;
  - (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
  - (c) the land—
    - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
    - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.
- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—

- (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
  - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".
- (8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.
- (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.
- (10) In subsection (9) –
- "relevant charge" means –
- (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;

"relevant leaseholder" means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

## **Extract from the Commons Act 2006 Explanatory Notes**

### **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.

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 permission. 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'.

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)*.