

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 outside the pilot
implementation areas

February 2007
(amended September 2010)



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Published by the Department for Environment, Food and Rural Affairs

September 2010 (Ver. 1.2)

COMMONS ACT 2006 — SECTION 15

Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green outside the pilot implementation areas

Introduction

These guidance notes are designed to help you the applicant to complete a form to register land as a town or village green under section 15(1) or 15(8) of the Commons Act 2006 (“the Act”) outside the pioneer areas for implementation of Part 1 of the Commons Act 2006 (see Coverage of England, on page 2 below).

Your application must be made using form 44 under the rules contained in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007¹. The regulations set out the information required in your application. Your application must be submitted to the commons registration authority (“the registration authority”) for your area. The registration authority will be able to advise you on completing the application form and the procedures involved.

You can see a copy of section 15 of the Act and the associated explanatory notes in Annex A below: the explanatory notes 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. The new legislation makes the following changes:

- it provides a period of grace after use ‘as of right’² 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 other steps to challenge use);
- it requires any period of statutory closure (e.g. during a foot-and-mouth disease 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.

¹ The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 are available on the internet at www.opsi.gov.uk.

² See note 4 as to the meaning of ‘as of right’.

In this guidance, we refer to different provisions contained in section 15. For example, section 15(1) means subsection (1) of section 15 (that is, the first part of section 15 marked with a (1)). You can look up these provisions in annex A.

Further guidance

This guidance provides only an overview of the legislation and the procedures for an application to register a new green. You can see a more detailed explanation of the terms used in section 15 in our guidance on *Part 1 of the Commons Act 2006 Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation* at Chapter 7.10. But you should disregard any guidance in Chapter 7.10 as regards the procedure for applying to register a new green, as that guidance applies only to applications made in the pioneer areas

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*. *Getting Greens Registered* 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.

General information about common land and town and village greens, the implementation plans for other sections of the Commons Act 2006, further copies of this guidance and the application form 44 can be accessed via Defra's website at: www.defra.gov.uk/rural/protected/commonland/index.htm.

Coverage of England

These guidance notes apply only to England outside the pioneer implementation areas for Part 1 of the Commons Act 2006. Different rules apply in relation to the registration of town or village greens in the pioneer implementation areas, and in Wales.

The pioneer implementation areas in England are: Devon, Kent (but not including unitary authorities in these first two counties), Cornwall, Hertfordshire, Herefordshire, Lancashire (but not Blackpool), and Blackburn with Darwen. If you want to apply to register a green in any of these areas, you should refer to the separate guidance to applicants in the pioneer implementation areas available from the Defra website, at:

www.defra.gov.uk/rural/protected/commonland/registration.htm#guidance.

In these areas, you should not apply using form 44, but you should ask your registration authority to supply you with a form for the purposes of applying to register a town or village green under section 15. The arrangements for applying in the pioneer implementation areas differ from those in the rest of England, and your application will be refused in those areas if your application is made in accordance with this guidance.

If you want to register a green in Wales, you should seek advice from the registration authority.

Disclaimer

These guidance notes are non-statutory. They do not form part of the regulations and have no legal effect. They provide guidance on the main features of the application process and do not attempt to provide a comprehensive explanation of every issue.

The registration of town or village greens is a complex area of law. The courts have been asked to rule on the law on a number of occasions and we expect they will continue to do so. This guidance should therefore not be regarded as definitive. It is for commons registration authorities to interpret the legislation in determining applications for the registration of new greens. You may wish to seek your own independent legal advice before proceeding with an application.

Guidance

1. Registration authorities

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 normally the county council, unitary authority, metropolitan district council or London Borough council. If the land comes under the jurisdiction of more than one registration authority, because it straddles their boundary, 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.

Sometimes, one registration authority may arrange that another neighbouring registration authority should deal with applications for registration of greens in its own area. If this happens, your registration authority will pass on your application to the other authority.

2. Areas exempt from registration

The New Forest, the Forest of Dean, and Epping Forest all have special status and you cannot register land as a town or village green in these areas. The registration authority for the relevant area will be able to advise you on the boundaries of the forests in case of any doubt.

3. Who may apply for registration

Anyone may apply to register land as a green under the criteria in section 15(1) of the Act. If you are a landowner you may register your land voluntarily as a green under section 15(8) (see note 8 below).

In both cases you must apply using form 44. This is available from the registration authority or can be printed from the Defra website at: www.defra.gov.uk/rural/protected/commonland/tvg.htm (to be found under the heading "Regulations and forms"). The procedure for registration will be simpler if you are applying voluntarily as a landowner to register land as green, because the registration authority will not require evidence of the use of the land.

4. Qualifying criteria for registration where the application is under section 15(1)

In preparation for your application you will need to assess whether the recreational use of the land by local people meets the strict tests for registration.

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

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, rather than 'by right' (i.e. in exercise of a legal right to do so). These requirements reflect the ancient law of custom, where long use 'as of right' 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 Annex A to this guidance. It will help your case if you are able to find a range of witnesses who can provide detailed statements about the qualifying use of the land.

Period of use 'as of right'

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. It must meet one of these tests to be properly considered:

- **Use continuing** — section 15(2) applies where the land has been used 'as of right' for lawful sports and pastimes for 20 years or more before the application is made, and this use continues³ at the date you apply.
- **Use ended no more than two years ago** — section 15(3) applies where recreational use 'as of right' for 20 years or more ended no more than two years before the date you apply.
- **Use ended before 6 April 2007** — section 15(4) makes a special transitional provision where recreational use 'as of right' for 20 years or more ended before 6 April 2007. In such a case, you must apply within five years of the date the use 'as of right' ended. Other special arrangements apply, in this situation only, where construction works under a planning permission affecting the land began before 23 June 2006.

The deadlines for making an application are not flexible so if you do intend to apply for registration, you must keep to them.

The registration authority will also look for evidence of:

- the other criteria in Section 15(2), (3) or (4) having been met, namely that:
 - a significant number of
 - the inhabitants of any locality, or any neighbourhood within a locality
 - indulged...in lawful sports and pastimes

³ For this purpose, recreational use 'as of right' is deemed to continue if, after 20 years or more of such use, permission is given for local people to use the land. This is explained in more detail in the section on 'Permission to use the land' below.

- as of right
- on the land
- for a period of at least twenty years;
- where relevant, the date of cessation of such use;
- where relevant, any interruption of such use owing to statutory periods of closure;
- where relevant, any planning permission affecting the land.

In order to understand the meaning of the elements described above you should read the additional information about these criteria in Chapter 8.10 (paragraphs 8.10.13 to 8.10.61) of the *Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation*⁴. But you should disregard that guidance as regards the procedure for applying to register a new green, as that guidance applies only to applications made in the pioneer areas.

5. Land descriptions and maps

You must include with your application a map and description of the land claimed for registration as a town or village green. (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. You must show the land which you want to register by means of distinctive colouring sufficiently to enable it to be accurately 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 10 below). Further information about how to obtain Ordnance Survey large scale maps can be found on the internet at www.ordnancesurvey.co.uk or by calling 08456 050505.

6. Grounds of application and evidence

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 **Further guidance** above).

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. You should include information on the nature of the recreational activities that have taken place on the land, an estimate of the number of people undertaking these activities and of their frequency, and explain how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application.

⁴ www.defra.gov.uk/rural/protected/commonland/registration.htm#guidance.

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 witnesses 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).

7. Voluntary registration where the application is under section 15(8)

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 the proprietor of any 'relevant charge' over the land, consent to the application. These terms are defined in section 15(9) and 15(10) of the Act (see Annex A). 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.

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 green; and

either

- that 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

- that no such consents are required.

In some cases the registration authority may decide to ask you for further evidence of your ownership before it accepts your application.

8. Supporting documents

You must include with your application 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). You are recommended not to forward the original of any deed or other private document. Instead, you should enclose a copy, preferably indorsed 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 question 11 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 be produced.

9. Statutory Declaration

You must make a statutory declaration, confirming the truth of the evidence given in your application, 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 symbol 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).

You are responsible for telling the truth in presenting the application and accompanying evidence and should be aware that your 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.

10. Action by the registration authority in deciding an application

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

(a) If you are applying under section 15(1):

The registration authority will stamp a date of receipt to your application when you send it to the registration authority. That 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. 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.

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.

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 application again.

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. Some registration authorities engage the services of a barrister for this purpose or use an inspector provided by the Planning Inspectorate. 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 inquiry⁵. 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 way⁶. It is entitled to deal with the application and the evidence as presented by the parties.

The authority will reach a final decision on the application based on all the facts and evidence presented about the location of the land, the number of local people using it and the nature and frequency of the recreational use they make of it.

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 details of the registration. If it is rejected, you will be notified of the rejection.

(b) If you are applying under section 15(8):

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 details of the registration. An application cannot be rejected, but it may be returned if you appear not to be the owner of the land, if any necessary consent has not been obtained, or the application is otherwise incomplete.

11. Amendment of an application and part registration

In the *Trap Grounds* case the House of Lords 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. In deciding how to exercise its discretion, the registration authority will consider what would be fair to all the parties affected by the application.

12. Repeated and withdrawn applications

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 Defra's view the registration authority is required to consider a revised application, subject to any relevant time limits in section 15. But the authority would be able to summarily reject repeated successive applications that do not raise any new issues for consideration. If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the evidence available.

⁵ *R (Whitney) v The Commons Commissioners*. The full text of the judgment can be found at www.bailii.org/ew/cases/EWCA/Civ/2004/951.html.

⁶ *Oxfordshire County Council v Oxford City Council*. The full text of the judgement can be found at www.bailii.org/uk/cases/UKHL/2006/25.html.

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.

Commons Act 2006 — Extract from Explanatory Notes to the Act

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 permission²⁵. 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* case²⁶.

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)*.

²⁵ 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.

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

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)*.