

Common Land

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What is Common Land?

- Land over which there exists right in common, originally such rights as:
 - Graze cows, sheep and pigs on land
- Historically Common Land rights were attached to each property and were not for the general public
- ‘the right to roam’- this was introduced by the Countryside and Rights of Way Act 2000

Rights of way over Common Land

- Rights of way were granted by individual landowners under various legislative provisions
- Countryside and Rights of Way Act 2000 gave the public rights of access on public rights of way over Common Land- similar to rights of way over any other land

Types of Common Land

- Lowland Commons and Upland Commons
- The nature of Common Land is varied, including large tracts of heathland, moorland, golf courses, roadside verges and traffic island.
- Common Land rules apply to all types

Registered Common Land

- Registration under:
 - Commons Registration Act 1965 **OR**
 - Commons Act 2006
- It is not possible to create new rights or Common Land

Commons Act 1965

- Purpose of the 1965 Act was to compile a register of all Common Land and associated rights
- Process of registration
 - Application
 - Hearing- if application was disputed
 - Decision- confirm, amend or refuse

Commons Act 1965 defects

- No requirement to notify the landowner resulting in gardens being registered as Common Land
- Small scale plans
- The register could not be amended even in if it was completely incorrect
 - except in situations where rights had been extinguished- However land still remained within the register

Commons Act 2006

- Aim- to improve the Law on Common Land and to remedy the defects of the 1965 Act.
- It did not remedy all the defect of the 1965 Act
- It is now possible to amend the Commons Register
- It is also now possible to register Common Land which failed to register within the 3 years of the 1965 Act- however rules are very strict

Ownership of Common Land

- Vast amount owned by Local Authorities including Parish and Town Councils
- 2006 Act- no longer requires ownership of Common Land within the register of Common Land
- Unregistered Common Land- Town or Parish council can make applications if they can show that they have maintained the land- strict rules

Management of Common Land

- Lowland Commons- minimal management
- Upland Commons requirements are greater due to grazing
- Commons Council- it is now possible for individuals with Commons rights to form into a Statutory Association to regulate the use of Common Land

Works on Common Land

- 2006 Act has simplified the previous statutory provisions relating to fencing and works on Common Land
- ‘Prohibition on restricted works’ unless consent is obtained from the Planning Inspectorate

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- Restricted Works are any works which have the effect of preventing or impeding access to the Common Land or resurfacing
 - No resurfacing unless it is to repair an area of existing surface of same material

Consent is not required for the following:

- Adding new stiles and gates
- Adding direction signs and information boards
- Creating or widening existing unsurfaced or loosely surfaced footpaths
- Adding seats
- Adding temporary sheep pens for not more than 28 days in a year
- Burning heather or curt bracken or manage vegetation by mechanical means
- Setting out areas for sports or games, including goal posts provided that they do not need major permanent construction
- Adding feeding and watering troughs

Consent is required

- Construction of:
 - Buildings
 - Ditches
 - Embankments
 - Trenches

Examples of exempt works

- Some restricted works can be exempt if temporary and only if the relevant notice of exemption is completed and sent to Planning Inspectorate
- E.g. temporary fencing and temporary obstacles- strict rules and guidelines must be followed

Deregistration of Common Land

- Common Land can only be deregistered if an alternative land is designated as Common Land
 - Application must be made and fee paid
 - Alternative land should normally be as close as possible to the land being replaced
 - An inquiry will be held and the Inspectorate will consider interest of the parties, the public, the neighbourhood and any other relevant matters

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