

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Registration

Registration of rights of common

Section 8 Apportionment

56. **Section 8** enables regulations to be made regarding the amendment of the commons registers where rights of common are to be apportioned. Apportionment occurs where land to which rights of common are attached (the dominant tenement) is divided into two or more parcels in separate ownership (*e.g.* where the owner sells only part of the land and retains the remainder). Generally, it is not intended that the apportionment of rights of common should be registered. Instead, rights will be shown as attached to the dominant tenement with which they were associated when an entry in respect of those rights was last made in the register. Subsequent changes to the dominant tenement will not be recorded (but see *subsection (5)* of section 9 for provision with regard to *pro rata* apportionment).
57. This is best illustrated by an example. Assume a common subject to rights to graze 100 sheep, where the register shows that the rights are divided equally between farms A and B, each dominant tenement having the right to graze 50 sheep attached to it. The owner of Farm A dies and the farm is divided equally between that owner's two children. Two new dominant tenements A1 and A2 come into being and the operation of Part 1 of the Act will ensure that to each is attached the right to graze 25 sheep. Farm B is sold to a developer who in turn sells it off in 50 plots of equal size, each with a house built on it. Each of those plots will have the right to graze one sheep. The register will show a common subject to two separate rights to graze sheep attached to the two 'historic' dominant tenements, A and B. The register would in each case identify the rights and identify the land to which they were attached. At the conclusion of the events described above, the owners of the new dominant tenements formerly comprised in farms A and B will be able to trace their entitlement to exercise their rights of common by reference to the historic dominant tenements subsisting in the register. For example, each owner of a house built on farm B will be able to show that they occupy 1/50th part of the area of the historic dominant tenement B, and (applying the rules of *pro rata* apportionment) therefore each has attached to it 1/50th of the rights recorded as attached to historic dominant tenement B. It will be possible to show that each owner is entitled to exercise the rights by virtue of the attachment of the rights to their house (the attachment will be shown in the commons register), and ownership of the house (which may be registered in the register of title to land kept by the Land Registry). The common law principle is that a right of common attached to land belongs to the owner for the time being of that land.
58. Any principle by which a right of common may be extinguished owing to the development of the dominant tenement so that it is incapable of benefiting from the right is abolished by section 13(3). In Defra's view, any fractional right which may

*These notes refer to the Commons Act 2006 (c.26)
which received Royal Assent on 19 July 2006*

arise in consequence of the rules of *pro rata* apportionment would be unexercisable, but (by virtue of section 13(3)) would not cease to exist.

59. However, where the rights attached to land which forms part of a historic dominant tenement are to be surrendered, varied or severed in accordance with the provisions in Part 1, it will be necessary to amend the register to record the previous apportionment of the rights. *Subsection (2)* enables regulations under *subsection (1)* to require the register to be amended in these circumstances.
60. *Subsection (3)* provides that, where the commons register has not been amended to reflect an apportionment of rights, the rights which arise as a result of that apportionment are to be treated as if they were separately registered. This provision is intended to ensure that each of the rights arising as a result of the apportionment is treated for the purposes of Part 1 of the Act as if it were registered, so that, for example, application may be made under section 12 to surrender and extinguish the right notwithstanding that the right is not itself reflected in an individual entry in the register at the time of the application.