

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Management

Functions of commons councils

Section 31 Functions

165. *Section 31* sets out the functions that may be conferred on a commons council in an order made under *section 26*. *Subsection (1)* limits the functions to those which relate to the management of agricultural activities, the management of vegetation and the management of rights of common. *Subsection (2)* requires the appropriate national authority to confer only those functions which it considers appropriate for each council.
166. *Subsection (3)* contains an illustrative list of the sort of functions which may be conferred. It is envisaged that the principal function of a commons council will be to make rules relating to the agricultural use of the land, the management of the vegetation, and the management of rights of common. A council might make rules, for example, regarding the numbers of animals and the times when animals may be turned out on a common, the marking of animals grazing on the common, letting of rights of common, and requirements for managing animals while they are on the common (*e.g.* hefting requirements).
167. There is no requirement for a commons council to be given functions relating to all the matters referred to in *subsection (1)* or all the functions set out in *subsection (3)*. Equally, the list of functions in *subsection (3)* is not exhaustive and other functions may be conferred where appropriate. For example, on an upland common where agricultural activity is taking place, it may be appropriate to confer functions on the council relating to management of grazing which are wider in scope than the specific matters referred to in *subsection (3)*.
168. It is envisaged that an order establishing a commons council will normally either permit or, where appropriate, require it to prepare and maintain a register to record which commoners are exercising their rights of common. Similar registers of the exercise of grazing rights already operate on some commons and have been found to be useful in managing the numbers and movements of animals. For example, the Dartmoor Commons Act 1985 requires the maintenance of such a register by the Dartmoor Commoners' Council, with requirements for commoners to provide up-to-date information on a continuing basis.
169. A council might be given the function of making rules relating to the leasing and licensing of rights of common. This would permit the council to control the use of rights of common by persons other than the commoner entitled to the rights. For example, controls might be imposed where holders of common rights wish to lease out their rights to others on the common, or, if they are active graziers, to take on more rights for significant periods of time. Any local rules made by a council would take precedence over any regulations made under paragraph 2 of Schedule 1 to regulate the leasing or

licensing of rights of common generally (see paragraph 7070), but could not apply to any arrangements made by the owner of a common to lease or licence any part of the surplus grazing to a third party, since the owner's right to use the surplus grazing is not a right of common.

170. *Subsection (4)* enables a commons council to make rules which have the effect of limiting or imposing conditions on the exercise of rights of common or on the exercise of the rights of an owner to use the surplus of a common. The intention is that all those exercising rights, whether through rights of common or to the surplus, should be subject to the same rules. For example, a commons council might enter into an agri-environment agreement that might require a period where no grazing takes place on the common. In such a case all those grazing animals on the common would be required to remove them for the specified period.
171. *Subsection (6)* requires a commons council in discharging its functions to have regard to the public interest (as defined in *subsection (7)*), as well as to any guidance issued by the appropriate national authority.

Section 32 Ancillary powers

172. *Section 32* gives a commons council ancillary powers to enable it to carry out its functions. *Subsection (2)* provides a non-exhaustive list of such powers, which include powers to enter into agreements and to raise money. The power to enter into agreements will enable commons councils to enter into funding arrangements such as agri-environment agreements which would be binding on all those using the common for agricultural purposes. A council will also be able to raise money by applying for funds from any other source, for example, Heritage Lottery funding or European Union funding programmes. Funding schemes and programmes change over time and these ancillary powers will allow a council to apply for funding from a wide range of sources to assist it in carrying out its functions.
173. *Subsection (3)* makes it clear that the power to raise money includes the power for a commons council to require the payment of fees in connection with participation in the council, for example, through payment of an annual subscription, and for the exercise of rights of common or rights to use the surplus of a common. It is expected that such fees will relate in most cases to the exercise of grazing rights.

Section 33 Consent

174. *Subsection (1)* makes it clear that where the consent of a person with an interest in the land is required for the commons council to do anything on the land for which it is established, nothing in Part 2 authorises a commons council to do anything on the land without that consent. For example, if commoners acting collectively would require the consent of the landowner to undertake works to improve the drainage on a common, then a commons council would also require the landowner's consent to undertake the same activity. However, by virtue of *subsections (2) and (3)*, a council does not need the consent of a person with a right of common before doing anything on the land, and it does not need consent for any activity which commoners could themselves undertake without consent.
175. *Subsections (4) to (6)* make provision about how a commons council can obtain consent, and includes provision that a failure on the part of the owner to respond in a timely manner to a notice served on him by the council, may be taken as the giving of his consent.
176. Where a person whose consent is required cannot be identified, *subsection (7)* enables a council to serve notice by posting a notice on the land, and again, where the owner fails to respond to such a notice in a timely manner, the council may take it that his consent has been given.

Section 34 Enforcement of rules

177. **Section 34** sets out the consequences of not complying with rules made by a commons council. Rules made by a council will be similar in effect to bye-laws made by a local authority. Breach of a rule can constitute a criminal offence if the appropriate national authority has approved the rule and if the rule itself specifies that breach of the rule is to constitute an offence. A commons council has a discretion to decide whether breach of a particular rule will constitute a criminal offence. Breach of the rule renders the offender liable on summary conviction to a fine (or daily fine) as specified in *subsection (3)*.
178. Under *subsection (5)*, a commons council may apply to a county court for an order requiring any person to comply with any of its rules. This provides an alternative approach to enforcement of rules where it is likely that imposition of a fine is unlikely to have the desired effect. Under *subsection (6)*, a council may only apply to the county court to ensure compliance with a rule the breach of which constitutes a criminal offence if, in its opinion, proceedings against the person in the criminal court would not provide an effective remedy.

Section 35 Rules: supplementary

179. **Section 35** makes further provision in relation to the making of rules by a commons council. *Subsection (2)* enables an order under section 26 establishing a commons council to make provision for the procedure to be adopted in the exercise of the power to make rules. It is expected that orders under section 26 which confer a power to make rules will require draft rules to be approved by the appropriate national authority before coming into force, and will also include requirements about the publication by commons councils of draft rules for consultation, publicising rules which have been made, and ensuring they are available for inspection.
180. The power given to the appropriate national authority in *subsection (3)* to revoke any rule made by a commons council is subject to *subsections (4) and (5)*, which require the appropriate national authority to give reasons for revoking a rule, and to consult with the commons council (and other persons as appropriate) before doing so.