

COMMONS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Management

Commons councils: supplementary

Section 36 Consequential provision

181. *Section 36* addresses potential problems where the functions given to a council might overlap with those of some other body. One example might be a manorial court (*e.g.* a court leet) which still exists in relation to some commons. For example, if a council were to be established encompassing several commons and one of those commons was governed by a manorial court, the section enables the appropriate national authority to alter or abolish that court's jurisdiction in order to remove any conflict of functions. Similarly, an order might make provision for the abolition or curtailment of the functions of a board of conservators in relation to common land.
182. The power enables the appropriate national body to vary or revoke specific legislation, including any scheme or arrangement in or under a local or personal Act, which relates to the management or maintenance of common land or the exercise of rights over common land.
183. The fact that provision under this section is by order under section 26 means that the procedures in section 27 will apply (and so the appropriate national authority must be satisfied that there is substantial support for the making of the order).
184. *Subsection (3)* ensures that the powers in *subsection (2) (c) to (e)* may not be exercised where their exercise would have the effect of prohibiting or restricting any public right of access. For example, schemes of management under Part 1 of the Commons Act 1899 (see *subsection (2)(c)*) generally confer rights of access in accordance with the prescribed scheme, but an order in pursuance of section 36 could not revoke that part of the scheme relating to such rights.

Section 37 Variation and revocation of establishment orders

185. *Section 37* describes the procedure to be followed where the appropriate national authority wishes to wind up a commons council because it is no longer operating effectively. *Subsection (1)* identifies three different situations which could lead to a commons council being wound up. *Subsection (2)* clarifies that a council may only be wound up through making an order under section 26. This requires the same procedure to be followed by the appropriate national authority as applies to establishing a council, to ensure that there is consultation with local interests and substantial support for the order to wind up a council. Such an order must also make provision for dealing with any liabilities and assets of the council, and provision for amending enactments that may have been amended previously as a result of the establishment of the council.