



# Commons Act 2006

## 2006 CHAPTER 26

### PART 3 **E+W**

#### WORKS

#### **38 Prohibition on works without consent **E+W****

- (1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.
- (2) In subsection (1) “restricted works” are—
  - (a) works which have the effect of preventing or impeding access to or over any land to which this section applies;
  - (b) works for the resurfacing of land.
- (3) The reference to works in subsection (2)(a) includes in particular—
  - (a) the erection of fencing;
  - (b) the construction of buildings and other structures;
  - (c) the digging of ditches and trenches and the building of embankments.
- (4) For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).
- (5) This section applies to—
  - (a) any land registered as common land;
  - (b) land not so registered which is—
    - (i) regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners; or
    - (ii) subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
  - (c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.

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- (6) The prohibition in subsection (1) does not apply to—
- (a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;
  - (b) works on any land where the works are carried out under a power conferred by or under any enactment applying to common land;
  - (c) works authorised under a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899 without any requirement for any person to consent to the works;
  - (d) works for the installation of electronic communications apparatus for the purposes of an electronic communications code network.
- (7) In subsection (6)(a) the reference to an enactment does not include Part 2 of this Act.
- (8) For the purposes of subsection (6)(b), an enactment applies to common land if it is expressed to apply (generally) to—
- (a) registered common land;
  - (b) common land; or
  - (c) any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.
- (9) Subject to the following provisions of this Part, consent given to works under subsection (1) of this section constitutes consent for the purposes of that subsection only.

#### Modifications etc. (not altering text)

- C1** S. 38 excluded (1.10.2007 for E.) by 1971 c. vi, s. 23(2C) (as inserted by Commons Act 2006 (c. 26), ss. 44, 56, **Sch. 4 para. 4(3)**; S.I. 2007/2584, **art. 2**)
- C2** S. 38 restricted (E.) (1.10.2007) by The Works on Common Land (Exemptions) (England) Order 2007 (S.I. 2007/2587), **art. 2, Sch. 1** (subject to arts. 3, 4)
- C3** S. 38 excluded by 1971 c. vi s. 23(2C) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by Commons Act 2006 (c. 26), s. 56, **Sch. 4 para. 4(3)** (with s. 60); S.I. 2007/2584, **art. 2(d)(i)**; S.I. 2012/739, **art. 2(h)(i)** (with **art. 4(5)**))
- C4** S. 38(1) modified (coming into force in accordance with s. 13 of the amending Act) by **Monken Hadley Common Act 2022 (c. ii), s. 7(3)** (with s. 8(3))

#### Commencement Information

- I1** S. 38 not in force at Royal Assent see s. 56(1); s. 38 in force for E. at 1.10.2007 by S.I. 2007/2584, **art. 2** (with **art. 3**)
- I2** S. 38 in force at 1.4.2012 for W. by S.I. 2012/739, **art. 2(c)** (with **art. 4(1)(3)**)

### 39 Consent: general **E+W**

- (1) In determining an application for consent under subsection (1) of section 38 in relation to works on land to which that section applies, the appropriate national authority shall have regard to—
- (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - (b) the interests of the neighbourhood;

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- (c) the public interest;
  - (d) any other matter considered to be relevant.
- (2) The reference in subsection (1)(c) to the public interest includes the public interest in—
- (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
- (3) Consent may be given under section 38(1)—
- (a) in relation to all or part of the proposed works;
  - (b) subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.
- (4) In considering the effect in relation to any land of proposed works under this section, the appropriate national authority may consider that effect in conjunction with the effect in relation to that land of any other works for which consent has previously been given under section 38(1) above or section 194 of the Law of Property Act 1925 (c. 20).
- (5) Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.
- (6) Regulations may specify a time limit for the making of applications under subsection (5).
- (7) Consent may be given under section 38(1) in relation to works which have been commenced or completed; and any consent so given has effect from the time of commencement of the works.

#### **Modifications etc. (not altering text)**

- C5** S. 39 applied by 1971 c. vi s. 23(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, [Sch. 4 para. 4\(3\)](#) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i) (with art. 4(5)))
- C6** S. 39 applied by 1967 c. xxix, Sch. art. 12(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, [Sch. 4 para. 2\(3\)](#) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i))
- C7** S. 39 applied (1.3.2019) by [Church Property Measure 2018 \(No. 8\)](#), [ss. 30\(3\)](#), 53(2); S.I. 2019/97, art. 2

#### **Commencement Information**

- I3** S. 39 not in force at Royal Assent see s. 56(1); s. 39(6) in force for certain purposes for W. at 12.8.2007 by [S.I. 2007/2386](#), [art. 2](#); s. 39 in force for E. at 1.10.2007 by [S.I. 2007/2584](#), [art. 2](#)
- I4** S. 39(1)-(5) (7) in force at 1.4.2012 for W. by [S.I. 2012/739](#), [art. 2\(d\)](#)
- I5** S. 39(6) in force at 1.4.2012 for W. in so far as not already in force by [S.I. 2012/739](#), [art. 3\(b\)](#)

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#### 40 Consent: procedure **E+W**

- (1) Regulations may make provision as to the procedure to be followed in the making and determination of applications under sections 38(1) and 39(5).
- (2) Regulations under this section may in particular include provision—
  - (a) as to the steps to be taken by an applicant before submitting an application;
  - (b) as to the form and content of an application;
  - (c) as to the procedure to be followed in making an application;
  - (d) as to the evidence to be supplied in support of an application;
  - (e) as to the fees payable in relation to an application;
  - (f) as to the steps to be taken by the appropriate national authority upon receipt of an application;
  - (g) for the appointment by the appropriate national authority of a person to discharge any (or all) of its functions in relation to the determination of an application;
  - (h) for the making of representations or objections in relation to an application;
  - (i) for the holding of a hearing or local inquiry in relation to an application;
  - (j) for the publication of a determination of an application and the notification of interested persons.

##### Modifications etc. (not altering text)

- C8** S. 40 applied by 1967 c. xxix, Sch. art. 12(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, **Sch. 4 para. 2(3)** (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i))
- C9** S. 40 applied by 1967 c. xxix, **Sch. art. 17(2A)** (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, **Sch. 4 para. 2(6)** (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i))
- C10** S. 40 applied by 1971 c. vi s. 23(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, **Sch. 4 para. 4(3)** (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i) (with art. 4(5)))
- C11** S. 40 applied (1.3.2019) by [Church Property Measure 2018 \(No. 8\)](#), **ss. 30(3)**, 53(2); S.I. 2019/97, art. 2

##### Commencement Information

- I6** S. 40 not in force at Royal Assent see s. 56(1); s. 40 in force for certain purposes for W. at 12.8.2007 by S.I. 2007/2386, **art. 2**; s. 40 in force for E. at 1.10.2007 by S.I. 2007/2584, **art. 2**
- I7** S. 40 in force at 1.4.2012 for W. in so far as not already in force by S.I. 2012/739, **art. 3(c)**

#### 41 Enforcement **E+W**

- (1) Where any works are carried out on land to which section 38 applies in contravention of subsection (1) of that section, any person may apply to the county court <sup>F1</sup>....
- (2) On an application under this section the court may make an order—
  - (a) in any case, for removal of the works and restoration of the land to the condition it was in before the works were carried out;
  - (b) in a case where consent has been given under section 38(1) but the works have not been carried out in accordance with any term of that consent, for the

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works to be carried out in such manner and subject to such conditions as the order may specify.

#### Textual Amendments

- F1** Words in s. 41(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 70](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### Modifications etc. (not altering text)

- C12** S. 41 applied (with modifications) (1.10.2007 for E.) by [1967 c. xxix, Sch. art. 12\(2B\)](#) (as inserted by [Commons Act 2006 \(c. 26\)](#), ss. 44, 56, [Sch. 4 para. 2\(3\)](#); S.I. 2007/2584, art. 2)  
S. 41 applied (1.10.2007 for E.) by [1971 c. vi, s. 23\(2B\)](#) (as inserted by [Commons Act 2006 \(c. 26\)](#), ss. 44, 56, [Sch. 4 para. 4\(3\)](#); S.I. 2007/2584, art. 2)
- C13** S. 41 applied by [1971 c. vi s. 23\(2B\)](#) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, [Sch. 4 para. 4\(3\)](#) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i) (with art. 4(5)))
- C14** S. 41 applied (with modifications) by [1967 c. xxix, Sch. art. 12\(2B\)](#) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by [Commons Act 2006 \(c. 26\)](#), s. 56, [Sch. 4 para. 2\(3\)](#) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i))

#### Commencement Information

- I8** S. 41 not in force at Royal Assent see s. 56(1); s. 41 in force for E. at 1.10.2007 by [S.I. 2007/2584, art. 2](#)
- I9** S. 41 in force at 1.4.2012 for W. by [S.I. 2012/739, art. 2\(e\)](#)

## 42 Schemes **E+W**

- (1) This section applies in relation to works on relevant land where, by virtue of section 38(1), the works may not be carried out without the consent of the appropriate national authority.
- (2) In subsection (1) “relevant land” means land which is subject to—
- a scheme under the Metropolitan Commons Act 1866 (c. 122) which is in force at the commencement of this section; or
  - a scheme under the Commons Act 1899 (c. 30) which is in force at the commencement of this section.
- (3) Where—
- any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of the works, and
  - the scheme does not allow for any person to consent to the works to be carried out,
- the works do not contravene that provision if they are carried out with (and in accordance with the terms of) the consent of the appropriate national authority under section 38(1) and of any owner of the land (if not the person carrying out the works).
- (4) Regulations may make provision as to the procedure to be followed in obtaining the consent of an owner under subsection (3) (and may include provision for the consent of an owner to be regarded as having been given where he has not objected within a period of time specified in the regulations).

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- (5) Where any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of the works without the consent of the appropriate national authority—
- (a) consent given under section 38(1) is to be regarded as consent given under the scheme; and
  - (b) consent may not be sought separately under the scheme.

#### Commencement Information

- I10** S. 42 not in force at Royal Assent see s. 56(1); s. 42(4) in force for certain purposes for W. at 12.8.2007 by [S.I. 2007/2386](#), [art. 2](#); s. 42 in force for E. at 1.10.2007 by [S.I. 2007/2584](#), [art. 2](#)
- I11** S. 42(1)-(3) (5) in force at 1.4.2012 for W. by [S.I. 2012/739](#), [art. 2\(f\)](#)
- I12** S. 42(4) in force at 1.4.2012 for W. in so far as not already in force by [S.I. 2012/739](#), [art. 3\(d\)](#)

### 43 Power to exempt **E+W**

- (1) The appropriate national authority may by order provide that section 38 is not to apply to—
- (a) the carrying out by a specified person of specified works on specified land; or
  - (b) the carrying out by a specified person, or a person of a specified description, of works of a specified description on—
    - (i) any land; or
    - (ii) land of a specified description.
- (2) The appropriate national authority may only make an order under subsection (1)(a) if it is satisfied that the works specified in the order are necessary or expedient for any of the purposes in subsection (4).
- (3) The appropriate national authority may only make an order under subsection (1)(b) if it is satisfied that works of the description specified in the order are likely to be necessary or expedient on any land, or on land of the description specified in the order, for any of the purposes in subsection (4).
- (4) The purposes referred to in subsections (2) and (3) are—
- (a) use of land by members of the public for the purposes of open-air recreation pursuant to any right of access;
  - (b) the exercise of rights of common;
  - (c) nature conservation;
  - (d) the protection of archaeological remains or features of historic interest;
  - (e) the use of the land for sporting or recreational purposes.
- (5) Where—
- (a) any land was at any time before the commencement of this section land to which section 194 of the Law of Property Act 1925 (c. 20) applied, but
  - (b) at any such time that section ceased to apply to the land by virtue of subsection (3)(a) of that section,
- the appropriate national authority may by order provide that section 38 is not to apply to the carrying out of works, or works of a description specified in the order, on that land.

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- (6) Where any land is the subject of a resolution under section 194(3)(b) of the Law of Property Act 1925 (c. 20) immediately before the commencement of this section, the appropriate national authority may by order provide that section 38 is not to apply to the carrying out of works, or works of a description specified in the order, on that land.
- (7) An order under this section may provide that section 38 is not to apply only if the works to which the order relates are carried out in accordance with the terms of the order.
- (8) In subsection (1) “specified” means specified in an order under that subsection.

#### Commencement Information

- I13** S. 43 not in force at Royal Assent see s. 56(1); s. 43 in force for certain purposes for W. at 12.8.2007 by [S.I. 2007/2386, art. 2](#); s. 43 in force for E. at 1.10.2007 by [S.I. 2007/2584, art. 2](#)
- I14** S. 43 in force at 1.4.2012 for W. in so far as not already in force by [S.I. 2012/739, art. 3\(e\)](#)

## 44 Supplementary **E+W**

- (1) Schedule 4 (which makes supplementary provision relating to works on common land) has effect.
- (2) A national authority may for any purpose specified in subsection (3) by order amend—
- any local or personal Act passed before this Act which contains provision for that authority to consent to works on land which is common land; and
  - any Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners which contains provision for that authority to consent to works on land to which the Act applies.
- (3) The purposes referred to in subsection (2) are—
- that of securing that sections 39 and 40 apply to an application for the consent referred to in paragraph (a) or (b) of subsection (2) as they apply to an application for consent under section 38(1);
  - that of securing that section 41 applies in relation to the carrying out of works in contravention of the provision referred to in paragraph (a) or (b) of subsection (2) as it applies to works carried out in contravention of section 38(1).
- (4) In subsection (2)—
- “national authority” means—
- the Secretary of State; and
  - the National Assembly for Wales;
- “common land” means—
- any land registered as common land; and
  - any land not so registered which is subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30).

#### Commencement Information

- I15** S. 44 not in force at Royal Assent, see s. 56(1); s. 44(1) in force for certain purposes for E. at 1.10.2006 by [S.I. 2006/2504, art. 2\(f\)](#); s. 44 in force for certain purposes for W. at 12.8.2007 and

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6.9.2007 by [S.I. 2007/2386](#), [arts. 2, 3](#); s. 44(2)-(4) in force for E. and s. 44(1) in force in so far as not already in force for E. at 1.10.2007 by [S.I. 2007/2584](#), [art. 2](#) (with [art. 3](#))

**I16** S. 44 in force at 1.4.2012 for W. in so far as not already in force by [S.I. 2012/739](#), [art. 3\(f\)](#) (with [art. 4\(1\)\(5\)](#))



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