
STATUTORY INSTRUMENTS

2008 No. 1961

The Commons Registration (England) Regulations 2008

PART 3

Applications and proposals to amend the registers

Scope of this Part

15.—(1) Subject to paragraphs (2) and (3), this Part applies in relation to any application or proposal.

(2) Only the following provisions of this Part apply in relation to an application under regulation 44 (declaration of entitlement to right of common)—

- (a) regulation 16(1); and
- (b) regulation 17.

(3) This Part does not apply in relation to an application under regulation 47 (matters affecting the public).

Making an application

16.—(1) An application must—

- (a) be made in writing on a form provided by the registration authority to which the application is to be made; and
- (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.

(2) Schedule 4 contains provisions which apply in relation to specific types of applications as to—

- (a) the circumstances in which an application is permitted or required to be made;
- (b) who may make the application; and
- (c) the matters which must be included in or which, subject to paragraph (3), must accompany the application.

(3) An applicant is not required to include with an application a copy of any document specified in Schedule 4 if—

- (a) the registration authority issued the document, or was a party to the document; or
- (b) the document has been deposited with the registration authority in accordance with any enactment.

Application fees

17.—(1) An application must be accompanied by the appropriate fee (if any) specified for an application of that type in or under Schedule 5.

(2) A registration authority is not required to take any steps to deal with an application until the applicant has paid the fee so specified.

Making a proposal

18.—(1) Before taking any other steps under this Part in relation to a proposal, a registration authority must prepare a statement in writing describing the proposal and explaining the justification for it.

(2) A registration authority may not proceed with a proposal under Schedule 2 to the 2006 Act unless it has complied with paragraph (1), and with paragraphs (2) to (5) of regulation 23, on or before 31st December 2020.

(3) A registration authority may not proceed with a proposal for the purposes of paragraph 2 of Schedule 3 to the 2006 Act unless it has complied with paragraph (1), and with paragraphs (2) to (5) of regulation 23, on or before 30th September 2009.

Land descriptions

19.—(1) This regulation applies in relation to any requirement to describe land for the purposes of an application or proposal, except where another provision of these Regulations specifies the manner in which land is to be described in a particular case.

(2) The land must be described, except where paragraph (3) applies, by an Ordnance Map accompanying the application or proposal and referred to in it.

(3) Where the land is registered land, and the application relates to the whole of the land in a register unit, the land must be described by a reference to the number of that register unit.

(4) Where part of the land is registered land, that part of the land must be described by a reference to the number of any register unit which includes that part.

(5) Any Ordnance Map accompanying an application or proposal must show the land to be described by means of distinctive colouring within an accurately identified boundary and must be—

- (a) on a scale of not less than 1:10,560 (six inches to one mile), where the land to be described—
 - (i) consists wholly or predominantly of moorland;
 - (ii) is a neighbourhood or locality, which is being described for the purposes of an application under section 15 of the 2006 Act; or
 - (iii) is the land to which a right of common is attached; and
- (b) on a scale of not less than 1:2,500 in all other cases.

Management of application

20.—(1) As soon as practicable after receiving an application and (if any) the specified fee, the registration authority must send an acknowledgement of receipt to the applicant, which must include—

- (a) the reference number allocated to the application; and
- (b) a postal address and an e-mail address to which written communications to the registration authority may be sent.

(2) The registration authority may, either when it acknowledges receipt of the application or at any time subsequently, direct the applicant—

- (a) to provide any further information or documents necessary to enable the application to be determined;

- (b) (otherwise than in the case of an application referred to in regulation 21(2)) to publish a notice of the application in such one or more newspapers circulating in the relevant area as the registration authority may direct, and as appears to it sufficient to secure adequate publicity;
 - (c) to post a notice of the application at any place or places specified in the direction, whether on the land to which the application relates or elsewhere; or
 - (d) to serve a notice of the application on persons specified in the direction, in addition to the requirements in regulation 22.
- (3) The registration authority may specify a time for complying with any directions given under this regulation.
- (4) The applicant must give notice to the registration authority when any directions given under this regulation have been complied with, and—
- (a) if the applicant was given a direction under paragraph (2)(b), that notice must be accompanied by a copy of the relevant page of each newspaper in which the notice of application was published;
 - (b) if the applicant was given a direction under paragraph (2)(c), that notice must include details of where and when the notice of the application was posted; and
 - (c) if the applicant was given a direction under paragraph (2)(d), that notice must include details of the date on which, and the means by which, each notice of the application was served.
- (5) If the applicant fails to comply with regulation 22, or with any directions given under this regulation, the registration authority may—
- (a) treat the application as abandoned;
 - (b) give directions to the applicant to remedy the non-compliance (and, if appropriate, extend the deadline for persons to make representations); or
 - (c) waive the non-compliance, if satisfied in all the circumstances that no-one is likely to be prejudiced by it and it would be unreasonable to require compliance.

Registration authority's duty to publicise application

21.—(1) As soon as reasonably practicable after receiving an application complying with regulations 16 and 17, the registration authority must—

- (a) publish a notice of the application on its website; and
 - (b) serve a notice of the application by e-mail on anyone who has previously asked to be informed of all applications and proposals, and who has given the authority an e-mail address for that purpose.
- (2) In addition, the requirements in paragraph (3) apply in relation to—
- (a) an application under section 15 of the 2006 Act;
 - (b) an application under section 19 of the 2006 Act, for the removal of registered land from, or for the addition of land to, a register; or
 - (c) an application under Schedule 2 to the 2006 Act.
- (3) As soon as reasonably practicable after receiving an application referred to in paragraph (2), the registration authority must—
- (a) publish a notice of the application in such one or more newspapers circulating in the relevant area as appears to the authority to be sufficient to secure adequate publicity; and
 - (b) serve a notice of the application on every other local authority for that area.

Applicant's duty to publicise application

22.—(1) As soon as reasonably practicable after receiving an acknowledgment of an application pursuant to regulation 20(1), the applicant must—

- (a) subject to paragraphs (2) and (3), serve a notice of the application on each of the persons specified in Schedule 6 in relation to an application of that kind; and
- (b) give notice to the registration authority of having complied with sub-paragraph (a).

(2) The registration authority may, in relation to any application, direct that paragraph 1(c) of Schedule 6 is not to apply, if it considers that the persons registered as owners of rights of common in gross are so numerous that it would not be reasonably practicable for the applicant to serve notice of the application on all of them.

(3) A requirement pursuant to paragraph 2 of Schedule 6 to serve a notice on an owner of land does not apply if that person cannot reasonably be identified.

(4) A notice given to the registration authority under paragraph (1)(b) must specify the persons on whom the notice of the application was served, and in relation to each such person state—

- (a) the date on which, and the means by which, the notice of the application was served on that person; and
- (b) the nature of that person's interest (if any) in the land to which the application relates.

Registration authority's duty to publicise proposal

23.—(1) A registration authority which has prepared a statement of a proposal to amend a register on its own initiative must, before taking any further steps in relation to the proposal, comply with paragraphs (2) to (5).

(2) The registration authority must publish a notice of the proposal on its website.

(3) If the proposal is to register or deregister any land as common land or as a town or village green, the registration authority must publish a notice of the proposal in such one or more newspapers circulating in the relevant area as appears to it to be sufficient to secure adequate publicity.

(4) The registration authority must serve a notice of the proposal on the following persons—

- (a) any person who has made a declaration, duly recorded in the register, of entitlement to a right of common over any land comprising the whole or any part of the register unit to which the proposal relates;
- (b) any commons council established for, or other body representing the interests of persons with rights of common over, land which includes the land to which the proposal relates; and
- (c) any owner of a right of common in gross which is exercisable over any land comprising the whole or any part of the register unit to which the proposal relates.

(5) The registration authority must also serve a notice of the proposal by e-mail on any other person who has previously asked to be informed of all applications and proposals, and who has given the authority an e-mail address for that purpose.

Contents of notice of application or proposal

24.—(1) A notice of an application or proposal which is required to be published, posted or served under regulation 21, 22 or 23, or by a direction of a registration authority under regulation 20, must contain the following details—

- (a) a reference to “the Commons Act 2006”, and the provision of that Act under (or pursuant to which) the application or proposal is made;

- (b) the name of the applicant (in the case of an application);
- (c) the name of the registration authority;
- (d) the name and location of the land to which the application or proposal relates;
- (e) a summary of the effect of the application or proposal;
- (f) both a postal address and an e-mail address for the registration authority to which any representations concerning the application or proposal may be sent;
- (g) a statement that any representations will not be treated as confidential, but will be dealt with in accordance with regulation 26, and that where the application or proposal is referred to the Planning Inspectorate for determination in accordance with regulation 27, any representations will be sent to the Planning Inspectorate;
- (h) the date on which the period for making representations expires, which must not be less than 42 days after the date of the publishing, posting or service of the notice; and
- (i) the address of the registration authority at which documents relating to the application or proposal are available for inspection.

Inspection of copies of documents

25.—(1) The registration authority must ensure that copies of the following documents are available for inspection at the address specified for that purpose in any notice of the application or proposal—

- (a) in the case of an application, copies of the application and any accompanying documents; or
- (b) in the case of a proposal, copies of—
 - (i) the statement prepared in accordance with regulation 18(1); and
 - (ii) any documents in the possession of the registration authority which are relevant to the proposal.

(2) The times and dates at which the documents referred to in paragraph (1) are available for inspection must include all normal office hours during a period of not less than 42 days ending with the expiry of the period for making representations.

Representations

26.—(1) Any person may, by the date specified in a notice of an application or proposal, make representations in writing to the registration authority about the application or proposal.

(2) Representations under paragraph (1)—

- (a) must state the name and postal address of the person making them, and the nature of that person's interest (if any) in any land affected by the application or proposal;
- (b) may include an e-mail address of the person making them;
- (c) must be signed by the person making them; and
- (d) must state the grounds on which they are made.

(3) As soon as reasonably practicable after the expiry of the period allowed for making representations in respect of an application, the registration authority must—

- (a) notify the applicant that no representations have been made; or
- (b) serve on the applicant a copy of all the representations it has received.

(4) The applicant may reply in writing to the registration authority within 21 days of being served with a copy of representations, setting out the applicant's response to the representations.

- (5) A reply under paragraph (4) must be signed by the person making it.

Responsibility for determining applications and proposals

- 27.**—(1) Subject to paragraph (2)—
- (a) an application made in accordance with these Regulations must be determined by the registration authority to which it was made; and
 - (b) a registration authority which has made a proposal in accordance with these Regulations must determine whether or not to amend its registers in accordance with the proposal.
- (2) In the cases specified in paragraph (3), a registration authority must refer to the Planning Inspectorate for determination by it—
- (a) any application made to the registration authority in accordance with these Regulations, and
 - (b) any proposal made by the registration authority in accordance with these Regulations.
- (3) Those cases are where—
- (a) the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority’s ability impartially to determine it;
 - (b) the application or proposal is made under section 19(4) of the 2006 Act, and seeks—
 - (i) to add land to, or to remove land from, a register; or
 - (ii) to correct an error as to the quantification of rights of common in a register; or
 - (c) the application or proposal is made under any of paragraphs 4 to 9 of Schedule 2 to the 2006 Act, and seeks to add land to, or to remove land from, a register.
- (4) When the registration authority refers an application or proposal to the Planning Inspectorate for determination—
- (a) the registration authority must send to the Planning Inspectorate all material in its possession which is relevant to the determination of the application or proposal; and
 - (b) in the case of an application, the Planning Inspectorate may direct the applicant to provide any further information or documents necessary to enable the application to be determined.
- (5) In these Regulations—
- (a) the “determining authority” means—
 - (i) the Planning Inspectorate, in relation to an application or proposal which has been referred to it pursuant to paragraph (2);
 - (ii) in relation to any other application or proposal, the registration authority which is required to determine it in accordance with paragraph (1); and
 - (b) the “referring authority” means, in relation to an application or proposal which has been referred to the Planning Inspectorate pursuant to paragraph (2), the registration authority which referred it.

Method of determining applications and proposals

- 28.**—(1) The determining authority must, in determining any application or proposal, take into account—
- (a) the contents of the application or proposal, and any material accompanying it;
 - (b) in the case of an application, any further information or evidence provided by the applicant in accordance with a direction under regulation 20(2) or 27(4);

- (c) any written representations made by any person in accordance with regulation 26, or in accordance with an invitation under paragraph (4);
- (d) any oral representations made by any person in accordance with paragraph (6);
- (e) the findings made at a site inspection, if any; and
- (f) where a public inquiry or a hearing has been held by an inspector—
 - (i) the evidence presented at the inquiry or hearing (if the determination is being made by the inspector who heard the evidence); or
 - (ii) the report and recommendation of the inspector (if the determination is not being made by the inspector).

(2) The determining authority may decide that a public inquiry is to be held in relation to any application or proposal.

(3) Where the Planning Inspectorate is the determining authority, it may decide that a hearing in accordance with regulation 33 is to be held in relation to any application or proposal.

(4) The determining authority may, if it thinks it necessary to enable an application or proposal to be determined, invite further written representations about any specified matter from—

- (a) the applicant, in the case of an application;
- (b) the registration authority, in the case of a proposal;
- (c) a person who has made representations in accordance with regulation 26; or
- (d) any other person;

and may specify the time within which any such further representations must be made.

(5) Representations made pursuant to an invitation under paragraph (4) must be signed by the person making them.

(6) Paragraph (7) applies in relation to any application or proposal which the determining authority decides to determine without holding a public inquiry or (where the Planning Inspectorate is the determining authority) a hearing in accordance with regulation 33.

(7) The determining authority—

- (a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and
- (b) may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person's civil rights an opportunity to make oral representations.

Notice of public inquiry or hearing

29. If a public inquiry or a hearing is to be held in relation to an application or proposal, the determining authority must ensure that a notice of the inquiry or hearing is—

- (a) published on an appropriate website;
- (b) served on—
 - (i) the referring authority, if the Planning Inspectorate is the determining authority;
 - (ii) in the case of an application, the applicant;
 - (iii) any person who has made representations in accordance with regulation 26; and
 - (iv) any other person whom the determining authority invited under regulation 28(4)(d) to make written representations; and
- (c) as the determining authority considers necessary—

- (i) published in such one or more newspapers circulating in the relevant area as appears to the determining authority to be sufficient to secure adequate publicity; and
- (ii) publicised by such other means or served on such other persons as may be appropriate to bring the inquiry to the attention of persons likely to be affected by the application or proposal.

Public inquiries: general provisions

30.—(1) Where it has been decided that a public inquiry is to be held in relation to an application or proposal, the determining authority must appoint an inspector—

- (a) to hold the inquiry; and
- (b) if the inspector is not also to determine the application, to provide a report and recommendation to the determining authority.

(2) Subject to the following provisions of this regulation, and to regulation 32, the procedure at the inquiry is to be determined by the inspector.

(3) Any person interested in the subject-matter of an inquiry may appear at the inquiry in person or by a representative.

(4) The inspector may, at any stage of an inquiry, prevent any person from—

- (a) giving evidence,
- (b) cross-examining a person giving evidence, or
- (c) presenting any matter,

if the inspector considers it to be irrelevant or repetitious.

(5) The inspector may—

- (a) require a person to leave an inquiry;
- (b) prevent a person from participating in the inquiry by giving evidence, cross-examining a person giving evidence, or presenting any matter; or
- (c) permit a person to remain at, or participate in, the inquiry only on specified conditions.

(6) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(7) The inspector may take into account any written representations or evidence or any other document received by the inspector from any person before or during an inquiry, provided that the inspector discloses it at the inquiry.

(8) The inspector may—

- (a) adjourn an inquiry to another date;
- (b) adjourn an inquiry to the site of any land affected by the application or proposal, and conduct part of the inquiry at that site in conjunction with a site inspection.

Pre-inquiry meeting

31.—(1) Where it has been decided to hold a public inquiry, the inspector may, if the inspector considers it desirable, hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at the inquiry.

(2) If the inspector decides to hold a pre-inquiry meeting, not less than 14 days' notice in writing must be given to—

- (a) the applicant, in the case of an application;
- (b) the registration authority;

- (c) any person who has made written representations about the application or proposal; and
 - (d) any other person whose presence at the pre-inquiry meeting the inspector considers desirable.
- (3) Paragraphs (2) to (6) of regulation 30 (so far as relevant) apply to pre-inquiry meetings as they apply to inquiries.
- (4) The inspector may, at a pre-inquiry meeting—
- (a) give directions about things to be done in preparation for the inquiry to—
 - (i) the applicant, in the case of an application;
 - (ii) the registration authority; and
 - (iii) any other person wishing to appear at the inquiry; and
 - (b) specify a date or dates by which any such directions must be complied with.
- (5) In particular, the inspector may direct any person wishing to give evidence to serve a written statement of that evidence on—
- (a) the inspector; and
 - (b) such other persons as the inspector may specify.

Procedure at inquiries

- 32.**—(1) At the start of an inquiry, the inspector must—
- (a) identify the main issues to be considered at the inquiry;
 - (b) identify any matters on which further explanation from any person appearing at the inquiry is required; and
 - (c) explain the procedure to be followed at the inquiry.
- (2) Paragraph (1)(a) does not preclude other issues from being considered at the inquiry, or (subject to the inspector’s powers under regulation 30(4)) raised by persons appearing at the inquiry.
- (3) If a person giving evidence at the inquiry has provided a written statement of evidence in accordance with a direction under regulation 31(5), the inspector may direct that—
- (a) the written statement is to be treated as the person’s evidence, or as part of the person’s evidence; and
 - (b) other parties at the inquiry may cross-examine the person on the written statement.

Hearings

- 33.**—(1) Where the Planning Inspectorate decides that a hearing is to be held in relation to an application or proposal for which it is the determining authority, it must appoint an inspector to hold the hearing.
- (2) A hearing is to take the form of a discussion led by the inspector.
 - (3) Paragraphs (2) to (8) of regulation 30 apply to a hearing as they apply to a public inquiry.
 - (4) Subject to regulation 30(4) to (6)—
 - (a) in the case of an application, the applicant is entitled to give, or to call another person to give, oral evidence; and
 - (b) any other person may give oral evidence with the permission of the inspector.
 - (5) Cross-examination is not permitted unless the inspector decides that it is necessary to ensure a sufficient examination of the issues.

Site inspections

34.—(1) Where an inspector is appointed to hold a public inquiry, the inspector must (unless any permission necessary to do so is refused) inspect the land affected by the application or proposal before determining the application or proposal or producing a report to the determining authority.

(2) In any other case, before an application or proposal is determined, the determining authority may conduct an inspection of the land affected by the application or proposal.

(3) Before a site inspection is made under paragraph (1) or (2) in relation to an application, the inspector or determining authority must ask the applicant whether the applicant wishes to be present or represented.

(4) If the applicant expresses a wish to be present or be represented, the inspector or determining authority must give the applicant reasonable notice of the date and time of the inspection, and give the applicant or their representative the opportunity to be present.

(5) The inspection does not need to be postponed if the applicant or their representative is not present at the appointed time.

Changes of procedure

35.—(1) This regulation applies where notice has been given under regulation 29 that a public inquiry or (where the Planning Inspectorate is the determining authority) a hearing is to be held in relation to the application or proposal.

(2) Where a registration authority is the determining authority it may, subject to paragraph (3), decide at any time before the start of a public inquiry to cancel the inquiry and determine the application without holding an inquiry.

(3) The registration authority must consult the applicant before deciding to cancel a public inquiry in relation to an application.

(4) Where the Planning Inspectorate is the determining authority it may, subject to paragraph (5), decide at any time before the start of a public inquiry or hearing—

- (a) to cancel the inquiry or hearing and determine the application without holding an inquiry or hearing; or
- (b) to hold a hearing instead of an inquiry, or vice versa.

(5) The Planning Inspectorate must consult—

- (a) the applicant, before deciding to change the procedure for determining an application; or
- (b) the referring authority, before deciding to change the procedure for determining a proposal.

Consultation requirement

36. The determining authority must consult Natural England before determining an application to register—

- (a) the creation, under section 6 of the 2006 Act, or
- (b) the variation, under section 7 of that Act,

of a right of common consisting of a right to graze any animal.

Action to be taken following determination of application or proposal

37.—(1) Where an application is granted or a decision is made to give effect to a proposal, in whole or in part, the registration authority must give effect to the determination in the appropriate register by addition, deletion, correction, or otherwise as may be appropriate.

- (2) The registration authority must give written notice of the determination to—
 - (a) the applicant, if the determination was made upon an application; and
 - (b) every person who made representations concerning the application or proposal.
- (3) Such notice must include—
 - (a) reasons for the decision; and
 - (b) details of any changes made to the register to give effect to the decision.
- (4) The registration authority must publish the decision in relation to any application or proposal, and the reasons for it, on its website.

Award of costs in relation to certain applications

38.—(1) This regulation applies in relation to an application under Schedule 2 to the 2006 Act where—

- (a) the application is referred to the Planning Inspectorate; and
- (b) a public inquiry is held in relation to the application.

(2) The inspector conducting the public inquiry may make an order for costs against any of the persons specified in paragraph (3), requiring the payment to such person mentioned in paragraph (4) as may be specified in the order of such amount as the inspector may determine in respect of costs reasonably incurred by that person pursuant to the application.

- (3) The persons who may be ordered to pay costs are—
 - (a) the applicant;
 - (b) any objector taking part in the public inquiry; or
 - (c) any registration authority taking part in the public inquiry.
- (4) The persons in whose favour an order for costs may be made are—
 - (a) the applicant; or
 - (b) any objector taking part in the public inquiry.