

From: Linda Davies - Divisional Director of Environment and Waste  
To: Regulation Committee 18<sup>th</sup> September 2008  
Subject: The Commons Act 2006 – DEFRA Pilot Project  
Classification: Unrestricted

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**Summary:** To advise members of the County Council's role and participation in a pilot implementation of new provisions set out within Part I of the Commons Act 2006 and to seek authority for the Regulation Committee to determine the additional functions required as a result of the coming into effect of the Commons Act 2006.

**Recommendation:** That the County Council's role and participation in the pilot implementation of Part I of the Commons Act 2006 be noted and that the additional responsibilities identified within the Commons Act 2006 are determined by the Regulation Committee.

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## Introduction

The law of Common Land and Village Greens is rooted deep in customary law and dates back to medieval times. During the nineteenth century, increasing awareness and recognition of the importance of such land to local communities as places for recreation gave rise to increasing statutory protection with the passing of the Inclosure Act 1857 and the Commons Act 1899.

In 1958, the Royal Commission produced a report on Common Land which made important recommendations, in particular in relation to the creation of a statutory register of Common Land and in 1965 a new Act was passed to give effect to some of these recommendations.

The Commons Registration Act 1965 gave all local authorities a duty, for the first time, of registering all Common Land and Village Greens within their administrative area, as well as details of ownership and any rights of common that existed (e.g. a right to graze animals). However, the task of establishing registers proved to be complex, lengthy and costly, and the 1965 Act was flawed in many ways. For example, some land provisionally registered under the Act was wrongly struck out, whilst other Common Land was overlooked and never registered, and many Village Greens became wrongly registered as Common Land (and vice versa).

Another major flaw was that the scope for correcting errors was very limited and, as a result, many events (such as changes of address) which affected entries in the Registers of Common Land or Village Greens have not been registered and the Registers have, in consequence, become significantly out of date since they were first compiled in 1970.

## **The Commons Act 2006**

The recent 2006 Act is designed to replace and significantly improve the now much out-dated 1965 legislation. The most voiced criticism of the current system is that it has a more “Domesday Book” approach; it is not a “living” record, and as the years go by the Registers are getting increasingly out of date.

The Registers were intended to provide conclusive evidence of the facts shown as at the date of registration. Yet, the original registration took place in the late 1960s and early 1970s and, accordingly, many entries in the Registers are only conclusive of what the legal position was more than 40 years ago. Since first registration many things might have happened without being recorded in the Registers. For example rights of common might have been transferred, apportioned or extinguished without any record in the Registers. Some Common Land may have ceased to be Common and other Common Land may have come into existence without any mention in the Registers.

The Commons Act seeks to bring the registration of Common Land and Village Greens into the 21<sup>st</sup> century by making a swathe of individual reforms to make the registers more useful. These include:

- Abolishing the requirement for ownership registration (a function now covered by the Land Registry)
- Reforming the substantive law of Commons
- Attaching new consequences to registration and non-registration
- Updating the registers
- Correcting existing mistakes
- Provision for registers to be held electronically

The net effect of these reforms is that the Registers will be much more useful in showing the current legal position in relation to information held by the County Council within these Registers.

## **The County Council’s role as a ‘Pilot Authority’**

In order to ensure that Government Ministers can be kept fully informed in relation to any costs or problems associated with a future national roll out of this new legislation, DEFRA invited applications from English Local Authorities to participate in a pilot project.

Kent County Council is one of seven Commons Registration Authorities that have been invited to participate. The other six authorities are listed at Appendix A. The result of this is that relevant provisions contained within Part I of the 2006 Act will be brought into force in these seven registration areas at least twelve months before the rest of the country. The Secretary of State made *The Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008* on the 21<sup>st</sup> of July 2008 to put this into effect.

In terms of budgetary provision members should note that the County Council has been notified of an intention by DEFRA to fund the County Councils costs in participating in the pilot project. An allocation of £19.1k has been agreed for the initial financial year (i.e. the last six months of the 2008/2009 financial year and the first six months of the 2009/2010). Provision has also been made within the Act for the County Council to charge fees in respect of certain applications. Currently these are set as default fees by DEFRA and

have been deliberately set at a low level, but it is my intention to increase these fees to reflect actual costs within this authority (although it should be noted the fee per application cannot exceed £1000).

### **New functions for Regulation Committee**

The Regulation Committee's responsibilities in relation to this area of work are set out in paragraph 2.5 of Appendix 2 Part 2 of the Constitution. The Committee currently considers and determines applications for the registration of new Village Greens and the variation of Rights of Common (where any party raises objection).

However, the Committee may well also have to take decisions on other aspects of the 2006 Act. For example, the County Council may well find itself in the position of having to amend the Registers to reflect unrecorded rights, or to amend or extinguish rights already shown. Currently, this Committee does not have the necessary authority to undertake such decisions and therefore I would recommend that further action be initiated by Officers to ensure this authority is in place prior to the introduction of the Act in this County on the 1<sup>st</sup> October 2008. A more comprehensive list of the required functions is set out at Appendix B.

### **Referral to the Planning Inspectorate**

The Secretary of State has decided that certain applications and proposals will have to be determined by the Planning Inspectorate. The County Council will still resolve and determine the majority of Town and Village Green applications. However, in cases where there is a conflict of interest, perhaps for example in respect of land owned by the County Council, this type of matter will, from the 1<sup>st</sup> October 2008, have to be passed to the Planning Inspectorate for determination.

Other issues which have to be determined by the Inspectorate are applications and proposals which affect the extent of any land registered as common land or green, or what can be done by virtue of a Right of Common. Likewise, any applications and proposals to register land as waste land to the manor, to transfer land from the Register of Village Greens to the Register of Common Land or to deregister certain types of wrongly registered land.

### **Additional Briefing**

It is unfortunate that neither Officer with responsibility for this issue is available to present this report. However, following discussion with the Chairman it has been decided that a further presentation will be given to Members on the 27<sup>th</sup> October 2008 at which there will be a far more detailed explanation of the new procedures and opportunity for questions on any issues raised by this report. Further notification of this meeting will be provided in due course.

### **County Council Approval**

I will ensure that the delegation of these new responsibilities to the Regulation Committee will be reported to a future meeting of the County Council for appropriate approval.

## **Recommendation**

That the County Council's role and participation in the pilot implementation of Part I of the Commons Act 2006 be noted and that the additional responsibilities identified within the Commons Act 2006 are determined by the Regulation Committee.

## Background Documents

*Commons Registration (England) Regulations 2008*

*The Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008*

*'The Commons Act 2006: Guidance to commons registration authorities in the pilot implementation areas. July 2008*

*Appendix A- List of participating Commons Registration Authorities DEFRA Pilot Project*

*Appendix B- List of functions set out in the Commons Act 2006*

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