



Ms Hannah McMinn
Common Land (Registration) Branch
Defra
3/C Nobel House
17 Smith Square
London SW1P 3JR

Please reply to:
Paul Hamblin (Director)
ENPAA
First Floor, 2-4 Great Eastern St
London EC2A 3NW
Telephone: 020 7655 4812
Email: paul.hamblin@enpaa.org.uk

Date: 24 September 2007

Dear Ms McMinn

Consultation on proposals to update and maintain the registers of common land and town or village greens by commons registration authorities.

Our response to this Defra consultation is on behalf of all National Park Authorities in England. Individual National Park Authorities may submit their own comments too, where they consider it appropriate. We are happy for our response to be made available for public inspection.

General Comments

Common land makes up a significant part of most National Parks in England and the way it is managed is critical to the achievement of our statutory purposes. The registration system must be fair and appropriate.

In particular, we suggest a robust and comprehensive notification system regarding any changes to the register:

- Natural England should be notified where:
 - rights are created or extinguished on commons which cover Sites of Special Scientific Interest; or
 - commons are entered in a national agri-environment scheme.

- Relevant Commons Associations.

We found it difficult to identify where proposals referred to both registered common land and town and village greens. Where sections relate to town and village greens as well, it would be helpful to state this clearly.

Specific points

Proposal 1. We agree the value of a pilot scheme. We also agree a phased commencement of implementation. This should be speedily completed, however, and we welcome the proposed three year timeframe. We suggest it would be more logical to start with what you describe as Area 2 (North West etc) given the largest proportion of common land in England lies Cumbria and the Lake District National Park. We suggest this is followed by your Area 3 (North East, Yorkshire and the Humber etc).

Para 3.1.6. If the phased approach is adopted, we suggest Defra ensures a consistent approach and provides good quality information both to the farming community and to the public. We see no value in bringing into force any provisions or inviting applications in advance of the timetable.

Proposal 2. We welcome the proposed changes to the rights section.

Proposal 3. We welcome this proposal.

Proposal 4. We agree with this proposal.

Proposal 5. We agree the rights section of the register should record the number of rights an applicant is entitled to. We prefer, however, Option 2. An independent check on the number of rights registered is essential to prevent abuse of the system.

Proposal 6. We disagree with this proposal. A nationally set figure would be transparent and fair to all applicants.

Proposals 7, 8. We agree.

Proposal 9. We agree with this proposal. It can be difficult, however, for people to locate information about commons when it is spread over different sources. Any future documentation for the public should clearly state the sources and location of any additional information.

Proposal 10. We agree.

Proposal 11. We agree.

Proposal 12: We agree with the rider that:

- where the land affected is designated as a Site of Special Scientific Interest, Natural England must be informed;
- notice is given to anyone who has made a Declaration of Entitlement to rights over the affected land; and
- notice is given to anyone with a registered interest in the land (e.g. landowner, Commons Association, Court Leet, Parish Council) and wishes to receive notification.

Regulations should stipulate the length of time for which applications should be advertised.

Proposals 13, 14: We agree.

Proposal 15. We disagree. A national scale of fees is considered preferable in the interests of transparency and fairness. Fees should be set at a level which does not prejudice the registration of areas such as village greens.

Para 5.3.4. Commoners Federations, Commons Associations and the relevant National Park Authority or Area of Outstanding Natural Beauty should always be consulted. All consultees' responses should carry equal weight.

Proposal 16. We agree.

Proposal 17. Para 5.1.1 states that Part 1 “ensures that an event is not recognised in law unless an appropriate amendment is made to the register”. However, para 5.4.2 states “The owner of an attached right will also be able to record in the register his entitlement to exercise that right by making a declaration of entitlement”. We suggest this position should be clarified as one paragraph appears to imply events must be registered to be lawful, the other that it is voluntary via a Declaration of Entitlements. It should be clear which changes must be registered to be unlawful, and which changes can be voluntarily registered.

We would like to see Registers used as working documents. Therefore every attempt should be made to record information which is important to the ongoing management of the commons, though we accept the Register is never going to be complete. We think it important to ease the tracing of owners of apportioned rights, for example to obtain their agreement to an agri-environment scheme.

Proposals 18 - 21. We agree but suggest other groups who should also be notified include:

- the landowner;
- other holders of rights;
- other commoners who have previously notified the Commons Registration Authority of changes prior to Declarations of Entitlement and the Commons Act; and
- Natural England if SSSI land.

Proposals 22 - 27. We agree.

Proposal 28. We agree, subject to the condition that mechanisms must be put in place to prevent or terminate any lease if its effect is to adversely affect the sustainable management of the common.

Proposals 29, 30. We agree.

Proposals 31, 33. We agree but suggest other groups who should also be notified include:

- the landowner;
- other holders of rights;
- other commoners who have previously notified the Commons Registration Authority of changes prior to Declarations of Entitlement and the Commons Act; and
- Natural England if SSSI land.

Proposal 32. We agree there are benefits in time limiting applications to correct errors to register entries. This in time will establish certainty in the register as is being achieved with the definitive map of rights of way.

Para 7.2.12. We agree newspapers are a valid form of advertisement. Alternatives include websites, site notices or e-mail alerts for people who have registered an interest in being informed.

Proposal 34. We agree.

Proposal 35. We agree.

Paragraph 7.3.5. We suggest Defra looks for a way to overcome a situation whereby an owner may be aware that the land could be common under these provisions and seeks planning permission to negate the registration. We advocate Defra and CLG collaborating on this issue and establishing protocols with planning authorities (including National Park Authorities) to share data on permissions and enforcement action.

Para 7.3.8. Defra should encourage registrations and any person should be able to apply to register.

Proposal 36. We agree.

Proposal 37. We agree but suggest other groups who should also be notified include:

- the landowner;
- other holders of rights;
- other commoners who have previously notified the Commons Registration Authority of changes prior to Declarations of Entitlement and the Commons Act; and
- Natural England if SSSI land.

Para 7.5.9. We suggest aerial photographs and overlays of historic and current maps would form appropriate evidence.

Proposal 38. We agree. Digitisation to electronic registers would be most useful for viewing by interested parties.

Proposals 39 - 43. We agree.

Para 8.2.16. Websites, site notices, e-mail alerts for people who have registered an interest in being informed are methods of communication that could all be employed.

Para 8.2.21. A requirement to publish the provisional register on the web fits with Government's electronic governance policy and improves access to information and to the public.

Para 8.2.23. We suggest Defra develops a template.

Proposal 44. We agree. It would be extremely useful if provisional registers were available on the web. Landowners, common rights holders, National Park Authorities, Areas of Outstanding Natural Beauty and other interested parties should be notified of the consultation.

Proposals 45, 46. We agree.

Para 9.6.5. We suggest the registration authority contacts all common land owners and common rights holders on the register. The requirement should apply to all registration authorities.

Proposals 47 and 48. We agree.

Para 10.2.3. We suggest a 'local authority interest' should include:

- ownership or management of the common;
- involvement in any potential development on, or adjacent to the common; or
- involvement in any activity in relation to the common which is likely to result in financial gain for the authority.

Para 10.3.3. We suggest the panel should be managed either by the Planning Inspectorate or Defra.

Thank you for the opportunity to comment on this consultation.

Yours sincerely

Paul Hamblin
Director