Commons Act 2006 – bringing into force of corrective applications under section 19(2)(a) and paragraphs 6-9 inclusive of schedule 2 for non pioneer authorities

The Department of Environment, Food and Rural Affairs (Defra) on 1st December 2014, brought into force section 19(2)(a) and paragraphs 6-9 of schedule 2 throughout England to allow respectively for the correction of mistakes made by Commons Registration Authorities (CRA) and the removal of wrongly registered land.

Not all of the available provisions contained in Part 1 of the Commons Act 2006 (the Act) have been brought into force with these corrective applications. The remaining provisions (for example, variation of existing rights of common, attaching a right in gross to land, extinguishment of a right of common and re-allocation of an attached right) will be brought into force at a later date.

There will undoubtedly be some areas of concern to all potential applicants and the most commonly asked questions have been answered below;

When will the regulations actually come into force?

These came into force on 1st December 2014 for non pioneer authorities. (See www.gov.uk/common-land-management-protection-and-registering-to-use for further information about pioneer authorities). Not all of the provisions of Part 1 have come into force for non pioneer authorities.

Do all applications attract a fee?

Fees are not payable for applications where it is alleged that the CRA made a mistake (section 19(2)(a)). For this reason it is imperative that CRAs check whether, at the initial registration, they made a mistake by registering the wrong land, not enough or too much. Applicants in the pilot authority areas have frequently tried to make applications for the removal of buildings (paragraph 6) and curtilage of buildings/land (paragraph 7) in this way rather than pay fees for applications under paragraphs 6 to 8 of Schedule 2. If the CRA can be shown (by comparison of application map and statement with register map) to have faithfully followed the application and registered the land as applied for, they have not made a mistake and the applicant cannot apply under section 19(2)(a). Applicants will have to apply under paragraphs 6 – 9 of Schedule 2. The CRA is not yet permitted to make what are often called “own motion” applications where the CRA is aware of a mistake it made when registering land as common or village green.

Any restrictions on any of these corrective applications?

Under the Commons Registration Act 1965 land could be provisionally registered under either section 4 or section 13. The provisions surrounding such provisional registration prior to 1970 are viewed as having been subject to inadequate notice. For this reason, only cases provisionally registered prior to 1970 can be considered under Schedule 2, paragraphs 6 – 9. For those cases registered after 1970 applicants would have to apply under sections 16/17 for de-registration (exchange land etc).

Dates by when such applications must be made?

Applications under paragraphs 6 and 7 of Schedule 2 must be made by 28 February 2027. There is no time limit for applications under section 19(2)(a) as Defra consider there is a continuing need to be able to correct the register. The Commons Register needs to be a "living document". Section 19 is "forever".

Application Forms

Applicants **must** use the correct form and tick the correct box to state under which section they are making the application. The application forms are available from Defra, see website links at the end of this document, Failure to use the correct application form or apply by letter will result in the 'application' being returned straight away. Applicants must use the form most applicable to their circumstances ranging from CA1 to CA15 – all are available for downloading from the Defra website. Any maps or plans which are required to accompany the application form must be to the prescribed scale as detailed in the application form.

Fees – these cannot be charged for CRA mistake applications. For the pilot authority areas there was a cap on the fees which could be charged. That cap of £1,000 has since been removed. CRA fees will take effect from the date of publication on the CRA website. Notice of 14 days will be given if those fees are subsequently amended and they will not therefore take effect until that time has passed. Applicants must be aware that **2 sets of fees** will be payable – one set for the CRA and the second set for the Planning Inspectorate (PINS), should the case be referred for determination by the Secretary of State. Current fees charged by some of the pilot authorities are:

Cornwall - £1,000
Devon - £750
Hertfordshire - £1,000

PINS costs –
applications under paragraph 6 - £3,400
applications under paragraph 7 - £2,800
applications under paragraph 8 - £3,800
applications under paragraph 9 - £3,400

While these fees appear high, it should be remembered that the increase in value for properties and land resulting from the removal of common land status would be in the tens of thousands of pounds.

Norfolk County Council has set its fee at £1,000 for applications made under paragraphs 6-9 inclusive. If paragraph 6-9 cases proceed to a public inquiry or hearing the Applicant will also be charged for hire fees of the venue.

Time taken to determine - there is no specific time for determination of these applications. Applications which are held to be valid will be given attention in the order of receipt.

Data Protection issues (DPA) – the Regulations will make no reference to DPA issues and each CRA will apply its own DPA policies and practices. The Application forms make it clear that copies of the documents submitted must be made available for public inspection. Personal information (addresses, signatures and email addresses) will be removed.

How will the making of the application be published
– this must be by -
notice on the CRA website page
emailed to all those who have asked to be notified of such applications
sent to any commons council
owners of any rights in gross (unless it is judged to be too onerous because of the numbers involved).
s19 applications – owner of the common
paragraphs 6 – 9 – owner/occupier/lessee
posting of 1 site notice only (similar provisions for s31(6) Notices) at the most obvious entry/exit point to the land/adjacent to the land.
No requirement to advertise in the local or national press
Good practice to advise any local Commons Association and the CRA Land Charges Section/Highway Boundaries Team if the Common Land unit forms part of a highway or highway verge

When is a case referred to PINS? – this will only be required for paragraphs 6 – 9 applications where land is being added or removed and only if someone with a legal interest in the land has objected. In practice, this will be rare as it will usually be the person with the interest in the land who has made the application. If someone has objected with no legal interest in the land the matter can be determined by the CRA. It may be advisable to refer an application to PINS where the CRA owns the land and there is no confidence in the CRA ability to objectively determine the application.

Publication of Notice of Decision/Determination - (whether PINS involvement or not) -
All those previously advised of making of application and on website.

Who determines applications?
This is likely to be delegated to a Chief Officer or an Inspector appointed by the Secretary of State if the application is referred to PINS.

Stamping the application
Non pioneer authorities need to continue to use the Commons Act 1965 Stamp on these applications.

Costs
Schedule 2 applications – costs can be awarded to an applicant and any objector if someone has acted unreasonably and case goes to a public inquiry. Note that costs cannot be awarded to a CRA. Inspectors do not set the level of costs awarded – it is up to the parties involved to come to an accommodation. Failure to do so will result in referral to a Costs Taxation Officer at the High Court. Costs awards cannot be made for Hearings.

If an application is successful who will arrange for the Maps and Registers to be updated?
The CRA will attend to this following the model entries

Prior to making an application:-

It is recommended that applicants contacts The Legal Orders and Registers Team at the CRA on telephone number 0344 800 8020 prior to making an application to discuss which application is most appropriate, to ensure the criteria of the legislation will be met, to obtain copies of the relevant pages and map of the Common Land or Village Green register and also a copy of the original application and application plan, if available. It may be possible to send these via e-mail if however, photocopies are required there may be a small charge.

For further reading, information and application forms please visit:-

https://www.gov.uk/common-land-management-protection-and-registering-to-use#commons-registration

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386740/commonsact-factsheet3.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386739/commonsact-factsheet2.pdf

https://www.gov.uk/commons-registers-apply-to-rectify-them#apply-to-deregister-buildings-wrongly-registered-as-common-land-or-as-a-town-or-village-green

http://www.legislation.gov.uk/ukpga/2006/26/schedule/2

http://www.legislation.gov.uk/ukpga/2006/26/section/19

Defra e-mail contact details:- commons.villagegreens@defra.gsi.gov.uk