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## Commons Act 2006

### Amending the Registers New Event applications

#### Introduction

One of the problems with the Registers established under the 1965 Act is that the registers were not kept up to date. This means that the registers are now very out of date.

The Commons Act 2006 (the 2006 Act) includes provisions which enable the registers to be updated, to record changes which have occurred. Broadly speaking, these applications fall into two categories:

1. Historic event applications, which relate to events which occurred after 1970 but before the implementation of the 2006 Act; and
2. New event applications, which relate to events which occurred after the 2006 Act has been implemented.

This article considers new event applications; historic event applications and corrections to the registers are discussed in other articles, which are available to download from NFUOnline.

#### The Areas

##### ***“The original pilot areas”***

These are the areas covered by Blackburn with Darwen Borough Council; Cornwall County Council; Devon County Council; County of Herefordshire District Council; Hertfordshire County Council; Kent County Council; and Lancashire County Council

##### ***“The new pilot areas”***

These are the areas covered by Cumbria County Council and North Yorkshire County Council.

##### ***“The pilot areas”***

Refers to both the original and the new pilot areas.

***“The rest of England”*** This refers to any part of England not covered by the two areas above.

New event applications relate to events which occurred on or after:

- 1 October 2008, and in the original pilot areas and
- 15th December 2014 in the new pilot areas.

Unfortunately, it is not possible to apply to amend the registers as a consequence of new events in the rest of England until the provisions of the 2006 Act are implemented in those areas; at the time of writing it was not known when this would occur.

It is important to remember that changes are not effective until the registers have been amended, so it is important to ensure that applications are made promptly, so that the change can be enforced and relied on.

## What events can be registered under these provisions?

### ***The creation of new rights of common***

Once the 2006 Act is in force in the area in which the land is situated, new rights of common cannot be created:

- over an existing registered town or village green;
- by reservation (for example for certain months or parts of the common only);
- by or prescription (a long period of use that has been unchallenged by the landowner)
- 'in gross' (in other words, when the rights are given to a person under a deed rather than belonging to a dominant tenement)

Provided none of the above apply, new rights of common can be created over land, although they will not be effective until they are registered. It is, therefore, important to ensure that any new rights of common are registered as soon as possible.

If the application is made to register a new right of common over land that is already registered as common land, the commons registration authority may only register the new rights if the common is capable of sustaining the new rights, in addition to any rights which are already registered.

Applications to register new rights can be made by either the owner of the common (sometimes referred to as the owner of the dominant tenement), or the owner of the land to which the rights will be attached (sometimes referred to as the owner of the servient tenement). Applications must be made on the correct form, which can be downloaded from the [gov.uk website](https://www.gov.uk).

### ***Varying an existing right of common***

Applications can be made by the owner of the common or the person who holds rights of common or owns the land to which a right of common is attached to:

- alter what the right entitles the holder to do;
- exercise the rights on a piece of land that is added to the existing common land; or
- exercise the rights on new land, instead of all or some of the land on which they could previously be used.

If the variation relates to a right to graze animals, it can only be permitted by the registration authority if the common is able to sustain the exercise of the affected rights and any other rights which exist over that land.

If the rights affected by the application are exercisable over land which is registered as a town or village green, it is not possible to extend what can be done under those rights.

Applications must be made on the correct form, which can be downloaded from the [gov.uk website](https://www.gov.uk).

These provisions do not allow applications to be made to change the land to which the right is attached. If part of the land to which the rights are attached is used for non-agricultural purposes, it may be possible to apply to reallocate the rights under section 11 of the Commons Act 2006, see below.

### ***Reallocation of a right of common***

As mentioned above, where part of the land to which common rights are attached is developed for non-agricultural purposes it is possible to reallocate the rights, to ensure they are all attached to the part which remains in agricultural use. This will apply when planning permission is granted to change the

use of the land, or where there is a compulsory purchase order to develop the land (the application to reallocate the rights must be made before the ownership of the land changes under a compulsory purchase order).

Applications must be made on the [relevant form](#) by the owner of the land to which the rights were attached.

### ***Transferring a right in gross (rights which are not attached to land)***

The holder of a right in gross can apply to the commons registration authority to transfer the ownership of the right. Applications must be made on the correct form, which can be downloaded from the [gov.uk website](#).

### ***Apportioning a right of common***

Where the land to which a right of common is attached is divided (e.g. where part of the land is sold), it is possible to make an application to apportion the rights between the two parcels. These applications can be made by a person who owns part of the land to which the rights are attached.

It is only possible to apply to apportion rights which can be quantified (e.g. a right to graze 25 animals). Rights which cannot be quantified (e.g. a right to turbary (taking peat)) cannot be apportioned.

The rights will be split in accordance with the share of the dominant tenement (i.e. the land to which the rights are attached) held by each person. For example, if 100 rights were attached to 100ha of land, and 20ha of land was sold with the associated rights, 20 rights would be apportioned to that land.

Any part rights resulting from an apportionment will be extinguished (e.g. 12.75 rights will be rounded down to 12 rights, with the remaining 0.75 rights being extinguished).

Applications to register an apportionment of common rights must be made if those rights are to be:

- surrendered;
- varied;
- reallocated, where part of the dominant tenement is used for non-agricultural purposes;
- severed (i.e. split from the dominant tenement);
- extinguished or transferred to new land due to a statutory disposition (for example a compulsory purchase order).

In these cases, the application to apportion the rights should be made at the same time as the relevant application from the list above.

Applications to apportion rights of common must be made on the [appropriate form](#).

### ***Attaching rights to land***

The owner of common rights which are not attached to land (known as “rights in gross”) can apply to attach the rights to land, provided he either occupies the land to which the rights will be attached or has the consent of the person who is entitled to occupy that land.

Applications must be made on the correct form, which can be downloaded from the [gov.uk website](#).

However, section 9 of the Commons Act 2006 limits the situations in which rights can be severed from land. This means that it may not be possible to sever the rights from the land in the future if the situation changes. It is, therefore, important that anyone considering an application to attach common rights to land takes professional advice about the implications of doing so, to ensure that they are aware of all of the potential long-term consequences.

### ***Surrendering or extinguishing a right***

Applications to surrender (give up) or extinguish (cancel by law) a right of common can be made on the [relevant application form](#).

Applications can be made by the owner of the land to which the rights are attached, the owner of a right in gross or the owner of any part of the common over which the rights can be exercised.

### **Registering a statutory disposition**

A statutory disposition is a legal instrument which either:

- extinguishes rights of common and the common itself; or
- transfers rights of common to new land, which is given in exchange for the land being taken away.

The list of legal instruments which are capable of doing this are contained in column 1 of the Table in paragraph 8 of [Schedule 4 to the Commons Registration \(England\) Regulations 2014](#), and are listed on the [gov.uk website](#). Column 3 of the table sets out who can make the application for each type of instrument; generally, the applicant is the person who will benefit from the legal instrument in question, however it is important to check what the Regulation says for the type of situation in question.

Applications must be made on the correct form, which can be downloaded from the [gov.uk website](#).

### **Declaring your entitlement to exercise a right of common**

Where rights of common are attached to land, the Commons Register may contain details of the land to which the rights are attached, but may not identify the person who is entitled to use those rights. Section 43 of the Commons Registration (England) Regulations allows the owner of:

- a freehold estate in land to which a right of common is attached; or
- a leasehold estate in any such land (excluding one that is granted for a term of six months or less from the date of grant),

to apply to amend the relevant entry in the rights section of Commons register, relating to all or part of the land over which the right is exercisable, to record a declaration that they are entitled to exercise the right. This could be useful if it is necessary to prove that you are entitled to exercise the rights (e.g. for the purposes of a BPS claim).

Applications must be made on the correct form, which can be downloaded from the [gov.uk website](#). When making an application under these provisions, the applicant must provide:

- a copy of the individual register to all or part of the land to which the right is attached, which records the applicant's ownership of an estate referred to in paragraph (1); or
- where the land is not registered in the individual register, other evidence of the applicant's ownership of an estate referred to in paragraph (1).

### **Severing a right of common**

The circumstances in which a right of common can be severed from land are very limited under the 2006 Act. Unless the severance of the rights is authorised under an Act of Parliament, rights can only be severed from land if they are being transferred to:

- Natural England or
- a Commons Council for the land over which the rights can be exercised. If there is no Commons Council for the land, the Secretary of State may make an Order providing that a person with

functions of management conferred by any enactment in relation to that land is to be regarded as Commons Council for these purposes.

The application has to be made by Natural England/the Commons Council, so farmers will not be able to make such applications themselves.

### **Fees**

If any fee is payable, it should be specified on the website for the Commons Registration Authority for the area in which the land is located. If a fee is payable, it must be paid when the application is submitted.

### **Procedure**

The Registration Authority may request additional information if it considers such additional information to be necessary in order to determine the application. It is important to comply with any such requests within the time limit specified in the notice, as failing to do so can result in the application being regarded as having been abandoned.

Applications must be publicised, to allow members of the public to make representations about the application. Details of any representations made should be passed to the person who made the application, and they should be given the opportunity to respond to those representations.

The local authority may then:

- determine the application on the basis of written representations;
- hold a hearing to determine the application; or
- hold an inquiry to determine the application.

The Commons Registration Authority must notify the person who made the application, and certain other interested parties, of their decision, the reasons for that decision and (if applicable) the changes made to the Commons Register as a result of the decision.

If applicable, the Commons Registration Authority must also update the Commons Register. If the application is granted, it is important to ensure that the Register is updated as in most situations the change will not be effective until the register is amended.

### **Further information**

Further information is available at

- <https://www.gov.uk/guidance/commons-registers-apply-to-record-new-events>

**The NFU can take no responsibility for any consequences arising from individual circumstances which cannot be fully accounted for in this document. It is advisable to seek professional advice.**

**For free initial Legal & Professional advice NFU members can contact NFU CallFirst on 0370 845 8458.**