

Commons Act 2006

Factsheet 6: Town and Village Greens

Introduction

Town and village greens derive from customary law. They were originally areas of land where local people indulged in lawful sports and pastimes. These might have included organised or informal games, picnics, fêtes and similar activities. A green can be in private ownership but many greens are owned or maintained by town and parish councils.

How can new greens be registered?

Land can be registered as a green if it has been used by local people for recreation 'as of right' (i.e. without permission, force or secrecy) for at least 20 years. This reflects the ancient law of custom, under which such a pattern of use created a presumption that local inhabitants had long-standing recreational rights over the land.

If you wish to register land as a green you can apply to your commons registration authority (county or unitary council). The authority will be able to advise on the procedures involved. An applicant needs to ensure that sufficient supporting evidence of the nature and extent of use of land is provided to satisfy the registration criteria.

What does the Commons Act 2006 do?

Section 15 of the Commons Act changes the legal definition of a green and sets out the qualifying circumstances in which land may be newly registered. Once enacted it will allow a specific period of grace, if recreational use 'as of right' is ended by the landowner, during which an application for registration as a green may be made.

The Act will also allow for the first time the owner of any land to register it voluntarily as a green, without having to show 20 years qualifying use.

When can I apply under the new provisions?

We are looking at the scope to bring section 15 into force as soon as possible, although we cannot yet say exactly when this will be. We expect that section 15 will be implemented initially with transitional measures until the rest of part 1 can be brought into force across the country. We hope to ensure that detailed guidance is available to coincide with commencement.

For more information please contact:

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Does the Trap Grounds case affect new registrations?

Yes there are implications for the registration system as a result of the Trap Grounds case, but generally the outcome will not alter the new measures in the Commons Act when they are brought into force. The case concerned a disputed application to register land as a green in Oxfordshire. It was referred to the High Court and the Court of Appeal to rule on various points of law. In May 2006 the House of Lords issued a final judgment in the case.

What did the House of Lords find?

The main points of the judgment are that:

- the Court of Appeal was wrong to conclude that action taken by an owner on land after an application to register it as a green can prevent its registration;
- recreational use by local people 'as of right' must continue until the date of the application, in order to justify registration under the law as it currently stands;
- greens are protected by 19th century legislation once they have been registered;
- such land becomes a green on registration, with legal rights for the local inhabitants to indulge in lawful sports and pastimes there;
- human rights law is not infringed by registration of land as a green.

How does this effect applications currently with registration authorities?

A registration authority should take account of the House of Lords' decision in determining applications still before it. If an authority decides to refuse an application on the sole grounds that the evidence shows recreational use 'as of right' ceased before the date of application, we have advised that they may wish to consider explaining in the determination that the refusal may not be fully determinative of the status of the land. This is because once section 15 of the Commons Act is brought into force and the period of grace introduced some applications are likely to be resubmitted.

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How are registered greens protected?

Town and village greens, including those newly registered, are protected by:

- Section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. It imposes a criminal sanction for the offence of injury to village greens.
- Section 29 of the Commons Act 1876 makes encroachment or inclosure of a green, and interference with or occupation of the soil unlawful unless it is with the aim of improving the enjoyment of the green.

What happens if an offence has been committed?

Where an offence has occurred, action in respect of section 12 of the 1857 Act can be brought by a churchwarden, the owner, parish, community or district councils. Any inhabitant of the parish can bring an action under section 29 of the 1876 Act.

How can greens be maintained?

The owner of a green cannot do anything that interferes with the lawful recreational activities of the local inhabitants. Greens in local authority ownership are often managed under the Open Spaces Act 1906 by the imposition of byelaws or with a scheme of regulation under the Commons Act 1899, but the law makes no provision regarding the maintenance of privately owned greens.

4 August 2006.

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