



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Section 15 of the Commons Act 2006

Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas

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This document is also available on our website at:

www.gov.uk/town-and-village-greens-how-to-register

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Introduction

1. These guidance notes are designed to help you, the applicant, complete a form to register land as a town or village green under Section 15(1) or 15(8) of the Commons Act 2006 (“the 2006 Act”) outside the pioneer areas for implementation of Part 1 of the Commons Act 2006 (see *coverage of England*).
2. Your application must be made using form 44 under the rules contained in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007¹. The regulations set out the information required in your application. Your application must be submitted to the commons registration authority (“the registration authority”) for your area. The registration authority will be able to advise you on completing the application form and the procedures involved.
3. The Growth and Infrastructure Act 2013 (the “2013 Act”) has made a number of significant changes to the law on registering new town and village greens under the Commons Act 2006 in England. Section 16 of the 2013 Act inserted Section 15C and Schedule 1A into the 2006 Act. These provisions, which took effect on 25 April 2013, exclude the right to apply for the registration of land in England as a town or village green where a trigger event has occurred in relation to the land. The right to apply for registration of the land as a green remains excluded unless and until a terminating event occurs in relation to the land. Trigger and terminating events are set out in Schedule 1A to the 2006 Act and broadly relate to whether land is identified for potential development in the planning system. Applications under Section 15(1) sent before 25 April 2013 are unaffected by the 2013 Act changes.
4. The 2013 Act has also reduced the two year period of grace in which an application in reliance on Section 15(3) of the 2006 Act can be made, to one year. This change took effect on 1 October 2013 by virtue of the commencement of Section 14 of the 2013 Act², which amended Section 15(3) of the 2006 Act. Applications submitted after this date which relate to land on which recreational use as of right ceased any more than one year previous to cessation of such use must therefore fail because the one year deadline has been exceeded.
5. Section 15 of the 2013 Act inserted Sections 15A and 15B into the 2006 Act which introduce a new mechanism for the deposit of ‘landowner statements’ and the registers in which information relating to such statements and their accompanying maps will be recorded. Section 15 came into force on 1 October 2013³. The deposit of such a statement by a landowner⁴ with a commons registration authority brings to an end any period during

¹ SI 2007/457.

² See article 6 of the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 2013/1488).

³ See article 3(b) of the Growth and Infrastructure Act 2013 (Commencement No. 3 and Savings) Order 2013 (SI 2013/1766).

⁴ “Owner” is defined in section 61(3)(a) of the 2006 Act.

which recreational use ‘as of right’ has taken place on the land to which the statement relates. Such a deposit does not prevent the accrual of any future period of use “as of right”, but subsequent landowner statements can be deposited to interrupt future periods of such use.

6. The mechanism for depositing a ‘landowner statement’ is based on the regime in Section 31(6) of the Highways Act 1980 (the “1980 Act”) for a landowner to deposit statement and map followed by subsequent declarations with an appropriate council⁵ to counter the deemed dedication (under Section 31(1) of that Act) of ways across the land in question as highways. Section 13 of the 2013 Act has amended (in relation to land in England⁶) the form and procedure for making deposits under Section 31(6) of the 1980 Act in order to align it with that for depositing a ‘landowner statement’ under Section 15A(1) of the 2006 Act. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013⁷ (the “2013 Regulations”), which commenced on 1 October 2013, prescribe an application form which can be used by landowners to make deposits under Section 31(6) of the 1980 Act and the deposit of a ‘landowner statement’ under Section 15A(1) of the 2006 Act⁸.

7. You can find a copy of all the legislation mentioned above, and the associated explanatory notes, at www.legislation.gov.uk.

8. In this guidance, we refer to different provisions contained in Section 15. For example, Section 15(1) means subsection (1) of Section 15 (that is, the first part of Section 15 marked with a (1)).

Further guidance

9. This guidance provides only an overview of the legislation and the procedures for an application to register a new green. You can find a detailed interpretation of the criteria for registration in our *Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation* at Chapter 7.10, but please disregard everything else because that information applies only to the pioneer areas (see Coverage of England below). Whilst the criteria are the same throughout England, a slightly different process applies in the pioneer areas.

10. Guidance on Sections 15A and 15B (landowner statements and their registers) and 15C and Schedule 1A of the 2006 Act (exclusion of the right to apply to register land as a town or village green) has been published. It is aimed at commons registration authorities, not applicants, but provides a detailed explanation of the legislative changes and how they

⁵ “Appropriate council” is defined in Section 31(7) of the 1980 Act and in practice will usually be the same authority as a commons registration authority.

⁶ The position in Wales remains unchanged although Section 13 does contain a restatement of the law in relation to Wales.

⁷ SI 2013/1774.

⁸ See regulation 2(2)(a) of and Schedule 1 to the 2013 Regulations.

work. In particular, Chapter 2 contains a useful Q&A section which may be of assistance to applicants. A copy can be found at the link in paragraph 12 below.

11. The Open Spaces Society is a source of useful information on town and village greens and produces a number of helpful publications on the subject including *Getting Greens Registered — a guide to the law and procedure for town and village greens*, and *Our Common Land — the law and history of common land and village greens*. *Getting Greens Registered* also includes an evidence questionnaire to use in support of a claim for registration. The Society can be contacted at 25A Bell Street, Henley-on-Thames, Oxon RG9 2BA, telephone 01491 573535, website: www.oss.org.uk.

12. General information about common land and town and village greens, the implementation plans for other sections of the Commons Act 2006, further copies of this guidance and the application form (form 44) can be accessed via Defra's website at: www.gov.uk/town-and-village-greens-how-to-register.

Coverage of England

13. These guidance notes apply only to England outside the pioneer implementation areas for Part 1 of the Commons Act 2006. Different rules apply in relation to the pioneer implementation areas, and in Wales.

14. The pioneer implementation areas in England are: Devon, Kent (but not including unitary authorities in these first two counties), Cornwall, Hertfordshire, Herefordshire, Lancashire (but not Blackpool), and Blackburn with Darwen. If you want to apply to register a green in any of these areas, you should refer to the separate guidance to applicants in the pioneer implementation areas available from the Government website, at: www.gov.uk/common-land-management-protection-and-registering-to-use#commons-registration.

15. In the pioneer implementation areas, you should not apply using form 44, but you should ask your registration authority to supply you with a form for the purposes of applying to register a town or village green under Section 15. The arrangements for applying in the pioneer implementation areas differ from those in the rest of England, and your application will be refused in those areas if your application is made in accordance with this guidance.

16. This guidance does not apply to Wales so if you want to register a green in Wales, you should seek advice from the registration authority.

Disclaimer

17. These guidance notes are non-statutory. They do not form part of the regulations and have no legal effect. They provide guidance on the main features of the application process and do not attempt to provide a comprehensive explanation of every issue.

18. The registration of town or village greens is a complex area of law. The courts have been asked to rule on the law on a number of occasions and we expect they will continue to do so. This guidance should therefore not be regarded as definitive. It is for commons registration authorities to interpret the legislation in determining applications for the registration of new greens. You may wish to seek your own independent legal advice before proceeding with an application.

Registration authorities

19. You must apply to the registration authority for the area of land which you want to register as a town or village green. This is normally the county council, unitary authority, metropolitan district council or London Borough council. If the land comes under the jurisdiction of more than one registration authority, because it straddles their boundary, we suggest that you apply to the registration authority within whose area the majority of the land lies. If that is incorrect the registration authority will advise you.

20. Sometimes, one registration authority may arrange that another neighbouring registration authority should deal with applications for registration of greens in its own area. If this happens, your registration authority will pass on your application to the other authority.

Areas exempt from registration

21. The New Forest, the Forest of Dean, and Epping Forest all have special status and you cannot register land as a town or village green in these areas. The registration authority for the relevant area will be able to advise you on the boundaries of the forests in case of any doubt.

Who may apply for registration?

22. Anyone may apply to register land as a green meeting the criteria in Section 15(1) of the Act, provided the right to apply has not been excluded in relation to the land under new section 15C(1). The right to apply for registration of a town or village green is excluded when a trigger event has occurred within the planning system in relation to the land. This rule applies even where a trigger event occurred prior to commencement of Section 15C (i.e. before 25 April 2013). Trigger events are prescribed by Schedule 1A to the 2006 Act and an example of such an event is where a planning application is first publicised. If the right to apply for registration of a green is excluded in relation to the land you wish to register then the registration authority cannot consider any application to register that land unless and until a terminating event which corresponds to the trigger event occurs in relation to that land.

23. Each trigger event has corresponding terminating events and these are set out in the second column of Schedule 1A. Broadly, terminating events are events where the prospect of developing the land comes to an end – the full list of such events is set out in Schedule 1A. Where the right to apply for registration of a green has been excluded because a trigger event has occurred, if one of the corresponding terminating events occurs this will mean that the right to apply for registration of the land as a green will again become exercisable. As with trigger events, this rule applies even where a terminating event occurred prior to the commencement of Section 15C. For example, one of the terminating events corresponding to the first publication of an application for planning permission in relation to land is where planning permission is refused, all means of challenging the refusal are exhausted and the decision to refuse planning permission is upheld (including circumstances in which the time limit for an appeal expires without such an appeal being made).

24. The changes made by Section 15C and Schedule 1A apply from 25 April 2013 and applications under Section 15(1) made before that date are unaffected.

25. In any case, however, whenever the commons registration authority receives an application it should seek confirmation from every local planning authority for the land in question, as well as the Planning Inspectorate, as to whether a trigger or terminating event has occurred in relation to the land. This will enable it to determine whether the right to apply for registration of land as a green is exercisable at the time the application is made.

26. If you are a landowner you may register your land voluntarily as a green under Section 15(8). This is covered in more detail below. Applications under Section 15(8) are unaffected by new Sections 15C and Schedule 1A.

27. In both cases you must apply using form 44. This is available from the registration authority or can be printed from the Government website at: www.gov.uk/town-and-village-greens-how-to-register. The procedure for registration will be simpler if you are applying voluntarily as a landowner to register land as green, because the registration authority will not require evidence of the use of the land.

Qualifying criteria for registration where the application is under Section 15(1)

28. Before applying, you are advised to contact the commons registration authority informally to establish whether the right to apply has been excluded in relation to the land you wish to register by virtue of Section 15C. If the right to apply has been excluded in relation to the land then the registration authority cannot consider your application.

29. Where the right to apply remains exercisable, in preparation for your application you will need to assess whether the recreational use of the land by local people meets the strict tests for registration.

30. Your application must show that use of the land meets one of the criteria set out in Sections 15(2) or 15(3)⁹. These criteria are alternatives, so you will need to see which one of them (if any) applies to your particular circumstances.

31. Whether you apply under Section 15(2) or 15(3), your application must show that a significant number of local people have indulged in lawful sports or pastimes ‘as of right’ (i.e. without permission, force or secrecy) on the land for at least 20 years, rather than ‘by right’ (i.e. in exercise of a legal right to do so). These requirements reflect the ancient law of custom, where long use ‘as of right’ created a presumption that the local inhabitants had established recreational rights over the land.

32. You should look very carefully at the criteria for registration in Section 15 of the 2006 Act. It will help your case if you are able to find a range of witnesses who can provide detailed statements about the qualifying use of the land.

Period of use ‘as of right’

33. Your application will be examined by the registration authority against the criteria in Section 15(2) or 15(3), as you have indicated on the form. It must meet one of these tests to be properly considered:

Use continuing — Section 15(2) applies where the land has been used ‘as of right’ for lawful sports and pastimes for 20 years or more before the application is made, and this use continues¹⁰ at the date you apply.

Use ended no more than one year ago — Section 15(3) applies where recreational use ‘as of right’ for 20 years or more ended no more than one year before the date you apply¹¹.

34. The deadlines for making an application are not flexible so if you do intend to apply for registration, you must keep to them. It is worth noting that any period during which the right to apply for greens registration is excluded under Section 15C(1), is disregarded. In other words, a trigger event causes the period of grace in Section 15(3)(c) to cease to run and such period would continue to run again only where a corresponding terminating event occurs in relation to the land. For example, a trigger event occurs in relation to land at a time when six months of the grace period remains. If a corresponding terminating event occurs on that land, then the period during which the right to apply was excluded will be disregarded and there would be a further six months during which an application for registration of land as a green could be made.

⁹ Section 15(4) became redundant on 5 April 2012.

¹⁰ For this purpose, recreational use ‘as of right’ is deemed to continue if, after 20 years or more of such use, permission is given for local people to use the land. This is explained in more detail in the section on ‘Permission to use the land’ below.

¹¹ As stated in paragraph 4 above, the period of grace in section 15(3)(c) of the 2006 Act, in relation to land in England, was reduced from two years to one year with effect from 1 October 2013.

35. The registration authority will also look for evidence of the other criteria in Sections 15(2) or (3) having been met, namely that:

- a significant number of
 - the inhabitants of any locality, or any neighbourhood within a locality
 - indulged...in lawful sports and pastimes
 - as of right
 - on the land
 - for a period of at least twenty years;
- where relevant, the date of cessation of such use;
 - where relevant, any interruption of such use owing to statutory periods of closure;
 - where relevant, any planning permission affecting the land.

36. In order to understand the meaning of the elements described above you should read Defra's interpretation of these criteria in Chapter 8.10 (paragraphs 8.10.13 to 8.10.61) of the *Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation*¹². But you should disregard anything regards the procedure for applying as the procedure is slightly different for applications made in the pioneer areas (the criteria is the same throughout England).

37. Following the introduction of the regime for depositing 'landowner statements' under Sections 15A and 15B of the 2006 Act, which allow landowners to bring to an end any accumulated years of recreational use of land as of right, it is strongly advised that before applying you establish whether a landowner statement has been deposited with regards to the land for which you intend to apply for registration. The common registration authority maintains a register of landowner statements, both in hard copy and on its website, which should be searchable by postcode and keywords. The register contains copies of the maps which accompany landowner statements and other key details including when the statement was deposited. Regulation 3 of the 2013 Regulations makes provision as to when a statement under Section 15A(1) is treated as having been deposited. By reviewing the register you can establish whether the land in question has been the subject of a landowner statement and therefore determine whether you have accrued the requisite 20 year period of use required to make a greens application under Section 15 of the 2006 Act (see *introduction* for further details).

38. The deposit of a 'landowner statement' interrupts recreational use 'as of right'. Where the 20 year period of requisite user has already accrued by the time the deposit is made and such use is continuing, the deposit of such a statement will bring such use to an

¹² www.gov.uk/common-land-management-protection-and-registering-to-use#commons-registration.

end. Thus, the deposit will trigger the grace period for making an application under Section 15(3) of the 2006 Act. Otherwise, the effect of depositing a 'landowner statement' under Section 15A(1) of the 2006 Act is to interrupt recreational use 'as of right', such that a new period of 20 years' requisite use will need to be accrued before a greens application can be submitted.

Land descriptions and maps

39. You must include with your application a map and description of the land claimed for registration as a town or village green. You must use an Ordnance Survey map, on a scale of not less than 1:2,500. You must show the land which you want to register by means of distinctive colouring sufficiently to enable it to be accurately identified by the registration authority (a coloured edging inside the boundary of the land may be the best method). The map must also be marked as an exhibit to the statutory declaration which accompanies the application (see *statutory declaration*). Further information about how to obtain Ordnance Survey large scale maps can be found on the internet at www.ordnancesurvey.co.uk or by calling 0845 605 0505.

40. If your application relates to land already registered as common land, your application need not include a map of the land, but you must include the register unit number.

Grounds of application and evidence

41. If your application is made under Section 15(1) of the Act, you will need to ensure that all of the evidence you have to support the nature and extent of use of the land 'as of right' is provided to the registration authority so that it can consider that evidence to see whether the land qualifies for registration. Witness statements, witness forms of evidence and photographs are likely to be helpful to your case. A sample of an evidence questionnaire to use in support of your claim can be obtained from the Open Spaces Society (see *further guidance*).

42. You should set out in your application, as briefly as possible, a summary of the case for registration and provide, on separate paper, a fuller statement of the facts supporting the claim. You should include information on the nature of the recreational activities that have taken place on the land, an estimate of the number of people undertaking these activities and of their frequency, and explain how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application.

43. The registration authority may decide to hold a hearing or inquiry into your application. The purpose of the inquiry will be to establish and test the evidence for and against registration of the land. It may be helpful to your case if witnesses are able to attend the hearing or inquiry to give evidence in person (even if similar evidence has been given in writing). Anybody attending the hearing or inquiry may be questioned about their

evidence by the person in charge, or by objectors to the application (this is known as cross-examination).

Voluntary registration where the application is under Section 15(8)

44. If you are the owner of land, you may apply under Section 15(8) of the 2006 Act to register it voluntarily as a green. You cannot do this unless you have first obtained the consent of any lease or charge holder of the land, such as a tenant, or a mortgagee. You must provide evidence that any 'relevant leaseholder', and the proprietor of any 'relevant charge' over the land, consent to the application. These terms are defined in Section 15(9) and 15(10) of the 2006 Act. In such cases you will need to consult these people in advance of the application to inform them of your intention to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a statement of the nature of their relevant interest in the land, and their formal consent to the application.

45. You will need to confirm in the statutory declaration that:

- you the applicant are the owner of the land and are applying to register the land as green;

and either that

- you have obtained and included with the declaration all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land;

or

- no such consents are required.

46. In some cases the registration authority may decide to ask you for further evidence of your ownership before it accepts your application.

Supporting documents

47. You must include with your application a copy of every document which might be relevant to the application which is in your possession or control (even if it would not be helpful to your application). You are recommended not to forward the original of any deed or other private document. Instead, you should enclose a copy, preferably indorsed with a certificate signed by a solicitor that it has been examined against the original: in such a case, you should indicate, either on the copy itself or on the application form, who has the original and where it may be inspected. If any related document is believed to exist, but

neither the original nor a copy can be produced, this should be mentioned in question 11 of the application, where you should describe the missing document and explain why it cannot be produced. Any inquiry or hearing into the application may ask that the original document be produced.

Statutory declaration

48. You must make a statutory declaration, confirming the truth of the evidence given in your application, before a justice of the peace, practising solicitor, commissioner for oaths or notary public. You may be asked to pay a fee for this service. Each map accompanying the application and referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A map is marked by writing on the face in ink an identifying symbol such as the letter 'A'. If there is more than one map a different identifying symbol must be used for each. On the back of the map it must state: *this is the exhibit marked 'A' referred to in the statutory declaration of (name of declarant) made this (date) before me (signature and qualification).*

49. You are responsible for telling the truth in presenting the application and accompanying evidence and should be aware that your statutory declaration is a sworn or affirmed statement of truth to that effect. It is a criminal offence to deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

Action by the registration authority in deciding an application

50. The notes in this Section provide some guidance on what will happen to your application after you have sent it to the registration authority.

If you are applying under Section 15(1)

51. The registration authority will stamp a date of receipt to your application when you send it to the registration authority. That date may be important, because it is the date against which the time limits on applications in Section 15(3) apply. The registration authority will formally acknowledge receipt of your application provided the right to apply has not been excluded in relation to the land under Section 15C and Schedule 1A. The registration authority will need to seek confirmation from the Local Planning Authorities for the land, as well as the Planning Inspectorate, on whether trigger or terminating events have occurred in relation to the land before it can formally acknowledge receipt of the application.

52. If a receipt is not received within thirty working days you should contact the registration authority. Sometimes the registration authority may decide that the application is incomplete or otherwise unacceptable, but consider that it could be put right. If that

happens, the registration authority may return the application to you and allow you to amend and resubmit it with the necessary changes.

53. The registration authority will now look carefully at the evidence in your application. It may decide that your application cannot be accepted (e.g. because the evidence is clearly insufficient to support the application, or because a 'landowner statement' under Section 15A(1) of the 2006 Act was deposited) and will reject your application without taking any further steps.

54. Otherwise, the registration authority will publicise your application (for example, by sending notice of the application to the landowner and publishing the notice in the local newspaper) and consider it further in the light of any objections received. You will be supplied with copies of all objections which are to be considered and will have a reasonable opportunity of answering them. If you ask to make any significant amendments to your application at this stage, and the registration authority agrees to accept the amendments, it may be necessary for the authority to publicise the application again.

55. The registration authority may decide to inquire into the application. This may take the form of a hearing before an officer of the authority or of a neighbouring authority, or the case may be heard before a committee of the authority. Alternatively an independent inspector may be asked to conduct a public inquiry. Some registration authorities engage the services of a barrister for this purpose or use an inspector provided by the Planning Inspectorate. A hearing or inquiry is particularly likely if the registration authority or another local authority owns the land, so that the evidence may be tested impartially. The Court of Appeal has ruled that in determining applications where there is a dispute, the registration authority should consider convening such a hearing or inquiry¹³. Lord Hoffman also expressed the view in the *Trap Grounds* case that the registration authority has no duty to look for evidence or to help present the applicant's case in the best way¹⁴. It is entitled to deal with the application and the evidence as presented by the parties.

56. The authority will reach a final decision on the application based on all the facts and evidence presented about the location of the land, the number of local people using it and the nature and frequency of the recreational use they make of it.

57. The registration authority will inform you whether the application has been accepted or rejected. If it is accepted, the land will be registered as a town or village green, and you will be supplied with details of the registration. If it is rejected, you will be notified of the rejection.

¹³ *R (Whitney) v The Commons Commissioners*. The full text of the judgment can be found at www.bailii.org/ew/cases/EWCA/Civ/2004/951.html.

¹⁴ *Oxfordshire County Council v Oxford City Council*. The full text of the judgement can be found at www.bailii.org/uk/cases/UKHL/2006/25.html.

If you are applying under Section 15(8)

58. The registration authority will formally acknowledge receipt of your application. If a receipt is not received within ten working days you should contact the registration authority. If the registration authority is satisfied that your application is properly made, the land will be registered as a town or village green, and you will be supplied with details of the registration. An application cannot be rejected, but it may be returned if you appear not to be the owner of the land, if any necessary consent has not been obtained, or the application is otherwise incomplete.

Amendment of an application and part registration

59. In the *Trap Grounds* case the House of Lords concluded that registration authorities can exercise discretion in accepting amendments to an application form, or register only part of the area of land claimed if only that part meets the registration criteria. In deciding how to exercise its discretion, the registration authority will consider what would be fair to all the parties affected by the application.

60. Where part of the land included in a greens application is excluded from the right to apply under Section 15(1) by virtue of Section 15C(1), that part cannot be considered for registration as a new green. However, for the portion of land not subject to the exclusion, the application should proceed as usual.

Repeated and withdrawn applications

61. You may decide to resubmit your application for registration should you consider that you have significant new evidence that supports your case or that new legal criteria or case law have changed the position. In Defra's view the registration authority is required to consider a revised application, subject to any relevant time limits in Section 15 of the 2006 Act. But the authority would be able to summarily reject repeated successive applications that do not raise any new issues for consideration. If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the evidence available.