

2010 No.

COMMONS, ENGLAND

**The West Barsetshire Commons Council Establishment Order
2010**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st July 2010</i>

The Secretary of State, has published a draft of this Order in the County of Barset and invited representations about it in accordance with section 27(2) of the Commons Act 2006(a).

Having regard to the representations made in accordance with section 27(4)(a) of that Act, and, in accordance with section 27(5) of that Act, having particular regard to representations received from persons of a kind there specified, the Secretary of State is satisfied that there is substantial support for the making of this Order.

In exercise of the powers conferred by sections 26, 29(3) and (4), 30, 31(1) to (4) and 59(1) of that Act, the Secretary of State makes the following Order.

Title and commencement

1. This Order may be cited as the West Barsetshire Commons Council Establishment Order 2010 and comes into force on 1st July 2010.

Interpretation

2. In this Order—

- (a) “the 2006 Act” means the Commons Act 2006;
- (b) “active grazier” means—
 - (i) in relation to the appointment of the first members of the Council, a commoner who the officer appointed under paragraph 1 of the Schedule determines has grazed animals upon one of the Commons in the period of 12 months immediately preceding the date of coming into force of this Order;
 - (ii) in relation to subsequent appointments, a commoner who is registered under article 8(2)(a) in the register kept by the Council pursuant to article 8;
- (c) “the appointed day” means 1st October 2010;
- (d) “commoner” has the meaning it is given in the Standard Constitution;

(a) 2006 c.26; section 61(1) defines the “appropriate national authority” as the Secretary of State, in relation to England.

- (e) “the Commons” means the areas referred to in article 3;
- (f) “the Council” means the West Bassetshire Commons Council established by article 3;
- (g) “the Standard Constitution” means the constitution which, by virtue of section 29(2) of the 2006 Act, applies to the Council (subject to contrary or inconsistent provision in an order under section 26 of that Act(a)), being the constitution set out in the Schedule to the Commons Councils (Standard Constitution) (England) Regulations 2010(b).

Establishment of the Council

3. With effect from the appointed day a commons council, to be known as the West Bassetshire Commons Council, is established for the areas of registered common land known as Allington Common, Framley Common and Hoggstock Common and registered in the register of common land kept by Basset County Council as register units CL16, CL17 and CL18.

Membership of the Council

- 4.—(1) The Council is to consist of not less than 10 and not more than 12 members, of whom—
- (a) three are to be elected by the active graziers on Allington Common from among themselves;
 - (b) two are to be elected by the active graziers on Framley Common from among themselves;
 - (c) one is to be elected by active graziers on Hoggstock Common from among themselves;
 - (d) one is to be elected by the commoners who are not active graziers from among themselves;
 - (e) two are to be elected by the owners of the Commons to represent their interests;
 - (f) one is to be appointed by Plumstead Episcopi parish council; and
 - (g) up to two may be co-opted by the Council.

(2) Elections and appointments of members of the Council under sub-paragraphs (a) to (f) of paragraph (1) are first to be held and made before the appointed day and thereafter between 1st July and 30th September every third year.

(3) Each member so elected or appointed is to hold office (unless the member resigns or dies or paragraph (4) applies)—

- (a) in the case of the first election or appointment, from the appointed day until 30th September 2013; and
- (b) thereafter, for three years from the 1st October next following their election or appointment.

(4) A person elected as a member of the Council pursuant to any of sub-paragraphs (a) to (d) of paragraph (1) ceases to be a member of the Council if at any time during the period of membership that person ceases to fall within the description of persons mentioned in the relevant sub-paragraph.

(5) The Schedule makes further provision about the election and appointment of members.

Functions of the Council

5. The Council has the following functions—

- (a) making rules relating to—
 - (i) agricultural activities, the management of vegetation and the exercise of rights of common on the Commons; and
 - (ii) the leasing and licensing of rights of common;

(a) See section 29(5) of the Commons Act 2006.

(b) S.I. 2010/XXXX.

- (b) maintaining a register of the grazing of animals on each of the Commons in accordance with article 8;
- (c) maintaining and securing fences or other boundaries on land forming part of the Commons or between the Commons and adjoining land (including the enforcement of any obligation upon another person to fence against the Commons);
- (d) removing unauthorised fences or other encroachments upon the Commons;
- (e) removing animals unlawfully permitted to graze on the Commons;
- (f) managing vegetation on the Commons; and
- (g) managing the exercise of rights of common on the Commons.

Rules: further provision

6. Rules under article 5(a)(i) may in particular include provision—

- (a) limiting periods when animals may be turned out onto the Commons;
- (b) limiting the number of animals which may be turned out onto the Commons during a specified period (for example, by restricting each commoner with rights to graze animals from exercising more than a specified proportion of those rights during the specified period);
- (c) restricting or prohibiting the turning out of entire animals;
- (d) about measures to be taken to control disease among animals on the Commons, including temporary prohibition of the grazing of animals on the Commons;
- (e) about the supplementary feeding of animals on the Commons;
- (f) about standards of husbandry to be followed by persons keeping animals on the Commons; and
- (g) requiring, from any person to be entered in the register maintained in accordance with article 8, the information described in that article.

Procedure for making, amending or revoking rules

7.—(1) Rules to be made under article 5(a), or any amendments to such rules (other than an amendment consisting solely of the revocation of one or more rules), must be confirmed by the Secretary of State before coming into force.

(2) At least one month before it applies to the Secretary of State for confirmation of the proposed rules, the Council must—

- (a) publish notice of its intention to apply for confirmation—
 - (i) in one or more local newspapers circulating in the area of West Barsetshire, and
 - (ii) together with a copy of the proposed rules, on a website;
- (b) give notice in writing of its intention to such persons (if any) as it considers represent the interests of commoners;
- (c) deposit a copy of the proposed rules with—
 - (i) the proper officer of Barset County Council,
 - (ii) the proper officer of West Barsetshire District Council, and
 - (iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972(a) and make it available for inspection and the making of copies in accordance with section

(a) 1972 c.70. Section 225 contains amendments not relevant to its application to article 7. Section 228 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46. There are other amendments to section 228 which are not relevant to its application to the authorities referred to in article 7(2)(c).

228 of that Act, in each case until such time as the proposed rules in question are either confirmed or confirmation of them is refused; and

- (d) send a copy of the proposed rules to—
 - (i) every commoner whose name and address appears in the register maintained in accordance with article 8; and
 - (ii) every person known to the Council to be an owner of land forming part of the Commons.

(3) The Council must on an application made to it provide to any person a copy of the rules (before or after confirmation), on payment of a charge of such amount as the Council may reasonably determine.

(4) If any written representations are served on the Council before it applies for confirmation of the rules, the Council must send a copy of the representations to the Secretary of State with the application for confirmation, and the Secretary of State must take account of any such representations in deciding whether to confirm the rules.

(5) The Secretary of State may confirm, or refuse to confirm, any rules submitted under this article for confirmation, but reasons must be given to the Council if the Secretary of State refuses to confirm them.

(6) Upon confirming any rules, the Secretary of State may fix the date on which the rules are to come into operation, and if no date is so fixed the rules shall come into operation one month after the date of their confirmation.

(7) When rules have been confirmed by the Secretary of State, the Council must, at least 14 days before the rules come into operation—

- (a) publish notice of their confirmation, together with a copy of the rules, on a website;
- (b) deposit a copy with—
 - (i) the proper officer of Basset County Council,
 - (ii) the proper officer of West Bassetshire District Council, and
 - (iii) the chairman of each parish council and parish meeting within the area of the Commons,

who must retain it in accordance with section 225 of the Local Government Act 1972 and make it available for inspection and the making of copies in accordance with section 228 of that Act, in each case for as long as those rules remain in force; and

- (c) give notice in writing to—
 - (i) such persons (if any) as it considers represent the interests of commoners;
 - (ii) every commoner whose name and address appears in the register maintained in accordance with article 8; and
 - (iii) every person known to the Council to be an owner of land forming part of the Commons,

of both the confirmation of the rules and the date on which they come into force.

(8) Where the Council is acting solely to revoke any rules made under article 5(a), not less than 14 days before the revocation comes into effect the Council must—

- (a) give notice in writing of the revocation, and the date on which it comes into effect, to—
 - (i) the Secretary of State;
 - (ii) the proper officer of Basset County Council;
 - (iii) the proper officer of West Bassetshire District Council;
 - (iv) the chairman of each parish council and parish meeting within the area of the Commons;
 - (v) such persons (if any) as it considers represent the interests of commoners;

- (vi) every commoner whose name and address appears in the register maintained in accordance with article 8; and
 - (vii) every person known to the Council to be an owner of land forming part of the Commons; and
- (b) publish notice of the revocation, together with a copy of the rules, on a website.

Register to be maintained by Council

8.—(1) The Council is to prepare before 1st April 2011, and thereafter to keep, a register containing the following information—

- (a) the name and address of each commoner who at any time exercises a right of common to graze animals on any area forming part of the Commons;
- (b) the name and address of each person who at any time exercises any other right to graze animals on any area forming part of the Commons;
- (c) the name and address of any other person who is a commoner and who applies to be entered in the register, together with a description of that person's right of common and an explanation of that person's entitlement to exercise that right;
- (d) as respects each person falling within paragraph (a) or (b) above—
 - (i) a description of that person's right of common, or other right, to graze animals and an explanation of that person's entitlement to exercise that right;
 - (ii) on which area forming part of the Commons that person grazes animals;
 - (iii) the number, types and breeds of animals which for the time being that person grazes on that area;
 - (iv) the period during which such grazing takes place; and
 - (v) the mark, tag or other method by which the ownership of those animals may be identified; and
- (e) such other information as the Council thinks fit,

(but not including information as to any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered).

(2) Any person who—

- (a) has lawfully grazed an animal or animals on any part of the Commons in the preceding 12 months, or
- (b) proposes to exercise a right to graze animals on any part of the Commons,

may apply to the secretary of the Council to be entered in the register, giving such information as is reasonably required.

(3) Any person who is entered in the register may, if—

- (a) that person is no longer grazing animals on the common, or
- (b) there is any other change in the relevant information recorded in the register,

apply to the secretary of the Council for the entry in the register to be amended or removed.

(4) Any member of the public may, on application to the secretary of the Council, make an appointment to inspect the register without charge.

(5) Any person objecting to any information recorded in the register, or to the omission of any information from the register, may complain in writing to the secretary of the Council, and the Council must consider the complaint and give the person notice of its decision in writing.

Appointment of reeves

9.—(1) The Council may appoint such persons as it thinks necessary to act as reeves for the purposes of—

- (a) enforcing or securing compliance with rules made by the Council; and
- (b) carrying out any activities on the Commons (such as managing vegetation, or removing animals turned out on to the Commons without lawful authority) in pursuance of the functions of the Council.

(2) Any reeve acting pursuant to an appointment under this article must carry a warrant issued by the Council as to that appointment and produce it if required.

Decisions requiring special majority

10.—(1) A decision by the Council on any of the matters specified in paragraph (2) must be made at a meeting of the Council and approved in a vote by a majority of at least two-thirds of the members present.

(2) Those matters are—

- (a) making, amending or revoking any rules;
- (b) making, amending or revoking any standing orders;
- (c) entering into any agreement under which the Council undertakes any obligation as to the manner in which it is to exercise any of its functions;
- (d) co-opting any person as a member of the Council.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

ELECTION AND APPOINTMENT OF MEMBERS

Election and appointment of first members of the Council

1. The Secretary of State must appoint a returning officer to facilitate the election of the first members of the Council.

2. For the purpose of the first elections of the members of the Council under article 4(1)(a) to (e), the returning officer must compile in relation to each of the Commons a list of each of the following—

- (a) persons who appear to the returning officer to be active graziers upon that common;
- (b) persons who appear to that officer to be commoners who are not active graziers; and
- (c) persons who appear to that officer to own the common or part of the common.

3. In relation to each list, only persons included on the list are entitled to vote in the election of members of the category listed.

4. Before finalising the lists under paragraph 2, the returning officer must—

- (a) by advertisement in a local newspaper circulating in the area of the Commons, specify a period (ending not less than 28 days after the date of publication of the notice) within which the draft lists may be inspected and representations may be made about them, and give details of the dates, times and place at which such inspection may be made, and of the website on which publication is required under sub-paragraph (c);
- (b) make available for inspection a draft of each list during the period and at the place specified under sub-paragraph (a); and
- (c) publish on a website both the notice and draft lists throughout the period specified under sub-paragraph (a).

5. In compiling and finalising the lists under paragraph 2(a) and (b), the returning officer must presume any declaration of entitlement to a right of common(a) contained in the register of common land kept by Basset County Council to be accurate.

6. The returning officer may request further information from any person who makes representations under paragraph 4(a), and in particular may require proof of ownership of, or (as applicable) other title to, land from—

- (a) any person claiming to be entitled to be included on a list under paragraph 2(a) or (b) as the owner or tenant of land to which a right of common is registered as being attached; and
- (b) any person claiming to be entitled to be included on a list under paragraph 2(c) as the owner of land forming part of the Commons.

7. In drawing up the final lists, the returning officer—

- (a) must take account, subject to sub-paragraph (b), of any representations received within the time specified under paragraph (4)(a) and any further information provided pursuant to a request under paragraph 6;

(a) Regulation 44 of the Commons Registration (England) Regulations 2008 (S.I. 2008/1961) provides for the making of declarations of entitlement to a right of common.

(b) must not take account of any matter which is, or was, capable of being registered under Schedule 3 to the 2006 Act, but which has not been registered.

8. The decision of the returning officer as to whether or not any person is entitled to be included on any list is conclusive, and the validity of the election shall not be questioned in any legal proceedings on the ground that any person should have been included in or omitted from any list.

9. The returning officer must, not less than 28 days before the first meeting of the Council, by advertisement in a local newspaper circulating in the area of the Commons—

- (a) give notice of the holding of the initial meeting of the Council; and
- (b) invite nominations in writing for election as members of the Council, specifying a date by which nominations must be received.

10. The only persons eligible to be nominated for election as members of the Council are—

- (a) in respect of persons to be elected under article 4(1)(a) to (c), the persons included on the relevant list compiled pursuant to paragraph 2(a);
- (b) in respect of persons to be elected under article 4(1)(d), the persons included on the relevant list compiled pursuant to paragraph 2(b);
- (c) in respect of persons to be elected under article 4(1)(e), the persons included on the relevant list compiled pursuant to paragraph 2(c), or any other person nominated by a person included on those lists.

11. Plumstead Episcopi parish council must, before the date of the first meeting, notify the returning officer in writing of the name of the person whom it wishes to appoint as a member of the Council pursuant to article 4(1)(f).

12. At the first meeting—

- (a) the returning officer must announce the valid nominations received for membership of the Council; and
- (b) in relation to any of the categories mentioned in article 4(1)(a) to (e)—
 - (i) where the number of valid nominations does not exceed the number of vacancies to be filled, the returning officer must declare the candidate or candidates to be duly elected unopposed; and
 - (ii) in any other case, the returning officer must cause an election by ballot of those present and entitled to vote to be held at the meeting.

Election and appointment of subsequent members

13. For each subsequent occasion on which new members of the Council are to be elected under any of sub-paragraphs (a) to (e) of article 4(1), or for the purposes of any election to fill a casual vacancy caused by a person so elected ceasing to be a member, the secretary of the Council or another member chosen by the Council is to act as returning officer.

14. On any such subsequent occasion, a person may only be elected as a member or vote in an election if—

- (a) in the case of an active grazier, the person is entered under article 8(1)(a) in the register kept by the Council;
- (b) in the case of any other commoner, the person is entered under article 8(1)(c) in the register;
- (c) in the case of an owner of any part of the Commons, the person provides the returning officer with such evidence of his ownership as the returning officer may reasonably require.

15. Where the membership of the person appointed by Plumstead Episcopi parish council expires, or a casual vacancy arises for that position, the parish council must notify the secretary of the Council of the person whom it wishes to appoint as a member.

16. Members are to be elected or appointed, and any elections are to be conducted, in accordance with the standing orders of the Council.

General provisions

17. In any election of members of the Council—

- (a) each commoner entitled to vote is entitled to one vote;
- (b) each owner of the Commons entitled to vote has a vote that is weighted in proportion to the extent of his ownership, but may cast that vote only in respect of one candidate;
- (c) where two or more persons are commoners or owners by virtue of a joint holding, they are not each entitled to vote but may jointly nominate one of them to be entitled to vote; and
- (d) the returning officer may allow a person entitled to vote to appoint a proxy in writing to vote on that person's behalf.

18. A declaration signed by the returning officer of the election of a person to the Council is evidence of such election.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes, with effect from 1st October 2010, a commons council (“the Council”) for the areas of registered common land known as Allington Common, Framley Common and Hoglestock Common within West Barsetshire (*article 3*).

The standard constitution for commons councils, as prescribed in the Commons Councils (Standard Constitution) (England) Regulations 2010 (S.I. 2010/XXXX), applies to the Council by virtue of section 29(2) of the Commons Act 2006 (c. 26).

This Order—

(a) makes provision as to the Council's membership, and its election or appointment (*article 4 and the Schedule*);

(b) confers functions on the Council, including that of making rules relating to agricultural activities, the management of vegetation, and the exercise of, and the leasing and licensing of, rights of common (*articles 5 and 6*);

(c) requires that any rule made or amended by the Council (other than an amendment consisting solely of the revocation of any previously made rule) must be confirmed by the Secretary of State before it shall come into force, and describes the procedure for publicising any rules it makes, and for obtaining the Secretary of State's confirmation of them (*article 7*);

(d) describes the information to be included in the register of grazing required to be prepared and maintained by the Council (*article 8*);

(e) permits the Council to appoint reeves, for the purpose of enforcing or securing compliance with any of its rules, and for carrying out other of the activities in pursuance of the council's functions (*article 9*);

(f) specifies those matters (including the making, amending or revoking of any rules) in which a decision of the Council requires a special majority of two-thirds of the members present (*article 10*).

A full impact assessment of the effect this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk.