

Common land and village greens

Notes on completing an application to deregister, or to deregister and exchange, common land or town or village greens

Commons Act 2006: Section 16

Introduction

These notes are to help you when applying to deregister, or to deregister and exchange, common land or town or village greens. References throughout these notes to 'common land' apply equally to 'town or village green' (except in relation to the transfer of "relevant provisions" – see Annex E to these notes).

Natural England's [MAGIC](#) interactive map provides geographic information about the natural environment. Using MAGIC may help you answer some of the questions on the Section 16 application form e.g. whether the land(s) is subject to rights of access under Section 193 of the Law of Property Act 1925 or is crossed by a publicly maintainable public right of way or contains Scheduled Ancient Monuments.

Before reading these notes and completing the application form, please read Annex A to these notes. Annex A explains what you should consider before deciding to make an application under Section 16 and the steps you should take before applying.

Section 16 of the Commons Act 2006 applies only to common land and town or village greens registered under the Commons Registration Act 1965 or the Commons Act 2006.

Fee payable

A non-refundable fee of £4,900 is payable for all applications under section 16 to deregister/exchange common land. A cheque for this amount, payable to "The Planning Inspectorate", must accompany every application. Alternatively, if you wish to pay by BACS the Planning Inspectorate's bank details are available on request.

SECTION A – The common land (or town or village green) to be deregistered – the “release land”

Note 1

The applicant must be the freehold owner of the release land. Where land is in joint ownership all the joint owners must sign the application. In the case of land owned by a corporate body, the application must be made by that body, and must be signed by authorised persons or made under seal. If any of the lands are crossed by a publicly maintainable public right of way such as a highway, bridleway, carriageway or footpath the relevant highway authority should be a joint signatory to the application.

If the owner of the release land does not also own the replacement land the owner/s of the replacement land must also join in the application.

Note 2

Before applying, check with the commons registration authority (usually the county council or unitary authority) that the land is registered as a common under the Commons Registration Act 1965. If the land is so registered you should send us copies of the register with your application. This will include details of land, rights and ownership, and the register map.

The commons register will not show which commoners are actively exercising their rights, but your pre-application consultation should provide this information.

Note 3

Any documents you send us, including representations from interested parties, will be made available to anyone on request. You should make the relevant parties aware of this. **See [Guidance Sheet 13: Privacy Policy](#) for more information.**

Note 4

You should pay particular attention to the description of the land(s) to be exchanged so that it can inform the description in the advertisement and in the deregistration Order (if the application is allowed and the Order is made). The description should be sufficiently detailed so that the land(s) can be easily identified.

SECTION B – The land to be given in exchange – the “replacement land”

Note 5

The applicant must be the freehold owner of the replacement land. Where land is in joint ownership all the joint owners must sign the application. In the case of land owned by a corporate body, the application must be made by that body, and must be signed by authorised persons or made

under seal. If any of the lands are crossed by a publicly maintainable public right of way such as a highway, bridleway, carriageway or footpath the relevant highway authority should be a joint signatory to the application.

If the owner of the replacement land does not also own the release land the owner/s of the release land must also join in the application.

If the release land is not more than 200 square metres section 16 does not require you to offer replacement land but says you may do so. In deciding whether or not to offer replacement land you should refer to paragraphs 3.2, 5.2 and 5.3 of Defra's Common Land consents policy (November 2015).

Where the release land is not more than 200 square metres and you are not providing replacement land you should explain fully why such land is not being provided; this should include a description of any alternative courses of action that you have considered and indicate, for example, why there is no need for replacement land to be provided.

Note 6

The replacement land must not already be registered as common land or as a town or village green (see Commons Act 2006 section 16(5)(b)).

SECTION C – Access arrangements and current features of the lands

Note 7

The public has a right of access to almost all registered common land (by virtue of the Countryside and Rights of Way Act 2000 or earlier legislation), and town or village greens are subject to rights for lawful sports and pastimes by local inhabitants. The land may also be subject to rights of access under Section 193 of the Law of Property Act 1925 and this includes rights of access for horse riders.

Note 8

If the exchange is for the purpose of providing a vehicular access, you should note the House of Lords judgment [Bakewell Management Limited \(Respondents\) v Brandwood and others \(Appellants\) 2004 \[2004\] UKHL 14](#).

This judgment may provide a solution for anyone who has to drive across common land to access their property but who has previously been unable to acquire a legal right to do so. You should note that town and village greens are protected by legislation which could prevent the driving of vehicles on them. Further advice is available on the [GOV.UK website](#).

Note 9

Where replacement land is being offered it need not be adjacent to the common containing the release land although this is preferable. Your proposal should explain how access to the replacement land will be provided and, if the replacement land is adjacent to the common containing the release land, how it would be integrated into the remainder of the common.

You should give details of existing boundary features on both the release and replacement land and on any land abutting the replacement land.

SECTION D – Details of the exchange or deregistration

Note 10

You should explain fully the reasons for the proposed deregistration or exchange. You should also address such questions as:

- What options you have considered for achieving your aims and why did you decide on this one?
- Were any options considered which did not involve the deregistration of any common land, or which involved the deregistration of a smaller area of common land?
- Why were these options rejected?

You should consult informally on your proposals at an early stage in their development. See **Annex A** of these Notes for further guidance on informal consultation, with particular regard to the section on *What steps should I take before applying?*

Note 11

See Annex A to these Notes for further details of the issues that the Secretary of State must consider when deciding an application under section 16.

Note 12

If an application involves more than two parcels of land you must clearly identify which parcel of land is intended to replace which parcel of release land.

SECTION E – Designations

Note 13

It is particularly important to carry out pre-application consultation with Natural England where the land is designated as a Site of Special Scientific Interest (SSSI) because SSSIs are subject to their own special statutory protections. Similar considerations apply for land designated as a Special Area of Conservation (SAC), a Special Protection Area (SPA) or

Wetland listed in accordance with the Ramsar Convention. Data on designated areas can be found at: www.magic.defra.gov.uk .

Natural England will advise you on any constraints and requirements that may apply to any operations that you propose to carry out on the release land if it is deregistered.

Natural England contact details:

Natural England
Consultation Service
Hornbeam House
Electra Way
Crewe Business Park
Crewe
Cheshire
CW1 6GJ
Email: enquiries@naturalengland.org.uk

Note 14

Historic England is also one of the bodies you must consult when making a section 16 application, giving it an opportunity to write to us with its views within 28 days.

Data on Scheduled Ancient Monuments can be found at:
www.magic.defra.gov.uk .

Historic England contact details:

Historic England Customer Services Department
PO Box 569
Swindon
SN2 2YP
Tel: 0870 333 1181
Fax: 01793 414926
Email: customers@HistoricEngland.org.uk

SECTION F – Adjacent common land

Note 15

In deciding your application, the Secretary of State will take account of any previous applications to deregister any part of the common and the potential impact of the proposed exchange on the common itself and on all common land in the vicinity.

SECTION G – Advertisement and consultation

Note 16

You should advertise your proposal within 7 days of making the application and allow at least 28 days for interested parties to write to us with their views.

The advertisement must be based on the form of notice at **Annex B**. If the advertisement is inaccurate we may ask you to re-advertise.

When completing the notice:

- Your description of the lands in the schedules to the notice should be accurate and detailed enough for anyone to easily identify the lands so that they can comment on the application if they wish. You should provide Ordnance Survey grid references unless the location of the land would be quite clear to someone unfamiliar with the lands;
- The address for inspecting the application form and map should be easy for interested parties living near the common to get to. Applicants often use public libraries, council offices, or post offices. The complete address should be given. A private address is not normally appropriate. Similarly, it is not appropriate to restrict viewing by appointment only; the location should be open to the public during advertised opening hours. It is helpful if all or part of the information is also available on a website, but the information must still be available in a printed form for public inspection.
- The closing date for writing to us must be no less than 28 days from the first date of publication of the notice. You must ensure that those individuals and organisations you write to receive the notice at least 28 days before the closing date. It may be helpful to allow more than 28 days.

The notice must be:

- advertised in a main local newspaper circulating in the area in which the release land and any replacement land are situated;
- sent to all the organisations and individuals listed in Section H of the application form, using the letter at **Annex C**;
- posted at the main points of entry to the release land and the replacement land. If there are no such places, the adverts must be posted at conspicuous places on the boundaries of the lands;
- kept at the inspection point with the application and the map.

You may also wish to send the notice to other bodies that you feel would be interested (for example, Wildlife Trust, Local Access Forum, Council for the Protection of Rural England, Ramblers' Association, local amenity society).

You must consult all registered commoners. You must write to the occupier of any property shown on the commons register as having rights of common attached to it, and any other person known to you as being entitled to exercise rights, if you believe that those rights are being exercised or are likely to be affected by the application.

You must write to us as early as possible, using the letter at **Annex D**, confirming that you have met the advertising requirements. We will not be able to progress your application until we have this confirmation.

Note 17

We will copy any representations on the application to you and ask for your comments within 21 days. We may then conclude that the application can be decided based solely on written evidence and a site visit, or that a public inquiry or hearing is needed. If there are no (or few) objections, it is more likely that a decision will be made solely on the basis of the written evidence and the findings of the site visit – see **Annex A**).

Evidence you submit, whether in the application itself or in correspondence, will be disclosed to interested parties. Any responses you make to representations should, therefore, only relate to the points raised, and should not refer to matters which you would not wish to be disclosed. See [Guidance Sheet 13: Privacy Policy](#) for more information.

Note 18

The Open Spaces Society campaigns to protect common land, open spaces and public rights of way in England and Wales and is one of the organisations you must consult.

Open Spaces Society contact details:

Open Spaces Society
25a Bell Street
Henley-on-Thames
Oxfordshire RG9 2BA
Tel: 01491 573535
Fax: 01491 573051
Email: hq@oss.org.uk

SECTION H – Maps

Note 19

You should provide **two identical copies** of an up-to-date map with your application. This is in addition to the register map, which you must also send us a copy of (see **Note 2**). With regard to the application map:

- It is **essential** that the map is accurate because, if your application is successful, it will be attached to the decision and used by the

commons registration authority to amend the commons register;

- The map should be based on the latest edition of the Ordnance Survey Sheets on a scale of not less than 1:2,500 although a smaller scale may be used for mountain or moorland;
- Details of areas, lengths and important features not provided in the application form should be shown on the map. As far as possible give measurements of the boundaries along each piece of land. Ensure that the scale of the map is clearly shown;
- The release and replacement land should preferably be shown on the same map and must be shown by edgings of red and green respectively (i.e. release land edged in RED and replacement land edged in light GREEN). This map should also show (in dark green) the common land boundary in relation to the release and replacement lands (details of the common boundary are on the register map);
- If, due to their distance apart, the lands cannot be shown on one map at 1:2,500 scale, show the lands on separate maps at that scale and provide a third map on a smaller scale showing all the lands concerned;
- All maps should clearly show at least two road names or other features, or at least one full grid reference.

Annex A

PROCEDURAL ISSUES

What should I do before applying?

It is strongly recommended that you carry out extensive informal consultation **before** submitting an application. This may help you resolve any objections before applying.

Among those you should consider consulting informally are generally those whom you will later need to consult formally if you decide to apply:

- the commons council (if there is one)
- a commoners' association (if there is one)
- all active commoners
- other commoners whom you are reasonably able to identify
- others with an interest in the land, e.g. tenants, or those with easements or other rights over the land
- any relevant parish, district, city or county council
- Natural England (if your proposal might affect a site of special scientific interest)
- Historic England (if your proposal might affect a Scheduled Ancient Monument)
- National Park Authority (if the proposal is in a National Park)
- AONB Conservation Board or Joint Advisory Committee (if the proposal is in an AONB)
- Open Spaces Society
- other bodies with a specific interest in the land, for its flora or fauna (e.g. Wildlife Trusts, Local Access Forum)
- other bodies with an interest in access to the land (Ramblers' Association, British Horse Society, Cyclists' Touring Club, local walking and riding groups)
- local residents and civic amenity groups

You may find the guidance in Natural England's "[A Common Purpose: A guide to agreeing management on common land](#)" helpful when making an application.

How will my application be decided?

The Secretary of State's decision will be based on the merits of your proposal, and will balance all the interests in the common, taking account of all views expressed. The criteria that the Secretary of State will have regard to are set out in section 16(6) of the Act. These are:

(a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;

(c) the public interest, which includes the public interest in:

- nature conservation
- the conservation of the landscape
- the protection of public rights of access to any area of land, and
- the protection of archaeological remains and features of historic interest;

(d) any other matter considered to be relevant.

The Secretary of State will apply these criteria taking into account Defra's [Common Land Consents Policy Guidance](#).

How do I make an application under Section 16 and what will happen to it?

Steps for you to take

- Send your application to us on or just before the date on which you advertise it. You must advertise it within 7 days of making your application.
- Advertise your proposal by placing notices on the common and on the replacement land, and in a newspaper circulating in the area in which the release land and replacement land are situated, and send a copy to the parties listed at Section H of the Application Form and to anyone else you think may have an interest.
- Allow a minimum of 28 days, from full compliance with the advertising requirements, for people to write to us with their views.

Representations and determining your application

- We will acknowledge receipt of your application as soon as possible.
- Anyone may comment on your application.
- Any representations will be copied to you and we will ask for your comments on them within 21 days.
- Any exchange will normally conclude no later than the point at which interested parties have written to us for a second time, responding to initial comments from you, and we have your comments on those representations.
- We will arrange for an Inspector (who will normally decide the application on behalf of the Secretary of State) to visit the

application site(s) and see the land(s) at first hand. You and interested parties will be invited to attend the visit.

- We will inform you as soon as possible whether your application can be decided based solely on the written evidence and site visit, or whether a hearing or a public inquiry is needed.
- Where more evidence is needed a hearing or inquiry may be arranged. See [Guidance Sheet 3](#) for further advice on hearings and inquiries.
- All applications are subject to the same thorough examination whichever process is followed in determining them.

We will send you the decision on the application as soon as it is ready.

What happens if I make a mistake with my application?

Your application should be complete in all respects when you submit it (see checklist at end of the Application Form). If it is incomplete, incorrect, or it is unclear, we will ask you for the missing information. We cannot progress your application until all the required information is received, including your letter confirming that you have met the advertising requirements (see **Annex D**). Any omissions may lead to delays.

What happens if my application is successful?

If consent is given, a copy of the decision (which will include the Order) and the application map(s) will be sent to you, the Commons Registration Authority and all those who made representations on the application. All decisions (and map(s) if the application is allowed) will be posted on the [Gov.uk website](#). The Commons Registration Authority will be required to amend the register in accordance with the Order.

Annex B

Form of Notice advertising your proposals

Section 16 of the Commons Act 2006

Proposed deregistration of common land/town or village green at:

..... **COMMON/TOWN OR VILLAGE GREEN***
(*insert CL/VG unit registration number)

[Insert name(s) of applicant or joint applicants] has/have* applied to the Secretary of State for Environment, Food and Rural Affairs under section 16 of the Commons Act 2006 for land forming part of the above-mentioned registered common land/village green* (the "release land") to cease to be so registered. The Planning Inspectorate will decide the application on behalf of the Secretary of State.

The purpose of this application is to enable [insert details of project].

[Include the following paragraph if replacement land is to be offered:]
It is proposed that land (the "replacement land") be registered as common land/town or village green* in place of the release land.

The release land is described in the First Schedule to this notice, [and the replacement land is described in the Second Schedule].

A copy of the application form and accompanying documents can be inspected at(give the full address including postcode) between the hours of [list opening times, which must include all normal office hours] until ... [insert date at least 28 days after the publication of the newspaper]. A copy of the application may be obtained by writing to [give address].

Any representations in respect of the proposed deregistration [and exchange] should be sent in writing ON or BEFORE that date to: Common Land Team, The Planning Inspectorate, 3F Temple Quay House, Temple Quay, Bristol BS1 6PN or commonlandcasework@pins.gsi.gov.uk.

Representations sent to The Planning Inspectorate **cannot be treated as confidential**. They will be copied to the applicant and possibly to other interested parties. For information about how The Planning Inspectorate processes personal information please see the Common Land Privacy Policy at <https://www.gov.uk/government/publications/common-land-guidance-sheet-13-privacy-policy>

FIRST SCHEDULE

(The release land)

[Include the location and area in square metres]

SECOND SCHEDULE
(The replacement land)

[Include the location and area in square metres]

(Insert name and address of person making the application)
(Insert date)

** delete whichever does not apply*

Annex C

FORM OF LETTER TO SEND TO CONSULTEES ENCLOSING A COPY OF THE DRAFT NOTICE (allow 5 days for postal delays)

COMMONS ACT 2006 – SECTION 16

I am/We* are applying to the Secretary of State for Environment, Food and Rural Affairs (Defra) under section 16 of the Commons Act 2006 to deregister an area of [Name of] Common/Village Green [and to provide replacement land in exchange for the land to be deregistered]. The Planning Inspectorate will decide the application on behalf of the Secretary of State.

I am/We* are required to you give notice of our proposals and am/are* sending you a copy of the attached notice in order to comply with that requirement.

Section 16 of the Commons Act 2006 enables the owner of land registered as common land or a town or village green to apply to Defra for the land or part of the land to be released from registration. If the "release land" is more than 200 square metres in area, an application must be made at the same time to register "replacement land" as common land or a green in its place. If the release land is smaller than 200 square metres, a proposal for replacement land may (but need not) be included.

The decision will be based on the merits of the proposal, and will balance all the interests in the common, taking account of all views expressed.

Regard must be given to the criteria set out in section 16 of the Act.
These are:

(a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;

(c) the public interest, which includes the public interest in:

- nature conservation
- the conservation of the landscape
- the protection of public rights of access to any area of land, and
- the protection of archaeological remains and features of historic interest;

(d) any other matter considered relevant.

These criteria will be viewed in the light of the overriding objective of protecting, maintaining or improving the common, and of ensuring that the overall stock of common land is not diminished. This will enable the diversity, variety, and overall extent, of common land to be safeguarded.

Any objections or representations about the proposal should be sent to The Planning Inspectorate by the closing date specified in the notice.

** delete whichever does not apply*

Annex D

FORM OF LETTER FOR YOU TO SEND TO US CONFIRMING THAT THE ADVERTISING REQUIREMENTS HAVE BEEN MET

COMMONS ACT 2006 – SECTION 16

Further to my application dated (*insert date*), reference number (*if known*), I write to confirm that the advertising requirements set out in Section I of the application form and the related guidance notes have been met.

I confirm that:

A. I have published the notice in (*give the name of the main local newspaper in which the notice was published*) on (*give the date of the advert*). **A copy of the extract from the newspaper is enclosed.** (*This should be the entire sheet, including the extract itself, but also showing the name and date of the newspaper*).

B. I have sent a letter based on the one at Annex C of the guidance notes to all those listed in Section I of the application form. **A copy of the letter sent is attached.** Those consulted were as follows:

(*list all those consulted, including, for organisations, the name of the contact*)

C. I have posted notices at the main points of entry to the lands (*or, if there are no such places, at conspicuous places on the boundaries*), and will maintain them there until the end of the objection period.

D. I have placed a copy of the complete application, including the notice and map, at the inspection point given in the notice. These documents will remain there until the end of the objection period.

Annex E

Schemes of management, local Acts and other relevant provisions applying to the release land

Common land

Generally, if a section 16 application is allowed and a deregistration Order is made it will cease certain "relevant provisions" from applying to the release land and will transfer them to the replacement land (see Commons Act 2006 section 17(6)). "Relevant provision" means a provision contained, or made under,:

- (a) section 193 of the Law of Property Act 1925;
- (b) a scheme under the Metropolitan Commons Act 1866;
- (c) an Act under the Commons Act 1876 confirming a provisional order of the Inclosure Commissioners;
- (d) a scheme under the Commons Act 1899;
- (e) section 1 of the Commons Act 1908.

If a deregistration Order is made and you want it to include any special arrangements you should tell us precisely the effect that you wish the order to have.

Town and village greens

Section 17(6) only applies to common land and not to town and village greens. So, if an Order is made and the application relates to a town or village green, any "relevant provisions" will no longer apply to the release land and will not automatically transfer to the replacement land.

Where the release land is governed by a Scheme of Management, it will only apply to the replacement land if the Scheme is amended to include the replacement land; this is a matter for whoever is responsible for the Scheme.

If a deregistration Order is made and you want it to include any of the other "relevant provisions" outlined above, or any special arrangements, you should tell us precisely the effect that you wish the order to have.