

## THE RIGHTS OF WAY COMMITTEE

15 May 2009

## REPORT OF THE EXECUTIVE DIRECTOR OF PERFORMANCE

## The Commons (Schemes) Regulations 1982

**1. SYNOPSIS**

This report seeks to establish a process for consideration and making schemes under the 1982 Regulations. Such schemes provide a simple and inexpensive way to manage commons and village greens within Northumberland.

**2. IMPLICATIONS**

<b>Policy</b>	This report is consistent with the County Council's corporate objective of safeguarding and maintaining the environment.
<b>Finance and Value for Money</b>	Funding will be part of the consideration for individual proposals; schemes are recognised as being an inexpensive way of management.
<b>Personnel</b>	There are no significant issues relating to personnel arising from this report.
<b>Property</b>	The Commons or Village Greens concerned are often in unknown ownership under the protection of the local authorities.
<b>Crime and Disorder</b>	This report has considered Section 17 of the Crime and Disorder Act (CDA) and the duty it imposes and there are no major implications arising from it.
<b>Equalities</b>	The use of schemes can enable lawful works to be carried out on Commons & Village Greens to enhance their availability for all sections of society.
<b>Customer Considerations</b>	As for Equalities.

**3. RISK ASSESSMENT**

It is not considered that a full risk review is necessary.

#### **4. CONSULTATION**

The contents of this report have been considered by the Head of Legal Services.

#### **5. RECOMMENDATIONS**

The Committee is recommended to

- a.** note the contents of this report;
- b.** Approve the delegation of powers to the Director of Corporate Services (after consultation with the chairman of the Rights of Way Committee) to:
  - i.** agree to consult on proposals for individual schemes;
  - ii.** to make schemes where no substantive objections have been raised during the consultation
  - iii.** to enter into agreements with Parish/Town Councils or appropriate community groups for the management of individual commons or village greens.

#### **6. Background**

6.1 The Commons Act 1899 provides an easy process of enabling councils and National Park authorities to manage commons and village greens where their use for exercise and recreation is the prime consideration and where the owner and commoners do not require a direct voice in the management, or where the owner cannot be found.

6.2 The scheme must be in the form prescribed by the Commons (Schemes) Regulations 1982. It includes a power to provide temporary car-parking spaces on common land subject to the consent of the owner of the soil and of the Secretary of State being first obtained. In addition once a village green is subject to a scheme, the provisions of the Commons Act 2006 will apply to works authorisations, rather than having to rely on criminal provisions in Victorian legislation.

6.3 Some schemes were made by some of the Northumberland District Councils in the past, but practice was not consistent. It is envisaged that most schemes would be requested by parish/town councils to enable them to manage common land and greens within their localities. The Regulations require two notices in a local newspaper. It is suggested that cost is borne by the applicants.

6.4 The Regulations provide for access to the common to be granted by a scheme to the 'inhabitants' but the effect of section 15(2) of the Countryside and Rights of Way Act 2000 Act is that the right of access now extends to members of the general public.

6.5 Section 50 of the Commons Act 2006 amends the Commons Act 1899 so as to update the arrangements for making schemes of management. Defra expected to consult on draft new arrangements, and new model schemes, in late 2008 but nothing has yet emerged.

## **7. CONTACT OFFICERS**

This report has been prepared on behalf of the Executive Director of Performance by Stephen Rickitt. For further information please contact Stephen Rickitt on extension 3219.

## **8. BACKGROUND PAPERS**

No unpublished background papers but published information is available on the DEFRA website at

<http://www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/acts.htm>.

**Commons Scheme**  
**.....Village Green, Northumberland**

1. The piece of land together with ponds, streams, paths and roads thereon (if any), commonly known as .....Village Green, situate in the parish of .....in the county of Northumberland and hereinafter referred to as "the Common", as shown on a plan sealed by and deposited at the offices of the Northumberland County Council of County Hall, Morpeth, Northumberland NE61 2EF, hereinafter called "the Council" and thereon coloured green, being a common within the meaning of the Commons Act 1899, shall henceforth be regulated by this Scheme, and the management thereof shall be vested in the Council.
2. The Council may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the Common, and may, for the prevention of accidents, fence any quarry, pit, pond stream or other like place on the Common, and shall preserve the turf, shrubs, trees, plants and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament and may place seats upon and light the Common, and otherwise improve the Common as a place for exercise and recreation. Save as hereinafter provided, the Council shall do nothing that may otherwise vary or alter the natural features or aspects of the Common or interfere with free access to any part thereof, and shall not erect upon the Common any shelter, pavilion, drinking fountain or other building without the consent of the person or persons entitled to use the soil of the Common and of the Secretary of State for the Environment. The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.
3. The Council shall maintain the Common free from all encroachments and shall not permit any trespass on or partial enclosure thereof or of any part thereof.
4. The inhabitants of the neighbourhood shall have a right of free access to every part of the Common, and a privilege of playing games and of enjoying other kinds of recreation thereon, subject to any byelaws made by the Council under this Scheme.
5. *[Not Applicable]*
6. The Council may set apart for games any portion or portions of the Common as it may consider expedient and may form grounds thereon for cricket, football, tennis, bowls and other similar games, and may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon; but such grounds shall not be so numerous or extensive as to affect prejudicially the enjoyment of the Common as an open space or the lawful exercise of any right of common, and shall not be so near to any dwelling-house or road as to create a nuisance or be an annoyance to the inhabitants of the house or to persons using the road.
7. The Council, may, with the consent of the person or persons entitled to the soil of the Common, and of the Secretary of State, temporarily set apart and fence such portion or portions of the Commons as it may consider expedient for the parking of motor and other vehicles, and may make charges for the use of such part as it may deem necessary and reasonable: provided that any area so set apart shall not be so near to any dwelling-house as to create a nuisance or be an annoyance to the inhabitants of the house. The Secretary of State, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Secretary of State before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.
8. The Council may, for the prevention of nuisances and the preservation of order on the Common, and subject to the provisions of section 10 of the Commons Act 1899, make, revoke or alter byelaws for any of the following purposes, namely –

- (a) prohibiting any person without lawful authority from digging or taking turf, sods, gravel, sand, clay or other substance on or from the Common, and from cutting, felling or injuring any gorse, heather, timber, or other tree, shrub, brushwood or other plant growing on the Common;
- (b) regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling and taking trees or underwood on or from the Common in exercise of any right of common or other right over the Common;
- (c) prohibiting the removal or displacement of seats, shelters, pavilions, drinking fountains, fences, notice-boards, or any works erected or maintained by the Council on the Common;
- (d) prohibiting any person without lawful authority from killing, molesting or intentionally disturbing any animal, bird or fish or engaging in hunting, shooting or fishing or the setting of traps or nets or the laying of snares;
- (e) prohibiting the driving, drawing or placing upon the Common or any part thereof without lawful authority of any motor vehicle, motor cycle, carriage, cart, caravan, truck or other vehicle (including any aircraft), except in the case of accident or other sufficient cause;
- (f) prohibiting –
  - [i] the flying of any model aircraft driven by the combustion of petrol vapour or other combustible substances;
  - [ii] the taking off or (except in the case of accident or other sufficient cause) landing of any glider or any other aircraft;
  - [iii] the flying of any glider or aircraft in such a manner as to be likely to cause undue interference with the enjoyment of the Common by persons lawfully on it;
- (g) prohibiting or, in the case of a fair lawfully held, regulating the placing on the Common of any show, exhibition, swing, roundabout or other like thing;
- (h) regulating games to be played and other means of recreation to be exercised on the Common;
- (i) regulating assemblies of persons on the Common;
- (j) regulating the use of any portion of the Common temporarily enclosed or set apart under this Scheme for any purpose;
- (k) prohibiting or regulating the riding, driving, exercising or breaking in of horses without lawful authority on any part of the Common;
- (l) prohibiting any person without lawful authority from turning out or permitting to remain on the Common any cattle, sheep or other animals;
- (m) prohibiting any person from bathing in any pond or stream on the Common, save in accordance with the byelaws;
- (n) prohibiting camping or the lighting of any fire;
- (o) prohibiting or regulating any act or thing which may injure or disfigure the Common, or interfere with the use thereof by the public for the purposes of exercise and recreation;
- (p) authorising any officer of the Council, after due warning, to remove from the Common any vehicle or animal drawn, driven or placed, or any structure erected or placed thereon in contravention of this Scheme or of any byelaw made under this Scheme;
- (q) prohibiting any person on the Common from selling or offering or exposing for sale or letting for hire or offering or exposing for letting for hire, any commodity or article, unless in pursuance of an agreement with the Council or otherwise in the exercise of any lawful right or privilege;
- (r) prohibiting the fixing of bills, placards or notices on trees, fences, erections or notice boards on the common;

- (s) prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any byelaw made thereunder.
- 9. Copies of all byelaws made under this Scheme shall be displayed on notice boards placed on such parts of the Common as the Council think fit.
- 10. Nothing in this Scheme or any byelaw made under it shall prejudice or affect any right of the person entitled as Lord of the Manor or otherwise to the soil of the Common, or of any person claiming under him, which is lawfully exercisable, in, over, under or on the soil or surface of the Common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any right of the commoners in or over the Common, or the lawful use of any highway or thoroughfare on the Common, or affect any power or obligation to repair any such highway or thoroughfare.
- 11. Printed copies of this Scheme shall be available for sale at the offices of the Council for such reasonable price as the Council may from time to time determine.