

TO: PLANNING & REGULATORY COMMITTEE

DATE: 18 NOVEMBER 2014

BY: COMMONS REGISTRATION OFFICER

PURPOSE: FOR DECISION

TITLE: COMMONS REGISTRATION: NEW PROCEDURE FOR APPLICATIONS TO AMEND THE COMMONS REGISTER

SUMMARY REPORT

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. New regulations will shortly be commenced to allow for the amendment of the commons register where land has been wrongly registered as common land or a town/village green. The regulations enable the Registration Authority to introduce a reasonable fee for certain types of applications.

INTRODUCTION

1. Defra will shortly be commencing The Commons (Correction of Registration) (Interim Arrangements) (England) Regulations 2014. The implementation date is likely to be 1 December 2014.
2. This set of regulations gives the general public the power to apply to the Commons Registration Authority (CRA) to amend the registers of common land and town/village greens (TVGs) under:
 - i. Section 19(2)(a) – to correct a mistake made by the CRA when it made or amended an entry in the register; and
 - ii. Paragraphs 6 to 9 of Schedule 2 – to remove ‘buildings’ and ‘other land’ wrongly registered as either common land or TVG.
3. The CRA’s role is to process any applications submitted to the authority and amend the registers of common land or TVGs, when appropriate. The CRA will be responsible for advertising the application, collating any representations and deciding who the determining authority is. A fee will be payable for applications made under Paragraphs 6 to 9 but not for applications made under section 19. CRA’s can set their own fees, which must be ‘reasonable’.

4. All applications are submitted to the CRA, but certain classes of applications must be referred to the Planning Inspectorate (PINS) for determination. At present, those classes include all applications under Schedule 2 and applications under section 19 if the effect would be to add to, or remove land from, the register or to correct the quantification of rights. Defra are exploring making some changes to this requirement in the new regulations.
5. Seven Registration Authorities took part in the Pioneer Project, which implemented the Commons Act 2006 for those authorities from October 2008. Since implementation each Authority has received the following number of applications:

Pioneer Authority	Applications received under Section 19	Applications received under Schedule 2, Paragraphs 6 to 9
Blackburn & Darwen	0	0
Cornwall	0	2
Devon	6	0
Herefordshire	4	3
Hertfordshire	3	4
Kent	3	0
Lancashire	0	2

6. Based on the number of corrective applications received by the Pioneer Authorities compared to the total area of common land and TVGs, Defra estimate that Surrey will receive approximately 2.3 applications to amend the commons register

Delegated authority

7. Of the applications that will be determined by the CRA, the final decision rests with the Planning and Regulatory Committee. Under the current Scheme of Delegation, where a TVG application has no significant objection and the authority has no legal interest in the land, the decision to determine the application is delegated to the Head of Legal and Democratic Services. It is proposed that the same delegated authority should apply to applications where no significant objection has been received. Otherwise, where applications can be determined by the CRA, they will come to the Committee for decision.

Fees

8. A fee will be payable for applications made under Paragraphs 6 to 9 but not for applications made under Section 19. There is no cap on fee amounts, which must be 'reasonable'. The new regulations require us to publish the fees on the Council's website. The first time the fees take immediate effect from the date of publication (when the regulations are in force).

9. The Pioneer Authorities have each set fees for dealing with these types of applications, although the Pioneer regulations indicated that these could be no more than £1000 each. The following fees are currently charged by the Pioneer Authorities:

- Blackburn with Darwen Council - £600
- Cornwall Council - £1000
- Devon County Council - £750
- Herefordshire Council - £1000
- Hertfordshire County Council - £1000
- Kent County Council - £600
- Lancashire County Council - £750

10. The Committee is asked to agree that a new fee of £1,000 be levied for processing relevant applications. As this is a new activity we don't have data to establish the amount of work involved in processing the applications. The setting of the fee of £1,000 is based upon an estimate of three days officer time at full cost recovery. As this activity develops the service will need to review the fee structure to reflect actual experience.

Equality Implications

11. The Committee needs to have due regard to the public sector equality duty when making this decision. Officers will take into account how they might assist anyone with a protected characteristic (e.g. a disability) if they need particular help in dealing with the process.

Financial implications

12. It is important that the Council ensures that any costs incurred in processing Schedule 2 applications are covered by the fees and will monitor future application processes and review the fees as necessary. Where an application is not referred to PINS, it is open to the CRA to decide to hold a hearing or public inquiry or engage more specialist legal assistance. These costs will need to be met by the Legal Services budget.

CONCLUSIONS

The introduction of new regulations to amend and correct the commons register will help to achieve the aim of the Commons Act 2006 to enable the commons registers to be brought up to date, so that they once again become a reliable record of extent of land and rights.

RECOMMENDATION

1. The reasonable charge to be levied on an applicant for applications submitted under Paragraphs 6 to 9 of Schedule 2 of the Commons Act 2006 to be set at £1000.

2. For applications where the County Council is the determining authority, if no significant objection has been received and the authority has no legal interest in the land, after consultation with the Chairman of the Planning and Regulatory Committee, the decision to determine an application is delegated to the Head of Legal and Democratic Services.

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BACKGROUND PAPERS

All documents quoted in the report.
