CYNGOR SIR *POWYS* COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE
22nd June 2017

REPORT BY: **HEAD OF LEISURE AND RECREATION**

SUBJECT: Determination of 'Corrective' applications under sections 19 and 22 and Schedule 2 of the Commons Act 2006

REPORT FOR: **CONSIDERATION / RECOMMENDATION TO FULL COUNCIL (subject to Cabinet decision on 20th June 2017)**

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1. The Welsh Government has brought into effect provisions of the Commons Act 2006, which impose new duties on Welsh Commons Registration Authorities. Powys County Council is a Commons Registration Authority.

2. The new duties relate to alleged errors or omissions on the Registers of Common Land, or of Town or Village Greens. Under sections 19, 22 and Schedule 2 of the Commons Act 2006, applications and proposals can now be put forward for correction of these errors and omissions

3. A report has been submitted to Cabinet for consideration on 20th June 2017 (copy attached - item no 6 on Cabinet agenda.) The report outlines the options for determining these applications.

4. The recommendation to the Cabinet is that determination of 'Corrective' applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006 be delegated to the Planning, Taxi Licensing and Rights of Way Committee, with opportunity for further delegation if appropriate.

5. If the Cabinet approves the recommendation as made, then the Planning, Taxi Licensing and Rights of Way can consider whether it would be appropriate to determine these applications as a full Committee, or whether a panel of members should be formed to determine these cases.

6. If the Committee feels that it would appropriate for a panel to be formed, then a recommendation to that effect can be made to the full Council. That recommendation would then need to be subject of consideration and a formal decision by the full Council.

CYNGOR SIR *POWYS* COUNTY COUNCIL.

CABINET EXECUTIVE
20th June 2017

REPORT AUTHOR:	**County Councillor Jonathan Wilkinson** **Portfolio Holder for Housing and Countryside Services**
SUBJECT:	Determination of 'Corrective' applications under sections 19 and 22 and Schedule 2 of the Commons Act 2006

REPORT FOR: **Decision**

1. Summary

1.1 Powys County Council is a Commons Registration Authority. The Welsh Government has brought into effect provisions of the Commons Act 2006, which impose new duties on Welsh Commons Registration Authorities.

1.2 The new duties relate to alleged errors or omissions on the Registers of Common Land, or of Town or Village Greens. Under sections 19, 22 and Schedule 2 of the Commons Act 2006, applications and proposals can now be put forward for correction of these errors and omissions

1.3 If opposed, some applications or proposals must be referred to the Planning Inspectorate for determination. However, the Council is required to determine any applications or proposals that are not referred to the Planning Inspectorate, whether opposed or not.

1.4 The Regulations relating to the processing of these applications are the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017. They came into force on 5th May 2017.

1.4 The purpose of this report is to consider the options open to the Council for determining applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006. Initial processing can be carried out by officers, but formal determination is currently a function of the Cabinet. This responsibility could be delegated, if it is considered appropriate.

2. Proposal

2.1 It is proposed that formal determination of applications and proposals be delegated, so that this responsibility does not remain solely with the Cabinet.

2.2 Responsibility for determining other applications relating to the Registers of Common Land and of Town or Village Greens is already delegated to the Planning, Taxi Licensing and Rights of Way Committee. Given this, it is

proposed that determination of the new ‘Corrective’ applications or proposals be delegated to the Planning, Taxi Licensing and Rights of Way Committee.

2.3 If delegated to the Planning, Taxi Licensing and Rights of Way Committee, a panel could be formed. This would allow for applications and proposals to be determined by a smaller number of Committee Members, on a rotating basis, rather than requiring a full Committee to consider them.

2.4 Delegation to officers may be appropriate for unopposed applications that are wholly administrative in nature, with evidence that is not complicated to interpret. An example would be section 19(2)(d) of the Commons Act 2006 under which names and addresses in the Registers can be updated e.g. following a change of residence (but not a change of ownership.)

3. Options Considered / Available

3.1 The Council must make arrangements to determine any ‘Corrective’ applications or proposals affecting the Powys Register of Common Land and Town or Village Greens that are not referred to the Planning Inspectorate.

3.2 Determination of these applications and proposals is a quasi-judicial role. It requires interpretation of evidence against the relevant legal criteria. The outcome affects the content of legal Registers that impact on property value, land use and other financial interests e.g. farm subsidy payments.

3.3 Even if unopposed, the Council cannot accept a ‘corrective’ application or proposal at face value; the evidence must still be scrutinised and challenged and it may be necessary to refuse an unopposed application.

3.4 Responsibility for determination of these applications and proposals could remain with the Cabinet. However, this would impact on the Cabinet’s time to consider other matters and on the time taken to determine individual applications under sections 19, 22 and Schedule 2 of the Commons Act 2006.

3.5 Determination could be delegated to the Planning, Taxi Licensing and Rights of Way Committee. The Committee already determines other applications relating to Common Land and Town or Village Greens, so has expertise in this area of work. A smaller panel of Members could be formed, to reduce the time and other costs of determination.

3.6 Determination of all applications could be delegated to Portfolio Holder or officer level. However, this would not be consistent with the way in which decisions are made about other, similar evidence-based Commons Registration and public rights of way applications.

4. Preferred Choice and Reasons

4.1 The way in which these applications is determined has an impact on the costs incurred. Responsibility for meeting those costs will fall to the Welsh Government (for ‘public interest’ applications), to the Council (where the

Commons Registration Authority may have made an error) or to the applicant, for other types of application. The cost incurred needs to be balanced against ensuring the appropriate level of scrutiny and challenge for decisions.

4.2 The preferred option is that determination of 'Corrective' applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006 be delegated to the Planning, Taxi Licensing and Rights of Way Committee, with opportunity for further delegation to a panel or to officer level. This will allow for a sufficient level of scrutiny and challenge, but would reduce the cost of determination when compared to full Committee or Cabinet involvement.

4.3 The Council can opt to hold a public inquiry and appoint an independent inspector for any opposed 'Corrective' application that it must determine, so additional scrutiny can be put in place if needed.

5. Impact Assessment

5.1 Is an impact assessment required? No

6. Corporate Improvement Plan

6.1 The outcome of these applications and proposals impacts on property value, land use and other financial interests and there is risk of legal challenge to any decision made. It is anticipated that many applications will be routine and not attract a high level of public interest. However, others may be contentious and raise significant concern for the public or the applicant(s.)

6.2 Determining a duly made 'Corrective' application under the Commons Act 2006 is a legal duty; it contributes to the Corporate Improvement Plan objective 'Meet statutory provision of rights of way and countryside access.'

7. Local Member(s)

7.1 None - this proposal has equal force across the whole County.

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

9. Communications

Have Communications seen a copy of this report? Yes

Have they made a comment? Communications comment is that no proactive communication action is required.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

10.1 Legal - The Professional Lead-Legal notes the recommendations in section 4 of this report and recognises the reasons given as being appropriate in the circumstances. The Legal Services will continue to give advice and support when and where required.

10.2 Finance – The contents of the report are noted. There will be no budgetary implications where applicants or the Welsh Government pay for determination as long as we set fees to cover full costs.

It could impact though where we are required to meet costs in cases where there may be a Commons Registration Authority error. In these rare events, it is suggested that the directorate find these additional costs within their existing budgets.

10.3 Corporate Property – Not applicable;

10.4 HR – Not applicable;

10.5 ICT – Not applicable.

11. Scrutiny

Has this report been scrutinised? No

12. Statutory Officers

12.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: " I note the legal comment and have nothing to add to the report."

12.2 The Strategic Director Resources (S151 Officer) notes the comments made by finance.

13. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
That determination of 'Corrective' applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006 be delegated to the Planning, Taxi Licensing and Rights of Way Committee, with opportunity for further delegation if appropriate.	To ensure an adequate level of scrutiny and challenge in determining these applications and proposals whilst balancing this against the cost of determination.

Relevant Policy (ies):	N/A		
Within Policy:	**Y**	**Within Budget:**	**Y**

Relevant Local Member(s):	N/A (applies county wide)

Person(s) To Implement Decision:	Planning, Taxi Licensing and Rights of Way Committee
Date By When Decision To Be Implemented:	With immediate effect

Contact Officer:	Stuart Mackintosh, Head of Leisure and Recreation
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Background Papers used to prepare Report:

- The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (Appendix 1)
- Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 - Welsh Government Guidance for Commons Registration Authorities May 2017 (Appendix 2)
- Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 - Welsh Government Guidance for Applicants May 2017 (Appendix 3)

WELSH STATUTORY INSTRUMENTS

2017 No. 566 (W. 135)

COMMONS, WALES

The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Made - - - -	*9 April 2017*
Laid before the National Assembly for Wales - -	*13 April 2017*
Coming into force - -	*5 May 2017*

The Welsh Ministers being the appropriate national authority make the following Regulations in exercise of the powers conferred by sections 3(5), 19(6), 24(1) to (2A), 24(3), 24(6) to (8) and 59(1) of, and paragraphs 2 to 10 of Schedule 2 to, the Commons Act 2006(**1**).

PART 1

Preliminary

Title, commencement and application

1.—(1) The title of these Regulations is the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017.

(2) These Regulations come into force on 5 May 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 1965 Act" ("*Deddf 1965*") means the Commons Registration Act 1965(**2**);

"the 1966 Regulations" ("*Rheoliadau 1966*") means the Commons Registration (General) Regulations 1966(**3**);

(**1**) 2006, c. 26; section 61(1) was amended by Schedule 7, para. 9 of the Planning (Wales) Act 2015, c. 4, and defines "appropriate national authority" as the Welsh Ministers in relation to Wales; and "regulations" as regulations made by the appropriate national authority.
(**2**) 1965 c. 64.
(**3**) S.I. 1966/1471.

"the 2006 Act" (*"Deddf 2006"*) means the Commons Act 2006;

"application" ("*cais*") means an application to a registration authority under section 19 of, or Schedule 2 to, the 2006 Act or under these Regulations to amend its register;

"appointed person" (*"person penodedig"*) means a person or persons appointed in accordance with regulation 4;

"commons council" (*"cyngor tiroedd comin*") means a body established by Order under section 26 of the 2006 Act;

"the determining authority" (*"yr awdurdod sy'n dyfarnu"*) means—

(a) the appointed person in relation to an application or proposal which has been referred to such person pursuant to regulation 15(2); or

(b) in relation to any other application or proposal, the registration authority which is required to determine the application or proposal in accordance with regulation 15(1);

"electronic communication" (*"cyfathrebiad electronig"*) has the meaning given in section 15(1) of the Electronic Communications Act 2000(**4**);

"inspector" (*"arolygydd"*), except in regulation 4, means a person appointed by the determining authority to conduct a public inquiry, hearing or site inspection in relation to an application or proposal;

"local authority" ("*awdurdod lleol*") means—

(a) a county council;

(b) a county borough council;

(c) a community council; or

(d) a National Park authority;

"notice of application" (*"hysbysiad o gais"*) means a notice containing the details specified in regulation 12(1);

"proposal" ("*cynnig*") means a proposal by a registration authority to amend a register on its own initiative pursuant to—

(a) section 19 of the 2006 Act; or

(b) Schedule 2 to the 2006 Act;

"referring authority" ("*yr awdurdod sy'n cyfeirio*") means, in relation to an application or proposal which has been referred to an appointed person pursuant to regulation 15(2), the registration authority which referred it;

"register" (*"cofrestr"*) means a register of common land or a register of town or village greens, and "registered" (*"cofrestredig"*) and "registration" (*"cofrestriad"*) are to be interpreted accordingly;

"registered land" ("*tir wedi ei gofrestru*") means land registered as common land or as a town or village green;

"register unit" ("*uned gofrestr*") means, in respect of any land registered in a register, the sum of that land's registration in the land section and the rights section of the register and, if the registration was made under regulations under the 1965 Act, the ownership section of that register;

"registration authority" ("*awdurdod cofrestru*") means a commons registration authority.

(2) These Regulations apply in relation to any application or proposal.

(**4**) 2000 c. 7. The definition of "electronic communication" was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

Amendment to register

3.—(1) An amendment made to a register pursuant to the determination of an application or proposal must be made in the appropriate section of the register unit relating to that land.

(2) A registration authority must, when amending the register (including the registration or removal of registered land and an amendment to a registration), follow as closely as possible the format of the register, with such variations and adaptations as the circumstances may require.

(3) Following the determination of an application or proposal the registration authority must stamp every sheet forming part of the determination.

Appointment of persons to discharge functions of a registration authority

4.—(1) The Welsh Ministers may appoint—

(a) persons ("an appointed person") as eligible to carry out the administration of applications made to, or proposals made by, a registration authority, which are referred by the registration authority to an appointed person in accordance with these Regulations; and

(b) any person who is employed or otherwise engaged as one of the inspectors of the appointed person, or is employed on its staff, as eligible to—

(i) determine an application or proposal which a registration authority has referred to the appointed person in accordance with these Regulations; and

(ii) carry out any steps necessary for or incidental to that purpose (for example, conducting a public inquiry, a hearing or a site visit).

(2) An appointment under paragraph (1) must be in writing.

(3) The Welsh Ministers may at any time, by giving notice in writing to an appointed person—

(a) revoke the appointment generally;

(b) revoke the appointment insofar as it relates to a particular application or proposal which has not been determined by the appointed person before that time; or

(c) revoke the authority of the appointed person to exercise a particular function in relation to an application or proposal.

(4) A notice under paragraph (3) will not affect the validity of anything done by the appointed person before the notice is given.

PART 2

Applications and proposals to amend the Registers

Making an application

5.—(1) An application must—

(a) be made in writing on a form provided by the Welsh Ministers for an application of that type;

(b) include the information specified in the form; and

(c) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.

(2) Schedule 1 contains provisions which apply in relation to the specific types of applications listed as to—

(a) the circumstances in which an application is permitted to be made; and

(b) the matters which must be included in or which, subject to paragraph (3), must accompany the application.

(3) An applicant is not required to include with an application a copy of any document specified in Schedule 1 if—

(a) the registration authority issued the document, or was a party to the document; or

(b) the document has been deposited with the registration authority in accordance with any enactment.

Application Fees

6.—(1) An application must be accompanied by such fee (if any) specified for an application of that type by the registration authority to which it is submitted.

(2) The fee specified by a registration authority as payable in relation to an application must be published on its website.

(3) Where a fee first specified by a registration authority under this regulation is subsequently revised by that authority, and in the case of any further revision, such revised fee must be published on the authority's website not less than 14 days before such fee is to take effect.

(4) No fee may be specified for an application made under, and for the purposes of, a provision listed in Schedule 2 to these Regulations.

(5) Where regulation 15 requires an appointed person to determine an application, the applicant must send to the appointed person the further fee (if any) specified for an application of that type by the appointed person.

(6) A fee may be payable at such times and in such instalments as the registration authority and the appointed person may specify.

(7) Any fee charged by the registration authority or the appointed person must be reasonable for the work performed or to be performed.

(8) Neither a registration authority nor an appointed person need take any steps to deal with an application until the applicant has paid to it the specified fee.

Making a proposal

7.—(1) Before taking any other steps under this Part in relation to a proposal, a registration authority must prepare a statement in writing describing the proposal and explaining the justification for it.

(2) A registration authority may not proceed with a proposal under Schedule 2 to the 2006 Act unless it has complied with paragraph (1), and paragraphs (2) to (5) of regulation 11, on or before 4 May 2032.

Land descriptions

8.—(1) This regulation applies in relation to any requirement to describe land for the purposes of an application or proposal, except where another provision of these Regulations specifies the manner in which land is to be described in a particular case.

(2) The land must be described, except where paragraph (3) applies, by an Ordnance Map accompanying the application or proposal and referred to in it.

(3) Where the land is registered land, and the application relates to the whole of the land in a register unit, the land must be described by a reference to the number of that register unit.

(4) Where part of the land is registered land, that part of the land must be described by a reference to the number of any register unit which includes that part.

(5) In paragraphs (3) and (4) the references to "registered land" include land provisionally registered under the 1965 Act, but which registration was not subsequently confirmed, in which case the requirement under those paragraphs is to be met by describing such land by reference to the number under which it was provisionally registered.

(6) Any Ordnance Map accompanying an application or proposal must show the land to be described by means of distinctive colouring within an accurately identified boundary and must be on a scale of not less than 1:2,500 if available, and in any event not less than 1:10,000.

Management of application

9.—(1) As soon as practicable after receiving an application and (if any) the specified fee, the registration authority must send an acknowledgement of receipt to the applicant, which must include —

(a) the reference number allocated to the application; and

(b) a postal address and an email address to which written communications to the registration authority may be sent.

(2) The registration authority may direct the applicant to provide any further information or documents necessary to enable the application to be determined.

(3) The registration authority may specify a time for complying with any direction given under this regulation.

(4) If the applicant fails to comply with any direction given under this regulation or, where applicable, fails to comply within the time specified, the registration authority may treat the application as abandoned.

Registration authority's duty to publicise application

10.—(1) As soon as reasonably practicable after receiving an application complying with regulations 5 (making an application) and 6 (application fees), the registration authority must—

(a) publish a notice of the application on its website;

(b) serve a notice of the application by email on anyone who has previously asked to be informed of all applications, and who has given the registration authority an email address for that purpose; and

(c) subject to paragraphs (2) and (3), serve a notice of the application on each of the persons specified in Schedule 3 in relation to an application of that kind.

(2) In relation to any application, the registration authority may decide that paragraph 1(c) of Schedule 3 does not apply in respect of the requirement to serve a notice on the persons registered as owners of rights of common in gross, if it considers that those persons are so numerous that it would not be reasonably practicable to serve notice of the application on all of them.

(3) A requirement pursuant to paragraph 2 of Schedule 3 to serve a notice on an owner of land does not apply if it is not reasonably practicable to identify that person.

(4) The requirements in paragraph (5) apply in relation to—

(a) an application under section 19 of the 2006 Act, for the removal of registered land from, or for the addition of land to, a register; or

(b) an application under Schedule 2 to the 2006 Act.

(5) As soon as reasonably practicable after receiving such an application, the registration authority must—

(a) post a notice of the application for not less than 42 days at or near at least one obvious place of entry to (or, if there are no such places, at or near at least one conspicuous place on the boundary of) the land to which the application relates;

(b) serve a notice of the application on every other local authority for that area; and

(c) serve a notice of the application on any commons council established for land which includes the land to which the application relates.

(6) Where a notice posted under paragraph (5)(a) is, without any fault or intention of the registration authority, removed, obscured or defaced before the period of 42 days referred to in that paragraph has elapsed, the authority is to be treated as having complied with the requirements of that paragraph.

Registration authority's duty to publicise proposal

11.—(1) A registration authority which has prepared a statement of a proposal in accordance with regulation 7(1) must, before taking any further steps in relation to the proposal, comply with paragraphs (2) to (5).

(2) The registration authority must publish a notice of the proposal on its website.

(3) If the proposal is to register or deregister any land as common land or as a town or village green, the registration authority must post a notice of the proposal for not less than 42 days at or near at least one obvious place of entry to (or, if there are no such places, at or near at least one conspicuous place on the boundary of) the land to which the proposal relates.

(4) The registration authority must serve a notice of the proposal on the following persons—

(a) subject to paragraph (7), the owner of any land comprising the whole or any part of the register unit to which the proposal relates;

(b) any person who has made a declaration, duly recorded in the register, of entitlement to a right of common over any land comprising the whole or any part of the register unit to which the proposal relates;

(c) any commons council established for land which includes the land to which the proposal relates;

(d) subject to paragraph (8), any owner of a right of common in gross which is exercisable over any land comprising the whole or any part of the register unit to which the proposal relates; and

(e) every other local authority for that area.

(5) The registration authority must also serve a notice of the proposal by email on any other person who has previously asked to be informed of all proposals, and who has given the registration authority an email address for that purpose.

(6) Where a notice posted under paragraph (3) is, without any fault or intention of the registration authority, removed, obscured or defaced before the period of 42 days referred to in that paragraph has elapsed, the authority is to be treated as having complied with the requirements of that paragraph.

(7) The requirement in paragraph (4)(a) does not apply if it is not reasonably practicable to identify that person.

(8) The registration authority may, in relation to any proposal, decide that paragraph (4)(d) is not to apply, if it considers that the persons registered as owners of rights of common in gross are so numerous that it would not be reasonably practicable for it to serve notice of the proposal on all of them.

Contents of notice of application or proposal

12.—(1) A notice of application or proposal which is required to be published, posted or served under regulation 10 (registration authority's duty to publicise application) or 11 (registration authority's duty to publicise proposal) must contain the following details—

(a) a reference to "the Commons Act 2006", and the provision of that Act under (or pursuant to which) the application or proposal is made;

(b) the name of the applicant (in the case of an application);

(c) the name of the registration authority;

(d) the name and location of the land to which the application or proposal relates;

(e) a summary of the effect of the application (if granted) or proposal (if a decision is made to give effect to it);

(f) both a postal address and an email address for the registration authority to which any representations concerning the application or proposal may be sent;

(g) a statement that any representations will not be treated as confidential, but will be dealt with in accordance with regulation 14, and that where the application or proposal is referred to an appointed person for determination in accordance with regulation 15, any representations will be sent to the appointed person;

(h) the date on which the period for making representations expires, which must not be less than 42 days after the date of the publishing, posting or service of the notice; and

(i) the address of the registration authority at which documents relating to the application or proposal are available for inspection.

Inspection of copies of documents

13.—(1) The registration authority must ensure that copies of the following documents are available for inspection at the address specified for that purpose in any notice of the application or proposal—

(a) in the case of an application, copies of the application and any accompanying documents; or

(b) in the case of a proposal, copies of—

(i) the statement prepared in accordance with regulation 7(1); and

(ii) any documents in the possession of the registration authority which are relevant to the proposal.

(2) The times and dates at which the documents referred to in paragraph (1) are available for inspection must include all normal office hours during a period of not less than 42 days ending with the expiry of the period for making representations.

Representations

14.—(1) Any person may, by the date specified in a notice of an application or proposal, make written representations to the registration authority about the application or proposal.

(2) Representations under paragraph (1)—

(a) must state the name and postal address of the person making them, and the nature of that person's interest (if any) in any land affected by the application or proposal;

(b) may include an email address of the person making them;

(c) must be signed by the person making them; and

(d) must state the grounds on which they are made.

(3) As soon as reasonably practicable after the expiry of the period allowed for making representations in respect of an application, the registration authority must—

(a) notify the applicant that no representations have been made; or

(b) serve on the applicant a copy of all the representations it has received.

(4) The applicant may reply in writing to the registration authority within 21 calendar days of being served with a copy of representations (or within such longer period as the registration authority may specify at the time it serves the copy of representations), setting out the applicant's response to the representations.

(5) A reply under paragraph (4) must be signed by the person making it.

(6) Where the applicant makes a reply under paragraph (4), the registration authority must send a copy of it to every person who made a representation under paragraph (1).

Responsibility for determining applications and proposals

15.—(1) Subject to paragraph (2)—

(a) an application made in accordance with these Regulations must be determined by the registration authority with responsibility for the register in which the land to which the proposal relates is recorded, or a registration authority who has the power to determine applications on such a registration authority's behalf; and

(b) a registration authority which has made a proposal in accordance with these Regulations must determine whether or not to amend its registers in accordance with the proposal.

(2) In the cases specified in paragraph (3), a registration authority must refer to the appointed person for determination by it—

(a) any application made in accordance with these Regulations; and

(b) any proposal made by the registration authority in accordance with these Regulations.

(3) The cases referred to in paragraph (2) above are where the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it, or where a person having a legal interest in the land the subject of an application or proposal (or someone acting on behalf of such a person) has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application or proposal, and—

(a) the application or proposal is made under section 19(4) of the 2006 Act, and seeks—

(i) to add land to, or to remove land from, a register; or

(ii) to correct an error as to the quantification of rights of common in a register; or

(b) the application or proposal is made under any of paragraphs 2 to 9 of Schedule 2 to the 2006 Act.

(4) Where the registration authority refers an application or proposal to an appointed person for determination—

(a) the registration authority must inform the applicant that the application has been referred to an authorised person for determination;

(b) the registration authority must send to the appointed person all material in its possession which is relevant to the determination of the application or proposal;

(c) in the case of an application, the appointed person may direct the applicant to provide any further information or documents necessary to enable the application to be determined; and

(d) the appointed person may direct the registration authority to provide any further information or documents necessary to enable the application or proposal to be determined.

(5) The appointed person may specify a time for complying with any direction given under this regulation.

(6) If the applicant fails to comply with any direction given under this regulation or, where applicable, fails to comply within the time specified, the appointed person may treat the application as abandoned.

Method of determining applications and proposals

16.—(1) The determining authority must, in determining any application or proposal, take into account—

(a) the contents of the application or proposal, and any material accompanying it;

(b) any material provided by the registration authority under regulation 15(4)(b);

(c) in the case of an application, any further information or evidence provided by the applicant in accordance with a direction under regulation 9(2) or 15(4)(c);

(d) in the case of a proposal, any further information or evidence provided by the registration authority in accordance with a direction under regulation 15(4)(d);

(e) any written representations made by any person in accordance with regulation 14, or in accordance with an invitation under paragraph (4);

(f) any oral representations made by any person in accordance with paragraph (7);

(g) the findings made at a site inspection, if any; and

(h) where a public inquiry or a hearing has been held by an inspector—

(i) the evidence presented at the inquiry or hearing (if the determination is being made by the inspector who heard the evidence); or

(ii) the report and recommendation of the inspector (if the determination is not being made by the inspector).

(2) The determining authority may decide that a public inquiry is to be held in relation to any application or proposal.

(3) Where an appointed person is the determining authority, it may decide that a hearing in accordance with regulation 21 is to be held in relation to any application or proposal.

(4) The determining authority may, if it thinks it necessary to enable an application or proposal to be determined, invite further written representations about any specified matter from—

(a) the applicant, in the case of an application;

(b) the registration authority, in the case of a proposal;

(c) a person who has made representations in accordance with regulation 14; or

(d) any other person,

and may specify the time within which any such further representations must be made.

(5) Representations made pursuant to an invitation under paragraph (4) must be signed by the person making them.

(6) Paragraph (7) applies in relation to any application or proposal which the determining authority decides to determine without holding a public inquiry or, where an appointed person is the determining authority, a hearing in accordance with regulation 21.

(7) The determining authority—

(a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and

(b) may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person's civil rights an opportunity to make oral representations.

Notice of a public inquiry or hearing

17.—(1) If a public inquiry or a hearing is to be held in relation to an application or proposal, the determining authority must ensure that a notice of the inquiry or hearing is—

(a) published on an appropriate website;

(b) served on—

(i) the referring authority, if an appointed person is the determining authority;

(ii) in the case of an application, the applicant;

(iii) any person who has made representations in accordance with regulation 14; and

(iv) any other person whom the determining authority invited under regulation 16(4)(d) to make written representations; and

(c) as the determining authority considers necessary, publicised by such other means or served on such other persons as may be appropriate to bring the inquiry to the attention of persons likely to be affected by the application or proposal.

Public inquiries: general provisions

18.—(1) Where it has been decided that a public inquiry is to be held in relation to an application or proposal, the determining authority must appoint an inspector—

(a) to hold the inquiry; and

(b) if the inspector is not also to determine the application, to provide a report and recommendation to the determining authority.

(2) Subject to the following provisions of this regulation, and to regulation 20, the procedure at the inquiry is to be determined by the inspector, having regard to all the circumstances of the case.

(3) Where the inspector does not propose to hold a pre-inquiry meeting, the inspector may give such directions in preparation for the inquiry as might have been given at such a meeting, and giving directions under this paragraph does not preclude the subsequent holding of a pre-inquiry meeting, if the inspector considers it desirable, nor does it preclude the inspector giving further directions at such a meeting.

(4) Any person interested in the subject-matter of an inquiry may appear at the inquiry in person or by a representative.

(5) The inspector may, at any stage of an inquiry, prevent any person from—

(a) giving evidence;

(b) cross-examining a person giving evidence; or

(c) presenting any matter,

if the inspector considers it not to be relevant or to be repetitious.

(6) If a person is behaving in a disruptive manner the inspector may—

(a) require a person to leave an inquiry;

(b) prevent a person from participating in the inquiry by giving evidence, cross-examining a person giving evidence, or presenting any matter; or

(c) permit a person to remain at, or participate in, the inquiry only on specified conditions.

(7) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(8) The inspector may take into account any written representations or evidence or any other document received by the inspector from any person before or during an inquiry, provided that the inspector discloses it at the inquiry.

(9) The inspector may, if it is considered reasonable in the circumstances—

(a) adjourn an inquiry to another date;

(b) adjourn an inquiry to the site of any land affected by the application or proposal, and conduct part of the inquiry at that site in conjunction with a site inspection.

Pre-inquiry meeting

19.—(1) Where it has been decided to hold a public inquiry, the inspector may, if the inspector considers it desirable, hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at the inquiry.

(2) If the inspector decides to hold a pre-inquiry meeting, not less than 14 calendar days notice in writing must be given to—

(a) the applicant, in the case of an application;

(b) the registration authority;

(c) any person who has made written representations about the application or proposal; and

(d) any other person whose presence at the pre-inquiry meeting the inspector considers desirable.

(3) Paragraphs (2) and (4) to (7) of regulation 18 (so far as relevant) apply to pre-inquiry meetings as they apply to inquiries.

(4) The inspector may, at a pre-inquiry meeting—

(a) give directions about things to be done in preparation for the inquiry to—

(i) the applicant, in the case of an application;

(ii) the registration authority; and

(iii) any other person wishing to appear at the inquiry; and

(b) specify a date or dates by which any such directions must be complied with.

(5) In particular, the inspector may direct any person wishing to give evidence to serve a written statement of that evidence on—

(a) the inspector; and

(b) such other persons as the inspector may specify.

Procedure at inquiries

20.—(1) At the start of an inquiry, the inspector must—

(a) identify the main issues to be considered at the inquiry;

(b) identify any matters on which further explanation from any person appearing at the inquiry is required; and

(c) explain the procedure to be followed at the inquiry.

(2) Paragraph (1)(a) does not preclude other issues from being considered at the inquiry, or (subject to the inspector's powers under regulation 18(5)) raised by persons appearing at the inquiry.

(3) If a person giving evidence at the inquiry has provided a written statement of evidence in accordance with a direction under regulation 18(3) or 19(5), the inspector may direct that—

(a) the written statement is to be treated as the person's evidence, or as part of the person's evidence; and

(b) other parties at the inquiry may cross-examine the person on the written statement.

Hearings

21.—(1) Where the appointed person decides that a hearing is to be held in relation to an application or proposal for which it is the determining authority, it must appoint an inspector to hold the hearing.

(2) A hearing is to take the form of a discussion led by the inspector.

(3) Paragraphs (2) and (4) to (9) of regulation 18 apply to a hearing as they apply to a public inquiry.

(4) Subject to regulation 18(5) to (7)—

(a) in the case of an application, the applicant is entitled to give, or to call another person to give, oral evidence; and

(b) any other person may give oral evidence with the permission of the inspector.

(5) Cross-examination is not permitted unless the inspector decides that it is necessary to ensure a sufficient examination of the issues.

Site inspections

22.—(1) Where an inspector is appointed to hold a public inquiry, the inspector must (unless any permission necessary to do so is refused) inspect the land affected by the application or proposal before determining the application or proposal or producing a report to the determining authority.

(2) In any other case, before an application or proposal is determined, the determining authority may conduct an inspection of the land affected by the application or proposal.

(3) Before a site inspection is made under paragraph (1) or (2) in relation to an application, the inspector or determining authority must ask the applicant whether the applicant wishes to be present or represented.

(4) If the applicant expresses a wish to be present or be represented, the inspector or determining authority must give the applicant reasonable notice of the date and time of the inspection, and give the applicant or their representative the opportunity to be present.

(5) The inspection does not need to be postponed if the applicant or their representative is not present at the appointed time.

Changes of procedure

23.—(1) This regulation applies where notice has been given under regulation 17 that a public inquiry or, where the appointed person is the determining authority, a hearing is to be held in relation to the application or proposal.

(2) Where a registration authority is the determining authority and considers it reasonable in the circumstances it may, subject to paragraph (3), decide at any time before the start of a public inquiry to cancel the inquiry and determine the application without holding an inquiry.

(3) The registration authority must consult the applicant before deciding to cancel a public inquiry in relation to an application.

(4) Where an appointed person is the determining authority and considers it reasonable in the circumstances it may, subject to paragraph (5), decide at any time before the start of a public inquiry or hearing—

(a) to cancel the inquiry or hearing and determine the application without holding an inquiry or hearing; or

(b) to hold a hearing instead of an inquiry, or vice versa.

(5) The appointed person must consult—

(a) the applicant, before deciding to change the procedure for determining an application; or

(b) the referring authority, before deciding to change the procedure for determining a proposal.

Action to be taken following determination of application or proposal

24.—(1) Where an application is granted or a decision is made to give effect to a proposal, in whole or in part, the registration authority must give effect to the determination in the appropriate register by addition, deletion, correction or otherwise as may be appropriate.

(2) The registration authority must give written notice of the determination to—

(a) the applicant, if the determination was made upon an application;

(b) every person who made representations concerning the application or proposal; and

(c) every person (other than persons mentioned in sub-paragraph (b)) who gave evidence at a public inquiry or hearing, where the name and contact details of the person are known.

(3) Such notice must include—

(a) reasons for the decision; and

(b) details of any changes made to the register to give effect to the decision.

(4) The registration authority must publish the decision in relation to any application or proposal, and the reasons for it, on its website.

Award of costs in relation to certain applications

25.—(1) This regulation applies in relation to an application under Schedule 2 to the 2006 Act where—

(a) the application is referred to an appointed person; and

(b) a public inquiry is held in relation to the application.

(2) The inspector conducting the public inquiry may make an order for costs against any of the persons specified in paragraph (3) who, in the opinion of the inspector, has acted unreasonably, requiring payment to such person mentioned in paragraph (4) as may be specified in the order in respect of costs reasonably incurred by the latter person pursuant to the unreasonable action of the former person.

(3) The persons who may be ordered to pay costs are—

(a) the applicant;

(b) any person taking part in the public inquiry; or

(c) any registration authority taking part in the public inquiry.

(4) The persons in whose favour an order for costs may be made are—

(a) the applicant;

(b) any person taking part in the public inquiry; or

(c) any registration authority taking part in the public inquiry.

PART 3

Supplemental

Electronic communications

26.—(1) Any requirement by or under these Regulations for a person to send a document to another person may be met by means of an electronic communication if—

(a) it results in the information contained in that document being available to the other person in a form similar to the form in which it would appear in a document sent in printed form; and

(b) except where the other person is the determining authority, the other person consents to the notice or document being sent by those means.

(2) A person who has provided an email address is to be treated as consenting to a document being sent by email.

(3) A written representation pursuant to regulation 14 or 16 or reply under regulation 14 may be sent by means of an electronic communication.

(4) Any requirement in these Regulations for a document to be signed does not apply in the case of a document sent by means of an electronic communication.

(5) Paragraphs (1) and (4) do not apply in relation to the appointment of persons to discharge functions of a registration authority and any subsequent revocation of such appointment (regulation 4) or the submission of an application form to a registration authority (regulation 5).

(6) For the purposes of this paragraph "document" includes a notice, document, information or evidence.

Service of documents

27. Any requirement in these Regulations to serve a document on another person is satisfied, if that person cannot be found, by—

(a) leaving the document at that person's last known address; or

(b) sending the document by registered post to that address.

Inspection and copying of documents

28.—(1) Any request to inspect or make copies of any document referred to in section 20(1)(b) or (c) of the 2006 Act must be treated by the registration authority as a request for information under the relevant legislation.

(2) Where the relevant legislation does not require the information contained in the document to be communicated or made available, the registration authority may refuse to permit inspection, or copies to be taken, of that document.

(3) In this regulation and in regulation 29, "relevant legislation" means the Environmental Information Regulations 2004(**5**) or the Freedom of Information Act 2000(**6**).

Official copies

29.—(1) Any person may request a registration authority to provide an official copy of, or of any part of, any register or document referred to in section 21(1) of the 2006 Act.

(**5**) S.I. 2004/3391.
(**6**) 2000 c. 36.

(2) A registration authority may charge a fee for providing an official copy, not exceeding its costs in providing official copies.

(3) Subject to paragraph (4), upon receiving a request for an official copy, and payment of any fee, a registration authority must provide an extract from the register or a copy of the document, certified on behalf of the registration authority as a true extract or copy as at the date of issue.

(4) A registration authority may refuse a request to provide an official copy of, or of any part of, a document referred to in section 20(1)(b) or (c) of the 2006 Act where the relevant legislation does not require the information contained in the document to be communicated or made available.

Official stamp of registration authority

30.—(1) Every registration authority must have an official stamp for the purposes of the 2006 Act, an impression of which bears the following information—

COMMONS ACT 2006

[Name of registration authority]

COMMONS REGISTRATION AUTHORITY

[Date].

(2) A requirement for a registration authority to stamp any document is a requirement to cause an impression of the official stamp to be affixed to it, bearing the date mentioned in the requirement or (where no date is mentioned in the requirement) the date when the stamp is affixed.

Revocations and savings

31.—(1) The following provisions of the 1966 Regulations are revoked—

(a) regulation 26 (new addresses);

(b) regulation 33 (certified copies and extracts);

(c) regulation 34 (fees for searches, etc.); and

(d) regulation 36 (errors and omissions).

(2) Paragraph (3) applies where—

(a) an application for the amendment of a register has been made to a registration authority before 5 May 2017, pursuant to regulation 26 of the 1966 Regulations; and

(b) the registration authority has not determined the application before that date.

(3) The registration authority shall continue to deal with the application on and after 5 May 2017 as if regulation 26 of the 1966 Regulations had not been repealed.

(4) Paragraph (5) applies where—

(a) an error or omission is discovered, before 5 May 2017, pursuant to regulation 36 of the 1966 Regulations; and

(b) the registration authority has not corrected the register before that date.

(5) The registration authority shall continue to deal with any necessary correction on and after 5 May 2017 as if regulation 36 of the 1966 Regulations had not been repealed.

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers

9 April 2017

SCHEDULE 1

Regulation 5(2)

Making an application

Applications under section 19(4)(b): amendment of a register of common land or town or village greens

1.—(1) An application made under section 19(4)(b) of the 2006 Act must include—

(a) a statement of the purpose (being one of those described in section 19(2) of the 2006 Act) for which the application is made;

(b) the number of the register unit and, in so far as is relevant to the mistake or other matter in the register in respect of which the application seeks correction, the number of the rights section entry, in the register to which the application relates;

(c) evidence of the mistake or other matter in the register in respect of which the application seeks correction; and

(d) a description of the amendment sought in the register.

Applications under Schedule 2: non-registration or mistaken registration

2.—(1) An application made under Schedule 2 to the 2006 Act, for the purpose of remedying non-registration or mistaken registration under the 1965 Act, must be made on or before 4 May 2032.

(2) An application made under Schedule 2 to the 2006 Act must include a description of the land to which the application relates.

(3) In an application made under paragraph 2 or 3 of Schedule 2 to the 2006 Act, the land to which the application relates may not include land that is covered by a building or which is within the curtilage of a building if all of the necessary building consents have been obtained (and evidence of such consent is provided) and the owner of that land does not consent to its registration.

(4) An application made under paragraph 2 of Schedule 2 to the 2006 Act must include—

(a) evidence of the application of that paragraph, as described in paragraph 2(2) of that Schedule, to the land to which the application relates;

(b) a copy of any enactment or scheme referred to in paragraph 2(2)(b) of that Schedule, by which the land to which the application relates is regulated, recognised or designated, or to which it is subject;

(c) evidence, if applicable, that any consent referred to under sub-paragraph (3) has been given.

(5) An application made under paragraph 3 of Schedule 2 to the 2006 Act must include—

(a) evidence of the application of that paragraph, as described in paragraph 3(2) of that Schedule, to the land to which the application relates;

(b) a copy of any enactment by or under which the land was (and continues to be) allotted, including any award; and

(c) evidence, if applicable, that any consent referred to under sub-paragraph (3) has been given.

(6) An application made under paragraph 4, 5, 6, 7, 8 or 9 of Schedule 2 to the 2006 Act must include evidence of the application of the appropriate paragraph, as described in paragraph 4(2), 5(2), 6(2), 7(2), 8(2) or 9(2) of that Schedule, to the land to which the application relates.

SCHEDULE 2

Regulation 6(4)

Application of a type and purpose for which no fee may be specified

Provision of the 2006 Act under which, or for the purposes of which, the application is made	*Purpose of application*
section 19	correction, for the purpose of section 19(2)(a) (of a mistake made by the registration authority)
section 19	correction, for a purpose described in section 19(2)(c)
Schedule 2, paragraph 2 or 3	non-registration of common land or town or village green
Schedule 2, paragraph 4	waste land of a manor not registered as common land
Schedule 2, paragraph 5	town or village green wrongly registered as common land

SCHEDULE 3

Regulation 10(1)(c)

Persons on whom registration authority must serve notice of an application

1. In all cases—

(a) any person who has made a declaration, duly recorded in the register, of entitlement to a right of common over any land comprising the whole or part of the register unit to which the application relates;

(b) any commons council established for land which includes the land to which the application relates; and

(c) unless the registration authority decides otherwise pursuant to regulation 10(2), any person who is registered as the owner of a right of common in gross which is exercisable over all or part of the land to which the application relates.

2. Additionally, in the case of an application of a type specified in the first column of the following table, all the persons (other than where that person is the applicant) specified in the corresponding entry in the second column.

Additional persons on whom the registration authority must serve notice of the application

Type of application	*Persons on whom notice of application must be served*
Application under section 19 of the 2006 Act, to correct a register	1. The owner of any land affected by the application. 2. In relation to an application for the purpose of updating any name or address referred to in an entry, any person to whom that entry refers.

Type of application	*Persons on whom notice of application must be served*
Application under Schedule 2 to the 2006 Act, to register land not registered, or to deregister land mistakenly registered, under the 1965 Act	1. The owner of the land to which the application relates. 2. Any occupier or lessee of that land.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, prescribe the procedure for applications and proposals under sections 19 of, and Schedule 2 to, the Commons Act 2006.

They include provisions about:

(a) the making, management and determination of applications and proposals to amend the registers (regulations 5, 7, 8, 9, 14, 15 and 16);

(b) fees that may be charged in relation to an application (regulation 6);

(c) the registration authority's duties in connection with the publication of applications and proposals (regulations 10, 11, 12 and 13);

(d) the holding of public inquiries and hearings and the cases where applications and proposals must be referred to an appointed person for determination (these include cases where the registration authority has an interest in the outcome of the application or proposal) (regulations 17, 18, 19, 20, 21, 22 and 23); and

(e) the award of costs in relation to certain applications (regulation 25).

They enable the Welsh Ministers to appoint persons as eligible to administer and determine applications made to, or proposals made by, a commons registration authority for the amendment of its registers (regulation 4).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.uk.

Llywodraeth Cymru
Welsh Government

Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Guidance for Commons Registration Authorities

May 2017

Guidance

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Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Guidance for Commons Registration Authorities

This guidance has been prepared by the Welsh Government and applies to Wales only.

The guidance is produced to accompany the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (the 2017 Regulations). It is intended to assist Commons Registration Authorities (CRAs) in considering and determining applications and proposals under sections 19, 22 and Schedule 2 to the Commons Act 2006 (the 2006 Act) to amend commons registers. It is not a substitute for legislation and can only reflect the Welsh Government's understanding of the law at the time of issue. In case of doubt, please refer to the Commons Act 2006 and the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017.

The interpretation of the 2017 Regulations and the 2006 Act is ultimately a matter for the courts. Where matters of statutory interpretation arise CRAs are advised to seek their own independent legal advice as necessary.

Background

The Commons Registration Act 1965 (the 1965 Act) established definitive registers of common land and town and village greens in England and Wales in order to record details of rights of common. Commons Registration Authorities (Local Authorities) were appointed to draw up commons registers (the registers).

The task of establishing registers was complex and the 1965 Act proved to have deficiencies. For example, some land was mistakenly registered as common land. Other land was overlooked and never registered. The Court of Appeal held that even where land had been wrongly registered as common land, the 1965 Act provided no mechanism to enable such land to be removed from the register once the registration had become final[1].

This guidance sets out how anomalies and mistakes relating to existing entries in the registers may now be amended. CRAs will be able to receive applications under section 19 of the 2006 Act, which provides for correction of the registers in prescribed circumstances, and under Schedule 2 to the 2006 Act, which allows land which fulfils relevant criteria to be added to the register if it is not registered, or removed from the register if it was wrongly registered.

[1] Corpus Christi College v Gloucestershire CC [1983] 1 Q.B. 360

For a detailed definition of the provisions (sections 19, 22 and Schedule 2 of the 2006 Act) please see the 'Guidance for Applicants'

Applications and Proposals

Anyone may make an application to amend the registers under section 19, 22 and Schedule 2.

A proposal is the term used for an application the CRA makes to itself under section 19 or 22 of, or Schedule 2 to, the 2006 Act.

A CRA can make proposals in the public interest where the CRA has no direct interest in the land or rights affected, however a CRA should not bring forward a proposal on behalf of a person (s) who could have otherwise made an application for that purpose. In particular a CRA should not bring forward a proposal in order that a person need not pay a fee for an application, or because there is a mistaken entry in the register for which the registration authority was not itself responsible.

The CRA may apply to itself where it has a direct interest in the matter, it does this by way of a proposal. For example where land is owned by the CRA; the CRA is entitled to a right of common by virtue of ownership of a dominant tenement to which the right is attached; or the CRA owns a right of common in gross.

CRAs should consider bringing forward proposals for amendment of the register where:

- there is a public interest in the amendment being made (e.g. the amendment would secure the registration of additional land as common land, to which public access would be secured); or

- the CRA (or any predecessor of the CRA) was responsible for a mistaken entry in the register, and no person has a personal interest in correcting the mistaken entry, or any person with such an interest cannot be identified (e.g. because the ownership of the land is unclaimed).

In determining responsibility for a mistaken entry in a register, the CRA should not assume responsibility for the identification of mistakes in anything done by another party to a registration, unless the CRA was under a duty at that time to identify and correct such mistakes.

When a CRA decides to make a proposal it must prepare a statement describing the proposal and explaining the justification for it (regulation 7 of the 2017 Regulations). A proposal is subject to the same requirements as an application in terms of the standard of evidence provided.

In specified cases, a CRA must refer both an application and a proposal to the Planning Inspectorate (PINS) for determination (regulation 15(2) and (3) of the 2017 Regulations), namely where:

- the CRA has an interest in the outcome of the application or proposal so that it is unlikely that there would be confidence in its impartiality; or

- the CRA has received objections to the application or proposal from those with a legal interest in the land;

and in either case:

the application or proposal seeks under section 19(4) of the 2006 Act to:
- add or remove land from the register; or
- correct an error in the number of rights of common in the register;

or

the application or proposal is made under any of paragraphs 2 to 9 of Schedule 2 to the 2006 Act.

Regulation 16(2) provides that the CRA may decide that a public inquiry is to be held in relation to any application or proposal.

Where a CRA makes a proposal, it is to be assumed that the CRA has 'an interest in the outcome' of the application (and probably an expectation that it will be granted). The CRA must decide whether that interest is "such that there is unlikely to be confidence in the authority's ability impartially to determine" the proposal (regulation 15(3) of the 2017 Regulations). Where this is the case, and the proposal is for one of the purposes mentioned above, the CRA must refer the proposal to PINS who may hold either a Hearing (regulation 16(3) of the 2017 Regulations) or a Public Inquiry regulation 16(2) of the 2017 Regulations).

Applying to make changes to the commons registers

The registers of common land and of town and village greens record information about where common land is located and the rights of common present over that land. The Commons Act 2006 (the 2006 Act) is the legislation that provides the power for applicants to apply to change the registers. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (the 2017 Regulations) set out the legal requirements that must be complied with when making and processing applications and proposals.

The following guidance sets out the process CRAs need to follow in order to determine applications and proposals to make changes to the commons registers. A series of frequently asked questions (FAQs) is included at page 19 of this document to assist you in the determination process.

Pre application

If advice is sought by applicants on making applications under sections 19 or 22 of, or Schedule 2 to, the 2006 Act, CRAs may find it helpful to refer applicants to the Welsh Government guidance document – Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 – Guidance for Applicants.

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/?lang=en

Applicants may also ask to view the existing registers. Where an applicant asks the CRA to provide them with official copies of documents you may make a charge for such a service. It will be a matter for individual local authorities to set their own reasonable fees for providing such a service based on actual costs.

Application Forms

Applications may be submitted by anyone, including individuals, an organisation or a business. When someone is applying on behalf of an organisation or a business they will need to make this clear on the application form. An application may only be accepted if it is submitted, in writing, on the correct form. A fee may also be required, along with evidence and any maps requested by the form (at the correct scale).

The application must be signed by every applicant or the applicant's representative. The application forms by type of provision are as follows:

Type of Application	Form
Section 19 – Correction of the Register	CA10 WG – E (English) CA10 WG – W (Welsh)
Schedule 2, paragraphs 2 to 9 – registration of common land and removal of common land from the registers of common land and town or village greens	CA13 WG – E (English) CA13 WG – W (Welsh)

Forms may be downloaded from individual CRA (Local Authority) websites or via the Welsh Government website at:

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/?lang=en

Setting Fees

It will be a matter for individual local authorities to set their own reasonable fees based on actual costs. You need to ensure that such charges are reasonable for the work performed or to be performed.

The cost of making an application

Applicants may, depending on the application they are making, be required to pay an application fee. CRAs must publish details of their fees on their website. In the event that the CRA wishes to revise its application fees it will need to publish these revised figures on its website for at least 14 days before the new fees take effect (regulation 6).

Applications made under section 19(2)(a) (correcting a mistake made by the registration authority) and 19(2)(c) (removal of a duplicate entry from the register) do not attract a fee as these are viewed as mistakes having been made historically by the CRA. Similarly, applications under Schedule 2 paragraphs 2 – 5 (inclusive) are also free as their determination is seen as being in the public interest as a whole. The Welsh Government has given a commitment to reimburse the costs incurred by the CRA in respect of public interest provisions.

In more complicated cases, it will generally be the case that the application is forwarded to PINS for further consideration. However, it may be the case that the CRA determines the application and if the facts merit it, the CRA may decide that a public inquiry is necessary. The CRA may seek further written representations if it thinks it is necessary to enable an application to be determined. The CRA may seek reimbursement from applicants for the additional costs, for example, the holding of a public inquiry. CRAs must publish additional fees on their website, for example in addition to the initial applications fees the hourly / daily rates of officer time should be clearly set out so that those applying are aware of the likely cost to them of determining the application.

If the applicant fails to pay the relevant fee there is no requirement for the CRA to process the application.

Evidence required

On receipt of an application CRAs will need to ensure that all of the required evidence has been included, including a copy of every document that is asked for on the application form. Applicants are advised not to forward original documents, but rather are expected to send copies that are certified, for example by a solicitor or other professional person, to say that they have been checked against the original and are a true copy. However, the CRA may require an applicant to provide original documents, for example if there are doubts about the validity of a particular document.

Applicants are not required to forward copies of documents that were issued by the CRA or are held by the CRA.

Maps

Applicants will, in most cases, need to include an up to date Ordnance Survey map with their application. CRAs will need to ensure that the maps provided have the relevant area of the land hatched in a distinctive colour (for example red) and are of a scale of:

- 1:2,500 (if this scale is available); or
- 1:10,000.

You may accept a larger scale map showing the land in more detail if it is considered to be appropriate. The map should accurately show the area of land comprised in the application, so that there is no doubt about the purpose of the application, and its effect if granted.

Checking the application

On receipt of an application the CRA should check to see whether the applicant has supplied all of the requisite information and documents and has signed the application.

As a guide applications will need to include the following:

1. A completed application form – CA10 WG (for applications under section 19) or CA13 WG (for applications under Schedule 2);
2. A description of the land to be registered/deregistered as appropriate (Question 6 on form CA13 WG);
3. The application fee (see below);
4. An Ordnance Survey map of the land to the correct scale (1:2,500 if available or 1:10,000 if not) with the relevant area hatched in a distinctive colour (for example red);
5. For applications under sections 19(2)(a) – (e) of the 2006 Act, a statement setting out the purpose of the application, the mistake in the register the applicant is seeking to correct and details of the amendment required (Question 5 form CA10 WG);
6. For applications under section 19(2) (a) and (c) evidence the mistake was made by the CRA;
7. For applications under section 19(4)(b) (amendment of a register of common land or town or village green), a statement of the purpose for which the application is made, the number of the register unit (and, if relevant, the number of the rights section entry), evidence of the mistake or other matter and a description of the amendment required;
8. For applications under Schedule 2:

    - **Schedule 2 (2) – (3)** - evidence that the land in question is land which falls within the scope of the legislation listed in paragraphs

2(2) and 3(2) of Schedule 2 to the 2006 Act and evidence of consent from the owner if the application includes land that is covered by a building or is within the curtilage of a building (if all necessary building consents have been obtained).

- **Schedule 2 (4)** – evidence of the provisional registration of the land, evidence that the land is still waste in character, evidence that the land is or was formerly of a manor, and evidence that the provisional registration was cancelled or withdrawn (including where relevant the Commons Commissioner's determination).
- **Schedule 2 (5)** – evidence of the provisional registration of the land as common land; the circumstances in which the provisional registration became final (e.g. a Commons Commissioner's decision) and the status of the land as a town or village green immediately before it was provisionally registered as common land (this can be formal evidence, such as an inclosure award or order or exchange, or it could be 20 years' use as of right, or was in customary use as a village green).
- **Schedule 2 (6) and (8)** - evidence of the provisional registration of the land as common land or as a town or village green; the circumstances in which the provisional registration became final (e.g. a Commons Commissioner's decision) and evidence that the land has been at all times and still is covered by a building or is within the curtilage of a building.
- **Schedule 2 (7)** - evidence of the provisional registration of the land as common land; the circumstances in which the provisional registration became final (e.g. without reference to the Commons Commissioner's for a determination) and that before its provisional registration the land was not subject to rights of common, waste land of the manor, was not a town or village green, or land of a description specified in section 11 of the Inclosure Act 1845.
- **Schedule 2 (9)** - evidence of the provisional registration of the land as a town or village green; the circumstances in which the provisional registration became final (e.g. without reference to the Commons Commissioner's for determination) and that the status of the land immediately before its provisional registration was not common land or a town or village green.

Additional guidance on applications made under Section 19(2)(a): mistakes made by the registration authority

A CRA should not consider itself responsible for any error in the register, solely because it failed to identify and resolve a mistake by another party to a registration, unless the registration authority had a duty at that time to identify and correct such mistakes. Generally, a registration authority was required under the 1965 Act to give effect to any duly made application for registration made to it at the proper time, regardless of its merits.

A mistake may arise, for example, where an error was made by the CRA in transposing onto the register map a plan supplied by an applicant or where in amending an entry in the register the CRA erroneously added a zero to (or deleted a zero from) the number of rights registered. An error made in a map supplied by an applicant which was faithfully reproduced in the register could not be corrected under this provision, because the CRA did not make the mistake (it may be possible to correct it under Schedule 2).

CRAs need to be aware of this distinction as it is likely that some applicants will inappropriately attempt to apply under Section 19(2)(a) either because they assume that all entries in the registers equate to mistakes made by the CRA or because they wish to avoid paying a fee. Applicants will be expected to provide supporting evidence where they believe the mistake was made by the CRA.

Ownership

Once a CRA has received an application that it believes to be complete it is under an obligation to publicise the application (regulation 10). One of the obligations under regulation 10 requires the CRA to serve a notice of the application on the owner of any land affected by the application, or to which the application relates. This obligation applies in connection with any application under section 19 of, or Schedule 2 to, the 2006 Act. In relation to application under Schedule 2, the CRA must also serve a notice of the application on any occupier or lessee of the land. If it is not reasonably practicable to identify such a person then this removes the CRA's obligation to serve a notice on an owner of land.

Furthermore, the 2017 Regulations set out that an application under paragraph 2 of Schedule 2 to the 2006 Act may not include land which is covered by a building, or within the curtilage of a building, if all the necessary building consents have been obtained (and evidence is provided), unless the owner of the land consents to the land being registered as common land.

Acknowledgement

If the application has been duly made (the requisite information and documents are included, the application has been signed and the fee, where relevant, has been enclosed) the CRA is required to send an acknowledgement to the applicant confirming receipt of the application. The acknowledgement letter needs to include:

- the unique reference number assigned to the application;
- a postal and email address through which applicants may contact you;
- a copy of the public notice that you intend to publish on your website and in certain circumstances, post at a location at or near the site;
- details of any further documents or information that you require the applicant to supply and a deadline for complying with this request; and

- details of the process you intend to follow in determining the application, including your obligations to forward applications to PINS for determination in certain circumstances. This will need to include information about the referral process and the fact that any such referral will attract further application fees.

Power to specify directions

CRAs have the power to direct applicants to supply further information or documents that are required in order for the case to be determined. In the event that an applicant fails to comply with such a direction, or fails to do so within the set deadline, the application may be abandoned (regulation 9).

There is no legal requirement to notify the applicant that the CRA considers the application abandoned, however as a matter of best practice CRAs may consider forwarding a letter to applicants notifying them that this is the case (Regulation 9(4)).

Advertising the application or proposal

Once the application is complete and has been acknowledged, the CRA has a duty to publicise the application. CRAs also have a duty to publicise proposals. The following list sets out how CRAs can comply with the requirement:

- publish a notice of the application or proposal on the CRA (LA) website;
- email a notice of the application or proposal to anyone who has asked to be informed of such applications or proposals (and who has provided an email address);
- serve a notice of the application or proposal on various people. This will depend on the specific application or proposal but may include:

    - owners of any land affected by the application or proposal (if reasonably identifiable);
    - anyone who has registered a declaration to use a registered right of common over any land which comprises the whole or part of the register unit connected to the application or proposal (when implemented);
    - any owners of rights of common in gross (rights which are not attached to land, but are held personally and can be bought or sold as assets) unless there are so many it would be impractical;
    - any Commons Council (when in place) responsible for the land which forms part of the application or proposal;
    - any occupier or lessee of the land in question; and
    - other Local Authorities with an interest

As set out above, the CRA is required to serve a notice of the application or proposal on the owner of any land affected by the application or proposal, or

to which the application or proposal relates. This obligation applies in connection with any application or proposal under section 19 of, or Schedule 2 to, the 2006 Act. In relation to application or proposal under Schedule 2, the CRA must also serve notice of the application or proposal on any occupier or lessee of the land. If it is not reasonably practicable to identify such a person then this removes the CRA's obligation to serve a notice on an owner of land.

CRAs would also be expected to inform NRW if the site is protected under habitat legislation and/or is designated as a SSSI, SAC or SPA. If this is the case, you will be required to comply with the relevant habitats legislation in addition to your duties under the 2006 Act and 2017 Regulations.

In addition, it is a matter of good practice for CRAs to send a copy of the notice of the application or proposal by post to anyone who has asked to be informed of such applications or proposals but who has not provided an email address.

As set out above, the CRA is not expected to serve notice on a landowner where it is not reasonably practicable to identify that person, in other words if the Land Registry search draws a blank and there is no other source of information locally.

Nor is the CRA expected to serve notice on the registered owners of rights of common in gross if they are so numerous it would not be reasonably practicable to serve notice on them all.

Adding or removing land from the register – and duty to publicise application or proposal

In the case where an application or proposal that would either add land to, or remove land from, the register, the CRA must post a site notice for not less than 42 days at, or near, a minimum of one obvious place of entry to the land. If there are no such places then the notice can be posted at a conspicuous place on the boundary of the land. In Welsh Government's view, one notice would suffice for contiguous areas of land. In order to keep costs down, multiple notices should be the exception, not the rule. Where the site notice is removed, obscured or defaced prior to the expiry of the 42 day period through no fault of the CRA it will be treated as having complied with the site notice requirement.

The CRA is responsible for drafting the notice. It is important that the notice complies with regulation 12 of the 2017 Regulations, is sufficiently descriptive, and explains fully the details associated with the application including, for example, giving sufficient explanation of the effect of the application or proposal.

Regulation 12 prescribes the details which must be included in a notice of an application or proposal. Failure to draft the notice correctly could leave a CRA's determination open to legal challenge. The notice must contain the following details:

- a reference to ‘the Commons Act 2006’ and the provision of the 2006 Act under which or pursuant to which the application or proposal is made;
- the name of the applicant and of the CRA;
- the name and location of the land affected by the application or proposal;
- a summary of the effect of the application or proposal;
- both a postal address and an email address for the CRA to which any representations concerning the application or proposal may be sent;
- an explanation that such representations will not be treated as confidential;
- the date on which the period for making representations expires, which must not be less than 42 days after the date of the service, publishing or posting of the notice; and
- the address of the CRA at which the application or proposal and any documents accompanying it are available for inspection.

Inspecting applications or proposals made

Copies of applications or proposals and any accompanying documents must be made available for inspection at the address specified in the notice. These documents need to be available for inspection during normal office hours and within the deadline (at least the 42 working days) for representations to be made.

Representations/Objections

Anyone can make a representation/objection regarding an application or proposal within the deadline (at least the 42 statutory days) specified in the notice of application. Those making representations/objections must state their name and address, the nature of their interest (i.e. do they have a legal interest in the land?), the grounds on which it has been made and be signed by the person making the representation/objection. Written representations are permitted to be made by way of email (regulation 26) – if this is the case no signature is required. The CRA may disregard objections where no name and address is supplied.

Any representation received after the deadline for representations has elapsed may be excluded from the process, although there may be (exceptional) circumstances where the CRA considers it reasonable to accept representations after this date – this would need to be considered on a case by case basis.

Once the deadline for representations has passed the CRA is required to write to the applicant to inform them that either:

- no representations have been received; or
- the authority has received representations.

Where representations have been received copies will need to be forwarded to the applicant. Applicants have the opportunity to respond to these representations – the 2017 Regulations set out that they must be given a minimum period of 21 days to write to the CRA with a response. Any such response must be in writing and signed by the person responding, although if this is done by email, no signature is required. A longer timeframe for comment may be given, for example, in the event that substantial correspondence on the application is received. There is also a duty on CRAs to provide the applicant's response to those who have made representations (regulation 14).

Depending on the type of application and the representations received it may be necessary for the application to be referred to PINS (see below).

Applications (or proposals) to which there is no objection

Even if no objections are received, CRAs must nevertheless consider the application or proposal on its merits. An application or proposal should only be granted if it is made in accordance with the criteria in the legislation, and the absence of opposition to its being granted must not be taken as suggestive that those criteria are met and need not be considered.

It is particularly important that an application or proposal is fully examined where, if granted, it would have some effect on the public interest, such as land being deregistered. For example, an application to deregister land under Schedule 2 paragraph 6 of the 2006 Act may not attract representations from third parties, but the CRA should nevertheless satisfy itself that the application contains sufficient evidence to merit granting the application. The applicant would be expected to provide convincing evidence that all of the land referred to in the application was and remained covered by a building, or the curtilage of a building, during the relevant period of time. If such evidence is unavailable then the application must not be granted.

Please note CRAs should be particularly cautious in accepting the applicant's assertion as to the facts, without supporting evidence, particularly in the absence of any third party who may wish to comment on or test such assertion.

Electronic communication

The use of email can speed up the application process, and is generally less costly and burdensome for all parties. Regulation 26 permits the use of email where it would result in the recipient receiving the information in substantially the same form as if it had been sent in printed form, provided that the recipient has consented to receive communications in this way. However, any person may communicate with the CRA by email, without the authority's prior consent. CRAs are therefore advised to establish and advertise email accounts which may be used in relation to sections 19 and 22 of, and Schedule 2 to, the 2006 Act.

An email need not be signed, but in case of any doubt, CRAs should take steps to establish the authenticity of any correspondent. Applications **must** be in hard copy and signed by the applicant; there is currently no mechanism that will allow for such applications to be submitted electronically.

Hearings and public inquiries

It is believed that many of the applications will be routine and will not attract significant interest. In routine cases, where there is no opposition, and the CRA intends to grant the application there will be no need to hold an inquiry. In cases where the CRA is minded to refuse an application you must afford the applicant the opportunity to be heard before you reach a final decision (regulation 16(7)). An opportunity to be heard means that the applicant is given the option of making oral representations so as to present their case to the decision maker, to explain orally the key aspects of the application, and to address any points of contention (but not necessarily to question any other person). This could be face to face or via a telephone call – in deciding this the CRA will need to have regard to the circumstances of the individual case.

When reaching a decision as to whether to grant or refuse an application or proposal, the CRA is required to consider the civil rights of any third party that may be affected by the application. The registration authority has to afford a similar opportunity to be heard to that person (regulation 16(7)).

Public inquiries are governed by regulations 17 to 20, 22 and 23 of the 2017 Regulations. An independent inspector (such as a barrister) can conduct public inquiries on behalf of your CRA. In cases where the application is referred to PINS they will be responsible for appointing an inspector to hear the case. Both you as the CRA and PINS (where cases are referred) will need to publish a notice of inquiries and hearings on respective websites and serve a notice of the inquiry or hearing on various parties (regulation 17). Whilst the 2017 Regulations do not prescribe a specific timeframe for publishing a notice of inquiries or hearings the Welsh Government expects both CRAs and PINS to allow an appropriate amount of time between the notice being published and the hearing or inquiry commencing. This will depend on the facts of the specific case. The appointed inspector may hold a pre-inquiry meeting – this will determine the matters to be addressed at the inquiry and the procedure which will be followed. If a pre-inquiry meeting is not considered necessary, the inspector can give written directions. An inspector, but not the CRA, can hold hearings under regulation 21. A hearing takes the form of a discussion led by the inspector.

Regulation 18 addresses general provisions in connection with a public inquiry. This sets out that, if the inspector considers evidence not to be relevant, or to be repetitious, the inspector has powers to prevent someone from giving evidence, cross-examining or presenting, as may be the case.

Site Visits

The CRA and PINS each have the power to conduct a site visit to help them understand an application or proposal (regulation 22(2)). In the event that a public inquiry is to be held the inspector overseeing the inquiry must organise a site visit before determining the application, unless the landowner refuses entry.

In advance of undertaking a site visit in relation to an application, the applicant must be asked whether they would like to be present or be represented (regulation 22(3)). If an applicant indicates a wish to attend the site visit but subsequently isn't present when it takes place, the inspection can still go ahead.

The 2006 Act does not provide powers of entry to land, and we would not expect a CRA to enter land without the permission of the landowner. In many cases, particularly where an application is made by the landowner, such permission will be willingly given. If permission is refused, it may be possible to inspect the land from public highways (including public rights of way) which pass across or near to the land.

CRAs should be cautious of exercising any right of access to land under Part I of the Countryside and Rights of Way Act 2000, under Section 193 of the Law of Property Act 1925, under any other legislation which confers a public right of access to common land, or any common law right to use of a town or village green. Such rights are invariably conferred for the purposes of recreation (or for similar purposes), and in Welsh Government's view, a landowner would be entitled to require an officer of the CRA to leave such land if that officer were present for the purposes of a site survey. Accordingly, where a CRA wishes to inspect such land, it should seek permission from the landowner notwithstanding any public right of access, and should respect any refusal.

Where land is unclaimed, no permission to enter can be obtained because no-one is known to have the authority to give such permission. In such a case, Welsh Government is of the view that a CRA may reasonably enter the land to inspect it. For the purposes of deciding whether land is unclaimed, the CRA is advised to adopt the criteria in section 45 of the 2006 Act (powers of local authorities over unclaimed land), that is that no person is registered as proprietor in the register of title maintained by the Land Registry and the CRA cannot otherwise identify the owner. The CRA should not assume that land is unclaimed merely because no person is recorded as owner of the land in the ownership section of the commons register.

Official Stamp

CRAs need to keep a stamp with an impression containing the information prescribed in regulation 30(1) of the 2017 Regulations. Following the determination of an application or proposal, the CRA is required to stamp every sheet that forms part of the determination (regulation 3(3)).

Determination by the Commons Registration Authority

The CRA must take all of the evidence and advice received into account, and be satisfied that all parties have been given sufficient opportunity to make their views known. The CRA must, in determining an application or proposal, take into account the matters set out in regulation 16(1) of the 2017 Regulations.

In addition, a CRA must be aware of and act in accordance with the following:

- its duty to take steps to maintain and enhance biodiversity under section 7 of the Environment (Wales) Act 2016;
- its duty (in relation to any land designated as a site of special scientific interest), to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest (section 28G of the Wildlife and Countryside Act 1981);
- its duty to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions;
- its duty (in relation to National Parks) to have regard to the purposes for which the National Parks are designated, and if it appears that there is a conflict between those purposes, it shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park (section 11A of the National Parks and Access to the Countryside Act 1949); and
- its duty (in relation to an Area of Outstanding Natural Beauty) to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (section 85 of the Countryside and Rights of Way Act 2000).

If an application or proposal is made where it may have a significant practical effect on any land designated as a SSSI, the CRA should consider consulting Natural Resources Wales.

Once a CRA has granted an application or taken a decision to give effect to a proposal, it must amend the register.

Once the application or proposal has been determined, the CRA must inform (in writing) the applicant. Written notice of the determination must also be given to everyone who made representations concerning the application or proposal, and everyone who gave evidence at a public inquiry or hearing (where the contact details are known). The notice needs to include reasons for the decision and details of any changes that will be made to the register so as to give effect to the decision. The CRA must also publish a copy of the decision and reasons for it on its website (regulation 24).

Following the determination of an application or proposal the CRA must stamp every sheet forming part of the determination, through the application of the official CRA stamp as described in regulation 30(1) of the 2017 Regulations.

Check lists for CRAs to use in determining applications and proposals are attached at Annex 1. These are intended as helpful reference documents, and are not intended to be an exhaustive list of your legal obligations. CRAs should ensure that they comply with the requirements contained within the 2006 Act and the 2017 Regulations.

Referral to the Planning Inspectorate

The Planning Inspectorate's role

An application or proposal must be determined by the CRA with responsibility for the register in which the land to which the application or proposal relates is recorded. However, in certain cases the CRA must refer the case to an 'appointed person'.

The 2017 Regulations refer to an appointed person. Currently the Planning inspectorate (PINS) is appointed by Welsh Ministers as the appointed person to undertake the administrative work associated with the making of decisions in connection with an application made under section 19, 22 and Schedule 2 of the 2006 Act (regulation 4 of the 2017 Regulations).

PINS generally has the same powers as a CRA in determining an application or proposal, for example, PINS can direct the applicant to supply further information or evidence in order to enable the application or proposal to be determined, and the deadline for doing so, and can treat the application as abandoned if the applicant does not comply with a direction (regulation 15(4)(c), (5) and (6) of the 2017 Regulations).

Deciding whether to refer

The following applications should be referred to PINS:

- where the CRA has an interest in the outcome of the application or proposal so that it is unlikely that there would be confidence in its impartiality; or
- the CRA has received objections to the application or proposal from those with a legal interest in the land;

and in either case:

the application or proposal seeks under section 19(4) of the 2006 Act to:

- add or remove land from the register; or
- correct an error in the number of rights of common in the register;

or

the application or proposal is made under any of paragraphs 2 to 9 of Schedule 2 to the 2006 Act.

Regulation 16(2) provides that the CRA may decide that a public inquiry is to be held in relation to any application or proposal.

The registration authority's role prior to referral

The CRA must first process the application or proposal in the specified manner (including publishing a notice of the application), and invite representations/objections to be sent to the CRA within the specified period of time (as set out above).

After the deadline for representations/objections, and after seeking the applicant's views on the representations/objections, if the above-mentioned criteria are met, the CRA should then refer the case to PINS, enclosing any documents which are relevant to the case. This includes the application or proposal, supporting documents, other relevant documents possessed by the registration authority, including extracts from the relevant registers, and any representations/objections received (regulation 15(4) of the 2017 Regulations). Where the CRA makes a representation/objection, it should include it with the other documents. At the same time, you must inform the applicant that the application has been referred to PINS for determination (regulation 15(4)(a)).

It is likely that PINS will ask the CRA to complete a 'referral letter', which confirms certain details, including the reason for referral. If PINS thinks that the criteria for referral do not apply, it will return the application or proposal to the CRA for determination. The CRA will be expected to provide a clear reason as to its interest in the matter and why there is unlikely to be any confidence in its ability to impartially determine the application.

The address for referred applications is:

The Planning Inspectorate / Yr Arolygiaeth Gynllunio
Crown Building / Adeilad y Goron
Cathays Park / Parc Cathays
Cardiff / Caerdydd
CF10 3NQ

The registration authority's role after referral

Once a case has been referred to PINS the role of the CRA will be of a practical nature, for example involvement in the setting up of a site visit or the provision of a venue for any hearing or public inquiry.

The registration authority's role after determination

When PINS has determined the referred case, it will notify the CRA of its decision. The CRA must give written notification of the decision to the applicant, anyone who made representations concerning the application or proposal and those who gave evidence as part of an inquiry (where the name and contact details of such a person are known). The notice must include the reasons for the decision and details of any changes made to the register to give effect to the decision. In addition the CRA is required to publish the decision and the reasons for it on its website. (regulation 24 of the 2017 Regulations)

Where an application is granted or a decision is made to give effect to a proposal (in whole or in part), the CRA must give effect to the determination in the register as appropriate – by addition, deletion, correction or otherwise. An amendment of the register has to be made in the appropriate section of the register unit relating to the land. CRAs must follow the format of the current register as closely as possible, noting that the Regulations allow for such variations and adaptations as the circumstances of the application or proposal require. We would expect this to be done as soon as practicable after the decision has been taken.

Whilst any amendment to the register will be dependent on both the specific circumstances of the case, and the form of the register to be amended, example Model Forms are included at Annex 2. It is for the CRA to decide which may be appropriate, and the types of applications that may relate to a specific form are noted on each form for guidance only.

Frequently asked questions

Q. **What or who is an appointed person?**

A. The 2017 Regulations refer to an appointed person. Currently the Planning Inspectorate (PINS) is appointed by Welsh Ministers as the appointed person to make decisions in connection with an application made under section 19 or 22 of, and Schedule 2 to, the 2006 Act.

Q. **Who can make an application?**

A. Anyone. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 state that anyone may apply: however in reality it is believed that only those with a legal interest in registered land will be likely to seek to apply.

Q**. How does a CRA access information on cases previously considered by the Commons Commissioners**

A. Information about Commons Commissioners and decisions made are published on the Association of Commons Registration Authorities England and Wales website at the following link:

http://www.acraew.org.uk/commissioners-decisions

However, the collection of decision letters published on this website is not comprehensive, and the CRAs should rely on their own records and archives in cases of doubt. The register will usually make clear whether a provisional registration was referred to the Commons Commissioners.

Q. **Can applicants view the existing registers?**

A. Yes. If the CRA is asked to provide official copies of documents you may charge for such copies. It will be a matter for individual local authorities to set their own reasonable fees for providing such a service based on actual costs.

Q. **Is there a time limit for making an application or a proposal?**

A. There is no time limit for making an application or proposal under section 19 of the 2006 Act.

All applications and proposals made under Schedule 2 to the 2006 Act must be made within 15 years of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 coming into force – 4 May 2032.

Q. **How much will applicants be expected to pay for the determination of their application?**

A. This will depend on the nature of the application; CRAs must publish fees on their website by type of application (regulation 6(2) of the 2017 Regulations). A CRA can amend its fees, but any revised fees must be published on its website at least 14 days before such fee takes effect (regulation 6).

If the application needs to be referred to the Planning Inspectorate (PINS) additional charges will be payable. The expectation is that PINS will recover its fees on a full cost recovery basis. PINS publish the daily rates charged for an Inspector and administrative work on their website. PINS will provide applicants with an estimated cost of the likely determination of their application before commencing work.

Any fee charged must be reasonable for the work performed or to be performed. No steps need to be taken by either the CRA or PINS before the specified fee has been received (regulation 6).

Q. **Can applications be made electronically?**

A. Not currently. Applicants are required to physically sign their application. Applicants are advised to either hand deliver the signed application form or send it via recorded post.

Q. **Can other correspondence be sent electronically?**

A. Yes, providing the applicant has agreed to this form of communication. Anyone providing an email address to the CRA is considered to have consented to a document being sent via email. The information contained in the email must be in substantially the same form as if it had been sent in printed form. If the information is in substantially the same form, the applicant is entitled to send the document (which includes a notice, document, information or evidence) electronically to the CRA (without express prior agreement). (regulation 26)

Q. **Does the CRA have to advertise applications or proposals in the press?**

A. No. There is no requirement for applications or proposals made under section 19 or 22 of, or Schedule 2 to, the 2006 Act to be published in the press.

Q. Schedule 2 (paragraphs 6 or 8) refers to curtilage, what does this mean?

A: For the purposes of Schedule 2 of the 2006 Act the definition of curtilage will depend on the circumstances of the particular property. A curtilage is generally understood to be the area of ground used for the enjoyment of a

house or building – so, for example, a house may have a physical barrier around it (e.g. a wall, hedge or fence) and the area within that enclosure (except the house) could, depending on the facts, be the curtilage.

Q. **What sort of evidence should the CRA expect to see to demonstrate that land had 20 years' use as of right, or was in customary use as a village green?**

A. This will depend on the individual circumstances of the land in question. Applicants have been advised to check to see if there are any Parish, Community or Town Council Records indicating that the land has been used by local inhabitants for lawful sports and pastimes as of right.

Please also see the guidance notes issued to accompany Section 15 of the Commons Act 2006 for the completion of an application for the registration of land as a Town or Village Green as this provides additional detail on the 'use as of right'. The guidance may be found at the following link:

http://gov.wales/docs/drah/publications/140807-section-15-commons-act-2006-en.pdf

Q. What is meant by applications duly made?

A. Applications are duly made when they comply with the requirements of the 2006 Act and the 2017 Regulations. CRAs are not required to proceed with applications which do not comply with the requirements of the 2006 Act or the 2017 Regulations.

Q: What happens if a mistake was made by the CRA but it is something that has no practical consequence?

A: Even where an error was made by the CRA in making an entry in the register, the error may have been made nugatory by a subsequent entry in or amendment of the register. For example, the CRA may have mistakenly included a parcel of land in the registration of a common, but a subsequent application for registration of rights over the common included that parcel as the land over which the rights were exercisable. In such a case, although an application may prove the original mistake made by the CRA, the mistake had no substantive impact, and the CRA will need to consider whether it would be unfair to make the correction sought by the application having regard to the test in section 19(5).

Q. **Can anyone inspect applications or proposals made?**

A. Yes, copies of the application or proposal and any accompanying documents (evidence) must be made available for inspection at the address published in the notice of the application or proposal. This inspection may take place during normal office hours and within the 42

working days (or longer period specified in the notice of the application or proposal) ending with the deadline for making representations / objections.

Q. **Can anyone make representations/objections to an application or proposal?**

A. Yes, anyone can make written representations/objections regarding an application or proposal. Representations/objections must be made to the CRA and must be made within the deadline specified in the notice of application or proposal.

The person making the representation/objection must state his or her name and address, the nature of their interest if they have such an interest (e.g. do they have a legal interest in the land?) and the grounds for making the representation/objection. The representation/objection must be signed by the person who has made it. Representations/objections may be made by email – if so, no signature is required.

Q. **Can the Commons Registration Authority object to an application?**

A. Yes, a CRA may object to an application made to them, however, an objection would normally only be appropriate if the CRA itself has some interest in the matter under consideration. If the CRA is aware of an impediment to granting an application, other than one in which it has an interest, that is a ground for refusal (or for concluding that the application is not duly made), rather than a ground for making an objection – in such cases, the CRA should ensure that details of the impediment are disclosed to the applicant and those making representations so that they may comment on them.

Where a CRA objects to an application it must consider whether the application should be referred to PINS. In a case where the CRA is objecting to an application it would seem to be clear that the CRA could be considered to have 'an interest in the outcome' of the application. In such cases there is unlikely to be confidence in the CRA's ability to determine it with impartiality. If this is the case, the application must be referred to PINS.

Q. **Can an application be withdrawn or changed?**

A. Neither the 2006 Act nor the 2017 Regulations contain provisions for the amendment or withdrawal of an application. If an application has been made, it is for the CRA to determine whether to proceed with the application. The CRA does not have to agree to withdraw or change an application if the withdrawal or change would affect the interests of others.

The Welsh Government would expect a CRA to be cautious in accepting the withdrawal of an application that has been made in the public interest, particularly if other people wish to see the application proceed to a determination. The CRA may agree to let the applicant correct something

that is clearly wrong (such as an incorrect map). You will need to act reasonably in the circumstances of the particular application and judge each case on its merits.

Q. Can a CRA refuse repeat applications?

A. The Welsh Government takes the view that an identical, or near identical, application to one previously made and refused would entitle the CRA to refuse to accept it on common law grounds of res judicata (A matter already judged).

If a repeat application was similar, but not the same, as that made previously, the CRA may need to consider the new evidence or material, and consider whether its earlier decision remains appropriate. Depending on the circumstances of the case, it may be relatively straightforward to isolate the new information and its potential impact on the previous decision. However, this could potentially be costly (not least because of the cost of publicising repeated applications), and could be relevant only where the application is sufficiently novel that it merits some element of fresh consideration.

Q. Can an application be granted in part only?

A. CRAs may conclude that an application should be granted only in part, because the criteria are met only in relation to that part.

Before granting an application in part only, the CRA should consider whether, had the application been submitted in relation only to that part, the application would have satisfied the requirements of the 2006 Act and the 2017 Regulations.

Q. Can a CRA reject what it considers to be a spurious application?

A. If the application is spurious in the sense that it does not fulfil the statutory criteria to be successful, this will constitute grounds for the CRA to refuse the application. If the application is made without sufficient evidence to be capable of being granted, then the CRA may conclude that the application is not duly made. For example, an application made under paragraph 7 of Schedule 2, which contains no supporting evidence, is unlikely to be duly made.

Q. Can costs be awarded to any party?

A. Costs may only awarded by an inspector where a Public Inquiry has been held in relation to an application or proposal under Schedule 2 to the 2006 Act. The person against whom costs are awarded must have, in the inspector's opinion, acted unreasonably.

The inspector may make an order for costs in favour of the applicant, any person who participated in the public inquiry or the CRA taking part in the public inquiry.

Costs may be ordered against the applicant, any person who participated in the public inquiry or the CRA taking part in the public inquiry.

Q. **Can a decision by the CRA be challenged?**

A. There is no specific appeals mechanism, however decisions by the CRA or PINS may be challenged in the High Court by way of judicial review.

Q. **Can anyone else order a CRA to amend its register under section 19, 22 and Schedule 2?**

A. Yes, a High Court may order an authority to amend the register if it is satisfied that:

- an entry, or information in an entry, was included due to fraud; and
- it would be just to amend the register.

Contacts

For further enquiries and comments please contact:
For enquiries relating to applications that have been referred to the Planning Inspectorate:

The Planning Inspectorate
Crown Building
Cathays Park
Cardiff
CF10 3NQ

e-mail: wales@pins.gsi.gov.uk

The Commons Act Team
Agriculture – Sustainability and Development Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: CommonsAct2006@wales.gsi.gov.uk

Annex 1 – Check Lists
Annex 2 – Model Forms

Llywodraeth Cymru
Welsh Government

Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Guidance for Applicants

May 2017

Guidance

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Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Guidance for Applicants

This guidance has been prepared by the Welsh Government and applies to Wales only.

The guidance is produced to accompany the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (the 2017 Regulations). It is intended to assist those making applications under sections 19, 22 and Schedule 2 of the Commons Act 2006 (the 2006 Act) to amend commons registers. It is not a substitute for legislation and can only reflect the Welsh Government's understanding of the law at the time of issue. In case of doubt, please refer to the Commons Act 2006 and the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017.

The interpretation of the 2017 Regulations and the 2006 Act is ultimately a matter for the Courts. Where matters of statutory interpretation arise you should obtain your own independent legal advice as necessary.

Background

The Commons Registration Act 1965 (the 1965 Act) established definitive registers of common land and town and village greens in England and Wales in order to record details of rights of common. Registration authorities (Local Authorities) were appointed to draw up commons registers (the registers).

The task of establishing registers was complex and the 1965 Act proved to have deficiencies. For example, some land was mistakenly registered as common land. Other land was overlooked and never registered. The Court of Appeal held that even where land had been wrongly registered as common land, the 1965 Act provided no mechanism to enable such land to be removed from the register once the registration had become final[1].

This guidance sets out how anomalies and mistakes relating to existing entries in the registers may now be amended. You will be able to submit an application under section 19 of the 2006 Act, which provides for correction of the registers in prescribed circumstances. You will also be able to submit an application under Schedule 2 to the 2006 Act, which allows land which fulfils relevant criteria to be added to the register if it is not registered, or removed from the register if it was wrongly registered.

[1] Corpus Christi College v Gloucestershire CC [1983] 1 Q.B. 360

Applications must be made to the appropriate Commons Registration Authority (CRA), which is part of the Local Authority for the area in which the land is situated. Contact details may be accessed at the following link:

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonlandregauthorities

The Provisions

Section 19 – Correction

Section 19 of the 2006 Act allows for applications to be made by any person to the CRA at the Local Authority to correct certain types of mistakes in the registers of common land and town and village greens (set out below).

It is not possible for a CRA to correct mistakes if it would be unfair to do so (section 19(5) of the Commons Act 2006). For example, if someone bought land thinking it was not a common or village green because it was not included in the register, the CRA would need to consider whether, in all the circumstances, it would then be unfair to allow an application to register it as common land or a town or village green. The interests of those who own the land must be balanced against those who want to correct the register.

The CRA may only grant an application if it considers that relevant evidence has been provided and it is fair to amend the register, having regard to the effect which the amendment will have on other people with an interest in the registration.

A CRA must refer an application to the Planning Inspectorate (PINS) if any of the following apply (regulation 15(2) and (3) of the 2017 Regulations):

- the CRA has an interest in the outcome of the application;
- the CRA has received objections to the application from those with a legal interest in the land;
- the application is looking to add or remove land from the register;
- the application is looking to correct an error in the number of rights of common in the register; or
- the application or proposal is made under Schedule 2 paragraphs 2 to 9 of the 2006 Act.

- ### Section 19(2)(a) - Mistakes made by the registration authority

An application may be made to the CRA to correct a mistake previously made by the CRA when making or amending an entry in the register. You should note that the mistake must have been made by the CRA.

For example, if an error was made by the CRA when mapping the boundary of a common during the registration of common land, this would fall within the scope of this provision. Another example would be where, in amending an entry in the register, the CRA made a mistake in the number or form of rights registered. If the CRA recorded all the information contained in an application correctly, this would not qualify as a Local Authority mistake.

- **Section 19 (2) (b) - Correcting other mistakes**

An application may be made to the CRA to correct any other mistake, provided the amendment does not increase or reduce the area of land registered as common land or village green and does not affect what can be done by virtue of having a right of common. In this scenario, the mistake could have been made by the CRA or another person.

For example, an application might be made to correct the name of the farm or holding to which a right of common is registered, or to correct a mistake in the identification of the land over which a right of common is exercisable - such as where a right is over the whole of a common rather than a particular part. For the CRA to be able to correct such a mistake, you will need to show how the mistake was made.

- **Section 19 (2) (c) - Duplicate entries**

An application may be made to the CRA to remove a duplicate entry in the register.

Duplicate entries sometimes occurred where two applications to register rights of common were made under the 1965 Act, for example by both the tenant and the landlord of a farm. If no objection was made to either registration they both became final.

- **Section 19 (2) (d) - Updating names and addresses**

An application may be made to the CRA to update any name or address shown in the register. For example, following marriage or moving residence. This provision can not be used to record a change in ownership of the rights.

- **Section 19 (2) (e) - Accretion or diluvion**

An application may be made to the CRA to update an entry in the register to take account of the common law principles of accretion and diluvion, which apply to all land where the boundary of ownership follows a body of water.

If, by gradual accretions in the ordinary course of nature, land is added on one side of the body of water, this land falls into the ownership of the person owning the rest of the land on that side, and the boundary line advances to correspond with this. Diluvion is the reverse - where land is eroded on the opposite side.

If the land affected is subject to rights of common, then the rights of the commoners and the rights of the owner will adjust in line with the boundary, however the number of rights will not increase or decrease.

Guidance on making a section 19 application starts at page 8

Schedule 2 - Non registration or mistaken registration under the Commons Registration Act 1965

Schedule 2 makes provision for any person to make an application to correct mistakes under the 1965 Act – it concerns land which should have been registered as common land, but wasn't, and land which shouldn't have been registered as common land, but was.

- ### Schedule 2 - Paragraph 2 - Non-registration of common land

An application may be made to the CRA for land to be registered as common land under the 2006 Act if the land is legally recognised as being common land but has not been registered. For an application to be successful, the land must be recognised by one of the following:

- The land is regulated by an order of regulation made under the Commons Act 1876 and confirmed by provisional order of the Inclosure Commissioners;
- The land is subject to a scheme made under the Commons Act 1899;
- the land is regulated as common land under a local or personal Act; or
- the land is otherwise recognised or designated as common land under any other enactment.

The 2017 Regulations set out that an application under paragraph 2 of Schedule 2 to the 2006 Act may not include land which is covered by a building, or within the curtilage of a building, if all the necessary building consents have been obtained (and evidence is provided), unless the owner of the land consents to the land being registered as common land.

The registration of land under Schedule 2, paragraph 2 will not create new rights of common. However, if land is added to an existing common that has rights over it, then the existing rights can be used over the new part of the common.

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- ### Schedule 2 - Paragraph 3 - Non-registration of town and village greens

An application may be made to the CRA for land to be registered as a town or village green under the 2006 Act if the land meets all of the following criteria:

- on 31 July 1970 it was allotted under an Act for recreation;
- was not finally registered as a town or village green under the Commons Registration Act 1965; and
- continues to be used for exercise and recreation.

The 2017 Regulations set out that an application under paragraph 3 of Schedule 2 to the 2006 Act may not include land which is covered by a building, or within the curtilage of a building, if all the necessary building consents have been obtained (and evidence is provided), unless the owner of the land consents to the land being registered as a town and village green.

The registration of land under Schedule 2, paragraph 3 will not create new rights of common. However, if land is added to an existing town or village green that has rights over it, then the existing rights can be used over the new part of the town or village green.

- **Schedule 2 - Paragraph 4 - Waste land of a manor not registered as common land**

An application may be made to the CRA to register land as common land under the 2006 Act if the land is waste land of a manor and meets the criteria set out in paragraph 4 of Schedule 2.

Waste land of a manor is land that fulfils all of the following:

- the land was at any point, or still is, part of a manor;
- the land is open, uncultivated and unoccupied at the date of the application; and
- the land has not been registered as common land or a village green.

Waste land of the manor is only eligible to be registered as common land if it was provisionally registered as common land under the Commons Registration Act 1965, someone objected and the provisional registration was cancelled for any of the following reasons:

- the Commons Commissioner dismissed it because the land was no longer part of a manor;
- the Commons Commissioner dismissed it because the land was not subject to rights of common, but the Commissioner did not consider whether the land was waste land of a manor; or
- the applicant withdrew or agreed to withdraw the application, whether or not it was referred to a Commons Commissioner.

In order to check whether land was part of a manor the following archives may be of use:

- The National Archives (www.nationalarchives.gov.uk);
- British History on line (www.british-history.ac.uk); or
- Local records offices

Open land – this is understood to be land that has no physical barriers that prevent access to that land. Please note that fencing that sets boundaries of ownership can still be classed as open land, especially if the land can still be accessed on foot.

You will need to consider whether any barriers on the land are temporary or permanent. Fencing is only considered relevant on land that forms part of your application; you may ignore fencing on adjacent land even if the common is completely surrounded by it.

Uncultivated land - Land is considered uncultivated if it has less than 25% sown agricultural species present

Unoccupied land - Whether land is considered to be unoccupied will depend on whether the land is used by the occupant and if so how much. Unoccupied land means that nobody is physically using the land in a way that prevents other people from using it. Land will not automatically be considered occupied because it is subject to a tenancy, lease or licence whose sole purpose is to allow grazing of the land. Land may be considered as occupied if it has been physically improved by tenants for example cultivating and reseeding moorland only for the tenants' use and benefit.

In the event that waste land of the manor is registered it will not create new rights of common. However, if it is added to an existing common with rights on it then the existing rights can be used over the new part of the common.

- ## Schedule 2 - Paragraph 5 - Town or village green wrongly registered as common land

An application may be made to the CRA to remove land from the common land register and instead register it in its register of town and village greens under the 2006 Act. To do this, the land needs to meet all of the following criteria:

- the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965;
- the provisional registration became final; but
- immediately before its provisional registration the land was a town or village green.

Some village greens were wrongly registered as common land because the land had rights of common over it, however village greens can also have rights of common over them. Any rights of common over the land will remain even if it is recorded in the register of town or village greens.

- **Schedule 2 - Paragraph 6 - Buildings registered as common land**

An application may be made to the CRA to remove land from the common land register under the 2006 Act if the land is covered by a building or the curtilage of a building (the land that 'belongs' to the building), and was wrongly registered as common land. The land must meet all of the following criteria:

- the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965;
- the land was covered by a building, or belonged to a building, on the date of the provisional registration;
- the provisional registration became final; and
- the land has been, at all times since the provisional registration, and continues to be, covered by a building or within the curtilage of a building.

- **Schedule 2 - Paragraph 7 - Other land wrongly registered as common land**

An application may be made to the CRA to remove land from the common land register under the 2006 Act if the land meets all of the following criteria:

- the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965;
- the provisional registration became final without being referred to a Commons Commissioner; and
- immediately before its provisional registration the land was not:
    - subject to rights of common,
    - waste land of a manor,
    - a town or village green (within the original meaning under the Commons Registration Act 1965), or
    - land described in section 11 of the Inclosure Act 1845.

- **Schedule 2 – Paragraph 8 - Buildings registered as town or village green**

An application may be made to the CRA to remove land from the town or village green register under the 2006 Act if the land is covered by a building or the curtilage of a building (the land that 'belongs' to the building), and was wrongly registered as a town or village green. The land must meet all of the following criteria:

- the land was provisionally registered as a town or village green under section 4 of the Commons Registration Act 1965;
- the land was covered by a building, or belonged to a building, on the date of the provisional registration;

- the provisional registration became final; and
- the land has been, at all times since the provisional registration, and continues to be, covered by a building or within the curtilage of a building.

- **Schedule 2 - Paragraph 9 - Other land wrongly registered as town or village green**

An application may be made to the CRA to remove land from the town or village green register under the 2006 Act if the land meets all of the following criteria:

- it was provisionally registered as a town or village green under section 4 of the Commons Registration Act 1965;
- the provisional registration became final without being referred to a Commons Commissioner; and
- immediately before its provisional registration the land was not common land or a town or village green.
- Land is considered not to have been a town or village green immediately before its provisional registration if it was physically unusable for recreation during the 20 previous years and the land was not, and is still not, allotted by an Act for recreation.

Applying to make changes to the commons registers

The registers of common land and of town and village greens record information about where common land is located and the rights of common present over that land. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 enable applications to be made to make changes to the register under sections 19 and 22 of, and Schedule 2 to, the Commons Act 2006.

The following guidance sets out the process you will need to follow in order to make changes to the commons registers. A series of frequently asked questions (FAQs) is included at the end of this document (page 16) to assist you in understanding the application process.

How to Apply

The Commons Act 2006 is the legislation that allows applicants to apply to change the registers. The application process for sections 19 and 22 of, and Schedule 2, are set out in the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (the 2017 Regulations).

You may apply as an individual, an organisation or a business. If you are applying on behalf of an organisation or a business you will need to make that clear on the application form.

Applications will need to be submitted, in writing, to the CRA at the Local Authority on the correct form.

The application must be signed by every applicant or the applicant's representative. The application forms by type of provision are as follows:

Type of Application	Form
Section 19 – Correction of the Register	CA10 WG – E (English) CA10 WG – W (Welsh)
Schedule 2, paragraphs 2 to 9 – registration of common land and removal of common land from the registers of common land and town or village greens	CA13 WG – E (English) CA13 WG – W (Welsh)

Forms may be downloaded from either your own Local Authority website or the Welsh Government website at:

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/?lang=en

.Making an application

Before making an application you will need to ensure that you have the correct evidence available to support your application.

You must include a copy of every document that is asked for on the application form. You are advised not to forward original documents, instead send copies that are certified, for example by a solicitor or other professional person, to say that they have been checked against the original and are a true copy. You are advised to note where the originals may be inspected.

It is not necessary to send copies of documents that were issued by the registration authority or those that you know they already have in their possession.

Map to accompany the application

You will generally need to provide a map, with the relevant area of the land in question hatched in a distinctive colour (for example red), as part of your application; the map must be at least the following scale (you may use a larger scale map showing the land in more detail if you wish):

- at a scale of 1:2,500 (if this scale is available); or
- at a scale of 1:10,000.

You must use an up to date Ordnance Survey map. http://www.ordnancesurvey.co.uk Should you need historical ordnance maps these are available on the internet.

The map should accurately show the area of land comprised in the application, so that there is no doubt about the purpose of the application, and its effect if granted.

Checklist of information to accompany the application

As a guide your application will need to include the following:

1. A completed application form – CA10 WG (if you are applying under section 19) or CA13 WG (if you are applying under Schedule 2);
2. A description of the land to be registered/deregistered as appropriate (Question 6 on form CA13 WG);
3. The application fee (see below);
4. An ordnance map of the land to the correct scale (1:2,500 if available or 1:10,000 if not) with the relevant area hatched in a distinctive colour (for example red);
5. If you are applying under sections 19(2)(a) – (e) of the 2006 Act, a statement from you setting out the purpose of the application, the mistake in the register you are seeking to correct and details of the amendment you require (Question 5 form CA10 WG);
6. If you are applying under section 19(2)(a) or (c) evidence the mistake was made by the CRA;
7. If you are applying under section 19(4)(b) (amendment of a register of common land or town or village green), a statement of the purpose for which the application is made, the number of the register unit (and, if relevant, the number of the rights section entry), evidence of the mistake or other matter and a description of the amendment you require;
8. If you are applying under Schedule 2 you, as the applicant, will need to include the following information as part of your evidence:

    - **Schedule 2 (2) – (3)** - evidence that the land in question is land which falls within the scope of the legislation listed in paragraphs 2(2) and 3(2) of Schedule 2 to the 2006 Act and evidence of consent from the owner if the application includes land that is covered by a building or is within the curtilage of a building (if all necessary building consents have been obtained).
    - **Schedule 2 (4)** – evidence of the provisional registration of the land, evidence that the land is still waste in character, evidence that the land is or was formerly of a manor, and evidence that the provisional registration was cancelled or withdrawn (including where relevant the Commons Commissioner's determination).
    - **Schedule 2 (5)** – evidence of the provisional registration of the land as common land; the circumstances in which the provisional registration became final (e.g. a Commons

Commissioner's decision) and the status of the land as a town or village green immediately before it was provisionally registered as common land (this can be formal evidence, such as an inclosure award or order or exchange, or it could be 20 years' use as of right, or was in customary use as a village green).

- **Schedule 2 (6) and (8)** - evidence of the provisional registration of the land as common land or as a town or village green; the circumstances in which the provisional registration became final (e.g. a Commons Commissioner's decision) and evidence that the land has been at all times and still is covered by a building or is within the curtilage of a building.
- **Schedule 2 (7)** - evidence of the provisional registration of the land as common land; the circumstances in which the provisional registration became final (e.g. without reference to the Commons Commissioner's for a determination) and that before its provisional registration the land was not subject to rights of common, waste land of the manor, was not a town or village green, or land of a description specified in section 11 of the Inclosure Act 1845.
- **Schedule 2 (9)** - evidence of the provisional registration of the land as a town or village green; the circumstances in which the provisional registration became final (e.g. without reference to the Commons Commissioner's for determination) and that the status of the land immediately before its provisional registration was not common land or a town or village green.

Stamp Duty Land Tax

If your application to amend the register will affect the right of common, you may have to pay stamp duty land tax (SDLT). More information in respect of SDLT may be found at http://www.hmrc.gov.uk/sdlt/

Cost of making an application

You may be required, depending on the application you are making, to pay an application fee. The fees will be published on your CRAs website so please check what the charge is before submitting your application. If your application is determined by the CRA and, as part of due process, a hearing or public inquiry is held you will be required to reimburse the CRA for this. Such fees will be published on the CRAs website.

Applications made under section 19(2)(a) (correcting a mistake made by the registration authority) and 19(2)(c) (removal of a duplicate entry from the register) do not attract a fee as these are viewed as mistakes having been made by the registration authority. Similarly applications under Schedule 2 paragraphs 2 – 5 (inclusive) are also free as their determination is seen as being in the public interest as a whole.

Depending on the application you are making and the complexity of the case it may be necessary for your CRA to forward your application to the Planning Inspectorate (PINS) for determination. If this is the case you may have to pay a further fee (depending on the type of application made) to PINS.

If this is the case PINS will contact you to set out the charging method and the estimated cost of determining your application. Please note that the expectation is that PINS will charge on a full cost recovery basis. Processing an application through to determination will only occur once all payments are made. Neither a registration authority nor PINS is required to process an application until the specified fee has been paid.

What happens once you have made an application?

On receipt of your application the CRA will undertake an initial check to ensure that you have supplied all the requisite information and documents and that you have signed the application form and included the application fee.

Once the CRA is content that the application has been duly made they will send you an acknowledgement confirming receipt of the application. Your acknowledgement letter will include:

- your unique reference number as assigned by the CRA to your application;
- a postal and email address through which you may contact the CRA;
- a copy of the public notice that the CRA intends to publish on their website or in certain circumstances, post at a location at or near the site;
- details of any further documents or information that the CRA requires you to supply and a deadline for complying with this request; and
- details of the process, including the obligation the CRA is under to forward your application to PINS for determination in certain circumstances. This will include being informed that any such referral will attract further application fees.

Please note that the CRA has the power to direct you to supply further information or documents in order that it may determine the application. The CRA may specify a time for complying with any such direction. If you fail to comply with such a direction, or fail to do so within the set deadline, the CRA can abandon the application.

Advertising your application

If your application is deemed complete the CRA has a duty to publicise your application. To comply with this requirement, the CRA must:

- publish a notice of the application on its website;

- email a notice of the application to anyone who has asked to be informed of all applications (and who has provided an email address);
- serve a notice of the application on various people. This will depend on the specific application but may include:

    - owners of any land affected by the application (if reasonably identifiable);
    - anyone who has registered a declaration to use a registered right of common over any land which comprises the whole or part of the register unit connected to the application (when implemented);
    - any owners of rights of common in gross (rights which are not attached to land, but are held personally and can be bought or sold as assets) unless there are so many it would be impractical;
    - any Commons Council (when in place) responsible for the land which forms part of the application;
    - any occupier or lessee of the land in question; and other Local Authorities with an interest

CRAs would also be expected to inform NRW if the site is protected under habitat legislation and/or is designated as a SSSI, SAC or SPA.

CRAs are expected to post a copy of the notice of the application to anyone who has asked to be informed of all applications but who has not provided an email address.

Where the application would either add land to, or remove land from, the register, the CRA must also post a site notice for not less than 42 days at, or near, a minimum of one obvious place of entry to the land. If there are no such places then the notice can be posted at a conspicuous place on the boundary of the land. In Welsh Government's view, one notice would suffice for contiguous areas of land. In order to keep costs down, multiple notices should be the exception, not the rule. Where the site notice is removed, obscured or defaced prior to the expiry of the 42 day period through no fault of the CRA, the authority will be treated as having complied with the site notice requirement.

The contents of the notice are set out in regulation 12 of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017. The information that must be provided includes a date on which the period for making representations expires. This date must not be before the statutory 42 days after the date of the publishing, posting or serving of the notice.

What happens if representations/objections are made to your application?

Once the period for making representations/objections has passed the CRA will write to you to inform you that:

- no representations/objections have been received; or
- the authority has received representations/objections.

If representations/objections have been received, the CRA will forward copies of these to you for your comment. You will be given the opportunity to respond in writing within 21 days to any such representations/objections. The CRA may specify a longer timeframe for comment. Please note the CRA is under a duty to circulate your response to others (those who made a representation/objection).

Depending on the application you are making and the representations received it may be necessary for the CRA to refer your application to PINS. In the event that this is the case the CRA will send the case file and all relevant evidence to PINS.

Referral to PINS

Your CRA must refer your application to PINS if any of the following apply:

- where the CRA has an interest in the outcome of the application or proposal so that it is unlikely that there would be confidence in its impartiality; or
- the CRA has received objections to the application or proposal from those with a legal interest in the land;

and in either case:

the application or proposal seeks under section 19(4) of the 2006 Act to:

- add or remove land from the register; or
- correct an error in the number of rights of common in the register;

or

the application or proposal is made under any of paragraphs 2 to 9 of Schedule 2 to the 2006 Act.

On receipt of a CRA referral PINS will make an assessment of your case based on the evidence you have provided in support of your application. They will acknowledge your application; issue you with their procedural guidance in respect of applications made under the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017. You will also be provided with a copy of the fee structure and the estimated costs that you will be required to pay in order for your case to be determined. This will include a requirement to pay an initial application fee to PINS to enable work to commence on determining your application.

It is anticipated that, where a fee is payable, the cost of determining applications will be based on full cost recovery. In order for fees to accurately reflect the work undertaken we anticipate that PINS will seek payment via

instalments as work progresses. As part of the acknowledgement process you will be provided with details as to how and when you will need to make payments

Hearings and Public Inquiries

In the event that either the CRA or PINS are considering refusing your application they must give you the opportunity to meet or discuss with them in order to talk about the key aspects of the application and answer any possible points of conflict. They must also give the opportunity to meet or discuss the application to anyone else whose civil rights would be affected by the outcome of your application – this is the case in all eventualities (i.e. if they are going to grant or refuse an application).

Either the CRA or PINS may decide to hold a public inquiry in relation to an application. If there is opposition to your application and objections are received from people with a legal interest in the land (such as the owner, commoners, or those with lease or tenancy agreements) your application will be forwarded to PINS and it is likely that a public inquiry will be held.

Site Visits

The CRA and PINS each have the power to conduct a site visit to help them understand your application. In the event that a public inquiry is to be held the inspector overseeing the inquiry must organise a site visit before determining the application, unless the landowner refuses entry.

Before the CRA, PINS or the inspector makes a site inspection, they must ask you whether you would like to be present or be represented. If you indicate that you wish to attend the site visit but subsequently don't attend, the inspection will continue without you.

Decisions

A decision on your application may be taken by either the CRA or PINS. An application may be granted in whole or part. Once this decision is made the CRA must communicate that decision as follows:

- give written notice to you as the applicant;
- inform everyone who made representations;
- inform anyone who gave evidence at a public inquiry or hearing, if that is practicable;
- publish the decision and the reason for it on the CRAs website; and
- give effect to the determination by amending the register as soon as possible.

The notice given to the various persons has to include the CRAs reasons for its decision and provide details of any changes that will be made to the register.

Frequently asked questions

Q. **What is a Commons Registration Authority (CRA)?**

A. Commons Registration Authorities were set up to administer the registration of common land and town and village greens. The 22 Local Authorities in Wales all undertake the functions of a CRA which include:

- maintaining the common land registers for public inspection;
- conducting searches of the registers;
- handling applications for amendments to the registers;
- registering new town and village greens;
- removing common land from the registers.

Q. **What or who is an appointed person?**

A. The 2017 regulations refer to an appointed person. Currently the Planning Inspectorate (PINS) is appointed by Welsh Ministers as the appointed person to make decisions on applications made under section 19, 22 and Schedule 2 of the 2006 Act.

Q. **Who can make an application?**

A. Anyone. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 states that anyone may apply: however in reality it is believed that only those with a legal interest in registered land will be likely to seek to apply.

Q. **The common land that I wish to make an application for covers two registration authorities, do I have to make an application to both?**

A. Most neighbouring registration authorities have 'straddling agreements' in place which means that one of them will have responsibility (in terms of processing an application) for the whole of the common land in question. You will need to check which registration authority you need to apply to.

Q. **I believe I have a very good case, what do you mean when you say a CRA may only grant an application if it is fair to amend the register?**

A. The CRA is under a duty to act fairly in respect of all parties involved, namely considering and balancing the arguments raised by all parties. For example if someone bought land having carried out all of the relevant searches and built on the land in good faith then the CRA would have to balance this person's interests in the land against the rights of those seeking to register the land as common land.

Q. **I believe my case was previously considered by the Commons Commissioners - how do I find out whether this was the case?**

A. Information about Commons Commissioners and decisions made are published on the Association of Commons Registration Authorities England and Wales website at the following link:

http://www.acraew.org.uk/commissioners-decisions

Q. **Before I make an application may I view the existing registers?**

A. You can ask your Commons Registration Authority to view the registers. If you request official copies of documents your CRA may charge you for making such copies. Charging will be a matter for individual local authorities who will be required to set their own reasonable fees for providing such a service based on actual costs.

Q. **Is there a time limit for making an application?**

A. There is no time limit for making an application under section 19 of the 2006 Act.

All applications made under Schedule 2 to the 2006 Act must be made within 15 years of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 coming into force – 4 May 2032.

Q. **How much will I have to pay for the determination of my application?**

A. This will depend on the nature of the application; you will need to refer to your CRAs website to see a published list of fees it charges by type of application.

If your application needs to be referred to the PINS additional charges will be payable. The expectation is that PINS will recover its fees on a full cost recovery basis. PINS publish the daily rates charged for an Inspector and administrative work on their website. PINS will provide you with an estimated cost of the likely determination of your application before commencing work.

Q. **Can I apply electronically?**

A. Not currently. You must physically sign your application. There is currently no mechanism that will allow for applications to be submitted electronically, and you are advised to either hand deliver your signed application form or send it via recorded post.

Q. **Can other correspondence be sent electronically?**

A. Yes, providing you have agreed to this form of communication. If you provide an email address it will be assumed that you have consented to a document being sent via email. The information contained in the email must be in substantially the same form as if it had been sent in printed form.

You are able to send documents (e.g. notices, information or evidence) by email to the CRA or, where relevant, PINS, without agreeing this expressly – provided that the information contained in the email is substantially in the same form as if it had been sent in printed form.

A requirement for a document to be signed does not apply in the case of a document sent by means of an email.

Q. **Do I have to advertise my application?**

A. No, this is the responsibility of the CRA. Your application will be published on the local authority website and, in certain circumstances, at a location at or near the site. There is no requirement for applications made under section 19, 22 or Schedule 2 of the 2006 Act to be published in the press.

Q. **I am applying under Schedule 2 (paragraphs 6 or 8), what does curtilage mean?**

A: For the purposes of Schedule 2 of the 2006 Act the definition of curtilage will depend on the circumstances of the particular property. A curtilage is generally understood to be the area of ground used for the enjoyment of a house or building – so, for example, a house may have a physical barrier around it (e.g. a wall, hedge or fence) and the area within that enclosure (except the house) could, depending on the facts, be the curtilage.

Q. **What sort of evidence would I need to provide to demonstrate that land had 20 years' use as of right, or was in customary use as a village green?**

A. This will depend on the individual circumstances of the land in question. You may wish to check to see if there are any Parish, Community or Town Council Records indicating that the land has been used by local inhabitants for lawful sports and pastimes as of right. Please also see the guidance notes issued to accompany section 15 of the Commons Act 2006 for the completion of an application for the registration of land as a Town or Village Green as this provides additional detail on the 'use as of right'. The guidance may be found at the following link:

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/guidelines-on-the-commons-act-2006/?lang=en

Q. **Can anyone inspect applications made?**

A. Yes, copies of the application and any accompanying documents (evidence) must be made available for inspection at the address published in the notice of the application. This inspection may take place during normal office hours and within the 42 working days (or longer period specified in the notice of the application) ending with the deadline for making representations / objections.

Q. **Can anyone make representations / object to my application?**

A. Yes, anyone can make written representation / objection regarding an application. Representations must be made to the CRA and must be made within the deadline specified in the notice of application.

The person making the representation / objection must state his or her name and address, the nature of their interest if they have such an interest (e.g. do they have a legal interest in the land?) and the grounds for making the representation / objection.

The representation / objection must be signed by the person who has made it. Representations / objections may be made by email – if so, no signature is required.

Q. **Can the Commons Registration Authority object to my application?**

A. Yes, a CRA may object to your application, however, an objection would normally only be appropriate if the CRA itself has some interest in the matter under consideration. If the CRA is aware of an impediment to granting an application, other than one in which it has an interest, that is a ground for refusal (or for concluding that the application is not duly made), rather than a ground for making an objection.

Where a CRA objects to an application it must consider whether the application should be referred to PINS. In a case where the CRA is objecting to an application it would seem to be clear that the CRA could be considered to have 'an interest in the outcome' of the application, such there is unlikely to be confidence in the CRAs ability to determine it with impartiality. If this is the case, the application must be referred to PINS.

Q. **Can I withdraw or change my application?**

A. Neither the 2006 Act nor the 2017 Regulations contain provisions for the amendment or withdrawal of an application. If an application has been made, it is for the CRA to determine whether to proceed with the application. You would need to speak to the CRA telling them that you wish to either withdraw or amend your application. However, the CRA does not have to agree to this, especially if the withdrawal or change would affect the interests of others.

We would expect a CRA to be cautious in accepting the withdrawal of an application that has been made in the public interest, particularly if other people wish to see the application proceed to a determination. The CRA may agree, if for example, it would be fair to let you or if it is to correct something that is clearly wrong (such as an incorrect map). The CRA will need to act reasonably in the circumstances of the particular application and judge each case on its merits.

Q. **Can I challenge a decision made by either the CRA or PINS?**

A. There is no specific appeals mechanism if you are unhappy with a decision made by either your CRA or PINS. Decisions by the CRA or PINS may be challenged in the High Court by way of judicial review. You are advised to seek your own independent legal advice before embarking on High Court action.

Q. **Can anyone else order a CRA to amend its register under section 19, 22 or Schedule 2?**

A. Yes, a High Court may order an authority to amend the register if it is satisfied that:

- an entry, or information in an entry, was included due to fraud; and
- It would be just to amend the register.

Q. **Who should I go to for help?**

A. In the first instance contact your Commons Registration Authority for advice, however, as part of its role is to determine your application it will need to be impartial so you may want to take your own independent legal advice from a solicitor with experience in this area of law. You may also wish to consider seeking advice from the Farming Unions, the Open Spaces Society or other body.

Contacts

For further enquiries and comments please contact:

The Local Authority in which the land to which the application applies is situated. A list of contact details may be found at the following link:

http://gov.wales/topics/environmentcountryside/farmingandcountryside/common/commonlandregauthorities/?lang=en

For enquiries relating to applications that have been referred to the Planning Inspectorate:

The Planning Inspectorate
Crown Building
Cathays Park
Cardiff
CF10 3NQ

e-mail: wales@pins.gsi.gov.uk

or

The Commons Act Team
Agriculture – Sustainability and Development Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: CommonsAct2006@wales.gsi.gov.uk