

**THIRD NATIONAL SEMINAR
ON
COMMON LAND AND VILLAGE GREENS**

PROCEEDINGS OF THE CONFERENCE

13 SEPTEMBER 2001

Edited

by

Christopher Short

Countryside & Community Research Unit,

University of Gloucestershire

February 2002

Contents

Page

Morning Session

Countryside and Rights of Way Act 2000: update on implementing Part 1, Hugh Craddock, DEFRA	2
Update on Government Consultation Paper, Giles Polglase, DEFRA	4
Countryside and Rights of Way Act 2000: mapping open country and common land in Wales, Gareth Roberts, Countryside Council for Wales	6
Countryside and Rights of Way Act 2000: nature conservation, Rob Cooke, English Nature	15
The England Rural Development Programme, Chloe West, DEFRA	18

Afternoon Session ~ Themed Workshops

Theme 1 ~ Upland Commons Bob Cartwright, Lake District National park John Powell, CCRU, University of Gloucestershire	24
Theme 2 ~ Lowland Commons, Nick Baxter, Surrey County Council Bob Warnock, Corporation of City of London	26
Theme 3 ~ Village Greens, Nicola Hodgson, Open Spaces Society Paul Johnson, Countryside Agency	28
Theme 4 ~ Local Authority Issues, Linda Ashton, Powys County Council Tom Bolton, Durham County Council	31
Appendix 1 – Ashstead Common	34

Morning Session

Countryside and Rights of Way Act 2000: update on implementation of Part 1

Hugh Craddock, Department of Environment, Food and Rural Affairs



Countryside and Rights of Way Act 2000, Part I Our objective

- Open up public access to mountain, moor, heath, down and registered common land by the end of 2005
- Overall objective — does not rule out earlier access



What's happened so far (1)?

- Act received Royal Assent on 30 November 2000
- Substantial provisions came into force on 30 January
- Further minor provisions were commenced on 1 April



What's happened so far (2)?

- Consultation on regulations on draft maps of open country and registered common land (28 March–20 June)
- Consultation on local access forums (31 July — continuing)



What's happening at the moment (1)?

- Consultation on local access forums is continuing — closing date is 23 October
- Work is well advanced to issue regulations on draft maps — expect these to be laid before Parliament in early October, coming into force by beginning of November
- Countryside Agency preparing draft maps in lead mapping regions (south east and lower north west)



What's happening at the moment (1)?

- Consultation on local access forums is continuing — closing date is 23 October
- Work is well advanced to issue regulations on draft maps — expect these to be laid before Parliament in early October, coming into force by beginning of November
- Countryside Agency preparing draft maps in lead mapping regions (south east and lower north west)



What's happening (3): Dedication

- Regulations under section 16 to allow owners of land to irrevocably dedicate the land for public access
- Working with Forestry Commission and Countryside Agency to prepare consultation paper on dedication scheme (due October)
- Forestry Commission already committed to dedication of national forestry estate — question only of form, speed and scale of dedication



What's happening (4): Provisional/Conclusive Maps

- Process for confirmation of draft maps of open country and registered common land, taking account of representations made (due October)
- Expect Countryside Agency to take at least three months to consider representations on draft maps
- Confirmation of earliest draft maps and issue of provisional maps unlikely until May 2002
- Regulations will prescribe procedure for appeals against provisional maps



What's happening (5): Exclusion and restriction of access

- Chapter II provides for regulations to be made (due November) on:
 - Exercise of discretion to exclude or restrict access on up to 28 days each year
 - Exclusion of dogs from grouse moors and lambing enclosures
 - Making of directions under sections 24–26 and 28 (land management, fire, safety, conservation and defence)
 - Appeals against refusal to make a direction



What's happening (4): Provisional/Conclusive Maps

- Process for confirmation of draft maps of open country and registered common land, taking account of representations made (due October)
- Expect Countryside Agency to take at least three months to consider representations on draft maps
- Confirmation of earliest draft maps and issue of provisional maps unlikely until May 2002
- Regulations will prescribe procedure for appeals against provisional maps



What's planned for the future (2)?

- Consultation papers to follow during autumn/winter on key components of implementation of access legislation
- Welcome widespread participation in consultation process

Greater Protection and Better Management of Common Land in England and Wales

Giles Polglase, Department of Environment, Food and Rural Affairs

Introduction

Since the launch of the consultation document in February 2000, this review of the policy and legislation relating to common land and town and village greens has continued to move forward. Unfortunately, progress has been much slower than expected due to the need to divert staff to other priorities such as the Countryside and Rights of Way Act 2000, and the foot and mouth disease problems.

The issues raised in the review fall into two broad but closely linked categories. The first contains the primarily administrative issues such as registration, control of works on commons and greens and also other more complex issues such as ownership of unclaimed commons. The second category is concerned with agricultural practices and management of commons. This includes difficult issues such as the role of commoners' associations, representation of other interests in the future management of commons and the links with various other aspects of Government policy and existing legislation.

The Current Position

Two documents are currently being prepared. The first is a report on the consultation responses. This will contain various statistical analyses and will set out the weight of opinions expressed both for and against the proposals contained in the consultation document. It will also give an indication of the diversity of views expressed and associated issues that arise.

We are also working on a separate document which will set out, in broad terms, the Government's proposals for future action. We hope to be in a position to issue both documents and make an announcement about the way forward later this year.

Related Issues

The Countryside and Rights of Way Act 2000 contains two new provisions relating to common land, town and village greens and certain other land (in addition to the access provisions contained in Part I of the Act). Section 68 of the Act addresses problems of vehicular access to premises over common land and town and village greens. DEFRA has recently developed draft regulations for England under section 68 and these were published for consultation on 26 July. For contact details regarding section 68, please refer to the final section of this paper.

The draft regulations are also available on the DEFRA website – see details below. The consultation period closes on 1 October. The National Assembly for Wales is currently preparing draft regulations.

Section 98 of the Act amends the definition of town and village green contained in section 22 of the Commons Registration Act 1965. It also provides powers to make regulations relating to the procedures to be followed in the registration process. We are currently considering what provisions might be contained in regulations but it is unlikely that we will be able to consult on any proposals before the new year.

Information:

General information, updates on progress and the recent consultation documents concerning the vehicular access regulations can be found at the common land branch web pages at:

<http://www.defra.gov.uk/wildlife-countryside/issues/common/index.htm#01>

If you would like to be added to the mailing lists, please contact the appropriate person below. We would especially encourage any commoners' associations in England who did not respond to the consultation to ensure that we have their contact details.

If you are based in Wales, please note that you should ensure that colleagues in the National Assembly have your details.

Contact Details:

England

- For the review and general policy issues:

Giles Polglase
Common Land Branch
Department for Environment, Food and Rural Affairs
Zone 1/05a Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6EB

Tel: (0117) 372 8883
Fax: (0117) 372 8969
E-mail: giles.polglase@defra.gsi.gov.uk

Or e-mail us at: commons.villagegreens@defra.gsi.gov.uk

- For vehicular access regulations:

Niall Malone
Common Land Branch
Department for Environment, Food and Rural Affairs
Zone 1/05b Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6EB

Tel: (0117) 372 8883
Fax: (0117) 372 8969
E-mail: niall.malone@defra.gsi.gov.uk

Wales

- For general policy issues and vehicular access:

Ray Baldacchino
Planning 1A
National Assembly for Wales
Cathays Park
CARDIFF
CF10 3 NQ

Tel: (029) 2082 3883
Fax: (029) 2082 6222
E-mail: Raphael.Baldicchino@wales.gov.uk

Countryside and Rights of Way Act 2000 – mapping access

Gareth Roberts, Countryside Council for Wales

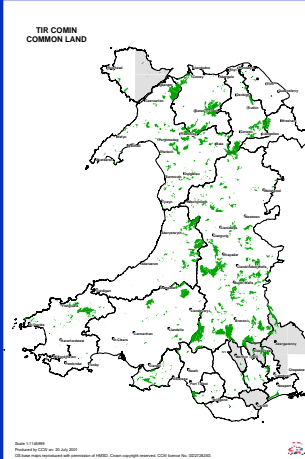
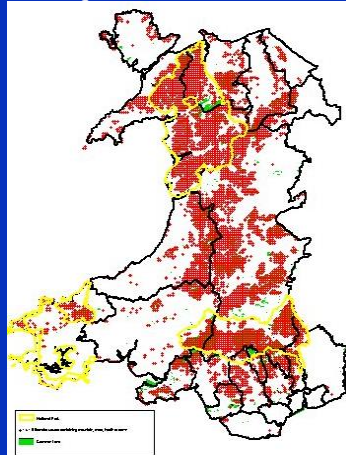


What is shown on the maps?

- Registered common land
- Open country



1 km sq



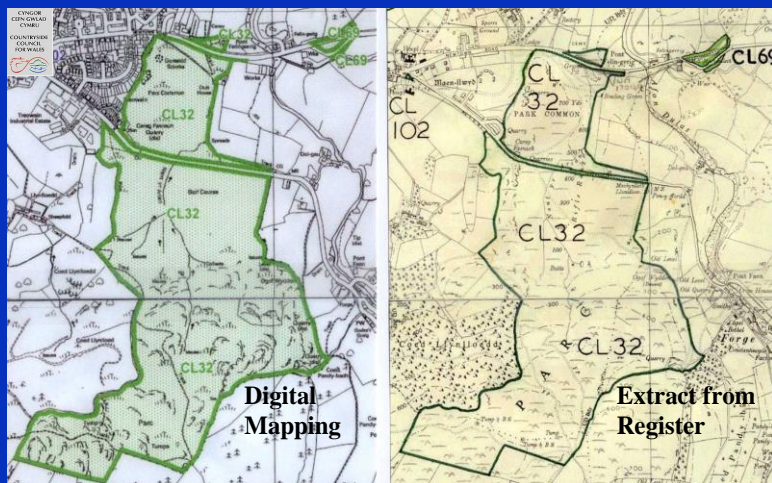
Registered common land

- All commons on the registers
- On or after 30 November 2000
- Unless removed by:
 - substitution
 - compulsory purchase

The Project Task for Landmark

- To digitise registered common land and develop a supplementary database of information for future reference
 - **specifically;**
- To transfer the common land boundaries shown on the statutory register maps (dating from the 1960's and before), together with the text register, to current OS digital mapping (Land-line);
- To replicate the boundary (right or wrong) on this modern mapping;
- The objective is NOT to create a new legal document defining common land boundaries

Registered Common Land



Mapping Common Land in Preparation for the Countryside and Rights of Way Act 2000

- Collation of the information from the original registers
- Digitisation by Landmark information Group
- Verification of checkplots by Commons Registration Officers
- Elimination of overlapping data
- Production of a seamless Wales Common Land dataset.



Open country

- Wholly or predominantly:
 - mountain
 - moor
 - heath
 - down
- as appears to CCW



Mountain

- > 600 metres
- Other upland:
 - rugged, steep, crags, scree, bare rock
 - semi-natural vegetation



Moor

- Open character.
- Mires, heaths, rough acid & upland calcareous grasslands.
- Bracken, bent-fescue grasslands.



Heath

- Generally open character.
- Heathers, gorses, bilberry, mires.
- Bracken, scrub, acid grassland.
- Regenerating trees.



Down

- Chalk or limestone.
- Open landscape.
- Semi-natural grassland.
- Scrub.
- Associated vegetation and landforms.



Improved and semi-improved grassland

- **Phase 1 survey description.**
- **As seen.**
- **Previous management indicative, not definitive.**



Predominantly

- **Normally at least two thirds cover.**
- **Areas defined by physical features.**



Physical boundaries

- **CCW's discretion**

1. walls, hedges, fences, roads (metalled public highways), rivers, lake shores;
2. other watercourses, unfenced vehicular tracks, raised banks;
3. cliffs, woodland edges, dry ditches and breaks of slope;
4. foot and bridle paths;
5. spanning short 'gaps' between strong physical features;
6. vegetation boundaries.



Small areas

- **Use discretion under 5 ha.**
- **Define useful purposes.**



Ffridd and coed cae

- No reference in Act.
- Only in if wholly or predominantly mountain, moor, heath or down.
- Criteria tend to exclude more intensively managed areas.



Map making

- Phase 1 and Upland surveys.
- Common land from the registers.
- Fine tune - air photos, satellite, field checks.
- Near final 'draft' maps by April 2002.
- Share drafts with LAF, UA, NPA before consultations.



Open Access in Wales - map milestones

- | | |
|-------------------------------|---------------------|
| • Berwyn - draft | Feb 01 |
| • 1st tranche - draft | Jun 02 |
| • 2nd & 3rd tranches - draft | Feb 2003 & Oct 2003 |
| • Last provisional map issued | Apr 2004 |
| • Conclusive maps all issued | end 2004 / 2005 |



Countryside and Rights of Way Act 2000: nature conservation

Rob Cooke, English Nature

SSSIs – What difference will the CROW Act make?

- Pre- CROW English Nature had no legal power to prevent damage to SSSIs
- 4,100 SSSIs, just over 1 million ha
- By area some 40% is in unfavourable condition
- Mostly due to inappropriate management or neglect
- Some habitats worse – 74% upland calcareous grassland, 63% moorland is unfavourable condition

Biodiversity Action Plan and species

- Duty on Ministers and Govt Depts to have regard to the purpose of conserving biological diversity in accordance with the Convention
- Also requirement on Local Authorities in Local Govt Act 2000
- Minister may, through exercise of his duty require Local Authorities to have regard to (DETR Circular 04/2001)
- Improvements to enforcement provisions relating to Scheduled species, including addition of cetaceans and basking sharks to schedule 5

SSSI's – Consultation and appeals

- **Statutory appeals to the Secretary of state over refusal of consent and Management Notices**
- **Forthcoming DEFRA code of guidance for English Nature and other public bodies on how Govt expects the SSSI provisions to be used**
- **English Nature will always seek to work in partnership, seeking dialogue and discussion**
- **The new duties in CROW also apply to English Nature where we advise others, and also on our management or our own NNR estate.**

Public Bodies

- **New duty to take reasonable steps...to further the conservation and enhancement of the special features of SSSIs**
- **New consultation procedures – not confined to operations within the boundary of an SSSI, but anywhere where an SSSI may be affected**
- **If a public body acts against our advice it must carry out the works to give rise to as little damage as possible, and restore the site to its former condition, so far as is reasonably practicable**
- **Ministers expect public bodies to apply strict tests to adopt the highest standards on SSSIs they own (DETR circular 04/2001)**

Countryside and Rights of Way Act

- **CROW has changed the basis of legislation from notice based to consent based regime**
- **It is now illegal to damage an SSSI without consent**
- **New powers to deal with neglect, including ultimately the power to enter land and undertake the work at owners cost**
- **New duties and provisions for public bodies**
- **General offence to damage an SSSI, applicable to all, including third parties**

SSSIs – What difference will the CROW Act make?

- **We cannot rely on litigation – must continue to seek to work in partnership wherever possible**
- **CROW is primary legislation – policy change is important, for example the forthcoming revised PPG9 on nature conservation and biodiversity**
- **Resources – money to finance positive management on SSSIs; staff to spend time assessing and advising on SSSIs**
- **CROW provides legal underpinning to allow us to deliver the PSA target of 95% of SSSIs in favourable condition by 2010**

The England Rural Development Programme

Chloe West, DEFRA

The England Rural Development Programme

Chloe West, DEFRA

England Rural Development Programme: Background



- Council Regulation on Rural Development (1257/99) agreed as part of Agenda 2000 Cap Reform
- Regulation combined 9 existing Regulations covering accompanying measures (including agri-environment) and structural fund measures (including support for the Less Favoured Areas, Processing and Marketing grants)
- Required Member States to submit 7 year Rural Development Plans (UK has four, for England, Wales, Scotland and Northern Ireland)

▲ Economy ▲ Environment ▲ Community

Approach In England



- April 1999: consulted on proposals for implementation - agreed on the need for significant *regional* emphasis:
 - Regional chapters with overarching national framework
 - Identification of regionally operated schemes and indicative budgets
 - Emphasis on consultation at both national and regional level
- September 1999: consulted on measures to be included in Plan

▲ Economy ▲ Environment ▲ Community

Approach In England



- December 1999: Minister announced measures and funding to be allocated
- February 2000: England Rural Development Plan submitted to Commission
- September 2000: STAR COMMITTEE agreement
- October 2000: formal Commission approval; new schemes launched by Minister

























▲ Economy ▲ Environment ▲ Community

The Programme



- Describes the current situation (strengths & weaknesses)
- Strategy for the Programme
 - which measures, why (link to strengths & weaknesses)
 - how much, and how
 - what we aim to achieve
- Details
 - scheme rules
 - how it will run
- Features
 - long-term plan
 - integrated support mechanisms re-direction of CAP

▲ Economy ▲ Environment ▲ Community

 <h3>Which measures and why?</h3> <ul style="list-style-type: none"> Two priorities: <ul style="list-style-type: none"> conservation & improvement of the environment creation of productive & sustainable rural economy Measures can be viewed at www.defra.gov.uk/erdp <p>  Economy  Environment  Community </p>	 <h3>Conservation & improvement of the environment</h3> <p><i>Expanding</i></p> <ul style="list-style-type: none"> Countryside Stewardship Scheme Organic Farming Scheme Woodland Grant Scheme Farm Woodland Premium Scheme <p><i>Continuing</i></p> <ul style="list-style-type: none"> Environmentally Sensitive Areas Scheme <p><i>Re-focusing</i></p> <ul style="list-style-type: none"> support for hill farming through the Hill Farm Allowance Scheme <p>  Economy  Environment  Community </p>
 <h3>Hill Farm Allowances</h3> <ul style="list-style-type: none"> Help preserve farmed upland environments by ensuring land in Less Favoured Areas is managed sustainably Contribute to the maintenance of social fabric in upland communities through support for continued agricultural land use Basic area payments with optional top-ups for certain environmental enhancements eg lower stocking densities Different payment rates for different categories of land Safety net guarantees 2001 payment is at least 90% of 2000 HLCA payment (provided there is no change to business or forage area) <p>  Economy  Environment  Community </p>	 <h3>Creation of a productive & sustainable rural economy</h3> <p><i>Aim:</i></p> <ul style="list-style-type: none"> create more diverse and competitive agricultural and forestry sectors, and more jobs encourage new products, new markets, collaboration provide training to support these activities <p><i>Four new schemes:</i></p> <ul style="list-style-type: none"> Rural Enterprise Scheme Processing and Marketing Grant Energy Crops Scheme Vocational Training Scheme <p>  Economy  Environment  Community </p>
 <h3>Rural Enterprise Scheme</h3> <ul style="list-style-type: none"> New scheme - £152 million over lifetime of ERDP Provides assistance for projects that help develop more sustainable, diversified and enterprising rural economies and communities Coverage wide-ranging: primary aim is to help farmers adapt to changing markets and develop new business opportunities Broader role is in supporting adaptation and development of rural economy, community, heritage and environment Strong regional focus, projects contribute to regional objectives <p>  Economy  Environment  Community </p>	 <h3>Projects must fall under one or more of the measures set out in EC RDR Regulations:</h3> <ul style="list-style-type: none"> Setting-up of farm relief and farm management services Marketing of quality agricultural products Basic service for the rural economy and population Renovation and development of villages and protection and conservation of rural heritage Diversification of agricultural activities and activities close to agriculture to provide multiple activities or alternative incomes <p>  Economy  Environment  Community </p>

Projects must fall under one or more of the measures set out in EC RDR Regulations:

- Agricultural water resources management
- Development and improvement of infrastructure connected with the development of agriculture
- Encouragement for tourist and craft activities
- Protection of the environment in connection with agriculture, forestry and landscape conservation as well as with the improvement of animal welfare

▲ Economy ▲ Environment ▲ Community



Basis of Scheme

- Competitive – projects compete for funds available
- No minimum/maximum project size
- Aim is best value for money

Aid Rates

- Minimal economic returns to the applicant: 50 - 100%
- Economic return to the applicant is the primary objective: 30 - 50%
- Substantial economic return: 15 - 30%

▲ Economy ▲ Environment ▲ Community



Those able to apply:

- Farmers
- Rural businesses
- Community groups

Welcome projects which:

- Are innovative
- Stimulate co-operation and collaboration
- Benefit particular groups e.g. young farmers

▲ Economy ▲ Environment ▲ Community



Processing and Marketing Grant

Capital grants to provide facilities for the processing and marketing of primary agricultural products

The PMG is aimed at:

- increasing competitiveness of primary agricultural products in the marketplace and their added value
- giving producers of primary agricultural products an adequate and lasting share of benefits
- contributing towards improvement of the agricultural sector concerned

▲ Economy ▲ Environment ▲ Community



What will the PMG support?

The PMG can provide support for:

- construction of new buildings
- refurbishment of old buildings
- purchase and installation of new equipment

but only for the processing and marketing of products covered by Annex 1 to the Treaty of Rome, and excluding fishery and forestry products

▲ Economy ▲ Environment ▲ Community



Projects must fulfil one or more of the following objectives:

- guide production in line with foreseeable market trends
- encourage the developments of new outlets for agricultural products
- improve or rationalise marketing channels
- improve or rationalise processing procedures
- improve the presentation and preparation of products

▲ Economy ▲ Environment ▲ Community



Projects must fulfil one or more of the following objectives:

- achieve the better use or elimination of by-products or waste
- apply new technologies
- apply innovation
- improve and monitor quality
- improve and monitor health conditions
- protect the environment

▲ Economy ▲ Environment ▲ Community



Projects must:

- comply with relevant national and EU legislation on equal opportunities
- comply with national and EU legislation on the environment, food safety and hygiene and animal welfare

Applicants must:

- provide evidence of normal market outlets
- full planning permission and/or listed building and other relevant consents (where this is a legal requirement) must be obtained before an application is submitted

▲ Economy ▲ Environment ▲ Community



Funding available

- £44 million in total available over 2001 to 2006
- can provide up to 30% of eligible project costs
- project must have total costs of at least £70,000
- maximum award to any one project £1,200,000
- applicants must fund at least 45% of total eligible project costs from their own resources

▲ Economy ▲ Environment ▲ Community



Who can apply?

- individuals
- collaborative groups of primary producers
- private and public limited companies (priority will be given to small and medium sized enterprises)

And for items/activities which are not included within a current EU-funded operational programme:

- producer organisations, recognised under EU's fruit and vegetable regime
- members of a recognised fruit and vegetable producer organisation

▲ Economy ▲ Environment ▲ Community



What isn't eligible?

- investments at retail level
- projects concerning processing of non-EU raw material (in practice, when these inputs make up more than 10% of a project's annual input)
- projects concerning inputs and outputs of material not covered by Annex 1 to Treaty of Rome (i.e. non-primary agricultural products)
- products for which no realistic market can be demonstrated
- intervention stores

▲ Economy ▲ Environment ▲ Community



What *isn't* eligible?

- cold stores for frozen products, unless part of normal processing operation
- investment to replace items purchased with a previous Processing and Marketing Grant
- upgrades to meet statutory requirements
- manufacture and marketing of products imitating milk or milk products
- sugar: aids for investment in processing and marketing activities in the sugar sector are, in general, implicitly prohibited by the common organisation of the market

▲ Economy ▲ Environment ▲ Community



Examples of potential applicants



- Group of potato producers:
 - upgrade, rationalise and amalgamate storage and grading facilities into a larger, more economical unit with better environmental control
- Fruit processing company:
 - process English fruits and looking to exploit the market for specialist fruit juices
- Small dairy business:
 - expand cheese-making operation to take advantage of growing market for speciality cheeses

▲ Economy ▲ Environment ▲ Community

Vocational Training Scheme



The VTS will fund vocational training activities that contribute to an improvement of occupational skill of farmers and other persons involved in forestry and farming activities and their conversion.

- £22 million funding over 7 years
- Each region has been given an indicative allocation
- No national allocation

▲ Economy ▲ Environment ▲ Community

Objectives



- Improved skill levels, competitiveness and economic outlook
- Stronger rural economy
- Further diversification
- Development of sustainable production practices
- Protection of the environment
- Prepare farmers for qualitative reorientation of production
- Adoption of best practice in relation to hygiene standards and animal welfare
- Application of forest management practices that improve the economic ecological or social functions of forests

▲ Economy ▲ Environment ▲ Community

What else are we looking for?



Projects which remove barriers. This might involve:-

- providing more flexible delivery mechanisms
- providing more local / community/ on farm training facilities
- creating more lifelong learning programmes
- overcoming problems associated with the delivery of practical craft skill training
- assisting with the cost of training
- helping participants find time for training

Links with other ERDP projects

▲ Economy ▲ Environment ▲ Community

Beneficiaries



- Farmers and growers
- Employees and family members
- Foresters
- People involved in the conversion of farming and forestry activities

Who can apply?

- Anyone eligible to receive support
- People from outside these categories e.g. a third party organising training activities can also apply. However they must provide evidence that final beneficiaries will fall within one of the categories listed above

▲ Economy ▲ Environment ▲ Community

What training is eligible?



Any training under the following headings:

- Information & Communication Technology (ICT)
- Business operation and management
- Marketing
- Countryside and environmental
- Diversification opportunities
- Managing resources
- Managing yourself and your staff
- Looking at new ways of working
- Technical skills (forestry)
- Technical skills (agriculture and horticulture)
- On farm food production and processing skills

▲ Economy ▲ Environment ▲ Community

What training is not eligible?

The following activities are *not* eligible:

- Full time courses provided through secondary schools, FE & HE Colleges
- Training leading to qualifications required under UK legislation
- Training activities in receipt of ESF funding under Objectives 2 & 3

▲ Economy ▲ Environment ▲ Community



Other criteria

- VTS not available in Objective 1 Areas
- Maximum project duration: 3 years
- Minimum project size: 20 days of training
- Ceiling on project management costs
- Limits on capital expenditure
- Some facilitation costs may be eligible
- Eligible cost restrictions in relation to publicly funded bodies

▲ Economy ▲ Environment ▲ Community



England Rural Development Programme

Financing

- £1.6 billion - EU and national funds
 - 21% EU allocation
 - 17% Modulation
 - 17% Modulation match-funding
 - 45% National funds

▲ Economy ▲ Environment ▲ Community



How will it operate?

- Common set of rules (agreed by EC) set out in Programme
- National schemes eg. HFAs, Organic Farming Scheme
- Regional targeting
 - rural economy measures
 - regional budgets
 - to meet regional priorities / objectives

▲ Economy ▲ Environment ▲ Community



Integration / Partnership

- Shared vision
 - goals, priorities and objectives drawn up with partners
 - all government schemes can and will contribute, not just ERDP
- Broad view
 - planned use of all measures together
 - will encourage multiple use of schemes complementing other government schemes

▲ Economy ▲ Environment ▲ Community



Only the first step

- press for more EU funds
- learn as we go (new schemes)
- monitor, evaluate, change if necessary

▲ Economy ▲ Environment ▲ Community



Afternoon Session ~ Workshops

Theme 1 ~ Upland Commons

*Bob Cartwright, Lake District national Park and
John Powell, CCRU, University of Gloucestershire*

Reports of the Task Force for the Hills and DETR's Greater Protection and Management of Common land

The group noted the need for comprehensive ground level views in commons management. A commonality of concerns was indicated over the following issues:

- legislative proposals were not always appropriate in the agricultural management of commons
- there was no recognition of the primacy of commoners
- only 1 out of 20 proposals in the DETR report concerns agricultural management
- Commons are not always adequately catered for in agri-environment schemes (e.g. Countryside Stewardship Scheme (CSS) has no prescriptions for commons)

There was general agreement that Foot and Mouth Disease (FMD) had intensified the need to concentrate attention on the agricultural management of the commons and in particular to deal with the damage that had been done. It was felt that any new legislation had to take account of the impacts of FMD and deal with grazing management issues. There was a need for financial resources to help pay for re-stocking and questions were asked as to whether there was scope in the CSS to ring-fence money for commons.

Foot and Mouth Disease

A major concern of participants was the impact of FMD. A range of issues was discussed by the group including:

- the lack of clarity over replacements and loss of quota
- the need for incentives to restock
- whether commons should be fenced to separate 'clean' from 'dirty' areas
- the need to diversify due to impacts on the wider community
- the lack of money to support diversification
- the lack of end markets for produces
- the lack of an extension scheme to support commoners in diversification.

Legal Matters

There was a discussion about the potential conflict between UK and EU regulations over biodiversity. The group noted that animal grazing enhanced biodiversity on upland commons and there was a need to maintain a certain level of grazing if biodiversity aims were to be met. There were questions asked about the Habitats Directive and the flexibility of implementation allowed.

A wide range of issues were brought up in the discussion including:

- the issue of inactive rights becoming active
- under-grazing and potential loss of graziers
- the payment structure to graziers
- local conditions and the difficulties of separating rights from land ownership

Many felt that commoners associations should have more say in the management of commons. Perhaps the establishment of local independent bodies that could use local knowledge for problem solving and that there was a need for a live register of commoners and their rights. Within commoners

associations themselves the point was made about the need for majority voting. This applied in particular to extinguishment of commons rights where part of the group felt that in this case there was a need for a unanimous vote while others noted that such a requirement could result lack of action. During discussion of the changes in the payment structure it was noted that potential problems might arise in the switch from headage to area payments. Concern was expressed here over potential for false payments if registrations are not sorted out now. Multiple registrations were identified as a problem and a mechanism for cross-checking registrations was needed. It was noted that the value of having area on the commons would increase under area payments. The group also suggested that if commons associations were given management powers they could also deal with registration problems.

Another topic over which there was a lot of discussion was 'Severance'. There was a great deal of concern expressed over the recent House of Lords judgement which upheld the 1999 Court of Appeal decision which essentially states that all grazing rights can now be severed from the land to which they are appurtenant. (The judgement can be viewed at <http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm>). Trading in grazing rights could become a problem and that rights should be linked to land around a commons. It was requested that DEFRA publicise legislative proposals but also that there was a need for action to cover the period before the legislation would be adopted.

Plenary Summary

- ❖ Legislation:
 - the need for commons legislation
 - urgency over new EU rules
 - creation of commons associations such that commoners have sense of ownership of the problems affecting the commons
 - severance, the recent decision was perverse
 - review of the commons register needed (duplication, boundaries)
- ❖ Management:
 - post-legislative guidance needed
 - voting mechanisms in commons associations needed (majority voting for most issues, unanimous voting for extinguishment of rights)
 - management plans
- ❖ FMD:
 - impact on communities
 - value of special breeds
 - re-hefting of sheep (how to introduce new stock)
- ❖ Wider rural economy:
 - incentives not good enough
 - lack of markets
 - need for improved advisory services
- ❖ Finance:
 - Need for survival in the short term
 - Agri-environment schemes should target commons

Theme 2 ~ Lowland Commons

Nick Baxter, Surrey County Council and
Bob Warnock, Corporation of City of London

Legal Surgery

This session included an extensive legal surgery, provided by Edward Harris.

Topics included:

Severance and the newly established position that rights of common may be separated from the property to which they were formally attached. (The judgement can be viewed at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm>).

It is anticipated that this could provide problems in the future, when, for example, rights of common could be sold to third parties living in other countries, who have no intention of exercising their rights, and who have no interest in the long-term management of the common. Another scenario could be that ultimately all the rights to graze fall to one commoner, which would not necessarily lead to the best long-term management of the common.

It was also suggested that severance could lead to problems regarding the restriction of access to common land under CROW, as third party owners of the rights of common could exercise their rights at times when the common had been closed to the public for good reasons.

A positive benefit to come out this was the opportunity to assign grazing rights, other than through the Lord of the Manor utilising any spare capacity, meaning that undergrazed commons could be put back into a beneficial grazing regime.

Access to common land under the various different Acts.

It is expected that the public may well experience confusion when exercising their rights of access to areas of common land, where access has been allowed under different Acts. In particular, there was the need for the public to know that they are restricted from approaching within 20 metres of any house adjacent to common land with access granted under CROW.

Finally, mention was made of a consultation document produced by DEFRA looking at the issue of access to houses across common land. It was noted that the deadline for comments to be received by DEFRA was imminent.

Best Practice: Management of Ashted Common National Nature Reserve by the Corporation of London

Bob Warnock, Superintendent of Ashted Common, gave a presentation on the management of Ashted Common in Surrey. This 200 ha common, which is owned by the Corporation of London, is managed for public access and nature conservation by a staff of 6, and with an annual budget of £250,000.

Much of the Common consists of wood pasture, with extremely old oak pollards, many of which were lost or damaged by frequent wild fires prior to the Corporation taking over ownership in the 1990's.

The Corporation has developed techniques to retain these features, including the removal of excess dead branches using coronet cuts, allowing decay to speed up (much of the ecological interest is due to the fauna associated with red rot within the ancient trunks of the pollards). Other work has included provision of all-weather paths and spraying-off bracken to reduce fire risk. Ashted Common is managed very much as a community woodland, and the local community is heavily involved, through volunteer input and via extensive consultation. (More detail is available in Appendix 1)

Discussions

The major issue discussed was:

Fencing for conservation purposes

Many lowland commons are important refuges for wildlife, as is evidenced by their designations as Sites of Special Scientific Interest and Sites of Nature Conservation Importance, etc, but lack of more

recent management, due to a decline in commoners exercising their rights in certain parts of the country (notably the south east), has resulted in a deterioration in the conservation value of many of these sites. This problem is recognised as being very much a lowland commons issue, and there has been a move to re-introduce grazing for conservation purposes to some of these commons. Invariably, the re-introduction of livestock requires fencing to prevent them becoming a hazard to traffic, although it was suggested that traffic calming could be looked at as an alternative approach in appropriate locations. The requirements of different, modern day users of lowland commons results in an essential dichotomy between the need to conserve the openness of the common, along with access, and the need to maintain the ecological value of the site, which can only probably be reconciled on a site by site basis.

Discussions included the option/advantages of permanent fencing against compartmentalised temporary electric fencing, which can be visually less intrusive but which is more resource hungry requiring daily condition checks, battery changes and re-erection/moving. Permanent fencing of a larger area is also better suited to the provision of a permanent water supply, which overcomes the need to provide water through use of bowsers, etc. It was also pointed out that extensive grazing, of large areas, leads to better structural diversity of the vegetation, providing valuable niches to be exploited by both plants and animals, and is a system which better replicates the grazing carried out in the past.

It was also suggested that an education campaign could be used to alert vehicle drivers to the presence of livestock, as an alternative, or as an adjunct, to fencing, depending on location.

It was noted that the proposal to establish a fast-track process to determine fencing applications, as detailed in the UK Biodiversity Action Plan for lowland heathland, is still awaited.

English Nature has produced a brief leaflet explaining how important common land is for wildlife: Common land – unravelling the mysteries (1999). Obtainable free from EN.

Postscript:

Following the meeting, Jenny Bowen of English Nature sent a note regarding Schedule 4(1) of CROW which amends the Law of Property Act 1925, s193(1)b, as follows:

b) the Secretary of State shall, on application of any person entitled as lord of the manor or otherwise to the soil of the land, or entitled to any commonable rights affecting the land, impose such limitations on and conditions as to the exercise of the rights of access or as to the extent of the land to be affected as, in the opinion of the Secretary of State, are necessary or desirable for preventing any estate, right or interest of a profitable or beneficial nature in, over, or affecting the land from being injuriously affected, for conserving flora, fauna or geological or physiographical features, or for protecting any object of historical interest and, where any such limitations or conditions are so imposed, the rights of access shall be subject thereto;

This amendment would appear to strengthen the case for fencing to conserve the features of the common, but still requires that an application for fencing is made to the Secretary of State.

Theme 3 ~ Village Greens

Paul Johnson, Countryside Agency
Nicola Hodgson, Open Spaces Society

New Legislation

S98 Countryside and Rights of Way Act 2000: -
amends the definition of town and village greens in Commons Registration Act 1965 section 22 (1)
(third limb)

This section came into effect on 30 January 2001

Town and village greens

98 - (1) Section 22 of the Commons Registration Act 1965
(interpretation) is amended as follows.

(2) In subsection (1), in the definition of “town or village green” for the words after “lawful sports and pastimes” there is substituted “or which falls within subsection (1A) of this section.

(3) After that subsection there is inserted -

“ (1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, either -

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed, or
determined in accordance with prescribed provisions.

(1B) If regulations made for the purpose of paragraph (b) of subsection (1A) of this section provide for the period mentioned in that paragraph to come to an end unless prescribed steps are taken, the regulations may also require registration authorities to make available in accordance with the regulations, on payment of any prescribed fee, information relating to the taking of any such steps”.

This section has now come into effect. No regulations have at present been made.

New issues to consider

1. Neighbourhood within a locality

History

The Enclosure Act 1845 refers at S30 to ‘allotment for the exercise and recreation for the inhabitants of the neighbourhood. There are other references at: S27, 39, 73.

The Act expressly states that neighbourhoods could acquire greens under the Enclosure Act.

Intention

To clarify that a locality does not have to equate to an administrative area i.e. parish but to a suitable area which the land in question might reasonably be expected to serve as a green.

It does not connote any connections with an established legal division of the country

Case: Strouds Green, Testwood, Hampshire

An inquiry was held to hear the evidence.

The report was confused and OSS and CA believed the inspector had interpreted the law incorrectly.

A further opinion was obtained by Hants County Council from Sheila Cameron QC.

Issues raised:**Definition of 'neighbourhood'**

- The people living near to a certain place or within a certain range, neighbours; a community, a certain number of people who live close together.
- The quality, condition, or fact of being neighbours or of being situated near to something; nearness

Themes: -

- Proximity to a particular place
- Proximity to each other

Issues raised: Definition of 'neighbourhood'

- The people living near to a certain place or within a certain range, neighbours; a community, a certain number of people who live close together.
- The quality, condition, or fact of being neighbours or of being situated near to something; nearness

Themes: -

- Proximity to a particular place
- Proximity to each other

2. Significant number of the inhabitants**Category of persons**

- 1.a significant number of the inhabitants of any locality,
- 2.a significant number of the inhabitants of any neighbourhood within a locality

Sunningwell

- must be used predominately by inhabitants
- must be a pattern of use - not trivial or sporadic

Irrelevant

- use by members of the public outside the 'area' defined will not defeat the application

Summary**Two Questions**

- 1.Does the area delineated / described by the applicant constitute a neighbourhood having regard to geographical proximity to the land, the subject of the application and the number of people living within that area?
- 2.Does the evidence show that a significant (in the sense of meaningful) number of the inhabitants of that area (a question of fact) have used the land in the manner required by the section

3.Regulations

- Have not been issued
- Drafts for consultation are expected from DEFRA

- 1.Inhabitants must either continue to use the land in a qualifying manner or
2. Must have ceased to use the land within any period prescribed in regulations

Concerns

- Believe period will be 2 years
- Landowners could defeat applications by preventing access to the land for 2 years
- Landowners could commence building works
- Landowners could start proceedings for a declaration that the land would not be capable of registration as a town or village green. (where user not as of right or for requisite period)

Court of Appeal

R (on the application of Beresford) v Sunderland City Council
[2001] EWCA civ 1218, 32 EG 86 (cs)

Key point

- An implied permission to use land will defeat a claim for registration as a town or village green.
- Use by toleration or acquiescence by the owner is prima facie 'as of right'
- Permission involves some positive act or acts on the part of the owner
 - Different forms
 - a) grant of oral or written consent
 - b) inference of permission from owners' acts
 - c) overt and contemporaneous acts

Conclusion

1. The facts of each individual case must be examined
2. Most cases when nothing is said or written will probably be clarified as ones of mere acquiescence.
3. As of right - without force, secrecy or permission

Procedure under Commons Registration Act 1965

The Act does not prescribe the procedure:

- The Regulations 1969 prescribe that the application can be made by anyone on Form 30
- There must be supporting evidence
- Statutory Declaration
- Authority can reject if not 'duly made'
- Application must be advertised within time limit of 6 weeks for objections.

OSS Recommendations

- 1) Non statutory inquiry to test the evidence

Human Rights - Right to a fair hearing before an independent impartial tribunal

St James Hospital, Portsmouth Hampshire

Non statutory inquiry held by Vivian Chapman March 2001

Key Points: -

- no definition of type of land which can be registered as a town or village green
- must apply words of statutory definition not by reference to popular conception
- the application was rejected for 2/3rds of the land and accepted for 1/3 - subject to a further plan being produced

Theme 4 ~ Local Authority issues

Linda Ashton, Countryside Council for Wales

Tom Bolton, Durham County Council

Local Authority Issues

**Linda Ashton
Powys County Council**

Apportionment (Best Practice)

- **Appendant & Appurtenant Rights** are attached to farmland or other land and are apportioned on a pro rata acreage basis unless the application indicates otherwise.
- **Rights in Gross** are held by the person.

Geographical Information Systems

- Common Land boundaries can be transposed onto modern seamless mapping.
- Extracts of the mapping can be printed of at the click of a button.
- Additional information can be held on each common within GIS.
- Other data sets can easily overlaid
- Data can be easily shared with other departments within Local Government.

Best Value

- Review and reform the way services are delivered.
- Challenge and reassess aims and objectives.
- Local needs and the Authorities capacity to meet those needs.
- Challenge, Compare, Consult, Competition.

Encroachment and Unauthorised Works on Commons

- Section 194 of the Law of Property Act 1925.
- The erection of any building, or the construction of any other works whereby access to common land (which was subject to rights on 1st January 1926) is prevented or impeded will require prior National Assembly consent in Wales or the consent of Secretary of State in England.

Developing a “live” register of rights

- Current register is a snap shot of the 1965 era with amendments when notified.
- DETR Best Practice Guide on managing the use of common land.
- Information is only useful if people know where to obtain it.

Appendix 1 ~ Ashstead Common
Policy Statement, Summary Description
and Operational management Objectives