



UNIVERSITY OF
GLOUCESTERSHIRE

at Cheltenham and Gloucester



FIFTH NATIONAL SEMINAR ON COMMON LAND AND TOWN AND VILLAGE GREENS PROCEEDINGS



Supported by



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INTRODUCTION

The 5th National Seminar on Common Land and Town and Village Greens took place on Tuesday, 13 September 2005, at the University of Gloucestershire, and was attended by a wide-ranging audience of almost 200 delegates. The event was sponsored by Defra.

A strong programme included a key speech in the Plenary Session from Jim Knight MP, the Minister for Rural Affairs, Landscape and Biodiversity, who outlined the Government's view of the role of commons and village greens in the 21st Century, and responded to questions that had arisen during the workshops. The discussion and debate was lively and constructive, particularly in relation to the new Commons Bill, which was introduced to the House of Lords earlier in 2005.

Paul Clayden opened the seminar with a short introduction. He emphasised the importance of common land and village greens to the rural well being, and the importance of seminars such as this for sharing ideas and for providing some serious consideration of the first legislative proposals for over 40 years.

Hugh Craddock, a key member of the Commons Bill team from Defra, followed on with a presentation entitled 'The Commons Bill and legislative process'. In the presentation Hugh outlined the four main sections of the Bill, Part 1: Registration, Part 2: Management, Part 3: Protection and Part 4: Supplementary and general measures. Hugh emphasised that Defra was aware how important common land was for a number of reasons, notable agriculture (especially in upland England and Wales), nature conservation and biodiversity (where 57% of common land is designated as SSSI), recreation (e.g. access under CROW), heritage (especially prehistoric sites), landscape and cultural/community. The Bill would not meet everyone's specific demands but it was important to continue the discussion to ensure that the new legislation was as effective as possible to ensure the sustainable future of common land.

Graham Bathe from English Nature, gave a presentation entitled 'Natural England and the multi-objective management of common land', which indicated the importance of common land and outlined the Natural Environment and Rural Communities Bill. This Bill will establish a single independent body called *Natural England* that

incorporates the work of English Nature, the access, recreation and landscape remit of the Countryside Agency and the agri-environment part of the Rural Development Service. He asked delegates to consider what role *Natural England* should adopt concerning common land. On a show of hands it was clear that most of those present considered that *Natural England* should have a central or championing role for common land.

An 'update on developments concerning common land in Wales' was offered by Buddug Jones from the Countryside Council for Wales with support from Gerry Quarrell of the Welsh Assembly Government. Mr Quarrell stressed the support of the Welsh Assembly Government to the legislation and for the need to develop regulations that were appropriate to the situation in Wales. Buddug Jones went on to show how important common land is for recreation in Wales with 99% of common land open to public access, and commons providing 30% of all access land. Like England, common land in Wales is very important for upland agriculture, nature conservation and landscape.

Jenny Griffiths and Brian Humphreys, who are Commons Registration Officers in Powys and the City and County of Swansea respectively, gave the final morning presentation on the role of commons registration officers after the Commons Bill. They outlined the current role of Commons Registration Officers and how the new Bill would affect this. Central to this role is bringing the registers up-to-date and keeping them accurate. This would include rectifying mistakes made in the first registration phase under the 1965 Commons Registration Act, although they suggested that there is a role for the Commons Commissioners or a similar body at this stage. The afternoon sessions gave delegates a chance to choose 3 sessions from a total of 9, which embraced 'New Institutional Arrangements', 'Managing the Resource' and 'Funding the Management of the Resource', and covered Statutory Commons Associations, Upland Commons, Lowland Commons, and Town and Village Greens.

In the plenary session, the Minister, Jim Knight, spoke about Common Land for the 21st Century, and announced that a new professional body, the Association of Commons Registration Officers,

will be formed for people involved in the registration of common land and town and village greens. He added that Defra would be providing £100,000 for the establishment of the body. The new organisation will provide expert advice to local and national governments on issues relating to common land.

Overall the seminar proved to be very successful with an excellent level of participation and discussion between different interest groups as well as different parts of England and Wales. It is clear from the overall evaluation that the majority of delegates found the seminar informative and interesting and I would like to thank the considerable effort of all the speakers and those involved in the workshops.



Christopher Short, Seminar Convenor
Countryside & Community Research Unit,
University of Gloucestershire

WELCOME

Paul Claydon *Author of Our Common Land*



I would like to extend a warm welcome to the encouragingly large number of delegates attending this, the fifth national seminar on common land and village greens. This is the first such seminar I have attended. I was due to be the introductory speaker at the fourth seminar two years ago, but had the misfortune to fall off a ladder and break a bone in my heel only a few days before the seminar was held.

We now have the first major piece of commons legislation since 1965 and only the second since 1908. This is therefore an important moment in the development of the law relating to commons and greens. The Commons Registration Act 1965 enacted (albeit imperfectly) the recommendations of the Royal Commission on Common Land (published in 1958) that commons and greens, and rights of common over them, should be registered. The Countryside and Rights of Way Act 2000 enacted the Royal Commission's recommendations for a public right of access to commons. The Commons Bill presently before Parliament will enact the Royal Commission's recommendations relating to the better management of commons, as well as some of the government's other proposals set out in DEFRA's *Common Land Policy Statement 2002*.

The Bill has received a favourable second reading in the House of Lords. The committee stage of the Bill will begin when Parliament resumes in

October; the projected date is Tuesday, 25th October, when the Bill will be considered by a Grand Committee of the House. There is every prospect that the bill will pass into law – no doubt with some amendments – next year (2006). Thereafter, regulations will be made to implement the details of what by then will be an Act.

Once the Bill is enacted and the regulations are in place, I will be producing a new edition of the Open Spaces Society's book *Our Common Land*.

THE COMMONS BILL AND LEGISLATIVE PROCESS

Hugh Craddock Commons Bill Team, Defra



The Commons Bill as it currently stands has four main parts:

- part 1: Registration
- part 2: Management
- part 3: Protection
- part 4: Supplementary and general

It is important to bear in mind why there is currently a Commons Bill going before Parliament. Common land is important and worth protecting for a number of reasons. It remains important to agriculture, especially in the uplands, commons are crucial areas for biodiversity, recreation and access as well as culturally central to many communities. The Royal Commission reported on common land in late 1950s, forming the foundation for the Commons Registration Act 1965, and described common land as 'last reserve of uncommitted land in England and Wales.' Because of its importance in terms of landscape and biodiversity common land is a significant factor in designated landscapes. For example:

- 57% of common land designated SSSI (and 20% of all SSSIs are on common land)
- four-fifths of common land in National Parks and AONB
- 44% of the land owned by the National Trust is common land

- the most extensive areas of common land are in upland England and Wales, resulting in half of all common land being in Cumbria and North Yorkshire.

Part 1 of the Bill deals with registration. Starting point is that common land and town or village greens are already registered by common registration authorities (i.e. county councils and unitary authorities). But there are many defects within the registers, not least in that the registers reflect the historical situation as it was in 1970 and not as it is now. The aim is to ensure common land registers are accurate, up-to-date and accessible by capturing in the registers events that have gone unrecorded (e.g. compulsory purchase schemes). This is important so that the registers are able to contribute to better management and to give certainty as to what is and is not common land or town and village green.

The measures within Part 1 of the Bill therefore include those required to ensure that commons registers are brought and kept up-to-date. It is proposed that the changes affecting registers are to be notified to registration authorities. There are also measures concerning the severance of rights of common. Traditionally, rights of common are attached to a farm holding, and the rights may be exercised by the owner of farm.

Severance is when the rights are no longer attached to the farm, but can be freely bought and sold as a tradeable asset. The problems highlighted by this practice are that the holder of such rights may have no local connection with the common and no stake or interest in its good management. Prohibition on severance would take effect retrospectively from publication date (28 June 2005) to prevent rights being severed before the Bill comes into force, subject to Royal Assent. Finally the measures include provision for registration of new town or village greens, which take into account the recent judgement in Court of Appeal (*the Trap Grounds*) so that use of a claimed green does not need to continue up to date of determination of an application for registration.

Other measures under Part 1 include *limited* criteria for registration of new common land, and deregistration of wrongly registered common land. However, some may see the criteria as too narrowly drawn, or too widely drawn, depending on perspective. The Bill does not enable a general review of rights registered under the 1965 Act because having listened to the stakeholders we agree that we must move on, and that reopening these registrations, forty-five years later, would not be helpful in achieving better management of our commons.

Part 2 of the Bill includes measures about establishing statutory commons associations with powers to protect and promote sustainable agriculture on common land. At present there is a lack of effective mechanisms for managing agricultural activity (typically grazing) on commons. The result has been poor management of agricultural activity on many commons leading to deterioration of the common and, in some cases, to severe over-grazing and consequent damage to the soil and vegetation. Part 2 enables commons associations to be established in response to local demand: commons associations are not to be imposed top down, but cultivated from bottom up. Commons associations will also be better able to enter into agri-environment agreements, which can bind all commoners into the agreement (currently a serious loophole on common land).

The establishment of these associations will be in response to local demand, where it can be shown that there is 'substantial support' from the legal interests in common. It will be approved by order of Secretary of State/National Assembly. The order will set out the terms of the commons association, rather as local Acts of Parliament have done in the past for bodies such as the Dartmoor Commoners' Council. There will also be provision for regulations to prescribe a standard constitution to which all commons associations would subscribe, containing standard terms (such as audit requirements, attendance of meetings by public, arrangements for elections).

The main purpose of these associations will be the protection and promotion of sustainable agriculture. Thus their remit will be the management of agricultural activities, including managing vegetation, removing unlawfully grazed livestock, etc. as well as making rules to underpin sustainable agricultural management and maintaining a live register of rights of common. This latter point may include the need to impose limitations on the exercise of rights of grazing.

The Secretary of State/National Assembly would approve the rules covering the management of the common. As a result a breach of rules would become a criminal offence and in extreme circumstances the rules may be revoked. The

measures include the opportunity to use the rules to set a levy as a means of raising funds. They may also be used to develop management plans and as a mechanism to enter into agreements.

Part 3 of the Bill covers the protection of common land through a process of modernising the existing legislation. The major part of this concerns reforms to existing law relating to works on commons, particularly s.194 of Law of Property Act 1925. The key points here are the need for clear criteria, the ability to place conditions on consent, the charging of fees to applicants and the opportunity to delegate determination to inspectors. The measures included would:

- apply controls to all registered common land
- extend controls to cover new mineral workings
- extend power to take action against unlawful works
- provide powers to exempt certain works.

Also within this section of the Bill there are powers of intervention. These are last resort powers for Government, Natural England and National Park authorities contained within Part 3, where unlawful agricultural activity is detrimental to sustainable management of common. Crucially it applies where activities are both unauthorised and detrimental to the protection and promotion of sustainable agriculture. This does fill a loophole. For example most harmful activities are illegal and can be dealt with (e.g. by police), however, a person turning out large numbers of sheep or ponies, other than in exercise of a right, may be causing real harm, but is not committing a criminal offence. The measures proposed provide a long stop.

Hugh Craddock's Powerpoint presentation can be viewed on the CD Rom – 'The Commons Bill and legislative process'

NATURAL ENGLAND AND THE MULTI-OBJECTIVE MANAGEMENT OF COMMON LAND

Graham Bathe *Access and Common Land Projects Manager (English Nature)*

Natural England

By October 2006 it is likely that the three organisations of English Nature, Rural Development Service and the Landscape Access and Recreation Division of the Countryside Agency will cease to exist. These organisations will fuse into a New Organisation – Natural England (NE). However, NE does not currently exist, and has no officers who can speak on its behalf. In this intermediate stage we have opportunity to help steer the future of NE. There are two Bills currently in Parliament, which will recommence their passage when Parliament reconvenes in October 2005. The Commons Bill will be dealt with in detail in this Seminar. Slightly ahead of this however is the Natural Environment and Rural Communities Bill. This introduces a raft of changes in the way that publicly funded bodies address issues in the countryside. The NERC Bill is being introduced at a time when there are substantial other changes proceeding in the countryside, driven in part by CAP reform and changes in farm support under the Single Farm Payment, where predicting the consequences are difficult.

The NERC Bill

The NERC Bill will establish a single, independent body called 'Natural England' with responsibility for enhancing biodiversity and landscapes in rural, urban, coastal and marine areas; promoting access, recreation and public wellbeing and contributing to the way natural resources are managed.

What should NE's role be concerning common land? Given the forthcoming passage of these two Bills, it is important to consider how NE should identify and prioritise its work on common land. Before that however, it is relevant to evaluate the importance of common land nationally.

Facts and Figures

Common land covers 360,000ha of England – 4% of the country. There are 7,000 English commons, 88% of English commons have registered rights of common, and about half have 20 or more right holders.



The Importance of Commons: Archaeology

Looking at the range of benefits that common land provides: they protect unploughed soils, or at least soils that have not been ploughed for centuries or millennia; often include discernible man-made earthworks and boundary features, and associated artefacts. There is likely to be (although there is no obviously available data) a high correlation between common land and scheduled ancient monuments, or other identified features listed in Sites and Monuments Records. Whilst NE will certainly not have a direct role concerning archaeology, it may well have Historical Landscape advisors who will have some involvement in these aspects, alongside counterparts in English Heritage.

The Importance of Commons: Cultural Issues

There is an aspect to common land which can be difficult to express, and difficult sometimes to comprehend. However, commons are inculcated deep within our historical culture. They are relics of ancient land-use systems, having their roots, long before the notion of 'rights' was envisaged, when resources were shared amongst communities. The subsequent codification of these in Anglo-Norman times, alongside feudalism and the introduction of Manorial Systems, became the focus of countryside management for the greater part of the last millennium. In some ways the 1965 Commons

Registration Act removed traditions, such as levancy and couchancy, which had been tried and tested for centuries, to leave us with the mess we inherit today. These living relics, with their customs and traditions, their lore and literary significance, are part of our cultural heritage and landscape.

The Importance of Commons

Rural Economies – We must not lose sight of the fact that commons were, and in many places still are, fundamental parts of rural economies. The principles of common-land management, founded on long-standing experience and practice, have supported communities financially, and provided a focus and structure to rural management. We lose such knowledge, experience and structures at our peril.

Local Communities – There are often intimate links between commons and local communities. These open spaces provide a sense of identity and focus to many villages and hamlets, a landscape setting and backdrop experienced every day, even if only from the kitchen window.

Access – Mapping under the CRoW Act has revealed the importance of common land to access. Part I of the Act grants a statutory right of access to open country (mountain, moor, heath and down) and to registered common land.

Of about 947,000ha of access land mapped under CRoW no less than 360,000ha is common land. This equates with 38% of all land mapped under CRoW. Even this figure understates the importance of commons somewhat, since the figures relate to commons registered under the 1965 Commons Registration Act, and thus excludes areas such as the New Forest, where rights of access, or fresh air and exercise already exist.

Nature Conservation – Common land is of overwhelming significance for nature conservation, throughout almost the whole country, ranging from the heaths and rolling downs of lowland England, to woodlands, and extensive northern moors. Amongst the range of interests found on common land, it is important not to forget geological interests, which form a crucial part of, and are encompassed within the phrase ‘nature conservation’. Sites of Special Scientific Interest are the cream of wildlife and geological sites in Britain. There are about 4,000 sites covering a million hectares. Some 20% of all SSSIs include common land, and 55% of common land is SSSI. However, common land is in disproportionately poor condition from the conservation perspective. There is a national target to get 95% of SSSIs in ‘favourable condition’ by the year 2010. Yet commons depress this figure significantly. Most common land SSSIs are in unfavourable condition, reflecting (in part) the difficulty of negotiating management agreements with large numbers of interests, and also trying to stimulate management in the under-grazed commons of the south.

Landscape – Turning to landscape, again common land is disproportionately important. 31% of common land contributes to Areas of Outstanding Natural Beauty; and nearly half (by area) contribute to National Parks.

Natural England – Should it be a Champion for Commons?

Once established NE will hold within its responsibilities the areas outlined above. Should it have a central and/or championing role concerning common land? Should this be for all commons, or just those with designations such as AONB, SSSI etc? What specific tasks should NE adopt?

Natural England – Where Should its Focus of Effort be Concerning Commons?

The following is a list of roles that NE could adopt:

- stimulating management on under-managed or inappropriately managed commons through incentive and agri-environment schemes
- applications for works requiring consent under the Bill (which replaces s194 applications under the 1925 Act)
- the stimulation, establishment & support of Commons Associations. The establishment of these is one of the greatest benefits of the Commons Bill, and will be explained in this seminar. It is hoped that the establishment of Statutory Commons Associations will be the mechanism to unlock long-standing difficulties concerning the management of common land through majority voting of right holders
- an Advisory Role, commenting and contributing to Regulations and Policy, and exchanging Best Practice; liaising with commoners and a wide range of stakeholders and interested parties. This might involve NE effectively adopting some of the ‘Advisory Body’ role envisaged at the time that the Stakeholder Working Group met
- NE might take enforcement action concerning unauthorised works or unauthorised agricultural activities
- should NE adopt a monitoring and audit role concerning the state of commons, also reviewing good agricultural and environmental condition alongside the Single Farm Payment scheme?
- What role should NE have concerning Town and Village Greens? Would it promote these, and provide incentives?
- what (if any) action should be taken concerning lost commons – those areas not included on the Register?
- are there any areas in the Commons Bill where NE could have delegated authority from the Secretary of State?
- this might involve issues relating to the setting up and establishing functions of Commons Associations, or involvement in certain aspects of the Commons Registers in association with Registration Authorities.

Seeking agreement and funding sympathetic management of common land would almost certainly be a key role for NE, funding right holders or Commons Associations to undertake works in the public good, providing nature conservation, landscape, access and community benefits.

Summary

Common land is of disproportionate importance. It covers only 4% of England, but it is of crucial importance for a wide range of interests including archaeology, the cultural landscape, communities and rural economies, nature conservation, access and the natural landscape. The Commons Bill is in Parliament alongside the NERC Bill which will establish a new integrated agency Natural England. There is opportunity to consider what role we want Natural England to take concerning common land, and the level of priority it should attach.

Audience Participation Session¹

The Natural Environment and Rural Communities Bill will establish ‘Natural England’ in just over a year’s time. Should it have a central or championing role concerning common land? Results of a show of hands in the hall (approximate figures):

- For: 140 Against: 20 Unknown: 15.

Graham Bathe’s Powerpoint presentation can be viewed on the CD –Rom – ‘Natural England and the Multi-objective Management of Common Land’

¹ This vote was done for the purposes of gauging mood in the hall only, and to generate debate, and has no statistical significance. It is acknowledged that the audience did not represent a scientifically chosen cross section of society, or interested parties, and indeed different groups (e.g. commoners, owners, conservationists, community groups etc) might have different views.

UPDATE ON DEVELOPMENTS CONCERNING COMMON LAND IN WALES

Buddug Jones, Countryside Council for Wales

As the previous speaker indicated, common land covers 8% (about 170,000 ha) of the total land area in Wales. Three quarters of commons have associated rights attached, including rights to graze sheep (53%), rights to graze cattle (35%), rights to graze ponies (27%). Nearly half (48%) of all commons are in private or 'mixed' ownership, 14% are owned by the Crown, 12% are Section 9 commons (and subsequently vested in the Local Authority). Only 3% are owned by the National Trust, National Parks or the Wildlife Trusts and only 2% by Local Authorities (Aitchison, 1997).

There is a high level of correspondence between the areas of common land and the three National Parks and the five Areas of Outstanding Natural Beauty (AONB) in Wales. In the Brecon Beacons National Park over 30% is common land (large, contiguous, upland commons), and commons represent about 25% of the Gower AONB.

Commons contain a rich diversity of archaeological sites, demonstrating a long continuity of human occupation and activity. These range from prehistoric activity and are represented by Bronze Age burial and ritual sites, Roman forts or early Christian site and field systems of the medieval period.

Overall 21% of Wales has a legal right of public access and common land represents 30% of this access land. Most of this (65%) is open access as a result of the CROW Bill.

Two habitats, grassland and heathland, account for 65% of common land habitats in Wales. The other categories are tall herb and fern (bracken) (14%) and bog, flush and fen (13%). As with England, there is a strong correlation between SSSIs and common land. About 30% of the total area of SSSI in Wales (263,991 ha) is common land and 45% of our common land (78,654 ha) is designated SSSI. Under EU Habitats Directive (1994), Special Areas of Conservation (SACs) are designated to help maintain the rich variety of European wildlife by protecting vulnerable habitats, and the plants and animals they support. There are several such key areas within Wales:



- *Blanket bogs* – Elenydd, Migneint, Berwyn
- *Raised Bog* – Cors Fochno
- *Fixed dunes/dune slacks, shifting dunes* – Aberffraw dunes.
- *Dry heaths* – NW Pembrokeshire commons, Halkyn common
- *Calaminarian grasslands* – Halkyn common
- *Gower Commons* – protecting the Southern Damselfly and Marsh Fritillary butterfly

Likewise Special Protection Areas (SPAs) have been set up, under the Birds Directive 1979, to conserve rare and vulnerable birds and the sites used by some migratory species and there is overlap between SPA and commons, especially upland common land, for important upland bird assemblage, including Black Grouse, Red Kite, Merlin, Golden Plover, Short Eared Owl, and coastal commons, such as in Pembrokeshire (St David's Peninsula) and Anglesey (Comin Penrhos Feilw), which are important for Choughs (an Annex 1 species).

There are a number of ways in which commons can be covered by management agreements. The most common is a management agreement on an SSSI covered by Section 15 and Section 16 of the Countryside Act 1968. In all, there are 701 active SSSI agreements in Wales, covering 18% (47,239 hectares) of the total area of SSSI. The other

main opportunity is Tir Gofal, Wales' Agri-environment scheme. The Scheme aims to encourage agricultural practices which will protect and enhance the landscapes of Wales, their cultural features and associated wildlife. The majority of Tir Gofal common land agreements are on sole rights commons; these form part of the whole farm agreement. There is only one common with several graziers entered into Tir Gofal.

Importantly, 92% of common land has no management agreement. This reflects the difficulty in securing management agreements, particularly including securing the signatures of all rights holders to the TG/SSSI agreement as well as the administrative time involved in drawing up an agreement.

It is important to stress the support of the Welsh Assembly Government and CCW to the legislation currently before Parliament and we recognise the need to develop Regulations that were appropriate to the situation in Wales.

Buddug Jones' Powerpoint presentation can be viewed on the CD-Rom – 'Update on developments concerning Common Land in Wales'

THE ROLE OF COMMONS REGISTRATION OFFICERS POST COMMONS BILL

Jenny Griffiths and Brian Humphreys *Powys County Council and City and County of Swansea*

Current Role

Under the 1965 Act the current role of Commons Registration Officers (CROs) is primarily to maintain Registers of Common Land and Town or Village Green. There are four sections to these registers:

- a General Section – showing straddling agreements etc
- a Land Section – includes a brief description and a map of the land concerned
- a Rights Section – showing applicant details
- a claim to Ownership – not conclusive evidence of title.

The rights sections also includes information on the number and type of stock or other rights, where the rights are exercisable, whether attached to land or 'held in gross' by a person and a description of the dominant tenement (usually identified by OS County Series field numbers or a plan).

The duty of CROs is to maintain the registers by processing applications for amendment when, for example land ceases to be common land or village green or a Right of Common is apportioned, varied or transferred, extinguished or released. Other duties include a duty to carry out Statutory Searches (for which there is currently a fee of £14) and a duty to make the registers available for public inspection (for which there is no charge.)

The Commons Bill currently before Parliament will have a dramatic impact on the role of CROs. They

will continue to keep and maintain the registers compiled under the 1965 Act. However they will be required to review the registers in order to correct clerical errors and other mistakes made during the 1965 registration process such as:

- mapping errors made by the Registration Authority
- the clarification of the extent of a dominant tenement
- removing duplicate entries in the register.

Crucially it will be the responsibility of the CRO to keep the registers up-to-date, including the need to capture 'qualifying events' since 2nd January 1970 during a 'Transitional Period' that includes:

- the creation of rights of common and new areas of common land
- the surrender, variation, apportionment, severance or transfer of rights of common
- the deregistration of registered land under an Act of Parliament – Acquisition of Land Act etc.

Perhaps the most contentious aspect of the Bill is the proposal for CROs to rectify mistakes made under the 1965 Act such as the fresh registration of 'missed' common land and village greens and the deregistration and removal of 'wrongly registered' common land and village greens. However, we believe that this may be a judgement that is best made by a 'Commons Commissioner' rather than the Registration Authority itself.

Overall the role of the CRO would be to improve the accuracy and reliability of the information in our registers and to provide a definitive, legal record of the extent of the land and the rights over that land, in order to facilitate the introduction of sustainable agricultural management. It is also important that the registers are more accessible in terms of availability and the information that they contain. For example, the transfer to electronic registers makes the registers more accessible and helps to preserve the 1965 paper registers. The electronic versions are also likely to be easier to translate than paper version where the markings cover up the finer detail making interpretation on the ground difficult to determine. Some advantages of an Electronic Register are that it can be used to produce A3 paper register sheets for the Rights Section or to produce CR Form 20 Notices. Changes of ownership and entitlement to rights can also be recorded more easily.

While not disagreeing with the thrust of the Bill we believe that the role of the CRO following the Bill should be to:

- serve as a source of information about common land and village greens issues
- share knowledge, expertise, problems and solutions
- build and foster good relationships between the various users of registered land
- promote Best Practice, including the benefits of modern technology.

To this end we welcome the establishment of the Association of Common Registration Officers.



Jenny Griffiths' and Brian Humphreys' Powerpoint presentation can be viewed on the CD-Rom – 'The Role of Commons Registration Officers Post Commons Bill'

NEW INSTITUTIONAL ARRANGEMENTS STATUTORY COMMONS ASSOCIATIONS

John Powell Commons Bill Team, Defra

Introduction

Part 2 of the Commons Bill covering the formation of Statutory Commons Associations was discussed in some depth. An overview of Part 2 was made and the government amendments proposed following the Second Reading Debate in the House of Lords and discussions with stakeholders over the recent months outlined.

The key aims of this part of the Bill are to enable the establishment of commons associations which will lead to improved agricultural management of common land and make entry of common land into agri-environment schemes easier. Commons associations will require substantial support of local interests in the common for an order establishing an association to be made. The aim of the Part 2 is to provide flexibility so that associations can be tailored to local circumstances. Associations may be created for one or more commons and may be granted a range of functions to manage agricultural activities.

Some problems had been identified at the Second Reading Debate, in particular the stated purpose of commons associations, which is the protection and promotion of sustainable agriculture. Concerns related to the narrow purpose implied for commons associations in managing agricultural activities on common land, and the extent to which this might constrain the formation of associations, and future operations.

In response the government is proposing an amendment to remove the term 'sustainable agriculture' and to leave commons associations without a single stated purpose. Instead commons associations could be granted functions relating to the management of agricultural activities, management of vegetation, and management of rights of common. An individual association might be given functions relating to all three areas of activity, to only one area, or to any combination, depending on local circumstances and the aims of the local interests in managing the common.

The second key change under consideration was in relation to the consent procedure for undertaking activities on the land. Recent discussions with stakeholders had revealed the need to develop a procedure for deciding when,



and from who, consent would be required when engaging in activities such as cutting or burning vegetation. A new consent procedure is being proposed which requires commons associations to obtain consent of landowners (or other persons) where consent would otherwise be required for the undertaking of an activity on the land. The intent of the proposed amendment is to maintain as far as possible the existing situation between rights of owners and rights of commoners. Where common rights holders currently have to get consent to undertake some activity on the land, then an association should also be required to obtain consent.

Discussion

Purpose and function of a commons association

There was general support among participants for removal of the term 'sustainable agriculture', which had caused some concern and confusion. There was no general agreement on the meaning of the term. Participants generally welcomed the set of functions that could be granted to a commons association. The granting of functions relating to management of vegetation was thought to be a broadening of scope for associations. This might make them more applicable to lowland commons where no agricultural activity was currently taking place.

Questions were asked about the membership of the association and representation of interests.

Participants were keen to know why the Bill said nothing about who should be part of the association. It was explained that in order to make commons associations applicable to a wide range of local conditions issues of representation and participation would be left to the Order making stage, where local interests, in conjunction with the Secretary of State (in England) or the National Assembly (in Wales) could determine representation and participation in each individual association.

Other functions of a commons association

There was a significant level of discussion on a wide range of problems occurring on different commons. Many of these related to motor vehicles and activities such as motorcycle scrambling, 4-wheel driving and parking. Other concerns related to activities such as 'raves' and other forms of access. Some participants wanted commons associations to be granted functions to enable them to deal with such situations. It was explained that legislation already existed to deal with problems of illegal driving and motor vehicles on common land. The problem was stated by some to be one of enforcement of existing laws rather than giving new powers to associations. There was some discussion about the potential effectiveness of an association even if it was given such powers.

Participants generally agreed that the central aim of commons associations, should be the management of agricultural activities on common land. If there was to be any broadening out of functions or powers granted to an association then the nature of the association itself would have to change, and accept representation on the governing body of a much wider range of interested persons. This approach was not supported although the range of illegal activities on commons remains a concern for a significant number of participants.

Owner's consent for activities undertaken on the land

The proposed amendment was generally thought to lead to greater clarity of the situation regarding owner's consent. Questions related to the procedures for obtaining consent, what occurs when the owner cannot be contacted, and whether consent had to be obtained each time for repeat procedures. Participants wanted to avoid any costly procedures for serving notice, particularly where an owner could not be found. Posting notices on the land was felt to be an acceptable approach where an owner could not be traced or the common had no known owner. Participants were concerned about the procedure when an owner refused consent, whether there was any alternative process and how a change of owner should be dealt with when there were customary and traditional practices that were no longer recognised.

Funding of an association

A key area of concern for many participants was funding, how establishment of an association should be funded and where operating monies would come from. A range of funding sources were discussed, some of which, such as the Rural Enterprise Scheme, had already been used for setting up a commons organisation (the Federation of Cumbrian Commoners). Other sources of funding, such as Heritage Lottery, had been accessed to undertake operations on commons (for example, the Gower Commons Initiative). There was widespread concern that the changes to the Common Agricultural Policy and advent of the Single Payment Scheme would result in declining numbers of upland farmers and difficulties in establishing associations. It was pointed out that a key aim of Part 2 was to allow for an association to cover multiple numbers of commons in order to achieve sufficient manpower and resources to operate efficiently.



THE PROPOSED ASSOCIATION FOR COMMONS REGISTRATION OFFICERS

Chris Hausermann *Commons Bill Team, Defra*



Introduction

Participants offered their views on three questions. The questions and participants' suggestions are as follows:

1) *Why have an Association and what could it do?*

Main points:

- problem sharing
- training schemes needed
- information sharing
- lobby for more funds
- better communication with each other and external bodies such as Defra
- give status to commons registration work.

Chris summarised by saying that the overriding issues for an Association concerned:

- information
- advocacy e.g. public interface
- provision of a forum on which to discuss day-to-day issues.

2) *What an Association could look like?*

Main points:

- funding needed
- benefit from links to Defra to give it official standing

- need an office or other central point
- location
- joint England and Wales Association (only 170 Common Registration Authorities).

Chris summarised by confirming that funding had been agreed for the Association and that Jim Knight, the Minister for Rural Affairs, Landscape and Biodiversity, would announce this at the Seminar. A press release had also gone out.

3) *How this could be taken forward?*

Volunteers offered the following:

- the Open Spaces Society volunteered to investigate the possibility of working with IPROW
- seven other volunteers including the 'Marshes Common Land Working Groups' offered to be used as a 'sounding board'
- text from 'Implications for the Bill for the Registers and the Registration Process'.

IMPLICATIONS FOR THE BILL FOR REGISTERS AND THE REGISTRATION PROCESS

Paul Johnson & Hugh Craddock *Commons Bill Team, Defra*



Introduction

Part 1 of the Commons Bill covers the issues of registration and the workshop focused on the implications of the Bill for the registers themselves as well as the registration process. Schedule 1 and 2 are also relevant and cover: rectifying mistakes under the 1965 Act and transitional provision in registration respectively.

The Bill proposes that Commons Registration Authorities would continue to keep registers of common land and town or village greens as currently but the Commons Registration Officers (CROs) would be permitted to make amendments to the registers as outlined in the morning presentation. The discussion in the workshop centred around three main areas:

- getting the registers up-to-date
- adding and removing land from the register
- searches.

Getting the registers up-to-date

The issue of apportionment concerned a number at the meeting and it was emphasised that this was generally intended to be possible during the transition period only (see Schedule 2 for details).

Likewise the issue of encroachment was raised. All those at the workshop recognised that the

maps produced under the Commons Registration Act 1965 varied in quality and were often difficult to read. Related work on the Countryside and Rights of Way Act 2000 had illustrated problems with some boundaries.

It was recognised that there would be a financial cost to users in securing up-to-date registers. For some of those present the opportunity to have a map with the dominant tenement would be an excellent resource for Commons Associations but there would be a cost to compiling such a resource.

Land omitted from the registers or wrongly registered

The parts of the Bill concerned with re-adding to the registers land that was clearly common land and the removal of land that was wrongly registered in 1965 were outlined. Again there was not agreement among those in the workshop. According to a recent Open Spaces Society survey in the East of England about 10% of registered common land units appear to have disappeared on the ground, and many others have encroachment on them. Given this fact some felt it was important to concentrate on the 90% that still exist. Others disagreed and felt that all registered commons and town and village greens should be protected, if this did not happen people could gain legal title through an

illegal act. All agreed that enforcing cases of encroachment was very difficult but it was a weak case for removal from the registers.

In both cases of removal from and adding to the registers, delegates felt that there was a need for hearing similar to those of the Commons Commissioners that resulted from the 1965 Act.

Searches

The final area of discussion concerned the issue of searches. Some delegates, especially those who were CROs, were concerned about the amount of searches that the Bill might require, both in terms of the information required to register rights and that required to check proposed changes. It was agreed that an information pack would be very useful for both CROs and the general public. It would be important for all CROs to be operating to the same standard for example and this should be more likely now with the introduction of the Association of CROs outlined at the seminar.

UPLAND COMMONS SESSIONS

IMPACT OF SINGLE PAYMENT SCHEME AND CROSS COMPLIANCE

(subject to 2005 revised guidelines)

Ian Condliffe RDS Defra

It is important to state clearly at the outset that some issues are not finalised and some areas of policy are still developing. For example, some cross-compliance procedures have not been finalised and thus the guidance may change, or the way in which inspections are carried out may change. There are also various changes in the law expected in 2006 that may impact on cross compliance. The summary here and the text on the PowerPoint paraphrase the requirements and therefore are not definitive.

Eligibility for the Single Payment Scheme (SPS) uses the definition that that cross compliance relates 'to an agricultural activity or to the agricultural land of your holding, including parcels which are set aside.' Under cross-compliance, all such land must be in Good Agricultural & Environmental Condition (GAEC), with all Statutory Management Requirements (SMR) adhered to. The term 'holding' applies also to land on which you have a common right to graze. Also, land must be at your disposal for more than 10 months and the agricultural area must be more than 0.3 ha with field parcels of more than 0.1ha. Furthermore, other than permitted exceptions, land should not be used for non-agricultural purposes. For example, holding a regular motorbike scrambling event would not be permitted anywhere on the holding even if SPS is not claimed on that particular field. If SPS is claimed on inbye only, you are subject to cross compliance on any common land for which you have rights.

The SPS payment calculation on common land is complex. SPS is an area payment so there is an overall maximum payment available for the common. This maximum is divided by the number (and type) of rights on the common, meaning that each right will have a payment value. Payment is made to those claiming entitlement based on their number of rights. If some rights holders do not claim SPS entitlement then the payment attached to those rights is not apportioned to other claimants.

Matters concerning cross compliance are also complex. Annex III of the EU regulation states that all statutory environmental, public and animal health and welfare standards (included within 18 Directives) are included. The 3 on animal welfare come into effect from 1/1/2007.

The 15 on environment and animal, presently in force cover:

- habitats
- birds
- protection of groundwater
- soil, sewage sludge
- nitrates
- animal identification
- public health
- animal health.

Annex IV of the EU regulation on cross compliance covers the protection of permanent pasture and GAEC. The key point is '...to avoid the abandonment of agricultural land and ensure that it is maintained in Good Agricultural and Environmental Condition...' Note that GAEC has been defined regionally, so it will be slightly different for England, Scotland, Wales and N. Ireland.

Under the protection of permanent pasture the general presumption is to protect such areas. Farmers will need to declare permanent pastureland as part of the SPS claim. The level of permanent pasture will be monitored via the Single Payment Form. This is unlikely to be an issue in England. Afforestation of permanent pasture that is 'compatible with the environment' is exempt providing it has been EIA-assessed.

GAEC in England has three sections, soils, air quality (burning of crop residues) and the management of landscape and habitat features.

Soil Protection Reviews (SPRs), previously known as Soil Management Plans will need to be prepared for 1 September 2006 based on a simple risk-based approach. SPRs are to be implemented on farms from 2007 BUT they will not apply to common land if more than one farmer has rights. There is a need to protect waterlogged soils and, on all land including common land, care will be needed on wheel tracking and poaching.

The UK legislation requirements for GAEC standards for habitats and landscape are:

- environmental impact assessment
- SSSI protection
- scheduled monuments

- public rights of way
- heather and grass burning
- hedgerow & forestry regs.

Additional requirements are:

- overgrazing
- unsuitable supplementary feeding
- protecting stone walls
- management of hedgerows
- control of injurious weeds and alien plants
- protection of hedgerows and watercourses with 2m buffer strips
- maintenance of land not in agricultural production.

Some of these standards are more applicable to commons than others. It is not possible to be definitive about some points concerning the liability of commoners for certain breaches of GAEC. However, commoners would not be liable for action of third parties for damage that does not relate to their rights of common, e.g. walkers causing footpath erosion or non-farm vehicles damaging permitted tracks.

The definition of overgrazing is largely the same as before, meaning that grazing land with so many livestock that the growth, quality or diversity of natural or semi-natural vegetation is adversely affected. The investigation position remains unchanged from that under headage payments and good farming practice under agri-environment and HFA schemes. The present situation on overgrazing is that only those commoners whose livestock can be identified as causing the damage would be liable to sanctions or penalty.

Unsuitable supplementary feeding (USF) means providing supplementary feed for livestock in a way that adversely affects the quality or diversity of natural and semi-natural vegetation through trampling or poaching of land by livestock, or by rutting caused by vehicles used to transport feed. USF is deemed to have occurred when the damage to the soil or semi-natural vegetation (e.g. moorland plant species) is such that this vegetation does not recover over the summer and the area is left bare, or the vegetation is replaced by (non-moorland) species that have germinated from the seeds in



the hay or silage in the enriched soil. Again the investigation position remains unchanged from that under headage payments and Good Farming Practice under agri-environment and HFA schemes. Sanctions will be applied to individual claimants carrying out USF.

The Powerpoint presentation ‘Impact of Single Payment Scheme and Cross Compliance’ can be viewed on the CD-Rom.

Undergrazing is not, at present included. There is no definition of undergrazing. Defra is waiting to see the impact of SPS on vegetation to see if action will be required. No decision has been made as to how this will be implemented. There are requirements for land not in agricultural production that require that vegetation be cut regularly. If the land becomes overgrown it may become ineligible for SPS and thus the total of common land available will be reduced which in turn will reduce the payments of all with common rights.

Generally, individual subsidy payments on common land are likely to be lower than in the past but note that cross compliance applies to all farmed land and while only certain GAEC requirements are likely to apply the most likely ones concern vegetation management and will apply to all who have rights.

UPLAND COMMONS - THE MANAGEMENT OF THE RESOURCE

Andrew Humphries *Federation of Cumbria Commoners*

Summary

Members of the workshop identified that during the day there had been a number of references to the key role of commoners collectively in delivering both the aims of the legislation and more broadly a range of public goods. The group were clear that the priority for them was to safeguard their property rights as well as exercising them responsibly and in a spirit of collaboration. The longstanding of access de facto in areas like the Lake District was testament to the approach in the English Uplands.

The whole group wondered whether this enhanced role for associations and federations (and similar groupings) would be supported financially. The experience in Cumbria was outlined, including the typical costs of operation. The level is modest, at a few thousand pounds per year, in national terms but locally significant and participants felt that the amounts were minute compared with the costs of administering agri-environmental schemes. The likelihood is that a well-organised network of associations and federations offers the potential for economies for agencies, possibly larger than the cost of supporting such commoners groups. The reality could be that commoners may be reluctant to adopt SCA status if there is too high a cost against a backcloth of declining economics.

The need for a national network of commoners was discussed. This was seen as relevant in several ways including:- sharing experience, good practice and concerns. The capacity to respond to consultations on a national, regional and sub-regional basis and to provide the critical mass for a reliable voice in discussion with other parties at National and Regional levels. Contributing to research and development, monitoring and evidence gathering were also mentioned.

In looking forward the group felt that too often common land is seen as a 'side show' – something of an anachronism and not built into policy or practice. For example in agri-environment schemes such as ELS, which is not appropriate as currently structured and HLS, which is competitive. The result is that there is no

criteria based scheme for commons yet they are of high environmental value. Communal land management should be seen as a distinct and valuable element in the cultural landscape of at least equal value to the many elements that are not only designated but supported and valued. The new RDR offers an opportunity to build in the concept of communal grazings as an identified and valuable asset to sustain through pillar 2.

Why should common grazing be considered as a special funding issue?

- It's a unique element in the cultural landscape.
- Evolved through custom and practice (and not through statute).
- There is a need for robust local management.
- The role of commons associations is fundamental to the future survival of commoning.
- Commons are multifunctional.
- There is a need to build capacity to deliver the aims of the Commons Bill.
- Communal agriculture is an important feature of the cultural landscape.
- Communal agriculture is in an unfavourable state and needs funding to survive.

Key funding Issues

- Establishment and operation of groups of associations through federations. These are required to provide discussion forums, advisory information for other bodies and to act as a focal point for wider stakeholder interests to be heard.

- Establishment costs are significant but represent good value for money. Are associations and federations of associations able to be funded as well as statutory commons associations?
- Running costs are significant (Federation of Cumbrian Commoners currently spend £8,500 per year) but this represents a significant benefit to various government agencies who then only have one single point of contact to reach many commoners' organisations.
- Unless we know what other commoners and commoners' associations are doing we will be divided.

Key Comments

- Very useful to have public funding but such organisations need to be independent.
- If Defra has a role, it is the facilitation of associations and support for their establishment. Need to indicate possible financial opportunities there might be from the new Rural Development Regulation.
- Regional grouping of commoners' associations is a very valuable level to operate at.
- National debate needed on what we want from 'landscape'. Landscape character areas do not mention farming systems or the role played by such systems in forming the landscape.



LOWLAND COMMONS - MANAGEMENT FOR MULTI-FUNCTIONAL USE - DEVELOPING A STRATEGY

Jim Swanson *Grazing Animals Project*

In developing strategy based around the multi-functional use of common land there are 3 key questions to answer.

1. What is the common used for ('values') and what new uses/values could be created to: involve people, raise their profile, help source money and enable conservation to re-engage with other uses?

	EXISTING USES	POSSIBLE NEW USES
<i>Access and recreation</i>	Grazing	Off road scrambling tracks (controlled to reduce disturbance to habitats)
	Walking	
	Cycling	
	Camping	
	Horse riding, trekking, safaris	
	Land yachting	
	Paragliding	
	Dog walking, rescue dogs	
<i>Scientific/environmental</i>	Urban open space	
	Naturalists, archaeologists	
	Research (ecological, archaeological, historical, cultural)	
	Biodiversity	
	Landscape	
<i>Educational</i>	Cultural landscape (built, man-made and natural landscape)	
	Duke of Edinburgh	School education, e.g. forest schools concept (= outside classroom)
<i>Cultural (events)</i>	Scouting/guiding	
	Civic events, fetes	Film/TV locations
	Beating the bounds	Mobile phone masts
<i>Economic</i>	Art trails, theatre, poetry, art, opera, religion	Community resource for social events
	Resources: grazing, pannage, turbary, piscary, estovers	Fuel/energy production, e.g. charcoal, peat, timber, biomass/wood chip for energy production, wind farms, gorse
	Forestry/timber	
	Mineral extraction	Soil conditioners from turf stripping and composting of vegetation management
	Transport	Job creation, e.g. practical management
	Utilities, e.g. power lines	Local products (food, venison, honey, beer, wine, whisky, beeswax, timber products, horse jumps, heather brooms, insect repellents, breeding and store animals, meat, cheese, skins, horns, wool, milk, yoghurt)
	Tourism	Bracken harvesting for compost/mulch
	Business use of commons	Job creation/skills training, e.g. using skilled apprenticeships to construct facilities, use by land management colleges, adult education centres, universities and colleges etc
	Game management	Car parking
	Urban and industrial developments	Bedding for livestock (bracken)

	EXISTING USES	POSSIBLE NEW USES
<i>Sporting</i>	Sport, orienteering, cross-country	Triathlon More formal athletics
<i>Undesirable</i>	Encroachment Fly tipping Arson Other undesirable uses! Motorbiking/4 x 4	
<i>Social</i>	Volunteering Army training	Resource for disadvantaged in society, ethnic minorities, elderly, disable, impoverished, criminal offenders Development control (protected open spaces) Green burial Training rescue and agility dogs Training voluntary mounted wardens
<i>Resource protection</i>	Water catchment management, i.e. lowland bogs store and release water, and help regulate both supply and flooding Carbon sequestration within vegetation Green lungs, pollution control	
<i>Medical</i>	Health (physical, mental, spiritual)	New medicines from flora

Note:

- a. All uses could provide income for management
- b. Lots of overlap between existing and new uses



2. What are the common’s current management problems & what might be the solutions?

PROBLEMS	SOLUTIONS
Overall	<ul style="list-style-type: none">• Wardening• Management committee
Inappropriate grazing	<ul style="list-style-type: none">• GAP project• Mechanical management methods
Under management	<ul style="list-style-type: none">• New uses for products, e.g. bracken mulches, wood chip for energy
Antisocial behaviour	<ul style="list-style-type: none">• Engendering a sense of ownership – start young and local• Education• Involve other agencies, e.g. Police and Fire Brigade
Lack of consensus	<ul style="list-style-type: none">• Management plan and committee
Road traffic	<ul style="list-style-type: none">• Involve Highways Agency• Cattle grids
Unlawful works, illegal fencing	<ul style="list-style-type: none">• Defra permission• Consultation
High and disparate access issues	<ul style="list-style-type: none">• Wardening• Management plan
Too much care/manicuring	<ul style="list-style-type: none">• Education
Lack of funds	<ul style="list-style-type: none">• Volunteers• Marketing• Fundraising effort• Charges for use
Single issue conflicts	<ul style="list-style-type: none">• Management plan
Lack of understanding, e.g. CROW	<ul style="list-style-type: none">• Education• Open days• Use technology, e.g. text, website
Multiple designations and objectives	<ul style="list-style-type: none">• Education• Management plan
Encroachment	<ul style="list-style-type: none">• Physical definition of boundaries• Enforcement
Eutrophication	

3. Which groups currently use the common and what are the pros and cons of that use? How can the users of the common help owners and managers?

User groups:

USE	PROS	CONS
Access	• Eyes and ears	• Potential disturbance to wildlife, litter
Dog walkers	• Visit every day, all year round	• Dog mess • Stock worrying • Disturbance to wildlife
Hikers	• Committed outdoor types	• Disturbance to wildlife
Horse riders, trekking, llama safaris	• Regular users of site	• Disturbance to wildlife
Climbers	• Eyes and ears	• Disturbance to wildlife
Commoners, farmers	• They can do all the work! i.e. produce the conditions for all the other user groups • Practical and stock skills • Machinery	• Inappropriate management of vegetation • Sometimes difficult for groups of commoners to cooperate
Naturalists, archaeologists	• Provide monitoring data and can provide scientific support for management	• Can be single interest
Camping	• Committed outdoor types	• Potentially litter, fires
Fishing	• Committed outdoor types • Can help with monitoring of water quality • Can provide political lobby for environmental improvements • Can help with practical works	• Fishing related litter, hooks etc
Cyclists, mountain biking	• Committed outdoor types	• Disturbance to wildlife and other users
Hang gliders	• Committed outdoor types	• Disturbance to wildlife and other users
Orienteering	• Committed outdoor types	•
Sports (e.g. golf, cricket)	•	•
Off roaders/trail bikers	•	• Damage to vegetation, disturbance to other users
Travellers	•	• Litter, stock worrying
Other undesirable uses	•	•
Metal detectors	•	• Excavations
Game management	• Understanding of habitat management • Prepared to help with practical works	• Shooting
School groups	• The next generation of naturalists etc!	•
Landscape and access lobby groups, e.g. Open Spaces Society, The Ramblers	• Can provide strong political lobby for continued funding for management	• Can be blinkered, single issue
Owner/management association	• Single body to provide management, apply for grants etc	• Politics

Notes:

- a. Uses divided into:
 - those with legal rights, e.g. commoners
 - acceptable uses (to who are they acceptable?)
 - unacceptable (damaging, illegal) uses (ditto).
- b. Whether a use can be of positive or negative value to site owner and/or manager depends on volume (and type) of that use; some uses are obviously more damaging, and there can be conflict between many of them.

- c. Often whether an activity is viewed positively or negatively depends on who is making the judgement and thus their own perceptions, e.g. grazier may view access negatively (e.g. dog walking).
- d. Solutions:
 - management crucial to overcome conflicts, with some self-policing possible; information provision is crucial
 - wardening
 - paying for use
 - use of commons by local 'voters' provides justification for management by organisations, and may help to provide financial support

- users often help with practical management and can take ownership of management that helps their use
- all users could potentially provide the eyes and ears for site wardens, and help with and support practical works on commons.

Jim Swanson's Powerpoint presentation can be viewed on the CD-Rom – 'Lowland commons – management for multi-functionality'

LOWLAND COMMONS – OPPORTUNITIES FOR FUNDING

Steve Clarke *English Nature*

Introduction

The workshop looked at three questions:

- is there any money ‘out there’?
- if so, where?
- how do we get our hands on it?

Discussion focussed on external funding as a whole, before looking specifically at a few providers, and then some of the issues that affect securing funds and the associated responsibilities that are often attached to it.

According to the Internet there are almost 9000 sources of funds available in the UK, distributing over £1billion a year between them. They range from major grants like the Lottery, which raised £16 billion over the first 10 years for good causes, £200 million of which was given to biodiversity projects, to local sources that can offer grants under £100 to support very specific local objectives.

Selecting the right funder

Not all of these will support the sort of work we want to do, and very few funds exist specifically to support ‘commons’ because they are commons, but there is a fair range who will support the type of work we want to do, be that better access, promote recreation, improve biodiversity or whatever.

Every provider has their own key interests and preferred areas of support, qualifying criteria, and responsibilities attached to their grants – your aim should be to understand the provider you approach, and are able to demonstrate how your project will deliver their aims and objectives and work within their rules. For example, the funding sources I see most often are:

- environmental stewardship
- heritage Lottery Fund
- the Landfill Tax Credit Scheme
- aggregates Levy Sustainability Fund
- some of the EU funds (e.g. Interregand LIFE).

Each of these is supporting environmental projects on common land and each has a different starting point – agri-environment, heritage and community, biodiversity and so on.

Many of the critical qualifying criteria are common across several funders, for example the need for some type of control over the land and

the support of the landowner and commoners, but most have some rules unique to their scheme: this is why securing external funding is a particular skill, especially when looking for large sums. Not everyone can do it – if in doubt, look for advice or assistance; many of the funding providers provide their own very useful guidance and the Institute of Fundraisers (see www.institute-of-fundraising.org.uk) offer a number of useful publications as well as training.

To help you decide which funder to approach there are some standard questions to consider:

- who are you?
- what are you trying to achieve?
- why you?
- what might it cost?
- what resources are available?
- how much do you need?
- what restrictions might apply?
- how will you demonstrate value for money?

Success is usually dependent on having a very clear understanding of what needs to be delivered, being able to demonstrate widespread support for your proposal, and remaining flexible over how it is to be achieved.

It is this element of flexibility that will widen the range of grant options you can approach – good rough land management improves biodiversity and secures our natural heritage, but how you would present the case would depend on whether you were looking for agri-environment schemes, Landfill Tax or Lottery support.

Getting the application right

The resources you can offer are critical – no fund covers absolutely all the costs, and many can only fund a set percentage of expenditure. Your resources might include cash, staff time, volunteer time, materials, office space and others.



When considering restrictions remember the issues relating to commons legislation. Is what you propose likely to infringe on any right holders, will the works need permission?

As your understanding of the issues and opportunities develops, the most likely funders usually become apparent, although again you might benefit from specialist guidance; English Nature for example uses a web-based search engine to assist our project development.

When finally selecting a funder to target it is important to understand the drivers behind the fund, and the restrictions that come with the fund: can you meet the funder’s needs and work within their conditions?

Should you try to tackle everything at once, or is it more sensible to break it down into elements that can try for different funders? Some funders like to be the only external source; others like to know they are sharing the risk. Some like to see some form of track record to be comfortable that you can deliver. If you are matching 2 or more sources of external funding, be very careful – it can be very complicated making sure that you stay within everyone’s rules.

Once you’ve chosen a funder, make sure you really address their interests in your application; present your case in their terms. Be concise but complete, consistent and accurate; errors can create an impression of incompetence, especially in financial projections!

If all this has put you off the idea of fund-raising, remember – it can be done! Most funders are required to distribute their funds to a pre-set timetable, and are always looking for good recipients. Know what needs to be done, know your funder, present a good case and remain flexible and you should be successful.

Best of luck!

Steve Clark’s Powerpoint presentation can be viewed on the CD-Rom – ‘Lowland commons – opportunities for funding’

TOWN & VILLAGE GREEN SESSIONS

WHAT ARE THE ISSUES? RESULTS FROM A RECENT SURVEY

Diane Simpson ADAS



Introduction

The research objectives for the research were to:

- review and update existing data on town and village greens (TVG)
- identify and analyse conflicts of interest re registration of new greens
- analyse problems arising over use and management of greens.

The key approaches within Phase 1 of the research were to conduct an email survey amongst Commons Registration Officers (CROs) in order to identify the number, size, ownership and location of greens registered since 1993. A literature review was also undertaken to identify key issues.

Phase 2 was to conduct in-depth interviews amongst CROs, solicitors and Parish Councillors to explore registration and management issues. Case studies involving 20 greens were undertaken to explore registration and management in more detail amongst owners, managers, applicants, and objectors.

Phase 1 revealed that there are about 4300 greens registered in England prior to 1993. Since 1993 this study suggests (for England and Wales) that just over 500 applications have been made and around 130 new greens registered. Since 1993, 37% of new greens have no recorded owner.

Registration Issues

The survey of CROs also revealed that responsibility is shared by CRO and solicitor, who are often in different departments or have different job titles. Generally CROs deal with procedures and solicitors the legal aspects. These are not necessarily full time roles and due to other complications there are communication issues. Complex cases also create financial and resource problems for the Registration Authority (RA). CROs were clear that time was needed to keep up with case law, even where few applications are received.

The legislation was criticised as being outdated, complex and vague. A key issue concerned the handling of objections and issues relating to a public inquiry. There was variation over the use of a public hearing by the RA. Vagueness causes difficulties in defining areas such as; as of right, lawful pastimes, neighbourhood, locality, significant number, etc. Case law was often relied on for interpretation, but this was seen as regularly changing. The survey suggests that the timescale to register a green is 1-4 years, if no objections are raised. However, waiting for the outcome of high profile cases delays process.

There was a great deal of evidence to suggest that development pressure influences a high proportion of applications, potentially over half. This was expected by CROs to increase in the future.

The views of the applicants and objectors suggested that the application form is difficult to complete as it is not clear what information is needed and how it will be judged. Many considered it difficult to understand the legal jargon used.

It was a considerable effort to collect evidence and complete the forms in somewhere between 3 to 18 months. Objectors found it difficult to collect evidence and prepare statements. However, help was available from the Open Spaces Society (OSS) and legal experts. The latter was noted as costly, often paid for by the applicant, objector or via local fund raising. The length of time taken to make a decision (1-4 years) was considered too long.

Public inquiries were seen as daunting for both applicants and objectors as well as witnesses. The unsuccessful party was likely to view the public inquiry as being biased to the other party but these inquiries were often thought to treat parties with respect.

Suggestions to improve the service included:

- an example application form
- central source of information on case law
- financial support
- provision of legal representation.

Management Issues

Out of the 27 Parish Councils interviewed the majority were aware of some management issue on the TVG but most saw the problems as minor. Some management issues were not helped by a lack of certainty over the legislation and some confusion over the status of a particular green. The most common problems were social issues:

- litter/cans/bottles
- cars parking on/at edge of green
- vandalism
- youths drinking.

Where the ownership of the TVG was private there was sometimes an issue of who should maintain the green.

In terms of dealing with the management issue, in many cases there was no perceived enforcement action. Social issues were tackled by police or in association with them. Parking often involved polite notices, messages through school or physical barriers. Most often people looked for the low-key approach or to reach a local resolution. Those involved included:

- local residents talk to Parish Councillor
- park warden
- Community Safety Partnership
- Residents Association
- contact with police or County Council if a more serious issue.

Parking on the edge of the green was considered very common and often described as minor issue. This often occurred at school picking up time, near a football club or village hall or for access to local hospital/university.

Parking is generally not allowed on the greens, even if parking on the edge occurs. Some incidences of unauthorised parking were reported but more often access was allowed on specific occasions such as fairs, cricket and football matches. Other problems less likely to be tolerated included residents parking on the green near their house or motorbikes/scooters riding on the green at night. Action included fencing, bollards & posts, parking bays or ‘no parking’ signs (police) as well as polite notices or knocking on doors and letters asking them to park elsewhere.

Those attending the workshop agreed that the survey reflected their own experience and hoped the new Bill would rectify some of the main issues raised.

Diane Simpson's Powerpoint presentation can be viewed on the CD-Rom – ‘Town & Village Greens - The Issues’

TOWN AND VILLAGE GREENS - OPEN SURGERY

Nicola Hodgson *Open Spaces Society*

The workshop discussed the main point that the Commons Bill in its present form repeals all of the Commons Registration Act 1965 and section 98 of the Countryside and Rights of Way Act 2000.

Clause 14 deals with the registration of greens. Under 14(2) the issues of locality, neighbourhood and the 20-year period (up to date of application) remain. Under 14(3)b, use may cease prior to application and the application is to be made within a period to be specified in regulations. In 14(4), use not 'as of right' only if the owner takes such action as may be specified in regulations

Clause 15 covers registration and exchange, replacing S147 of the Inclosure Act 1845. Sub-clause 15(6) indicates that the appropriate national authority should have regard specific to criteria.

The main areas not included in the Bill concern works on town and village greens. The proposed Part 3 of the Bill will not apply to town and village greens, instead s12 Inclosure Act 1857 & s29 of the Commons Act 1876 will be the only protection. There is also nothing concerning vehicular access to town and village greens.

The Commons Bill does seek to give effect to the recommendations set out in the Common Land Policy Statement (CLPS) with respect to the registration of common land and town or village greens. It does not generally change the law with regard to town or village greens (section 4), other than the registration of greens, and the criteria for registering new greens. The CLPS para. 4 concluded there was no need to make provision for dual or exchange registrations, particularly in the light of proposals for improved protection for commons. However, the Commons Bill does allow for this.

Supplementary information can be viewed on the CD-Rom - 'Open Spaces Society'



PLENARY

Jim Knight MP *Minister for Rural Affairs, Landscape and Biodiversity*

I'm delighted to be here today. Our common land, with its ancient traditions and long-established rights of common, is a vital part of our heritage. And reform of common land law only happens once every forty years or so! So with a Commons Bill now in Parliament, this is a timely opportunity to take stock of where we're going in this area.

The roots of commoning were set in the Dark Ages. Commons were central to people's survival. The local wasteland provided the essentials of life – food, water, fuel and shelter. No surprise then that the first ever Act of Parliament, in 1235, was about commons.

The rights of local people to the products of these lands may have narrowed over the centuries, but commons remain fundamentally important in our society:

- they are central to our hill farming culture and to the sporting economy
- they are our single most important wildlife resource, with over half of our common land being SSSI's
- their open and natural appearance is a key influence on our landscape – with 80% of common land included within national parks and areas of outstanding natural beauty
- they are a unique 'time capsule' of historic and archaeological information, usually free from the impact of development or the plough
- and they are our single most important category of open space – valued by all as a place to exercise, shake off the pressures of everyday life and experience nature.

In 1958, a Royal Commission identified three priorities for legislation on common land:

- establishing a right of public access to it all
- getting it properly protected in the public interest
- securing its good management for the future.

I'm sure it would have greatly surprised the Royal Commission that 47 years later, we are only now completing their task. Of course, the national registration of commons and greens was implemented by the Commons Registration Act in 1965. But no-one could have foreseen how lengthy that initial process would be – and how many problems it would leave, despite the huge value of creating these registers.

Progress with tackling the Royal Commission's other priorities was stalled for many years by worries about public access to commons. Our Countryside and Rights of Way Act has now resolved those. At the end of next month we will complete – ahead of schedule – the rollout of the new access rights over commons and open country throughout England and Wales.

That's a huge achievement in its own right – but we can now tackle the remaining issues enabling good management of the land, and ensuring it is properly protected for the future.

So – our Bill is in the House of Lords. Inevitably there are still some details to be resolved, and we have made it clear from the outset that we are in listening mode. We have a responsibility to get this legislation right and are determined to do just that. But I am pleased that the Bill has been broadly welcomed – despite the complexity and the wide range of interests involved. And I want to pay tribute to the hard work and common sense of the national Stakeholder Working Group, which reported to Government two years ago. Without their expertise and desire to make practical progress, it would have been impossible for us to prepare a Bill commanding such strong support.

I am also excited that the formation of Natural England from October 2006 will help us implement the Bill in a truly joined-up way. We are already working closely with the three Natural England agencies to create a positive and facilitating role for the new organisation in helping to ensure a healthy future for common land.

You will be pleased to hear that at this stage of the day I am not going to take you through the detail of the Bill again! Suffice to say that on management of commons, our watchword has been to use a light touch. If it works, don't fix it. But where there are real problems in managing agricultural uses of commons, for example, we are providing new powers to help the local interests deliver solutions at the local level. And making it easier to use financial drivers, such as agreements under the Environmental Stewardship Scheme, to help ensure the land is managed sustainably and in the public interest. On works and fencing on commons, our guiding principle has been to modernise and streamline the

control regime in the Bill while retaining the principle that by and large, commons should remain open and unspoilt. We need to make sure:

- that the regime operates clearly and consistently
- that the procedures used are proportionate to the impact in each case
- and that action is taken against damaging unlawful works.

On registration of commons and greens, the Bill will strengthen the protections offered by the existing registers by:

- bringing them up-to-date and keeping them so
- ridding them of spurious registrations like houses and gardens
- re-capturing genuine commons and greens that wrongly failed to achieve registration previously
- and keeping them on the registers for good: it is time to give the registers the security they were designed to have.

We recognise that the Bill will add significantly to the work of Commons Registration Officers, and they will need support and guidance. So as well as looking at the funding implications for local authorities, I am delighted to announce today that Defra will be funding the establishment of an Association of Commons Registration Officers to meet this need.

This new network will support Commons Registration Officers and promote good practice in the way commons and greens are registered. In the longer run, the Association will become self-financing and run by members for their own benefit. It will be well placed to provide expert advice to local and national government on relevant issues relating to commons and greens. This is an exciting new development that will fill a real vacuum. This Seminar has demonstrated in successive years the usefulness of registration officers networking with each other. The new Association will make a real difference to their ability to work consistently and effectively towards implementing the new legislation.



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