Llywodraeth Cymru
Welsh Government

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

Guidance for Applicants

May 2017

Guidance

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Guidance for Applicants

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

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

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

Background

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

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

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

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

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

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

The Provisions

Section 19 – Correction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Guidance on making a section 19 application starts at page 8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applying to make changes to the commons registers

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

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

How to Apply

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

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

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

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

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

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

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

.Making an application

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

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

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

Map to accompany the application

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

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

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

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

Checklist of information to accompany the application

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

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

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

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

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

Stamp Duty Land Tax

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

Cost of making an application

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

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

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

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

What happens once you have made an application?

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

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

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

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

Advertising your application

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

- publish a notice of the application on its website;

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

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

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

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

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

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

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

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

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

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

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

Referral to PINS

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

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

and in either case:

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

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

or

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

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

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

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

Hearings and Public Inquiries

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

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

Site Visits

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

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

Decisions

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

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

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

Frequently asked questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. **Can I apply electronically?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contacts

For further enquiries and comments please contact:

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

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

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

The Planning Inspectorate
Crown Building
Cathays Park
Cardiff
CF10 3NQ

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

or

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

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