

EXPLANATORY MEMORANDUM

TO

THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (WALES) REGULATIONS 2007

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing in the Welsh Assembly Government and is laid before the National Assembly for Wales.

Description

1. These Regulations deal with applications to local authorities for the registration of land as a town or village green and for the determination of such applications by the authorities. The Regulations prescribe a form which must be used for the purposes of any application and will be accompanied by detailed non-statutory guidance notes on the registration process.

Matters of special interest to the Subordinate Legislation Committee

2. None.

Legislative Background

3. Section 15 of the Commons Act 2006 (“the 2006 Act”) replaces, with modifications, previous legislation for the registration of new greens contained in sections 13 and 22 of the Commons Registration Act 1965. In accordance with section 56 of the 2006 Act, the provisions of section 15 of the 2006 Act come into force in accordance with provisions made by order by the appropriate national authority. Section 61 of the 2006 Act provides that ‘appropriate national authority’ means the National Assembly for Wales in relation to Wales.

4. In accordance with the provisions of sections 24(1) and (4) and 59(1) of the 2006 Act, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, the Welsh Ministers are now empowered to make the above Regulations.

5. The Regulations are to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

6. Town and village greens originally developed under customary law as areas of land where local people indulged in lawful sports and pastimes and in doing so established recognised recreational rights. These rights typically included organised or ad-hoc games, fetes and similar activities. The customary right was established by long usage that was deemed to date back to the year 1189, the limit of legal memory. The Commons Registration Act 1965 (“the 1965 Act”) made provision for the registration of these historic greens and also enabled ‘new’ greens to be registered on the basis of 20 years’ use ‘as of right’ (ie without permission, force or secrecy).

7. Following earlier public consultation on a range of measures, the Common Land Policy Statement 2002 set out the commitment of the Governments in England and Wales to

legislate to reform the law relating to common land and greens. The 2006 Act gives effect to many of the commitments in that Policy Statement.

8. The 2006 Act received Royal Assent on 19 July 2006. Once fully commenced, it will repeal the 1965 Act and, in section 15, re-enacts, with modifications, the provisions in the 1965 Act for the registration of new greens. Section 15 makes the following changes to the existing law:-

- It provides a period of grace after use 'as of right' has been ended by the landowner during which an application to register land as a green can still be made. This will normally be two years but, as a transitional measure, five years will be allowed where the use ended before 6 September 2007 (the date on which section 15 will be brought into force).
- It ensures that, where a landowner grants permission for use of land when there has already been 20 years' use of the land as of right, use continues to be regarded 'as of right' (so there is no time limit for making an application for registration, unless the landowner takes steps to challenge use).
- It requires any period of statutory closure (eg during an outbreak of foot-and-mouth disease) to be disregarded when deciding whether there has been 20 years' use 'as of right'.
- For the first time, it enables the owner of land to voluntarily register it as a green.

9. The registration of greens was debated in both Houses of Parliament during the Parliamentary stages of the Commons Bill. In response to a number of points made by members of both Houses, the relevant clause of the Bill was amended during its passage through Parliament to provide greater certainty so that crucial elements of the criteria for registration were included in the clause itself rather than left to secondary legislation.

10. One significant change effected by section 15 is the new power which, for the first time, enables the owner of land to apply voluntarily to register it as a green. This can be done only if the landowner has first obtained the consent of any lease or charge-holder of the land, such as a tenant or a mortgagee. A green that has been dedicated voluntarily will be subject to the same statutory protections as all other registered greens and local inhabitants will have the legal right to indulge in sports and pastimes on the green.

11. Part 1 of the 2006 Act includes a number of other changes to the registration arrangements for common land and greens and it will be necessary to implement these provisions on a phased basis. The full implementation of Part 1 will include new arrangements for the determination of applications under that Part, including applications for the registration of greens, which may include provision for disputed applications to be referred by the registration authority to a person appointed from an independent panel. As an interim arrangement, these Regulations enable applications to register land using the new criteria under section 15 but adopting procedures similar to those which apply in relation to applications currently brought under the 1965 Act. These Regulations will be replaced when Part 1 is fully brought into force.

Implementation

12. These Regulations were made on 12 August 2007 and are intended to come into force on 6 September 2007. Equivalent Regulations came into force in England in April 2007.

Regulatory Impact Assessment

13. A Regulatory Impact Assessment (RIA) was prepared for the Commons Bill. Copies of it were deposited in the House libraries and it may be seen on the DEFRA website via

<http://www.defra.gov.uk/wildlife-countryside/issues/common/commonbill/pdf/full-ria.pdf>

14. A separate RIA has not been produced for these Regulations as they have no discernable impact on the costs of business nor should there be any significant impact on local authorities or business.

15. No public consultation exercise has been carried out in relation to these Regulations because they replicate the procedures contained in existing regulations and are required solely to bring into effect the provisions of section 15 of the 2006 Act. Furthermore, the relevant provisions in the 2006 Act were fully debated during the passage of the Commons Bill through Parliament and consultation on implementation is unnecessary. A new, more modern, application form and clearer guidance on the new criteria for registration will accompany the Regulations, which will assist the public in bringing new applications.

16. The Regulations will have no impact on the statutory duties imposed by sections 77 to 79 of the Government of Wales Act 2006 or on the statutory partners identified in sections 73 to 75 of that Act.