

# A Common Purpose

A guide to  
**Community Engagement**  
for those contemplating management  
**on Common Land**



**ENDORSED BY THE  
DEPARTMENT FOR ENVIRONMENT, FOOD AND  
RURAL AFFAIRS' NATIONAL COMMON LAND  
STAKEHOLDER GROUP**

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This revised edition represents a collective enterprise. It was prepared by Natural England, as part of the Common Land Major Project, commencing with the original work by the Countryside and Community Research Unit of the University of Gloucestershire, and incorporating amendments based on the practical experience of its use by the Open Spaces Society, Country Land and Business Association, the Wildlife Trusts, commoners, parish councils, local access fora, local authorities and consultants.

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## Preface to the Second Edition

*A Common Purpose* was produced in 2005 to provide guidance concerning community engagement and consensus building for those contemplating works on common land. It was born from a widespread desire to develop a better, more mutually respectful and collaborative approach among those who value commons for different reasons. It was produced by Christopher Short, Elizabeth Hayes, Paul Selman and Amanda Wragg of the Countryside and Community Research Unit of the University of Gloucestershire, for a consortium of organisations involved in common land management. These included the Open Spaces Society, National Trust, English Nature, Rural Development Service, and The Countryside Agency, all of which adopted the final version.

*A Common Purpose* was also recognised at ministerial level during the passage of the Commons Act 2006. The Parliamentary Secretary for Biodiversity, Landscape and Rural Affairs, referred to it as ‘an excellent code of practice which sets out useful guidelines on how controversy can be minimised and co-operative working maximised when physical changes such as fencing on a common are being contemplated, so that fast-tracking can occur’. *A Common Purpose* has been made widely available through the websites of the Open Spaces Society and Natural England, and the Planning Inspectorate recommends potential applicants, in its guidance sheet 1a *Works on common land: procedural issues*, to follow the principles in *A Common Purpose*.

*A Common Purpose* was written originally for lowland commons with no active graziers, where there is a range of stakeholders with no legal interest but a strong emotional interest—in recreation, natural history or archaeology, for instance. The guidance has proved valuable in such circumstances, probably saving thousands of pounds by avoiding the need for a public inquiry or litigation. This revised document still, through the example given, reflects its origins but it is also recognised that the principles apply to upland commons where stakeholders both with and without legal interests have different management objectives and there are different drivers for their involvement. The organisations who have endorsed this document commend it to all those involved in negotiating multi-faceted management of common land where there is more than one stakeholder. While the context may vary enormously, eg many more upland commons are actively grazed, the principles espoused herein are applicable to all these situations, though of course the specific actions will need to be adapted to the individual circumstances.

Although *A Common Purpose* has been widely used by owners, managers and advisers as guidance during discussions and consultations on commons management, interpretation of the procedures which are recommended by the guidance has varied widely. This has been partly as a consequence of the differing circumstances and needs of those setting out to consult on the future of their individual commons, but also due to a degree of uncertainty as to what procedures might normally be followed, amended to fit their own circumstances.

The legislation governing works on common land changed with the passing of the Commons Act 2006 and its subsequent regulations. The need for an update provided an opportunity to consider the broader future of *A Common Purpose* and any revision, in the light of experience among those who have used it. A questionnaire survey was distributed to solicit views. Responses were received from a range of interests, including the Open Spaces Society, Country Land and Business Association, commoners, access fora, parish councils, the Wildlife Trusts and Natural England.

While there was a strong overall demand to retain *A Common Purpose*, this was coupled with recognition that commons were extremely variable, and that its relevant application depended on local circumstances. The main suggestions arising from the review were as follows.

1. Clarify the application and target audience of *A Common Purpose*.
2. Specify its function and limitations, drawing attention to other resources.
3. Place greater emphasis on outcomes rather than processes.
4. Acknowledge difficulties in ensuring democratic representation, and provide guidance on consensus-building techniques.
5. Provide flexibility in the process to be followed, underlain by immutable principles.
6. Improve presentation through clearer sections, flow charts, and summaries.
7. Provide simple background concerning what a common is.

These issues have been incorporated within the revision.

Since the original publication of the guidance in 2005, the Commons Act 2006 has been passed which changes some aspects of the law relating to carrying out works on commons and allows for the setting up of commons councils.

In addition, since the first edition was published, Natural England has commissioned the Open Spaces Society to produce *Finding Common Ground* (2010) which sets out how to take account of the public interest in determining management solutions for commons. *A Common Purpose* should therefore be read alongside *Finding Common Ground*.

Natural England has also published a series of fact-sheets commissioned from Footprint Ecology on all aspects of managing a common for local communities and groups and has amended the rules for Higher Level Stewardship applications where there is shared grazing to require the setting up of a commoners' association.

This document refers only to England, but the principles apply equally to Wales.

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# Introduction

Common land, one of the oldest institutions in England and Wales, includes some of our countryside's finest assets. There are 7,000 commons in England, covering nearly 400,000 hectares. Common land has been fundamental to traditional rural existence for centuries, and remains vital to agriculture and the rural economy of many areas. Over half of all commons are designated as Sites of Special Scientific Interest because of the many rare and unusual habitats and species they support. Common land is rich with archaeological information that has often been lost elsewhere. For many local communities access to common land has been a key part of daily life for centuries, providing fresh air, a sense of belonging and identity, and room to stretch on untamed and open access land which is usually very different from the surrounding landscape. The Countryside and Rights of Way Act 2000 established for the first time a right of access on foot to almost all common land which did not already have access rights (on foot or horseback).

Common land is valued for all these interests and more. Management, often by commoners grazing their stock, has kept commons special for centuries. However, as rural economies change, many commons are not receiving enough management to maintain their various interests. Because so many people value them highly, they can be fertile ground for disagreement when there are proposals to review management. Such disagreement is further fuelled by the separation these days of many communities from familiarity with the practice and need for land management.

This guide aims to reduce the potential for controversy, by setting out a process for planning management of common land that takes proper account of the views of all interested parties. If you are trying to bring a common into better management, or if you just care about its future, this guide will help engage with others so that everyone can work towards a common purpose.

# **The Commons of England**

## **What is common land?**

There are over 7,000 different commons in England. They are found everywhere from the remotest uplands to the heart of our cities. Nobody is ever far from a common.

In a strict sense, commons are (or derive from) areas of land where certain people hold particular rights, such as the ability to graze animals, collect sticks or dig peat. Commons are older than Domesday, and once covered half of England. However, the vast majority were inclosed in the 17<sup>th</sup> and 18<sup>th</sup> centuries, and now just 400,000 hectares survive.

Details of commons and the rights associated with them are maintained in commons registers held by local authorities<sup>1</sup>. All common land has an owner, just like any other land (contrary to the widely-held belief that commons belong to everyone). However, because the rights are fully recognised in law, commons have been protected, and have become increasingly important assets to local communities and to the nation generally.

## **Why is common land so special?**

Commons probably provide a wider range of public benefits than any other category of countryside in England. In addition to their significance for local farmers and residents who graze animals or exercise other rights, commons are of outstanding importance for wildlife, landscape and archaeology. In fact a staggering 88% of all common land in England is recognised by law because of its national or international importance. In addition, almost all registered common land is available for public access.

## **The protection of commons**

Commons are particularly special to local communities, who may guard them jealously, just as their predecessors did in the face of the inclosure movement. Commons provide a pleasant setting for local settlements, a sense of identity, a place to exercise and experience nature, and allow children to play. They frequently feature in folklore, festivities and art. In some cases there are rights to ride horses, bikes and enjoy other forms of pastime. Commons are usually undivided by fences, in contrast to nearby private inclosed fields, and are therefore closely integrated with adjoining settlements, whose occupants are concerned to ensure they can continue to enjoy 'their' common as a local asset. It is therefore crucial that the views of local people contribute fully to any decision on the future and management of commons. The national or international status of many commons, for nature conservation, landscape or archaeology, also imposes various duties, in some cases with a legal duty requiring management actions.

## **Causes for concern**

The special features of commons, including their wildlife, character and landscape, generally derive from centuries of stable management by commoners. Commons were normally maintained by commoners' animals keeping the land open and accessible. Local people were often also involved in cutting vegetation and carrying out other forms of management. Many commons today are changing from the open landscapes present throughout their history, as fewer commoners are actively managing the land. This is especially the case in busy and built-up areas, where there may be few farmers, and where roads pass through the middle of commons, making grazing hazardous. Some commons are becoming overgrown, and losing some of the special landscape or wildlife features for which they have been designated. However, such land is often still treasured

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<sup>1</sup> In accordance with the Commons Registration Act 1965, and Commons Act 2006. Certain commons which have their own Acts of Parliament, such as the New Forest and Epping Forest, are not included within local registers.

by local people, who value their commons for a wide variety of reasons, and who will have views on their future management.

### **The Secretary of State's role concerning work on commons**

Any works which have the effect of preventing or impeding access to or over common land, or involve the resurfacing of common land, require consent under section 38 of the Commons Act 2006. This includes fencing, banking, and ditching, or surfacing with concrete, tarmac or similar.

Because of the high value placed by society on commons, they have been singled out for special consideration at the highest level.

The Secretary of State has delegated powers to the Planning Inspectorate to reach decisions on applications to carry out such works. In making their decision, the Planning Inspectorate must have regard to:

- the interests of owners, occupiers and right holders, especially those exercising rights of common
- the interests of the neighbourhood
- the public interests, including
  - nature conservation
  - the conservation of the landscape
  - the protection of public rights of access
  - the protection of archaeological or historic features

The full text of this section is included in Annex 4.

## Using *A Common Purpose*

### Aim

*A Common Purpose* is intended to provide a mechanism whereby everyone with an interest in common land can contribute to deciding its future, through a structured and inclusive framework. Although phrased to assist those who own or are responsible for commons, or are considering management to protect or enhance particular features, it may be of interest to anyone who enjoys or uses commons for any reason at all. It has particular application in cases where any works (such as fencing) may require consent under the Commons Act 2006. *A Common Purpose* was conceived to address those circumstances where local communities have a particular interest in the future of commons. Hence it is especially relevant for those commons which have settlements nearby, whose residents visit, view and enjoy their commons. These situations occur mainly, but not exclusively, in lowland and highly-populated parts of England. However the philosophy espoused in *A Common Purpose*, of ensuring that those with interests in commons have an entitlement to contribute to decisions, has application in every situation where works are being contemplated. Accordingly it is recommended that the principles are adopted in all cases, while tailoring the processes to local conditions.

### Issues beyond the scope of *A Common Purpose*

*A Common Purpose* is specifically aimed at providing mechanisms to assist with community engagement. It does not purport to provide answers to the innumerable concerns arising on commons, including agricultural issues, stocking levels, farm viability, erosion, tipping and other abuses. It is not a manual or toolkit to facilitate the recovery or suitable management of commons. It simply provides a system to ensure that decisions have the widest possible support, and that if applications for works are submitted, they are more likely to be successful.

### Circumstances where *A Common Purpose* should be followed

It is recommended that *A Common Purpose* should be employed:

- a) in all cases where an application for works may arise under s38 of the Commons Act 2006
- b) in any other case, as a matter of good practice, where an application for works is not required but where local communities and groups have particular views or concerns about their common, and may wish to contribute to decision making on its future.

*A Common Purpose* provides:

1. **principles** that can be followed in *all* cases where works on commons are contemplated, and
2. **detailed guidance** that can be adopted or adapted according to local circumstances.

It is not suggested that this approach should be followed in its entirety on every common: Many sites already have a close working arrangement among stakeholders. The approach has been developed to help address issues that develop on commons where groups or individuals may become concerned if their interests have not been properly considered when management is contemplated. The precise details of the process will vary from one location to another but the underpinning principles remain constant.



## **Principles: applicable in all cases**

- 1) **Many people have a stake in common land.** Commons provide diverse benefits for landowners, commoners, those with sporting interests, local communities and visitors from further afield; they are often nationally important for landscape, nature conservation and archaeology; nearly all are available for public access. Hence, common land is valued by many people for different reasons. What people value may differ but those people are united by the strength of their concern.
- 2) **All interests on common land are legitimate and deserve recognition.** The various interests of commons should not be prioritised or viewed competitively, as if one consideration should prevail over another. The starting point should be an attempt to embrace all interests within a single management framework, though this must not be seen as any weakening of the statutory requirements that may apply on many commons. Progress is least likely when one interest in a common attempts to sideline others, or force change upon them.
- 3) **Decisions affecting the future of commons should be determined through an inclusive decision-making process.** This means that those people with a significant interest in commons can *actually* contribute to decisions on their future, rather than simply be consulted once a decision has been made elsewhere.

There is an increasing body of knowledge and experience available on environmental conflict resolution and consensus building. This has been used to draw up ***Best Practice for Stakeholder Participation*** on common land, as provided in Annex 1.

## **Detailed Guidance: to be tailored to local circumstances**

The stages given below will help you to:

- identify the various groups with interests in your common;
- determine their key aims;
- involve them in considering the options for management and the implications for them;
- work for an agreed outcome.

### **1) Gathering background information**

- a) Collate evidence on issues to be addressed
- b) Investigate the history of the common.
- c) Carry out comprehensive site inspection.
- d) Set down hopes and aspirations
- e) Identify relevant legislation and controls and any statutory designations.



### **2) Engaging with stakeholders**

- a) Agree objectives
- b) Identify stakeholders
- c) Establish mechanisms for seeking the views of stakeholders
- d) Test representation
- e) Ensure that all views can be articulated



### **3) Harnessing the views of stakeholders**

- a) Present and summarise key issues and concerns
- b) List all management options
- c) Identify pros and cons of each
- d) Establish stakeholders' aims and aspirations
- e) Invite suggestions for further options
- f) Summarise key issues and concerns



### **4) Examining management options**

- a) Seek any technical advice necessary
- b) Analyse and summarise the views expressed during the first consultation
- c) Consider all management options against stakeholder views, legislative duties and site-specific factors
- d) Shortlist options with potential



**5) Selecting the most appropriate option(s)**

- a) Re-engage all relevant stakeholders on potential options
- b) Analyse and present the results
- c) Seek to reach broad consensus



**6) Implementation**

- a) Seek any necessary permissions
- b) Establish programme of actions
- c) Implement agreed management
- d) Continue to inform and involve main stakeholders
- e) Monitor and review

This guide will not make your decision for you, but it should help inform the decision-making process and improve the prospects of reaching agreement.

In a first consultation, stakeholders should be given as much information as possible on the background to the common and the available options, but making clear that additional suggestions will be welcomed and that no decisions on the way forward have been made.

Once all views have been considered and where relevant, legislative requirements and local or economic limitations taken into account, then a second consultation on a set of proposals, including alternatives, should be initiated. This should involve all those stakeholders consulted during the first consultation and any others who have been identified during the process. At this stage there is also plenty of scope to make detailed changes to any proposals to meet the concerns of individuals about particular parts of any proposals. The aim should be to reach the widest possible consensus on a way forward. This process has been developed for commons where the practice of wide stakeholder inclusion in management planning has yet to be established, or where management proposals can be predicted to be contentious. The steps can be condensed somewhat where co-operative stakeholder involvement is already established, although it is recommended that the procedures be followed in full for major management reviews to ensure that no stakeholders, or management options, have been overlooked.

It may be that full stakeholder involvement is not required for all potential management planning, for example where the changes being proposed are minor. However the general presumption should be for open, inclusive communication with those who may be affected by any proposal. Once a way forward has been agreed, implementation should include continuing dialogue with the main stakeholders to inform and continue to consult on detail or timing for example. The initiation of this whole process is an excellent opportunity for establishing a continuing involvement in the management of the common by the local community.

## **Stage 1: Gathering background information.**

This stage identifies your own broad objectives for the common, and investigates whether there may be a case for taking action (without specifying yet the appropriate type of action).

### **a) Collate evidence on the issue to be addressed**

A review of management is likely to have been initiated by particular concerns, such as a decline in special wildlife, the loss of amenity, scrub growth inhibiting access, or other changes in habitat.

### **b) Investigate the history of the common**

There may be old postcards or photographs, accounts from commoners' families, maps or manorial records demonstrating what it used to look like. This may provide the basis for assessing why changes have occurred and actions which could assist in recovery. Alterations may have occurred gradually over many decades or even a century, giving an impression that the common 'has always been like that'. Similarly, such records can reveal previous activities on the common and what it was used for.

### **c) Carry out a comprehensive site inspection**

This can throw up issues such as encroachments, problems with dumping or invasive plants which you may not know about. Make sure you visit all parts of the common, especially along the boundaries which, where they adjoin roads or gardens are often the places where problems occur. A visit might also alert you to past and present uses or activities, tracks of horses, bicycles or vehicles or spent shotgun cartridges for example.

### **d) Set down hopes and aspirations**

Such aspirations might, for example, be conservation of the Marsh Fritillary butterfly, or improved network of footpaths or bridleways. Keep an open mind on any mechanisms available to achieve the objectives. There will be many occasions where a review has been prompted following an existing survey which has identified concerns and may have recommended specific action. While you may wish publicly to acknowledge such material, it is important for all participants to keep an open mind on the best way forward until all the evidence and the views of other interests have been assembled.

### **e) Identify relevant legislation and controls and statutory designations**

These may include national or international wildlife designations, inclusion in a National Park or Area of Outstanding Natural Beauty or archaeological scheduling, as well as wayleaves for services, public and private rights of way, public right to ride, grazing or shooting agreements, licences to clubs or associations (e.g. model aircraft fliers) or retained rights such as use by the military.

## Stage 2: Engaging with stakeholders

### a) Agree objectives

The organisers should have a clear idea of why they want to carry out a consultation. This will often stem from concerns about the condition and/or future of the common. Broad objectives such as the preparation of a habitat or visitor management plan are best as these do not restrict subsequent actions to single issues. It may be that there are concerns about misuse of the common by some, dumping, or illegal vehicle use perhaps, but a consultation on these issues alone is bound to throw up other concerns which are better addressed in a wider plan. Where particular people or organisations have an overriding interest (the landowner or a major tenant, or on designated sites, the statutory body for example), it would be wise to consult them at an early stage about the purpose and aims of your consultation as their consent may be necessary later on for any proposed actions.

### b) Identify stakeholders

This may be straightforward but on some commons it will take longer. It is an iterative process, and further names may be added as the procedure develops. Use the Table in Annex 2 as a start to determine what and who this would include. Broadly there are three categories:

- **Those with a legal interest** e.g. landowner (often called the ‘owner of the soil’ on common land), commoners (those who own or occupy the land to which rights of common are shown as attached in the register, and not necessarily—indeed, now seldom—the people whose names appear as the applicants for registration of the rights, which are historical information only), tenants, easement holders and retained sporting interests.
- **The local community or communities.** There is no single contact here but start with the clerk to the parish council or community group, and other local groups like the civic society, and identify areas of the community that adjoin the common directly.
- **Other relevant interests.** Use the list in Annex 2 to consider subject areas relevant to your particular common and try to find an appropriate contact. This table is not definitive; consider which other interest groups may be relevant to your common using the results of your site visit and local enquiries to help identify possible users.

### c) Establish mechanisms for seeking the views of stakeholders

This will partly depend on the types of stakeholders involved and partly on their scale of interest. There will be some existing organisations with specific aims and responsibilities, capable of responding to communications and attending meetings. Some interests, such as local residents, may be capable of identifying representatives from among themselves for the purpose of engaging with the process. Others, such as dog walkers, may be united only by their action, and are less likely to form homogenous group. In such cases it is appropriate to identify how their views may be captured, for example through questionnaires, surveys on the common, leaflets and such like.

In all cases it is appropriate to gauge the scale of interest. An inclusive process enables people to contribute to decision making, but does not require them to do so. Stakeholders may therefore be as involved as they choose.

**d) Assess representation.**

It may be necessary to ensure that people listed or nominated to express views are truly representative of their group. Those most willing to serve on groups may be those with the strongest and least democratic views and therefore not necessarily representative of their constituency. As you go through the process you may need periodically to test such representation, and remind people of the ground rules and objectives for the engagement process.

**e) Ensure that all views can be articulated.**

When considering consultation mechanisms, give some thought to encouraging all interested groups and individuals to come forward. Group meetings are a way of establishing links and stimulating interest. However, some groups will have individuals with strongly-voiced opinions, while other people will be reticent in public fora, forming barriers to meaningful engagement. Hence it may be preferable to harness views using a variety of less intimidating mechanisms, through site visits, questionnaires, tick-lists and similar. An opportunity to socialise can also break down barriers.



### **Stage 3: Harnessing the views of stakeholders: the first consultation**

Before you go through this, the first consultation process, consider the likely benefits of seeking the help of a skilled and independent facilitator.

Once you have identified potential interests and established mechanisms for obtaining views, prepare the background information to engage with key interests.

#### **a) Present and summarise key issues and concerns,**

Give a full description of the background to the consultation, the reasons for carrying it out and the aims of the exercise. Explain why the process has been instigated, and how you are anxious to ensure that everyone has an opportunity to contribute to any decisions concerning the future of the common. Give as much information as possible about the common and the problems which are of concern and, if relevant, the recent history. Provide information in the form of leaflets, background papers, meetings, talks and displays or by other means. Tell people how long the consultation will last and what arrangements there will be for reporting back. Let them know that the results of the consultation will be published. In some cases you will find that consultees are well aware of the issues but have not had a chance to articulate their concerns, while others have not noticed anything to concern them. You will often find that despite your detailed research into the common and its users, stakeholders will be able to give you new information or insights into the history and usage of the common.

#### **b) List all management options**

Give consultees a number of options but make clear that further options have not been ruled out and that no decisions have been made. Unless they represent a particular interest with its own clear aims and objectives, consultees will be helped in forming a view by the presentation of a range of possible option for future management.

#### **c) Identify pros and cons of each**

Care needs to be taken here not to lead consultees towards a particular conclusion. However, in forming a view, people appreciate some background information. There may for example be a legal condition that prevents or restricts a given course of action, or statutory requirements that must be met. Different types of habitat or visitor management may have advantages and disadvantages, for example cutting grassland may maintain its value for wildlife and access for visitors but may cause damage to plants and soil in wetter areas. If you do give background on possible management options in this way, make this as objective as possible giving no indication that one option is better or worse than another, leaving consultees to make up their own minds based on the information you have supplied and their own views and experience.



#### **d) Establish stakeholders' aims and aspirations**

Your consultation should encourage consultees to bring out any concerns they have about the present situation and their hopes for the future.

Again, there should be no preconceptions on any practical mechanisms whereby those aims may be achieved. There are various approaches that could be used. Consider the range of consultation methods and their advantages and disadvantages: public meetings, one-to-one meetings, open or drop-in days, presentations, public notices, newsletters, site walks, local media, and questionnaires.

At the end of each contact conclude by identifying key areas of agreement and concern. Let other stakeholders know what the next steps are and when they can expect to hear from you again. Reassure them that you are seeking to approach everyone, bearing in mind that news travels fast in many communities. Make sure you record consultees' views in written form. Basically, this is an exploratory phase:

- retain an open mind;
- be inclusive and build up trust;
- use non-technical language; and
- communicate regularly and widely.
- record everything you do to consult others
- keep a written record of people's views.

#### **e) Invite suggestions for further options**

Although you will have prepared what looks like an exhaustive list of possible options, others may suggest alternatives you have not thought of. Be prepared to add to the options you have put forward and raise these and discuss with others during the consultation process. At this stage take on board all new thoughts and serious suggestions and make sure these are included for later consideration

#### **f) Summarise key issues and concerns.**

Once you have carried out a full consultation with stakeholders and identified main areas of agreement and concern, consider how to bring this stage to a close. It may be appropriate to hold a meeting bringing groups of stakeholders together. This will ensure broad awareness of the diversity of views involved. Alternatively you may choose to summarise all views in a short document and distribute this among the stakeholders. Either way, you need to emphasise:

- the areas of concern and the views, hopes and aspirations of each stakeholder;
- the key areas of agreement and concern among stakeholders who participated.
- that the time people have invested voluntarily in the process is highly valued.

This process is likely to generate some discussion and may need subsequent revision. Once this stage is completed, you need to review (in the light of the areas of concern and agreement above) your original aims alongside those of others. Determine whether it is necessary or desirable to continue with your proposals. It may be that your own broad management aims (recorded in Stage 1) have changed as a result of talking with other stakeholders and action is no longer considered appropriate. Or it may be very clear that there is currently little opportunity to make

progress due to the divergence of views. In some cases you may have no option but to proceed with some form of management to meet legal duties. In most cases, though, you will need to consider how the areas of concern and agreement might be taken forward and this is the point at which to move to Stage 4.

## **Stage 4: Examining management options**

By starting this stage you are saying that something needs to be done in order to tackle the key areas of concern and agreement identified in previous stages. This section seeks to find out what the options are and which is both most suitable to the task(s) and acceptable to the various stakeholders. Note that it remains important for this stage to be inclusive, involving all key stakeholders identified in Stage 2 or a smaller group agreed by the stakeholders.

### **a) Seek any technical advice necessary.**

- Where there is a national designation make early contact with a local representative of the relevant statutory agency.
- Permission for various activities is also required from the landowner(s), so ensure they are well briefed and actively involved. (see Annex 1).
- Permission may also be required for activities such as cutting down trees or undertaking work near a watercourse.
- The policy and legal framework for common land is complex. Consider the possible legal constraints that may apply, for example, whether consent is required from the Secretary of State for works or fencing (Annexes 3, 4, 5).
- You should contact the Open Spaces Society at an early stage, before any decisions have been made, as it has expertise in common land generally and is a statutory consultee on all applications for works.

### **b) Analyse and summarise the views expressed during the first consultation**

The views expressed during the first consultation need to be summarised in writing and made available to all those who were consulted. For short comments and questionnaires a generic summary of the results, with tables if these are helpful, will be adequate. For longer comments consider either longer summaries, taking care wherever possible to use the words of the consultee, or reproduce the comments in full in an appendix at the end of the report but without identifying the individual. Include views with which you may disagree or which may appear irrelevant or impractical. You may already have done this (see 3 f) above).

### **c) Consider all management options against stakeholder views, legislative duties and site specific factors.**

As a group, list the full range of management options that might be relevant in tackling the key areas of concern and agreement identified in previous stages. It is likely that there will be a number of techniques to tackle a particular area of concern or agreement. For example, if the broad management aim is to keep a common open for access and wildlife, there may be a need to prevent scrub encroachment, and the management options might include grazing with various types of stock, different methods of cutting, burning or a combination of these. Some options may simply be impractical on your common, (e.g. use of large machines but inadequate access) too expensive or not acceptable to a statutory body or the owner of the common whose consent is required.

#### **d) Shortlist options with potential**

Evaluate all options and identify those that appear feasible and are worth presenting as potential solutions. The best options are obviously those with the greatest benefits and fewest drawbacks identified by all stakeholders. By the end of this stage there needs to be a clear idea of the advantages and disadvantages of each of the option(s) worthy of further exploration, before moving on to the consensus-building exercise in Stage 5.

## **Stage 5: Selecting the most appropriate management option(s):the second consultation**

The most suitable management options should be determined through an inclusive participatory exercise that considers the shortlist of potential solutions. This will clearly vary according to the size of the common and the number and type of stakeholders involved. On a common involving many complex issues and/or strongly held views, expertise in consensus-building techniques may be necessary. It might be possible to receive some external help, or to seek the involvement of a neutral chairman or facilitator. Again, consider Best Practice in Stakeholder Participation, in Annex 1. You may not be able to reach unanimity, but what you are looking for is a mutually acceptable solution, or a common purpose, between the various stakeholders regarding the best way forward for the management of the common.

### **Some principles of consensus**

- Commit yourself to abide by outcomes
- Be open, honest and build up trust
- Be inclusive at all levels and times
- Have a common information base
- Share responsibility for outcomes and implementation.

### **a) Re-engage all relevant stakeholders on potential options**

This stage should involve all those previously consulted including local residents and interest groups. Consider the same range of consultation methods you looked at for the first consultation (see 3d) above) Link the type of approach to the stakeholder; for example members of the public might welcome a drop-in day to see what is planned, while the landowner would appreciate a one-to-one meeting.

### **b) Analyse and present the results.**

Once the various exercises are complete you will need to analyse the results and present them. This could take the form of a further written report together with a draft management plan, a proposal for an application to the Planning Inspectorate for structures (e.g. fencing) on the common, or some other document or action. You may wish to present the proposals initially through an existing forum (a management committee, the parish council or a community group for example). There may be overwhelming support for the preferred option, qualified agreement provided that some issues are resolved, or little support from stakeholders.

### **c) Seek to reach broad consensus.**

- All stakeholders should accept the *equal* relevance of every other interest. If necessary remind participants of the objectives, principles and ground rules.
- While some interests may have agreed techniques through which the importance of any site can be evaluated, this is not possible in most cases. Avoid asserting that some particular interests are more important than others, which will generate conflict.
- The overall objective is to accommodate the aims of as many interests as possible while causing least possible disadvantage to others.

Be open about the results you received and present a way forward seeking to mitigate unwelcome aspects where possible. If it helps, allow a further period for comment or set up meetings with particular interest groups who still have concerns. If you are close to an agreement, you can proceed to Stage 6; otherwise you need to consider whether to proceed. If you do then prepare a strategy to address the concerns raised, and record any concerns that have not been taken into account, including reasons why. Alternatively you may decide to re-visit Stages 3 and 4 and examine different solutions.

#### **d) Take stock**

Before moving on to Stage 6 it is important to reflect on the lessons learnt from the consultation process. For example, it may be appropriate to prepare a Statement on Agreed Management, which summarises the conclusions reached. Such a document could contain:

- the key areas of concern and agreement identified;
- an outline of the preferred management option and why it was proposed and selected;
- a note of any concerns held by stakeholders about this option;
- the endorsement of stakeholders.

Consideration should also be given to producing a longer-term vision for the common. This may describe the importance of the common for the different interests and the aims of management. It may be appropriate to develop a management plan that would govern action in pursuit of that vision. This is also a good time to double-check that the chosen option does not fall foul of any of the legislation relevant to the site.

It may be in some instances that consensus is not achievable. In such cases it is essential to record what objections have been made. It may be decided that a particular option is still considered appropriate notwithstanding any unresolved issues. Alternatively, it might be appropriate to revisit the other options identified in Stage 4 and consider whether a different solution or compromise can alleviate any outstanding anxieties.

## **Stage 6: Implementation**

### **a) Seek any necessary permission**

The requirement for various consents and authorisations should have been identified earlier, and this stage may involve simple clarification or confirmation. Where statutory consent is required, such as an application for planning permission, a notice to carry out listed operations on an SSSI, or an application under s38 of the Commons Act 2006, the various procedures will need to be followed. In relation to an application under the Commons Act, the fact that this guidance has been followed will be an important piece of supporting evidence for your submission. Note that for some works several separate permissions may be required, due to the variety of legislation that can apply. Securing permission under one Act does not negate the need to secure permission under others. For example obtaining planning consent does not remove the need to secure approval under s38 of the Commons Act should the proposed works include the erection of any building, fence or other work that prevents or impedes access to a common (Annexes 3, 4, 5).

### **b) Establish an implementation programme**

This will determine who does what and when. This is a crucial and often overlooked stage of implementation. It basically changes the written document or plan into a working process. It is important for everyone to see who is responsible for all the different aspects involved, including who makes particular decisions and the associated lines of communication.

### **c) Implement the agreed management**

Now you are able to celebrate implementing the agreed management. Ensure that procedures agreed are strictly adhered to. Ensure that all stakeholders are alerted to any intention to deviate from the agreed course.

### **d) Continue to involve stakeholders where relevant**

Continue to inform stakeholders about the actions taken. This could be in the form of an annual meeting, a bi-annual newsletter or other means. Where there is an opportunity to do so, give stakeholders a meaningful voice in the continuing management of the common: how an annual budget for path maintenance is spent would be a good example.

### **e) Monitor and review**

Remember to undertake regular monitoring that will demonstrate the impacts, positive and negative, of the works done. Review the results periodically to ensure that the desired outcomes are being achieved. It is sometimes helpful for those who had reservations about particular aspects in this process to be involved in the monitoring and review of management. Stage 6 is an ongoing process. Agree a point for a major review (e.g. in five years time) when you can share the successes as well as drawbacks of the work done so far. Use this opportunity to share the plans of the key stakeholders for the next five or so years.

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## Annex 1

**Best Practice in Stakeholder Participation when considering the future of Common Land** (developed from Reed, M.S., 2008, Stakeholder Participation for Environmental Management: A Stakeholder Review, Biol Cons 141, 10, 2417-2431 and Sidaway, R., 2005, Resolving Environmental Disputes, London)

- 1) **Stakeholder participation should be considered as early as possible and maintained throughout the process.** Involving those with an interest in a common should be considered from the outset, enabling them to identify objectives, 'own' decisions, plan, implement, monitor and evaluate. Regular communication among stakeholders is critical to generating trust and confidence.
- 2) **Relevant stakeholder interests need to be carefully identified and represented.** Identification of stakeholders is an iterative process, whereby new ones are added as the process continues. Potential interests on commons are likely to include (and may extend beyond) the following:
  - a) Those with legal interests on the land (owners and occupiers, commoners, other right holders) or their umbrella bodies and representatives, NFU, CLA, commoners' associations etc
  - b) Local communities who enjoy the common, parish councils, nearby residents, dog walkers, those who enjoy the landscape, families with children who play on the common,
  - c) Countryside lovers, walkers, ramblers, and (where relevant) horse riders or other recreational groups, with their representatives, including the Ramblers' Association, Open Spaces Society, British Horse Society etc
  - d) Wildlife enthusiasts and agencies, including Wildlife Trusts, natural history societies, RSPB
  - e) Those seeking to protect historical and archaeological interests, including local history and archaeological societies.
  - f) National agencies with functions relating to the land, including Natural England and English Heritage.
- 3) **Clear objectives for the participatory process should be agreed among stakeholders at the outset.** It is essential to identify the goal towards which the group should be working. This is likely to include searching for agreement on the future of the common which will bring the broadest possible benefits to the neighbourhood and wider interests. Complete unanimity may not be possible but a broad basis of support should be the aim, focusing on mutually acceptable solutions.
- 4) **Mechanisms for seeking views should be tailored to the types of stakeholder involved.** Some existing groups will be easily identified and reached and have established mechanisms of responding, some may need to be encouraged to establish loose affiliations, and some may need to be searched out and are least likely to attend meetings. This last group may need to be alerted through signs on the common, leaflets, and their views obtained by surveys or questionnaires.
- 5) **Establish mechanisms to ensure that all views can be articulated.** Many groups will have individuals with strongly voiced opinions, while others will be reticent in public fora, forming barriers to meaningful engagement. Hence it may be preferable to harness views using a variety of less intimidating mechanisms. Opportunity to socialise can also break down barriers. The time that people invest voluntarily needs to be valued. Similarly those people who are most ready to serve on a group may be those with strongest and least representative views. Where a spokesperson is identified, mechanisms should be established to test

their ability to represent the views of their group faithfully and democratically. Periodically the group will need to be reminded of the ground rules, and specifically the objectives and collaborative approach being followed.

- 6) **Highly-skilled facilitation is critical.** The outcome of the participatory process may be more sensitive to the manner in which it is conducted than the tools used. An independent chairperson is more likely to engender co-operation
- 7) **Greatest emphasis should be placed on aspirations and outcomes, rather than the mechanisms to achieve those outcomes.** By seeking broad endorsement for the goals of all parties, a wide range of options can then be explored without pre-conception in an un-loaded atmosphere.
- 8) **Group participants should agree to a *collaborative* process to identify solutions which will bring the widest possible benefits.** Participants should commit to finding solutions beneficial to all, and not just their own interest. By agreeing to participate, stakeholders are acknowledging that:
  - a) commons are important and valued for a wide range of reasons,
  - b) all perspectives are valid and deserve respect.
  - c) an open mind should be kept about what form any work should take (if any), until they have properly explored the various options and the impacts on others.
- 9) **Expertise should be pooled through the participation process, including an integration of local and national knowledge.** While individuals bring to the group specialised knowledge from their own field, this needs to be set alongside opportunity to broaden understanding through iterative two-way learning. Where national information is provided, this should be seen as complementing and on an equal footing to local knowledge.

## Annex 2: Identification of Stakeholders and Issues

|                            | Issues – key values and benefits of common                                                                                                                | Examples of stakeholders                                                                                                                                                                                                                                                            | Context, policy and legal considerations                                                                                                                                                                                                        |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Agriculture</b>         | Pasture for sheep, cattle, ponies<br>Turbary & estovers<br>Pannage<br>Contribution to rural economy                                                       | Active commoners<br>(Non-participating) right holders<br>Landowners ('soil owners')<br>Tenants<br>Grazing licensees<br>Commoners' associations<br>NFU/CLA<br>Statutory body: Defra                                                                                                  | Common Agricultural Policy<br>Agri-environment schemes<br>Management agreements<br>Local Acts of Parliament<br>Local byelaws                                                                                                                    |
| <b>Nature conservation</b> | Wildlife associated with stable conditions<br>Examples of semi-natural habitats<br>Uncommon plants, invertebrates and other wildlife<br>Natural landforms | Local wildlife enthusiasts<br>Wildlife Trusts<br>Natural history societies<br>Local and county specialists<br>National Trust<br>RSPB<br>Particular interest groups (e.g. Butterfly Conservation, BSBI)<br>Statutory body: Natural England                                           | Statutory designations (57% common land is SSSI)<br>International designations (SPA, SAC, Ramsar site)<br>Local wildlife/geological designations<br>Protected species                                                                           |
| <b>History/tradition</b>   | Long history of traditional management (centuries)<br>Integration with local settlement<br>Key element within manorial system<br>Historic landscapes      | Local history groups<br>County history societies<br>Local and county specialists<br>Sites and Monuments Record (local authority)<br>National Trust<br>Statutory body: English Heritage                                                                                              | Sites and monument record<br>Scheduled ancient monuments<br>Historic landscape designations<br>County designations                                                                                                                              |
| <b>Landscape</b>           | Scenic rural environment<br>Unsown, 'wild' appearance<br>Minimal invasive signs of human intervention<br>Open vista                                       | Local residents<br>Public who view common from homes, or during travel<br>Visitors travelling to enjoy site<br>Amenity groups e.g. Open Spaces Society<br>CPRE<br>National Trust<br>Local and county specialists<br>Statutory body: Natural England                                 | National parks, Areas of outstanding natural beauty<br>County-based landscape designations<br>Designations in structure and local plans<br>Designations in village design statements<br>Countryside character maps                              |
| <b>Archaeology</b>         | Earthworks retained in absence of ploughing<br>Artefacts preserved in undisturbed soils                                                                   | County archaeological societies<br>Local and county specialists<br>Sites and Monuments Record (held by local authority)<br>National Trust<br>Statutory body: English Heritage                                                                                                       | Sites and monument record<br>Scheduled ancient monuments<br>County designations                                                                                                                                                                 |
| <b>Access</b>              | Opportunities for peace and tranquillity<br>Fresh air and exercise<br>Communal (uncharged) facility<br>Appreciation of open space, scenery, wildlife      | Local residents<br>Visitors including children<br>Walkers including Ramblers' Association<br>Open Spaces Society<br>Local authorities<br>Local access forums<br>Disabled user groups<br>Riders, including British Horse Society and livery yards<br>Statutory body: Natural England | Statutory public right of access e.g. through CRow Act, rights of way<br>Local byelaws<br>Government policies on health and exercise<br>Government agencies e.g. highways, police, fire.<br>Rights of access for utilities<br>Private easements |
| <b>Recreation</b>          | Energetic sports and pastimes<br>Competitive events<br>Training                                                                                           | Sports clubs<br>Recreational groups<br>Specialists societies<br>Sport and Recreation Alliance                                                                                                                                                                                       | Rural White Paper welcomes range of activities in countryside<br>Government policies on                                                                                                                                                         |

|                                     |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                        |                                                                                                                       |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
|                                     | Specific recreational pursuits (as permitted) – model aircraft, cycling, riding                                                                                                                                                                                                                           | Local access forums<br>Local authorities<br>Statutory body: Sport England                                                                              | health and exercise<br>Strategy for sport<br>Existing rights and restrictions<br>Current legislation and byelaws      |
| <b>Game management and shooting</b> | Grouse moor management<br>Pheasant/partridge shoots<br>Deer<br>Rabbits<br>Rough shooting                                                                                                                                                                                                                  | Game clubs<br>Shooting clubs<br>Moorland Association<br>Game Conservancy Trust<br>British Association Shooting & Conservation<br>Statutory body: Defra | Legitimate quarry species<br>Regulations on firearms<br>Local byelaws                                                 |
| <b>Community and Culture</b>        | Often intimate historic links with fringing community/ies<br>Contribution to settlement identity and sense of belonging<br>Site of community events<br>Perceived as local amenity for residents<br>Enhances property prices<br>Visual link to/from common and settlements<br>Tourism – local and national | Local residents<br>Local event organisers<br>Community groups<br>Local history societies<br>Parish councils<br>Statutory body: Natural England         | Local plans<br>Local development framework<br>Community strategies<br>Village design statements<br>Neighbourhood plan |

## **Annex 3: Consent Procedures Relating to Common Land in England**

The aim of this annex is to highlight any legal requirements that any active management resulting from the general discussions and consultation may require. It should be read in conjunction with Annex 5, which outlines the wider policy and legal framework for common land in England. Common land legislation also covers Wales but the agencies involved will be different so the resulting processes are also likely to be different, and the Commons Act has not been fully implemented there.

### **1. Applications under the Commons Act 2006, s38 for the Secretary of State's consent to undertake works on common land.**

Any works which have the effect of preventing or impeding access to or over common land, or involve the resurfacing of common land, require consent under section 38 of the Commons Act 2006. This includes fencing, banking, and ditching, or surfacing with concrete, tarmac or similar. The full text of sections 38 and 39 are given in Annex 4. The Planning Inspectorate determines applications on behalf of the Secretary of State.

Where works are undertaken without consent *any person* may apply in the county court under section 41 of the Commons Act 2006, and the court may make an order for the removal of the works and restoration of the land.

Background information is available on:

<http://www.defra.gov.uk/rural/protected/commons/>

Casework and common-land databases are also available via these pages.

Applications forms can be obtained from:

<http://www.planningportal.gov.uk/planning/countryside/commonland/forms> Certain works are exempt from the need for consent in accordance with a statutory instrument issued under s43 of the Act. This is available on:

[http://www.opsi.gov.uk/si/si2007/pdf/uksi\\_20072587\\_en.pdf](http://www.opsi.gov.uk/si/si2007/pdf/uksi_20072587_en.pdf)

Applications submitted in accordance with *A Common Purpose*, where it can be shown that all reasonable steps have been taken to harness and take account of stakeholders' views, are likely to be dealt with more swiftly and with less difficulty than those where new objections arise following formal submission.

### **2. Management operations on a Site of Special Scientific Interest (SSSI).**

Where the common has been wholly or partial designated a Site of Special Scientific Site Interest (SSSI) Natural England needs to be consulted and consent obtained before carrying out any activities specified in the notification. Further information is contained on:

<http://www.naturalengland.org.uk/ourwork/conservation/designatedareas/sssi/owneroccupierinfo.aspx>

### **3. Management operation on a Scheduled Ancient Monument**

Where the common has been wholly or partial designated a Scheduled Ancient Monument (SAM) English Heritage need to be consulted before any management is undertaken. SAMs are designated to protect sites against disturbance and from metal detecting. Any management operations that are likely to disturb the soil in and around the designated area will require consent from EH. Further information is contained on [www.english-heritage.org.uk](http://www.english-heritage.org.uk), following 'conserving historic places' icon.

As well as their regulatory roles, both Natural England and English Heritage will have an important function in advising on or even requiring positive management on designated sites.

#### **4. Management impacting on a water course/body**

Should any proposed management have an impact on or be close to a watercourse or area of water it is important to consult with the Environment Agency. For further details see [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) and follow the icon for 'business and industry' for further details of your legal obligations.

#### **5. Obtaining a felling licence**

If the management proposed requires the felling of trees it is likely that a felling licence is required. These are obtained from the Forestry Commission. It is the responsibility of those undertaking the felling or engaging others to do the work to ensure that the appropriate authority has been secured before any felling takes place. Full details of the exceptions and the procedure are contained in the booklet 'Tree felling – getting permission' available from any Forestry Commission Conservancy Office. For more details see [www.forestry.gov.uk/planting](http://www.forestry.gov.uk/planting).

#### **6. Obtaining consent for gates or stiles across public highways**

If it is proposed to erect a fence across a footpath or bridleway, regardless of whether section 38 consent is obtained, it will be necessary to apply to the highway authority to give consent under section 147 of the Highways Act 1980 for the installation of a gate (bridleway or footpath) or stile (footpath only). Such consent can only be given where the land is in use, or being brought into use, for agriculture. The structure should be to British Standard 5709.

## **Annex 4: Extracts from the Commons Act 2006**

### **PART 3 WORKS**

#### **38 Prohibition on works without consent**

- 1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.
- 2) In subsection (1) “restricted works” are —
  - a) works which have the effect of preventing or impeding access to or over any land to which this section applies;
  - b) works for the resurfacing of land.
- 3) The reference to works in subsection (2)(a) includes in particular—
  - a) the erection of fencing;
  - b) the construction of buildings and other structures;
  - c) the digging of ditches and trenches and the building of embankments.
- 4) For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).
- 5) This section applies to —
  - a) any land registered as common land;
  - b) land not so registered which is —
    - i) regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners; or
    - ii) subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
  - c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.
- 6) The prohibition in subsection (1) does not apply to —
  - a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;
  - b) works on any land where the works are carried out under a power conferred by or under any enactment applying to common land;
  - c) works authorised under a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899 without any requirement for any person to consent to the works;
  - d) works for the installation of electronic communications apparatus for the purposes of an electronic communications code network.
- 7) In subsection (6)(a) the reference to an enactment does not include Part 2 of this Act.
- 8) For the purposes of subsection (6)(b), an enactment applies to common land if it is expressed to apply (generally) to—
  - a) registered common land;
  - b) common land; or
  - c) any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.
- 9) Subject to the following provisions of this Part, consent given to works under subsection (1) of this section constitutes consent for the purposes of that subsection only.

### **39 Consent: general**

- 1) In determining an application for consent under subsection (1) of section 38 in relation to works on land to which that section applies, the appropriate national authority shall have regard to—
  - a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - b) the interests of the neighbourhood;
  - c) the public interest;
  - d) any other matter considered to be relevant.
- 2) The reference in subsection (1)(c) to the public interest includes the public interest in—
  - a) nature conservation;
  - b) the conservation of the landscape;
  - c) the protection of public rights of access to any area of land; and
  - d) the protection of archaeological remains and features of historic interest.
- 3) Consent may be given under section 38(1)
  - a) in relation to all or part of the proposed works;
  - b) subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.
- 4) In considering the effect in relation to any land of proposed works under this section, the appropriate national authority may consider that effect in conjunction with the effect in relation to that land of any other works for which consent has previously been given under section 38(1) above or section 194 of the Law of Property Act 1925 (c. 20).
- 5) Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.
- 6) Regulations may specify a time limit for the making of applications under subsection (5).
- 7) Consent may be given under section 38(1) in relation to works which have been commenced or completed; and any consent so given has effect from the time of commencement of the works.



## **Annex 5: The wider policy and legal framework for common land**

Note – this section is not definitive, but sets out to give a good starting point.

### **Legal mechanisms relating to common land**

#### *Local Acts 1844 to 2002*

Such Acts are numerous, the earliest example being the Southampton Marsh Act 1844 and the most recent example the Greenham and Crookham Commons Act 2002.

#### *Metropolitan Commons Act 1866*

This prevented the enclosure of any common wholly or partly within the Metropolitan Police District, a radius of 15 miles from Charing Cross, and provided for management schemes to be confirmed by supplemental acts.

#### *Commons Act 1876*

This provides for the management of commons by conservators, nominated by various interests including local authorities, and for areas to be set aside for inhabitants to play games.

#### *Commons Act 1899*

The 1899 Act permits district councils to manage and improve commons in the interests of public access and recreation while preserving the rights of commoners. Generally used where rights of common are no longer exercised but the common remains a locally important area of open space. The Act enables a scheme to be formulated by the district council, including the power to enact byelaws to regulate behaviour on the common. Schemes of regulations under both the 1876 and 1899 Acts may apply, as may Section 22 of the 1899 Act.

#### *Open Spaces Act 1906*

The Act enables local authorities to purchase open space in the interests of recreation. Under section 10 of the Act, such land must be kept open for public recreation.

#### *National Trust Acts 1907 to 1971*

Only applicable to commons owned by the National Trust. Under section 29 of the 1907 Act, the land must (subject to certain permitted works) be kept unenclosed and un-built upon and remain as open space for public recreation and enjoyment. The vast majority of commons owned by the National Trust have been declared inalienable, that is to say a third party may not acquire them. Under the Acts (1907-1971), there may also be open access over the area owned and/or byelaws to control public behaviour. In addition there is considerable scope for powers for the management of commons including, under a recent judgment, the power to fence and undertake other works with consent from the Secretary of State.

#### *Commons Act 1908*

Allows the commoners to supervise the grazing of uncastrated animals, the supervision being funded through a levy. The Act requires that a committee be established to enforce the agreed Regulations.

### *Law of Property Act 1925*

Where common land is subject to an open right of access under section 193 of this Act, 'orders of limitation' may prohibit certain activities such as the playing of golf by non-members. However, section 193 of the Act makes it a criminal offence for the public to drive, camp or light fires on the common.

Applications for works on commons, including fencing, were formerly made under s194 of this Act. These provisions were revised and replaced through s38 of the Commons Act 2006.

### *Commons Registration Act 1965*

This required that all common land and manorial waste, and all common rights, were included within registers held and compiled by Commons Registration Authorities (usually County or other councils). Some commons with independent statutory provisions were exempt. The 1965 Act was subject to a number of flaws and exaggerated claims, but became conclusive concerning the extent of commons and rights at that time. Many issues have changed since the registers were compiled, and these must now be updated in accordance with the Commons Act 2006, which also repeals the whole of the 1965 Act.

### *Acquisition of Land Act 1981, Section 19*

This requires suitable exchange land to be provided when there is a compulsory purchase of common land.

### *Countryside and Rights of Way Act 2000*

This Act provides a right of access on foot to all registered common land which did not already have the right, as well as to mountain, moor downland and heath, in 2005. Section 2 of the Act also strengthens the powers of the Government in relation to the management of sites designated for their nature conservation value.

### *Commons Act 2006*

This provides for updating the commons registers and the establishment of commons councils, and establishes new procedures for seeking approval for works on commons (see Annex 3, with full text given in Annex 4). The 2006 Act repeals the Commons Registration Act 1965.

Commons may be purchased by local authorities under the Local Government Act 1972, the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Wildlife and Countryside Act 1981, or individual County Council Acts. For example, Chobham Common was purchased in 1968 by Surrey County Council under the Surrey County Council Act 1931. There is also special legislation related to the Metropolitan Commons Act, which applies to certain commons around London. (See further reading.)

### *European Directives*

There are now obligations under European legislation that will impact on the management of commons, where they are designated as Special Protection Areas (under the Birds Directive 79/409/EEC) or Special Areas of Conservation (under the Habitats and Species Directive 92/43/EEC). The obligation is on Member States to maintain or restore the specified interests of designated sites.

## Annex 6 Further reading, advice and support

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[www.defra.gov.uk/wildlife-countryside/issues/common/index.htm](http://www.defra.gov.uk/wildlife-countryside/issues/common/index.htm) ]

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# Annex 7: Researching the management options, worked example: *Nether Topping Common*

**Broad Management Aim:** maintenance of open grassland conditions, and prevention of scrub encroachment.

Summary of advantages ✓✓✓ and disadvantages ××× of management options for each stakeholder interest.

| Stakeholder Areas of Interests | Evaluation                                                                                                      | Management Options and Implications |            |            |                |                   |             | Comment                                                                                                                                                                                                                                                                                    |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------|------------|------------|----------------|-------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                |                                                                                                                 | Grazing                             | Burning    | Mowing     | Turf Stripping | Selective Felling | Do Nothing  |                                                                                                                                                                                                                                                                                            |
| <b>Agriculture</b>             | <i>There are no active commoners although of 14 right holders, 3 have expressed willingness to graze sheep.</i> | ✓✓                                  | ×2         | ×          | ×              | ×                 | ×××         | 1 type / number of stock & timing of grazing to be agreed<br>2 might benefit grazing<br>3 agree area and timing of burn<br>4 safety issues to be checked<br>5 type of machinery is critical<br>6 short-term impact on landscape and access, will improve<br>7 impact on access during work |
| <b>Nature Conservation</b>     | <i>See site objectives. Notified SSSI for chalk flora and invertebrates. Part of Topping Hills cSAC.</i>        | ✓✓✓1                                | ✓✓3        | ✓✓5        | ✓✓             | ✓✓                | ×××         |                                                                                                                                                                                                                                                                                            |
| <b>History/ Tradition</b>      | <i>"Topping Downs" first recorded 1279, and managed for sheep until mid 20 century</i>                          | ✓✓✓                                 | ××         | ×          | ×              | ×                 | ×××         |                                                                                                                                                                                                                                                                                            |
| <b>Landscape</b>               | <i>Site comprises mixed chalk grass-scrub landscape, with establishing birch woodland</i>                       | ✓✓                                  | ×          | ✓          | ×6             | ✓                 | ××          |                                                                                                                                                                                                                                                                                            |
| <b>Archaeology</b>             | <i>Bronze-age barrows (overgrown) and undated field boundaries (possibly iron age)</i>                          | ✓✓                                  | ✓          | ✓          | ×××            | ✓✓                | ××          |                                                                                                                                                                                                                                                                                            |
| <b>Access</b>                  | <i>c 100 visitors daily, mainly villagers, and in summer from nearby town Topping Magna</i>                     |                                     | ✓4         | ✓✓         | ×6             | ✓✓✓7              | ××          |                                                                                                                                                                                                                                                                                            |
| <b>Recreation</b>              | <i>Occasional orienteering. Bridleway on site. Otherwise informal games, model aircraft.</i>                    |                                     | ✓          | ✓✓         |                | ✓✓                | ××          |                                                                                                                                                                                                                                                                                            |
| <b>Game</b>                    | <i>Cover for gamebirds from neighbouring estate. Rough shoot of rabbits.</i>                                    |                                     |            |            |                |                   | ✓✓          |                                                                                                                                                                                                                                                                                            |
| <b>Community/ Culture</b>      | <i>Abuts Nether Topping village, with which it is identified, and is visible from most properties</i>           | ✓                                   |            | ✓          |                | ✓                 | ✓           |                                                                                                                                                                                                                                                                                            |
| <b>Cost Implications</b>       |                                                                                                                 | <b>Med</b>                          | <b>Med</b> | <b>Med</b> | <b>High</b>    | <b>High</b>       | <b>None</b> |                                                                                                                                                                                                                                                                                            |

**CONTEXT - Description of Site:** 94 hectares of undulating downland and scrub/birch on Lower Chalk and clays, bisected by tributaries of Avon. **Current Condition:** The SSSI is currently recorded as in "Unfavourable Declining" condition. Certain plants and invertebrates for which the site has been recognised since mid 19<sup>th</sup> century have not been reported in the last ten years. **Recent Changes:** Reports from older residents, an account of the common featuring in the Book "Topping History", a painting by Leakey dated 1905, together with a collection of photographs taken in the 1940s, confirm that the site has gradually scrubbed over during the 20<sup>th</sup> century. Without intervention the site will become scrubby inaccessible woodland during the next 20-50 years.