

Number: WG33299



Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation Document

Town and Village Greens

Date of issue: 23 October 2017

Responses by: 2 February 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

The principle for reforming the town and green system in Wales has already been established through Part 8 of the Planning (Wales) Act 2015, which sets out various amendments to the Commons Act 2006.

These reforms are, in essence, intended to restrict the ability of a person to register land as a town or village green simply for the purpose of frustrating or preventing lawful development in Wales.

Powers are also conferred upon the Welsh Ministers for the purpose of making certain specified kinds of procedural provision in relation to those reforms in regulations.

This consultation seeks views on a range of proposals specific to the content of such regulations.

How to respond

The closing date for responses is 2 February 2018 and you can respond in any of the following ways:

Email: Please complete the consultation response form and send it to:

planconsultations-b@gov.wales

Please include 'Town and Village Greens consultation – WG33299' in the subject line.

Post: Please complete the consultation response form and send it to:

Town and Village Greens consultation
Decisions Branch
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Positive Planning – Proposals to reform the planning system in Wales:

www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en

Planning (Wales) Act 2015:

<http://www.legislation.gov.uk/anaw/2015/4/contents/enacted>

Contact details

For further information:

Email: planconsultations-b@gov.wales

Tel: Owain Williams on 0300 025 1715

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

1. Introduction and Background

Preface	1
Current position	1
Purpose of the consultation	3

2. Town and Village Greens

Overview	3
----------	---

Proposals

Making a statement to a commons registration authority	4
Management and publishing of a statement	5
Maintaining a register	7
Format of a register	8
Removal of entries from a register	8

Annex A – Schedule 6 of the Planning (Wales) Act 2015	10
---	----

1. Introduction and Background

Preface

- 1.1 Where local people have indulged 'as of right' in lawful sports and pastimes on land for a period of at least 20 years, section 15 of the Commons Act 2006 ("the 2006 Act") allows for any person to apply to the relevant commons registration authority for the land to be registered as a town or village green.
- 1.2 However, the system for registering town and village greens operates independently of the planning system, which has been identified as problematic, given registration can be used solely as a means to frustrate or prevent lawful development proposed and approved via the planning process.
- 1.3 This consultation paper sets out proposals to prevent this from occurring through the introduction of secondary legislation in the form of regulations, following the commencement of relevant sections of the Planning (Wales) Act 2015 ("the 2015 Act").

Current position

- 1.4 In December 2013, the Welsh Government published the '*Positive Planning*' consultation paper, which contained proposals to reform the town and village green system in Wales. The proposals intended to:
 - Enable landowners to submit a statement to their commons registration authority (which would include a form, a map and other documentation considered relevant), the effect of which is to end any period during which persons have indulged in lawful sports or pastimes on the land, and therefore restricting the ability for land to be registered as a town or village green; and
 - Prohibit applications being made to register land as a town and village green where such land has entered the planning system (for further explanation, see the entry relating to Schedule 6 of the 2015 Act in Annex A).
- 1.5 Responses to the policy proposals relating to town and village greens were positive from the majority of respondents and in order to carry them forward, changes were required to primary legislation. These changes were introduced in the 2015 Act (identified in Table 1).

Table 1:

Provision of the 2015 Act	Effect when commenced
<p>Section 52¹ – Statement by owner to end use of land as of right</p>	<p>This section amends section 15A of the Commons Act 2006 so it applies in relation to Wales.</p> <p>Section 15A of the 2006 Act, as amended, provides for an owner of land to deposit a statement with their commons registration authority (to be accompanied by a map), the effect of which is to bring to an end any period during which persons have undertaken sports and pastimes on the land in question as of right. It also confers powers upon the Welsh Ministers for the purpose of making, in regulations, certain kinds of procedural provision related to the deposit of such a statement.</p> <p>Because section 15A will apply in relation to Wales, this also means, as a consequence, section 15B of the 2006 Act also similarly applies.</p> <p>Section 15B requires each commons registration authority to keep a register containing information about statements deposited under section 15A and the maps which accompany them. It also confers powers upon the Welsh Ministers for the purpose of making provision in regulations about the information which is required and the manner in which a register is to be kept.</p>
<p>Section 53² – Exclusion of right to apply for registration</p>	<p>This section amends section 15C of the 2006 Act so it applies in relation to Wales.</p> <p>Section 15C excludes the right of a person to apply for the registration of a town or village green in certain specified circumstances (“trigger events”). It also provides where the right of a person to apply for registration ceases because of the occurrence of a trigger event, such right only becomes exercisable again in the event of other specified circumstances (“terminating events”).</p>

¹ In force for the purpose of making regulations (see section 58(2)(b)) of the 2015 Act.

² As above

	The range of trigger and terminating events are specified in a new Schedule 1B to the 2006 Act, introduced on the commencement of Schedule 6 to the 2015 Act, and are described in Annex A.
Section 54 ³ – Applications to amend registers: power to make provision about fees	<p>This section makes amendments to section 24 of the 2006 Act which enables the Welsh Ministers to make provision in regulations about the making and determination of any application for the amendment of a register of common land and town and village greens.</p> <p>An effect of these amendments is the Welsh Ministers may make provision not only in respect of fees payable in relation to such an application to the person to whom an application is made, but also to the person who determines an application.</p>

Purpose of consultation

- 1.6 It is our intention to commence sections 52 and 53 of, and Schedule 6 to, the 2015 Act so far as not already in force and to make regulations governing the procedure relevant to the deposit of a statement bringing to an end of any period during which persons have indulged in lawful sports or pastimes as of right.
- 1.7 The purpose of this consultation is to seek views on the proposals related to the content of those regulations.

2. Town and Village Green Proposals

Overview

- 2.1 The principle for reforming the town and village green system in Wales has already been established through provisions contained in the 2015 Act.
- 2.2 The proposals set out in this consultation include those related to the following matters:
- The information which should be included in a statement submitted to commons registration authority by a landowner;
 - Fees payable to a commons registration authority;

³ In force for all relevant purposes (see section 58(2)(b)) of the 2015 Act and article 2 of the Planning (Wales) Act 2015 (Commencement No.4 and Transitional Provisions) Order 2017 (S.I. 2017/546)

- Publishing a statement when submitted and received by a commons registration authority;
- Maintaining a register to record information; and
- Removal of entries from the register, where information is known to be incorrect.

Proposals

Making a statement to a commons registration authority

Information included within a statement

- 2.3 Section 15A(1) of the 2006 Act provides the power for landowners to submit a statement to their relevant commons registration authority which would bring to an end any period during which persons have undertaken sports and pastimes on the land in question as of right and limiting the time an application can be submitted to register the land as a town or village green. The commencement of section 52 of the 2015 Act will bring section 15A of the 2006 Act into force, in relation to Wales.
- 2.4 We anticipate the information required to be contained in a statement deposited with the commons registration authority would be the same for each case (for example, the name and address of the landowner and a description of the land). Therefore, to ensure a consistent approach across all commons registration authorities in Wales, we consider it appropriate to introduce a prescribed form for statements, which should include, as a minimum:
- The name of the commons registration authority to whom the statement is being submitted;
 - The full name and address of the landowner (or the appointed representative submitting on their behalf – see paragraph 2.7);
 - A description of the land;
 - An Ordnance Survey six-figure grid reference; and
 - Declarations to be signed by the landowner (or the appointed representative submitting on their behalf – see paragraph 2.7).
- 2.5 Along with their statement, landowners would also be required to submit an Ordnance Survey Map of the land to which the statement relates, set to a prescribed scale, including the boundary of the land.

Declarations

- 2.6 Before a statement is submitted to the relevant commons registration authority, we consider it important for a declaration to be made on the statement to confirm the information contained within the statement and any accompanying documentation is, to the best of the landowner's knowledge, true and accurate. Therefore, the landowner should be required to sign and date the statement they submit.

- 2.7 However, there may be circumstances where a landowner may not be able to sign their statement, for example, if they cannot read. In these circumstances, it would be acceptable to allow landowners to ask a friend, relative or another representative of their choosing to sign the statement on their behalf.

Fee to accompany the submission of a statement

- 2.8 We acknowledge and accept the administration involved in processing a landowner statement will have a cost impact on commons registration authorities. Therefore, to offset these costs, we consider it to be reasonable for commons registration authorities to charge a fee to landowners when they submit a statement and accompanying documents.
- 2.9 We are not proposing to prescribe a set fee in legislation, however, we would expect commons registration authorities to set a reasonable fee which recovers only the administration costs involved in processing and registering a statement.

Consultation questions:

- Q.1 Do you agree the information required in paragraph 2.4 is appropriate? Should any additional information be included within a statement?**
- Q.2 Do you agree it would be reasonable for a landowner to have their statement signed by a representative of their choosing if they are unable to sign the statement themselves? If not, why not?**
- Q.3 Do you agree commons registration authorities should be able to charge their own fee for the administration and processing of a statement, with the aim of recovering the cost of providing this service? If not, why not?**

Management and publishing of a statement

Acknowledgment of receipt

- 2.10 In the interests of clarity and certainty, commons registration authorities should provide landowners (and the person who signed a statement on their behalf, if applicable) with an acknowledgement letter as soon as reasonably practicable, which confirms their statement and accompanying documentation has been received. This would alleviate any concerns a landowner may have regarding whether a statement they have submitted to their commons registration authority has been received or not.

- 2.11 The acknowledgment letter should be sent in the format the statement and accompanying documentation was received (i.e. in paper form for statements delivered by hand or post and in electronic form for statements submitted electronically).
- 2.12 In circumstances where a statement is received without any (or only part) of the documentation identified in paragraph 2.4, commons registration authorities would be required to write to the landowner (and the person who signed the declaration on the statement, if applicable) as soon as reasonably practicable to explain their statement cannot be processed and recorded until the required information is forthcoming. Landowners (and the person who signed a statement on their behalf, if applicable) should also be made aware their statement cannot take effect until all the information required in paragraph 2.4 is received by the commons registration authority.
- 2.13 If the missing information is sent and received, commons registration authorities will be required to send an acknowledgement letter, in accordance with paragraph 2.10.

Publishing a statement

- 2.14 To ensure the process is transparent, commons registration authorities will be required to publish a notice informing the general public a statement has been submitted by a landowner, which may affect the land in question being registered as a town or village green. Commons registration authorities would be required to:
- Publish the notice of receipt on their website, or on a website maintained by them;
 - Send notice of the statement to any person who has previously requested to be informed of all statements, either in paper or electronic form;
 - Post a copy of the notice on or near the land to which the statement relates in a conspicuous place for a minimum period of 60 days; and
 - Take reasonable steps to protect the notice and, if need be, replace it if it is removed, defaced or obscured.
- 2.15 Although the submission of a statement under section 15A of the 2006 Act brings to an end any period during which persons have undertaken sports and pastimes on the land in question as of right, there remains a two year period of grace within which an application to register the land as a town or village green can be made to the commons registration authority, subject to local residents having indulged in lawful sports and pastimes on the land for a period of at least 20 years.
- 2.16 This two year period will begin from the date included in the acknowledgment letter sent by commons registration authorities, which effectively confirms the submission of all the information required to be submitted with a statement in paragraph 2.4.

Maintaining a register

- 2.17 Section 15B of the 2006 Act places a duty on commons registration authorities to keep a register of all statements, accompanying maps and any other documentation submitted to them. This will apply to commons registration authorities in Wales when section 52 of the 2015 Act is commenced.
- 2.18 The purpose of keeping and maintaining a register is to ensure statements and accompanying documentation submitted to commons registration authorities can be easily accessed by any person, should they wish to, either electronically or in paper format, which encourages transparency and accessibility.
- 2.19 We are proposing commons registration authorities must keep a register of all statements to include the following information:
- (a) A copy of the map and any legend accompanying, or forming part of the map;
 - (b) A copy of the statement submitted to the relevant commons registration authority;
 - (c) The name and address of the landowner and, if applicable, the person who signed and deposited the statement on their behalf;
 - (d) The date the statement was received by the commons registration authority;
 - (e) Details of the land shown in the map, including:
 - (i) The Ordnance Survey 6-figure grid reference;
 - (ii) The name of the ward or district the land is situated;
 - (iii) The address and postcode of buildings on the land; and
 - (iv) The name of the town or city which is nearest the land.
 - (f) The job title of the person in the commons registration authority to whom enquiries regarding the content of the register can be made;
 - (g) The email address and telephone number of the commons registration authority;
 - (h) An index of the contents of the register; and
 - (i) Any other information they feel is necessary.

Format of a register

- 2.20 Improvements in computing technology have made accessing information speedier and increasingly more user friendly. With all local authorities in Wales maintaining a website, information regarding town and village greens (i.e. guidance and application forms) could potentially be readily available, without the need for contacting or visiting the local authority offices directly.
- 2.21 We consider it appropriate for all commons registration authority registers to be kept in an electronic format on their website, or a website maintained by them. This will ensure all information is retained in one place, is easily accessible and can be amended, where required.
- 2.22 However, we acknowledge these facilities may not be as accessible for some groups and in certain locations, therefore, we are proposing in addition to an electronic register, commons registration authorities should also keep a paper version of the register in their offices. It should be kept in such a manner which is suitable to enable a copy of a statement (including any accompanying documentation) to be taken by any person who requests a copy.

Consultation questions:

- Q.4 Should any further information be contained in the register, in addition to what is proposed in paragraph 2.19?**
- Q.5 Do you agree the register required to be kept and maintained by commons registration authorities should be in both electronic and paper forms? If not, why not?**

Removal of entries from the register

- 2.23 There may be instances where a statement and accompanying documentation is deposited to a commons registration authority and uploaded onto the register, only for a material error (for example, an incorrect boundary outline) to be discovered in either the statement, accompanying documents or both. This can potentially cause confusion among interested parties.
- 2.24 We propose in circumstances where a material error is discovered either in a statement or any accompanying documentation and has been uploaded to the register, the commons registration authority should retain the information they have on the register for a period of time and provide an opportunity for the landowner (or an appointed representative) to correct the error(s).

- 2.25 The commons registration authority would be required to write to the landowner (or appointed representative on their behalf) as early as practicable to outline the material error(s) discovered in the statement and / or the accompanying documentation and give notice of their intention to remove the statement and accompanying documentation if revised information is not forthcoming within a prescribed period.
- 2.26 We propose landowners (or their appointed representative) are provided a period of 28 days from the date of the letter sent by the commons registration authority, to submit any revised information or documentation which remedies the material error(s) identified.
- 2.27 If revised information or documentation is not received by the commons registration authority within the 28 day period, they would be obligated to remove the relevant statement and accompanying documents from their register with immediate effect. This will mean the land to which the statement relates could continue to be used in the manner it was prior to the statement being submitted.

Consultation questions:

- Q.6 Do you agree with our proposals to provide a period of 28 days for landowners (or their appointed representative) to submit any revised information or documentation to remedy a material error? If not, why not?**
- Q.7 Do you have any additional comments to make on the consultation paper?**

Annex A

Schedule 6 (introduced by section 53(3) of the 2015 Act) Town and Village Greens: New Schedule 1B to the Commons Act 2006

<i>Trigger events</i>	<i>Terminating events</i>
<p>1. An application for planning permission for development of the land is granted under the Town and Country Planning Act 1990, or a direction that planning permission for development of the land is deemed to be granted is given under section 90 of that Act.</p>	<p>(a) Where the planning permission is subject to a condition that the development to which it relates must be begun within a particular period, that period expires without the development having been begun.</p> <p>(b) On the expiry of the period specified in a completion notice, the planning permission ceases to have effect in relation to the land by virtue of section 95(4) of the 1990 Act.</p> <p>(c) An order made by the local planning authority or the Welsh Ministers under section 97 of the 1990 Act revokes the planning permission or modifies it so that it does not apply in relation to the land.</p> <p>(d) The planning permission is quashed by a court.</p>
<p>2. A local development order which grants planning permission for operational development of the land is adopted for the purposes of paragraph 3 of Schedule 4A to the Town and Country Planning Act 1990.</p>	<p>(a) The permission granted by the order for operational development of the land ceases to apply by virtue of a condition or limitation specified in the order under section 61C(1) of the 1990 Act.</p> <p>(b) A direction is issued under powers conferred by the order under section 61C(2) of the 1990 Act, with the effect that the grant of permission by the order does not apply to operational development of the land.</p> <p>(c) The order is revised under paragraph 2 of Schedule 4A to the 1990 Act so that it does not grant planning permission for operational development of the land.</p>

	<p>(d) The order is revoked under section 61A(6) or 61B(8) of the 1990 Act.</p> <p>(e) The order is quashed by a court.</p>
<p>3. An order granting development consent for development of the land is made under section 114 of the Planning Act 2008.</p>	<p>(a) The order granting development consent ceases to have effect by virtue of section 154(2) of the 2008 Act.</p> <p>(b) An order made by the Secretary of State under paragraph 2 or 3 of Schedule 6 to the 2008 Act changes the order granting development consent so that it does not apply in relation to the land.</p> <p>(c) An order made by the Secretary of State under paragraph 3 of Schedule 6 to the 2008 Act revokes the order granting development consent.</p> <p>(d) The order granting development consent is quashed by a court.</p>