



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Commons Act 2006

Common Land Guidance – Special Consent Provisions : National Trust Commons



INVESTOR IN PEOPLE

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Common land guidance - special consent provisions: National Trust commons

Note: The information contained within this guidance relates to procedures in [Wales only](#).

This leaflet should be read in addition to 'Common Land Guidance - General Overview'.

The information in this leaflet was correct when it was published, but it has no legal status.

1. Introduction

Commons owned by the National Trust are subject to a different law to section 38 commons. National Trust land is subject to its own Acts. Under section 29 of the National Trust Act 1907, the Trust must keep its commons "unenclosed and unbuilt on for the recreation and enjoyment of the public". That requirement is qualified by powers given in section 29 itself, and in later provisions, including section 23 of the National Trust Act 1971.

The definition of common land for sections 23 and 29 is the same as for section 38. Section 23 therefore applies to any National Trust owned land which is registered as common land under the Commons Registration Act 1965. It also applies to any National Trust land that is not registered as common land which is regulated by a Provisional Order Confirmation Act under the Commons Act 1876 or Commons Act 1899. Section 23 does not generally apply to registered town or village greens see the 'Common Land Guidance – Special Consent Provisions (other than National Trust Land)' note for more information on town or village greens, but it may occasionally do so if a green is subject to a scheme or Act.

A copy of sections 23 and 29 are at **Appendix A**. Works carried out under section 23 that prevent or impede access can only be carried out if the consent of Welsh Ministers is obtained under section 23(2). Section 29 permits some works on Trust land without the need for Welsh Ministers consent. The guidance at **Appendix B** gives the Trust's view of which works fall into which category.

Caution: The Appendix B list is not an authoritative statement of the law. In addition, you should check carefully that any works you propose to carry out are expressly authorised by the National Trust Acts.

2. How do I apply under section 23 of the National Trust Act 1971?

Section 23(1) enables the Trust to carry out works on common land that it considers "desirable for the purpose of providing, or improving, opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto", but Welsh Ministers consent is often needed under section 23(2).

Applications under section 23(2) should be made by either:

- (i) the Trust, if the Trust is to carry out the proposed works; or
- (ii) a third party, if the third party is to carry out the proposed works under an express or implied right.

All section 23(2) applications must be accompanied by a letter from the Trust's Solicitor, confirming that the Trust has concluded that the proposed works are desirable having regard to section 23(1).

The Solicitor to the Trust can be contacted at the National Trust's central office: Heelis, Kemble Drive, Swindon, SN2 2NA.

Applications under section 23(2) are determined using the same procedure and criteria as for applications under section 38. The same application form is used.

3. How do I know that making a section 23 application is the best way forward?

If you are considering works on National Trust common land, they will fall into one of three main categories:

A. "Desirable" works (see previous section) under section 23 which will need consent under section 23(2) if they prevent or impede access (see list at **Appendix B, Column A**). Such works may include in particular:

- (a) providing or arranging for the provision of facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation;
- (b) erecting buildings and carrying out works.

B. Works which are either (i) expressly authorised by section 29, or (ii) allowed under section 23(1) and which do not prevent or impede access (see list at **Appendix B, Column B**).

C. It may also be open to the Trust to apply under the section 16 deregistration and exchange provisions (see separate guidance), where works are proposed on registered common land, or town or village green, that do not fall within the category of works permitted by section 29 or section 23(1) or where consent is unlikely to be granted under section 23(2).

Please refer to the 'Common Land Guidance - General Overview' note for guidance in answer to the following questions:

What steps should I take before applying?

Is my application likely to succeed?

How do I make an application, and what will happen to it?

How long will my application take?

What happens if I make a mistake with my application?

What should I do if I need to carry out emergency work on a common?

National Trust Act 1907 (as amended by the Commons Act 2006)

Section 23 - Further powers over certain common or commonable land

(1) Subject to the provisions of this section, in addition to the powers conferred on the National Trust by section 29 (Powers exercisable over certain Trust property) of the Act of 1907, the National Trust shall have power with respect to any Trust property to which that section applies to do anything appearing to the National Trust to be desirable for the purpose of providing, or improving, opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto, and in particular—

(a) to provide or arrange for the provision of facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation;

b) to erect buildings and carry out works.

(2) The erection of any building (other than a shed for tools and materials), or the construction of any other work, whereby access by the public to any Trust property to which the said section 29 applies is prevented or impeded, shall not be lawful unless the consent of the Secretary of State [in England] is obtained.

2A Sections 39 and 40 of the Commons Act 2006 apply in relation to an application for consent under subsection (2) of this section as they apply in relation to an application for consent under section 38(1) of that Act.

2B Section 41 of that Act applies in relation to the carrying out of works in contravention of subsection (2) of this section as it applies to works carried out in contravention of section 38(1) of that Act (and as if references to consent under that provision were to consent under subsection (2) of this section).

2C Nothing in section 38 of the Commons Act 2006 applies in relation to land to which section 29 of the Act of 1907 applies.

(3) Notwithstanding anything in subsection (2) of section 30 (Power to charge for admission to Trust property) of the Act of 1907 the National Trust may make such reasonable charges as they may from time to time determine for the use by the public of any facilities, services, parking places or other accommodation provided under this section.

Section 29 - Powers exercisable over certain Trust property

(1) By virtue of this Act there shall be imposed upon the National Trust with respect to any of the Trust property which is land to which this section applies the following duties and the National Trust shall (subject to the provisions of this Act) have with respect to the same property the following powers (namely):—

(A) Except as in this Act otherwise provided they shall at all times keep such property unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public:

(B) They may plant drain level and otherwise improve and alter any part or parts of such property so far as they may deem necessary or desirable and they may make temporary enclosures for the purposes of this subsection and for the purpose of protecting or renovating turf and for protecting trees and plantations:

(C) They may make and maintain roads footpaths and ways over such property and may make and maintain ornamental ponds and waters on such property:

(D) They may on such property erect sheds for tools and materials and may maintain and repair such sheds:

(E) They shall by all lawful means prevent resist and abate all enclosures and encroachments upon and all attempts to enclose or encroach upon such property or any part thereof or to appropriate or use the same or the soil timber or roads thereof or any part thereof for any purpose inconsistent with this Act:

(F) They may set apart from time to time parts of such property upon which persons may play games or hold meetings or gatherings for athletic sports.

(2) 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 confirming a provisional order of the Inclosure Commissioners; or

(ii) subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899; and

(c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.

Works on National Trust common land for which Welsh Ministers consent will/will not be sought

A - Works where the Trust will seek consent	B - Works where the Trust will not seek consent
<p>1. Permanent fencing or barriers of any sort, including safety barriers and barriers* for keeping vehicles off a common</p> <p>2. Fencing, permanent or otherwise, associated with stock grazing unless it is clearly linked to works set out in B19</p> <p>3. Any other temporary fencing or barrier not associated with B19</p> <p>4. Construction of cattle grids</p> <p>5. Construction of buildings intended to help the public to enjoy the property (e.g. shelters and refreshment and toilet facilities) but not including sheds for the storage of tools and materials</p> <p>6. Creation of new permanent parking areas and extensions to existing permanent parking areas</p> <p>7. Any other buildings or works which prevents or impedes access to a common and is not mentioned above or in column B of this table</p> <p>* This relates only to barriers situated on the common itself and includes banks and ditches, dragon's teeth and the laying of large stones</p>	<p>1. Erection of sheds for the storage of tools and materials*</p> <p>2. Planting of trees</p> <p>3. Drainage work</p> <p>4. Levelling work</p> <p>5. Maintenance work and repairs</p> <p>6. Resurfacing work using same materials as used previously</p> <p>7. Construction of gates and stiles into existing boundaries</p> <p>8. Creation of ponds or other bodies of water</p> <p>9. Dredging and clearance of ponds or other bodies of water</p> <p>10. Erection of signs and notice boards</p> <p>11. Management of vegetation by mechanical means</p> <p>12. Improvements (not involving an extension to the area) to existing permanent parking areas</p> <p>13. Resurfacing (with the same material) of paths and tracks</p> <p>14. Resurfacing (with the same material or replacement material more in keeping with the character of the common) of existing parking areas</p> <p>15. Movement of soil onto the common</p> <p>16. Widening of paths and tracks</p> <p>17. Creation of new paths, tracks and access ways</p> <p>18. Setting out areas for sports and games</p> <p>19. Temporary fencing or barriers associated with:</p> <ul style="list-style-type: none"> • planting, draining or levelling • alterations or improvements, • protecting or renovating turf • protecting trees and plantations <p>* This does not extend to workshops or offices or to storage of mechanical vehicles</p>

