

Commons Act 2006 Section 38

**Notes for completing an application
form for consent to construct works
on common land**

Notes for completing an application form for consent to construct works on common land

Introduction 1

Completing your appeal form 1

Complaints 10

Judicial Review

The Public Services Ombudsman

How we use your personal information

Annex A - Form of Notice for advertising your proposals

Annex B -

Example of a Notice (solely for illustration)

Annex C

Form of letter to send to consultees enclosing a copy of the draft notice

Annex D

Form of letter for you to send us confirming that the advertising requirements have been met

Annex E

Commons Act 2006 (c.26)

Part 3 - Works

Notes for making an application for consent to construct works on common land

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

This leaflet should be read in addition to the leaflet 'General Overview for applications under Section 16 and Section 38'.

From 1st April 2013 the Countryside Council for Wales ceased to operate in Wales, and their functions were taken over by Natural Resources Wales.

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

1. Introduction

These notes are to assist you if you are proposing to carry out works on common land. They should be read in conjunction with the application form and the 'Common Land Guidance - General Overview' note.

The Welsh Ministers have appointed Planning and Environment Decisions Wales (PEDW) to exercise their functions under section 38 of the Commons Act 2006 (see Annex E) on their behalf.

Planning and Environment Decisions Wales (PEDW) manages casework relating to the development and use of land in the public interest.

2. Completing the Application Form

Application form references follow:

SECTION A - The land

Note 1

Under section 38 of the Commons Act 2006, you need Welsh Ministers consent to construct any restricted works on land registered as common land under the Commons Registration Act 1965. Restricted works are any that prevent or impede access to or over the land, and also include resurfacing works, such as a new car park or access road (see 'Common Land Guidance - General Overview' note for more information).

Section 38 also applies to land not registered as common land which is regulated by a Provisional Order Confirmation Act under the Commons Act 1876 or which is subject to a scheme of management under the Commons

Act 1899. Section 38 does not generally apply to registered town or village greens [see '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.

Section 38 does not apply to commons owned by the National Trust but an equivalent provision, section 23 of the National Trust Act 1971, does. See 'Common Land Guidance – Special Consent Provisions (National Trust Commons)' note for more information about works on National Trust commons.

Note 2

Before applying, check the name of the common with the **commons registration authority** in your area (**usually the borough, county borough or county council**) and that the land has been registered as a common under the Commons Registration Act 1965. If the land is registered as common land (or is one of the village greens that is subject to section 38), then you should send us certified copies of the register (held by the **commons registration authority**) with your application. This will include details of land, rights and ownership, and the register map.

The **commons registration authority** may hold other information which will help you in completing the rest of this form.

Note 3

Where restricted works are constructed unlawfully (i.e. without the Welsh Ministers consent), any person can take action against them through the county court under section 41 (see Welsh Government's leaflet 'Common Land Guidance – Enforcement against unlawful works on common land' note for further information).

SECTION C - Area of Common and Common rights

Note 4

If the land is registered, consult the rights section of the commons register (held by the **commons registration authority**) before answering section C. Registered common rights can include: pasture (grazing), turbary (digging peat), estovers (e.g. bracken for animal bedding), piscary (fishing), pannage (pigs eating acorns), or common in the soil (minerals).

The commons register will not show which commoners are active, but your informal consultations, before you begin to complete the application form, should reveal them.

SECTION D - The proposal

Note 5

Describe the proposal fully, and include details of any construction materials to be used. Consider whether there are any works in addition to the main proposal for which you should also seek consent. State all areas accurately. Do not underestimate, as this could give rise to problems at a later stage.

Note 6

The public has a right of access to almost all registered common land (**see Notes 17 and 18**). We will consider this very carefully when determining your application. For fencing proposals, answer additional questions 17-20 of the application form fully.

Note 7

For temporary works/fencing, clearly state the period of time for which consent is sought. If you still need the works after the time limit has expired, a further section 38 consent will normally be needed.

Note 8

If Yes, please treat all works for which you are seeking consent as 'proposed' works when completing the form, regardless of whether or not they have already been constructed. Make clear when answering questions 11 and 12:

- (i) which works are already in place, and why; and
- (ii) which will be new.

You should always obtain consent before carrying out works. If, for any reason (e.g. an oversight), you have already begun or completed the works, then we will still accept your application; but you run the risk of enforcement action being taken against you in the meantime (see the Welsh Government's 'Common Land Guidance – Enforcement against unlawful works on common land' note for further information).

If consent is given, it will take effect from the time of commencement of the works. If consent is applied for but not given, the works will be considered unlawful and you run the risk of people taking enforcement action.

Note 9

It is important to give a **full** response here in support of your proposal. You should address questions such as:

- How will the works help to protect, maintain or improve the common, having regard to all the interests in it?
- What options have you considered for achieving your aims, and why did you decide on this one?
- Were any options involving less (or no) works on common land considered? Why were these rejected?

See 'Common Land Guidance - General Overview' note for further guidance.

Note 10

We strongly encourage you to consult informally on your proposals at an early stage in their development. See 'Common Land Guidance - General Overview' note for guidance on informal consultation, with particular regard to the section on *What steps should I take before applying?*

Any documents you send us, including letters from third parties, will be made available to any interested parties on request. You should make the relevant parties aware of this.

SECTION E - Other consents

Note 11

If consent is granted under section 38, you will still need to obtain any other necessary consents, legal authority or supporting evidence before proceeding with the works - such as permission from the landowner, planning permission, adhering to the environmental impact assessment process if appropriate, and permission from the highway authority to erect stiles or gates on a public right of way (see Question 17 and 'Common Land Guidance - General Overview' note). Section 38 consent includes permission to proceed with works on a Site of Special Scientific Interest (SSSI) (**see Section F, Note 13** and 'Common Land Guidance - General Overview' note).

Note 12

This note only applies where you need planning permission for your proposal. Consent can only be given for the works described in your application and the published notice (**see Note 22**). If, having advertised your proposal, it later changes by, say, conditions being imposed by the planning permission, you may have to withdraw your application and make a fresh one. Therefore, to avoid abortive work, you may prefer to await the grant of planning permission, where it is needed, before seeking section 38 consent. If you choose to run the applications concurrently, we would still ask you to obtain and send us a copy of the planning permission before determining the section 38 application. This will assist us in determining your application.

SECTION F - Designations

Note 13

Natural Resources Wales will know whether or not these designations apply.

Contact details:

Cyfoeth Naturiol Cymru - Natural Resources Wales.
Unit 5/7
Plas Carw
Cefn Coed Parc
Nantgarw
CF15 7QQ

Tel: 0300 065 3000

Email: enquiries@naturalresourceswales.gov.uk

Note 14

Information on scheduled ancient monuments can be found by contacting Cadw

Contact details:

Cadw
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

Email: Cadw@gov.wales

Tel: 01443 336000

SECTION G - Existing works and adjacent common land**Note 15**

This section asks for more information about the context of the proposed works in the surrounding common land. In deciding your application, we will take account of any existing works on the common, consider the potential impact of the proposal on the common itself, and on all common land in the vicinity.

SECTION H - Public access**Note 16**

Consult the commons register or the **commons registration authority** for the information requested in questions 24 and 25 of the application form.

Note 17

Although not directly related to the questions in Section H, you should be aware that Part 1 of the Countryside and Rights of Way Act 2000 introduced a public right of access on foot to all registered common land (to which a right of access did not already apply). This right can be subject to certain exceptions and limitations.

Note 18

Section 193 of the Law of Property Act 1925 gives a public right of access for air and exercise to any common which lies in an area which was a borough or urban district before 1 April 1974. These are often known as 'urban' commons. It can also be applied to other commons by way of a Deed made by the owner of the land.

An Order of Limitation usually restricts the type or scope of public access to land to which section 193 applies.

SECTION I - Schemes of management and local Acts

Note 19

If there is a scheme, read its terms carefully. Some works are permitted by schemes, without any requirement to obtain Welsh Ministers consent. **Any other works** need consent under section 38.

Note 20

If there is a local Act, read its terms carefully, and consult us if in any doubt about how to proceed. Information about local Acts may be available from the **commons registration authority**.

SECTION J - Advertisement and consultation

Note 21

You must advertise your proposal **within 7 days** of making this application, and allow a minimum of **28 days** for people to write to us with their views. Base the advertisement on the form of notice at **Annex A** (an example notice is at **Annex B**), and include **all** the works for which you are seeking consent.

In completing the notice:

- (a) your description should be detailed enough for readers to know whether they wish to object to, or support, any part of the proposal;
- (b) the address for inspecting the application and map should be easy for people who live near the common to get to. Applicants often use public libraries, council offices, or post offices. A private address is not normally appropriate but may be acceptable in very exceptional cases where there might only be dwellings in a remote community, rather than places where there are public buildings; and
- (c) the closing date for people to write to us must be no less than 28 days from the appearance of the notice. Make sure that any organisations you write to (see Note 22) receive the notice at least 28 days before the closing date.

We can offer advice on drafting the advertisement, including whether the use of a private address for inspection of the application is acceptable, but responsibility for describing the proposal rests with you.

Note 22

The notice must be:

- (a) advertised in at least one main local newspaper;
- (b) sent to all the organisations listed in Section J, using the letter at **Annex C** (see next paragraphs);

(c) posted at the main points of entry to the common (or, if there are no such places, in a conspicuous place at the site); and

(d) placed at the inspection point with the application and map.

To comply with (b) above, you must write to all the organisations listed in Section J, using the letter at **Annex C** if your application is under section 38 or section 23. You may also choose to send the notice to other bodies with an interest in the land or its flora and fauna (for example, Wildlife Trust, Local Access Forum, Ramblers' Association, local amenity society). You may be aware of other bodies who would benefit from receiving a copy of the notice as a result of the informal consultation process (see 'Common Land Guidance - General Overview' note).

You must consult all active commoners. As a minimum, you must write to the occupier of any property shown on the commons register as having rights of common attached to it, and any other person known to you as being entitled to exercise rights, **if** you believe that those rights are being exercised or are likely to be affected by the application. Where practicable, you should write to the occupiers of all properties on the register, but we recognise that this will not always be viable where there are a large number of rights registered.

You must write to us as early as possible, using the letter at **Annex D**, to confirm that you have met the advertising requirements. We will not be able to proceed with considering your application until we have this confirmation from you.

Note 23

Representations from interested parties

If we receive objections or other representations from interested parties, we will copy them to you and ask for your comments within 21 days. We may then conclude that we can reach a decision based solely on written evidence, or that a public inquiry, hearing or site visit is needed. If there are no (or few) objections, it is more likely that a decision will be made solely on the basis of the written evidence. It is therefore in your interests to have established local support for your application before submitting it. We will keep you informed about the progress of your application. (see 'Common Land Guidance - General Overview' note)

Please note that evidence you submit, whether in the application itself or in correspondence, may be disclosed to objectors, or to anyone interested in the application at any stage. Any responses you make to objections should, therefore, only include comments that are relevant to the points raised, and not include other matters which you would not wish to be disclosed.

Note 24

The Open Spaces Society campaigns to protect common land, open spaces and public rights of way in England and Wales.

Contact details:

Open Spaces Society
25a Bell Street
Henley-on-Thames
Oxfordshire
RG9 2BA
Tel: 01491 573535
Fax: 01491 573051
Email: hq@oss.org.uk

SECTION K - Maps

Note 25

Provide **two copies** of an up-to-date map which clearly shows what you are proposing to do and where. This is in addition to the register map, which you must also send us a copy of (see Section A and **Note 2**). With regard to the application map:

- use an Ordnance Survey Sheet of the latest Edition, of sufficient scale to show clearly the location of the works in relation to other features (1:2,500 if available or not less than 1:10,000);
- identify clearly the scale of the map, so we can check the measurements of the proposed works;
- highlight accurately the boundary of the common land in **GREEN** and the site of the proposed works in **RED**. (Details of the boundary are on the register map);
- show the information on just one map if possible, but use additional maps if necessary;
- clearly show, on all maps, at least two road names or other features, so the site can be easily identified, and give at least one full grid reference;
- include a plan or drawing of the proposed works if it helps to clarify your proposal;
- provide **two copies** of each map and plan.

SECTION L - Public inquiry or hearing

Note 26

Public inquiry or hearing

An inquiry or hearing will not be held in every case (see **Note 23** and 'Common Land Guidance - General Overview' note). Where needed, it is

usual practice to hold them in public halls, council buildings, council chambers or committee rooms, and some are held in hotels, schools, theatres etc. The choice of venue will generally need to accord with the requirement of our Inquiries Venue Facilities note. The note can be found here:

http://www.planningportal.gov.uk/uploads/pins/venue_and_facilities_for_publicinquiries_and_hearings.pdf

Applicants should use their local knowledge, and feedback gained from their informal consultations, to judge levels of opposition/support for their proposal. The venue should be large enough to accommodate comfortably the numbers of people expected to attend. Large venues are not desirable for a hearing or an inquiry where few people are likely to attend. Similarly, small venues are inappropriate for inquiries which are the subject of significant public interest. The venue should be unaffected by noise and other disturbance associated with activities in other parts of the building or the surrounding area e.g. playgroups, sports and games, building works etc.

3. Complaints and Judicial Review

Complaining to us

If you have a complaint about the way the application is being, or has been handled, either by the Inspector or by our Case Officer, you should contact the Complaints Officer at:

The Complaints Officer
PEDW
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
Telephone: 0300 123 1590

Email: pedw.complaints@gov.wales

Your complaint will be investigated impartially and you can normally expect a reply within three weeks. If an error has been made, we will explain this and offer our apologies, but the law does not allow us to change the decision in any way.

You can find more information on our complaints procedures on our website at:

www.planningportal.gov.uk/uploads/pins/row/complaints_leaflet.pdf

The High Court

Once an application decision is issued we have no power to amend or change it. The only way that a decision may be reviewed is following a successful judicial review.

You must to apply to the High Court for a Judicial Review promptly and in any event not later than 3 months from the date of the decision. To be successful, you would have to show that

- The decision maker has overstepped his/her powers; or that
- Criteria relevant to the type of application have not been met and this has damaged your interests.

You should apply to:

The Administrative Court
Cardiff Civil Justice Centre
2 Park Street
Cardiff
CF10 1ET
Telephone: 029 2037 6400
Website: www.courtservice.gov.uk

If you wish to pursue this course of action, you may want to consider seeking advice from a solicitor or the Citizens Advice Bureau.

The Public Services Ombudsman for Wales

If you think you have been treated unfairly because we or the Inspector have not done our jobs properly, you can contact the Public Services Ombudsman for Wales. The Ombudsman has no power to question the merits of an application or to change the decision. He is concerned only with the way in which we deal with and process applications. The Ombudsman will not usually investigate unless you have complained to us first.

You can contact the Ombudsman at:
Public Services Ombudsman for Wales
1 Ffordd Yr Hen Gae
Pencoed
CF35 5LJ
Telephone: 01656 641150 (all calls are charged at local rate)
Email: ask@ombudsman-wales.org.uk
Website: www.ombudsman-wales.org.uk

The Council on Tribunals

If you have a complaint about the procedure that we used for an application, you can complain to the Council on Tribunals (The Council on Tribunals has no power to question the merits of the application or to change the decision). Their address is:

Council on Tribunals
81 Chancery Lane
London
WC2A 1BQ
Website: www.ajtc.gov.uk

You can find more information on challenging a decision in the High Court on our website at: <http://www.planningportal.gov.uk/>

4. How we use your Personal Information

If you participate in an application under the Commons Act 2006, then the type of personal information contained in your representations will normally include your name, contact details and any other personal information you choose to provide.

We use the information provided to process the application, and this includes making your written representations available to the applicant and other relevant parties.

We publish the Inspector's decision on the Planning Portal. In some cases, we also publish appeal documents and representations, including names and addresses. Phone numbers, fax numbers and e-mail addresses are removed before publication.

The guidance in this leaflet explains the application process in more detail and you are advised to read this leaflet before providing any representations. For further details please see our privacy statement:

www.planningportal.gov.uk/planning/appeals/online/about/privacystatement=wa

If you have any queries about our use of your personal information please contact us at the address below.

Further Information

Further information about our privacy policy is on the Planning Portal at www.planningportal.gov.uk/planning/appeals/online/about/privacystatement=wa or on request. If you have any queries about our policy, or wish to request your personal data, then please contact us through the address below:

Contacting us

Planning & Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff CF10 3NQ
Phone: 300 123 1590
E-mail: PEDW.Casework@gov.wales
Website: www.gov.wales/planning-and-environment-decisions-wales

Annex A
Form of Notice for advertising your proposals

.....COMMON

Community/Town* of

County Borough/Borough/City* of.....

Person/organisation [give name] has applied to the Welsh Ministers for consent under section 38 of the Commons Act 2006/section 23(2) of the National Trust Act 1971* to carry out restricted works on
....Common.

The proposed works are: [describe the works/fencing* and the area they will cover; e.g. on square metres/hectares (area) and/or metres (length)*] The works/fencing* will be located [give location and any other relevant details]

A copy of the application form and map showing the proposed works can be inspected at between the hours of 10.00 am and 4.00 pm weekdays (not public holidays) until the day of [at least 28 days from last appearance of notice]. A copy of the application may be obtained by writing to [give address].

Any objections or representations should be sent in writing ON or BEFORE that date to PEDW at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ, or PEDW.Casework@gov.wales Letters sent to PEDW **cannot be treated as confidential**. They will be copied to the applicant and possibly to other interested parties.

(Insert name and address of person proposing to construct works)

(Insert date)

** delete as appropriate*

Annex B
Example of a Notice (solely for illustration)

LARGISH COMMON
Community of Smallston
District of Smallford
County of Smallshire

Smallford Football Club has applied to the Welsh Ministers for consent under section 38 of the Commons Act 2006 to carry out restricted works on Largish Common.

The proposed works are: (i) a brick changing hut on 146 square metres; (ii) a gravel parking area adjoining the hut on 100 square metres; (iii) a 40 metre length of fencing around the car park.

The works will be located in the south west corner of the common, south of the football pitches, with height-restricted access from Smallston Lane. Visitors to the common will be able to park in the car park on days when it is not being used by the football club. The fencing will be 1 metre high post and rail, and two stiles and one access point for the disabled will be provided.

A copy of the application form and map showing the proposed works can be inspected at Smallston Post Office, Small Street, Smallston, Smallshire, SM1 1VS between the hours of 10:00 am and 4:00 pm weekdays (not public holidays) until the twenty-fifth day of May 2008. A copy of the application may be obtained by writing to [give address].

Any objections or representations should be sent in writing ON or BEFORE that date to PEDW at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ, or PEDW.Casework@gov.wales. Letters sent to PEDW **cannot be treated as confidential**. They will be copied to the applicant and possibly to other interested parties.

S Large
Smallford Football Club Secretary
10 Largish Common Road
Smallshire
SM10 6SL

26 April 2008

Annex C

FORM OF LETTER TO SEND TO CONSULTEES ENCLOSING A COPY OF THE DRAFT NOTICE (ALLOW 5 DAYS FOR POSTAL DELAYS)

COMMONS ACT 2006 – SECTION 38* **NATIONAL TRUST ACT 1971 - SECTION 23***

I am/We are* applying to the Welsh Ministers for consent to construct works on (Name of) Common under section 38 of the Commons Act 2006/section 23 of the National Trust Act 1971*.

I am/We are* required to give you notice of our proposals, and am/are* sending you a copy of the attached notice in order to comply with that requirement.

[For section 38 applications only:

Under section 38, I/we need Welsh Ministers' consent to carry out any restricted works on **land registered as common land** under the Commons Registration Act 1965 (and on certain other land specified in section 38).

Restricted works are any that prevent or impede access to or over the land. They include fencing, buildings, structures, ditches, trenches, embankments and other works, where the effect of those works is to prevent or impede access. They also include, in every case, new tarmac (or similar) surfaces, such as for a new car park or access road.]

[For section 23 applications only:

Under section 23, we need Welsh Ministers' consent to carry out certain works on National Trust land, which prevent or impede access by the public.]

The decision will be based on the merits of the proposal, and will balance all the interests in the common, taking account of all views expressed. Regard must be given to the criteria set out in section 39 of the Act. These are:

- (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, which includes the public interest in:
 - nature conservation
 - the conservation of the landscape
 - the protection of public rights of access to any area of land, and
 - the protection of archaeological remains and features of historic interest;
- (d) any other matter considered relevant.

These criteria will be viewed in the light of the overriding objective of protecting, maintaining or improving the common, and of ensuring that the overall stock of common land is not diminished. This will enable the diversity, variety, and overall extent, of common land to be safeguarded.

Any objections or representations about the proposal should be sent to PEDW by the closing date specified in the notice.

** delete whichever does not apply*

Annex D

FORM OF LETTER FOR YOU TO SEND US CONFIRMING THAT THE
ADVERTISING REQUIREMENTS HAVE BEEN MET
(ADAPT AS APPROPRIATE)

COMMONS ACT 2006 – SECTION 38* NATIONAL TRUST ACT 1971 - SECTION 23*

Further to my application dated *(insert date)*, reference number *(if known)*,
I write to confirm that the advertising requirements set out in Section J of
the application form and the related guidance notes have been met.

I confirm that:

A. I have published the notice in *(give the name of the main local newspaper in which the notice was published)* on *(give the date of the advert)*. **A copy of the extract from the newspaper is enclosed.** *(This should be the entire sheet, including the extract itself, but also showing the name and date of the newspaper).*

B. I have sent a letter based on the one at Annex C* to all those listed in
Section J of the application form. **A copy of the letter sent is attached.**
Those consulted were as follows:

(list all those consulted, including, for organisations, the name of the contact)

C. I have posted the notice at the main points of entry to the common *(or, if there are none, in a conspicuous place at the site)*, and will maintain it there until the end of the objection period.

D. I have placed a copy of the complete application, including the notice and map, at the inspection point given in the notice. These documents will remain there until the end of the objection period.

* delete whichever does not apply

Annex E

Commons Act 2006 (c.26)

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.