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Welsh Government

## Guidance Document

# Guidance to Commons Registration Authorities in Wales on Sections 15A to 15C of the Commons Act 2006

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

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## INTRODUCTION

1. This guidance is for commons registration authorities in Wales and should not be considered an authoritative statement of the law, which is ultimately a matter for the courts.
2. In December 2013, the Welsh Government issued the *'Positive Planning – Proposals to reform the planning system in Wales'* consultation paper, which set out proposals to improve the town and village green process in Wales, including:
  - Enable owners of land to submit a statement to their Commons Registration Authority, the effect of which is to bring to an end any period during which persons have indulged in lawful sports and 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 or village green where such land has entered the planning system<sup>1</sup>
3. These proposals were met with positive responses and were introduced in the Planning (Wales) Act 2015 (“the 2015 Act”).
4. A further consultation paper (*“Town and Village Greens”*) was issued by the Welsh Government in October 2017 and set out proposals to commence the relevant sections of the 2015 Act relating to reforms to the town and village green process, along with the making of regulations governing the procedure relevant to the deposit of a landowner statement.
5. Responses were positive and the commencement of relevant sections of the 2015 Act and the Town and Village Greens (Landowner Statements) (Wales) (No.2) Regulations 2018 (“the 2018 Regulations”) came into force on 22 October 2018.

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<sup>1</sup> Schedule 1B to the Commons Act 2006

## **CHAPTER 1: LANDOWNER STATEMENTS**

### **What has changed?**

6. Sections 52 and 53 of, and Schedule 6 to the 2015 Act amends the law on registering land as a town or village green by applying sections 15A and 15C of the Commons Act 2006 (“the 2006 Act”) to Wales, as well as inserting new schedule 1B into the 2006 Act.
7. Section 15A of the 2006 Act allows owners of land to deposit a landowner statement with the relevant Commons Registration Authority, the effect of which brings to an end any period of recreational use ‘as of right’ over the land to which the statement relates. Section 52 of the 2015 Act amends Section 15A of the 2006 Act so it applies to Wales.
8. Section 15C of the 2006 Act 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”). Section 53 of the 2015 Act amends Section 15C of the 2006 Act so it applies to Wales.
9. The trigger and terminating events are specified in Schedule 6 of the 2015 Act, which are introduced by a new Schedule to the 2006 Act (Schedule 1B).
10. The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 (“the 2018 Regulations”) prescribe the form and processes for the depositing of, and recording of information relating to landowner statements.
11. Sections 52 and 53 of, and Schedule 6 to the 2015 Act commenced on 22 October 2018. The 2018 Regulations came into force on 22 October 2018.

### **What is a landowner statement?**

12. A landowner statement is a statement deposited with Commons Registration Authorities which brings to an end any period of recreational use ‘as of right’ over the land to which a statement applies.
13. Where a landowner statement is deposited with the relevant Commons Registration Authority, the 2018 Regulations require it to be accompanied by a map which shows the land to which the statement relates, along with a relevant fee.
14. One of the criteria for registering land as a town or village green is the land has been used ‘as of right’, which means without permission, force and secrecy for at least 20 years. The effect of depositing a landowner statement

is to interrupt any such period of use of the land shown in the corresponding map and described in the statement.

15. Section 15A(2) of the 2006 Act does not prevent a new period of use commencing when a landowner statement is deposited. Therefore, if recreational use 'as of right' of the land were to continue once a landowner statement is deposited, a new 20 year period of requisite use could begin to accrue. However, if another landowner statement is deposited within 20 years of the previous deposit, then it will again prevent any recreational users of the land reaching the 20 years use required by the registration criteria for town and village greens.
16. For land which has been subject to recreational use as of right for 20 years or more before a landowner statement is deposited, the deposit of such a statement would trigger the two year period of grace which allows applications to be made to register land as a town or village green. Such applications would rely on the qualifying criteria provided by section 15(3) of the 2006 Act (i.e. where use of the land as of right has ceased).

#### **Who is affected by the changes?**

17. The changes introduced by the new legislation will predominately affect landowners, Commons Registration Authorities and recreational users of land.
18. Landowners will be affected as should they wish to bring to an end any period of recreational use 'as of right' over their land, they will now be required to deposit a statement to the relevant Commons Registration Authority to this effect.
19. Similarly, Commons Registration Authorities will be required to manage, publicise and maintain a register of all landowner statements deposited with them.
20. Recreational users of land will be affected by the deposit of landowner statements because it will bring an end to any period during which they have used the land as of right. When a landowner statement is deposited in relation to land which has been used as of right for recreation for at least 20 years, it would trigger the two year period of grace when applications can be made to register the land as a town or village green.

## **Procedure for submitting landowner statements**

### *Validation*

21. Upon receipt of a landowner statement, Commons Registration Authorities will need to ensure a landowner statement is:
- In the form prescribed by Schedule 1 to the 2018 Regulations, or in a form substantially to the like effect, with such insertions or omissions as are necessary in a particular case;
  - Signed by every owner of the relevant land, or by a duly authorised representative;
  - Signed by the secretary, or some other duly authorised officer of every owner of the relevant land which is a body corporate or an unincorporated association;
  - Accompanied by an Ordnance Map, at a scale of not less than 1:10,560, showing the boundary of the relevant land in coloured edging; and
  - The relevant fee (if any).

### *Acknowledgement of an application*

22. Where a Commons Registration Authority considers all the requirements in paragraph 21 have been met, acknowledgement of receipt should be sent to applicants as soon as practicable.
23. In circumstances where the requirements in paragraph 21 are considered not to have been met, Commons Registration Authorities must give notice to applicants identifying the requirement(s) which do not accord with the validation of a statement and set out the reasons why the requirement(s) has / have not been complied with.

### *Publicity and notification requirements*

24. Where a valid landowner statement has been deposited, the Commons Registration Authority will be required to undertake certain publicity and notification requirements, as prescribed in Regulation 6(4) of the 2018 Regulations.
25. Commons Registration Authorities must:
- Publish a notice on their website confirming deposit of a landowner statement and accompanying documentation;
  - Serve notice on any person who has asked to be informed of all landowner statements which have been deposited with a Commons Registration Authority (subject to an email or postal address having been given to the relevant Commons Registration Authority); and

- Displaying notice a landowner statement has been deposited for at least 60 days at or near at least one obvious place of entry to the relevant land, or where there are no such places, at least one conspicuous place on the boundary of such land.
26. The form of the notice is contained in Schedule 2 to the 2018 Regulations and provides key information relating to the relevant Commons Registration Authority and the landowner statement itself, including a map and a description of the land.
  27. There is no specified time for how long notice should be published on a Commons Registration Authority's website; however, it is expected to be at least the same length of time as the notice is displayed at or near the site (i.e. a minimum of 60 days).
  28. Regarding the requirement of displaying notice at or near the site, the 2018 Regulations prescribe for Commons Registration Authorities to display at least one notice. It will be for Commons Registration Authorities to determine how many notices are required for each case, depending on the size of the land, the number of entry points etc.
  29. Once a notice has been displayed by a Commons Registration Authority, there will no formal requirement to revisit and maintain these notices during the minimum 60 day period if they are removed, obscured or defaced (through no fault of the Commons Registration Authority) as once the notice(s) has been displayed, the relevant Commons Registration Authority is considered to have complied with the requirements set out in the 2018 Regulations<sup>2</sup>.
  30. However, if a Commons Registration Authority is informed a notice has been removed, obscured or defaced, it would be good practice to display a new notice.

## **Maintaining registers**

31. All Commons Registration Authorities are required to keep and maintain registers of all landowner statements (including accompanying information and documentation) received by them.
32. The Welsh Government is currently undertaking a project to develop and introduce electronic registers for common land in Wales. Until this has been implemented, Commons Registration Authorities are required to retain and maintain a paper copy of the register. The 2018 Regulations require the paper copy of the register to be available for inspection by any person who requests it. However, the 2018 Regulations also require an electronic record of any landowner statements deposited under section 15A of the 2006 Act to be kept. This will assist the transfer of information to the proposed electronic

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<sup>2</sup> Regulation 6(6) of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018



register for common land in Wales. Whilst the 2018 Regulations do not require an electronic version of a register to be published or made available to the public, Commons Registration Authorities are encouraged to do so where practicable.

33. All registers must contain:
- The contact details of the person in the Commons Registration Authority to whom enquiries about the register may be made;
  - An index of the contents of the register; and
  - Any other information which Commons Registration Authorities consider appropriate.
34. In respect of each landowner statement and map deposited with a Commons Registration Authority, all registers must contain the following information:
- A copy of Part B of the landowner statement;
  - A copy of the map and any legend accompanying or forming part of the map;
  - The name and address, including the postcode, of the relevant owner(s);
  - The date of which the statement and map were deposited with the Commons Registration Authority; and
  - Details of the land delineated on the map, including:
    - The Ordnance Survey six-figure grid reference of a point within the area of land;
    - The name of the electoral ward, district or community in which the land is situated;
    - The address and postcode of those buildings on the land to which a postcode has been assigned; and
    - The name of the town or city which is nearest to the point referred to as part of the Ordnance Survey six-figure grid reference.
35. Commons Registration Authorities are required to keep their registers in such a manner as is suitable to enable a copy of any of the information contained in the register to be taken by, or for any person, who requests a copy from the relevant office (i.e. the office specified on the Commons Registration Authority's website, or the principle office of that authority).

### **Removal of entries from registers**

36. Commons Registration Authorities have the ability to remove an entry, or any part of an entry, which contains a material error in the landowner statement or accompanying map (i.e. an incorrect boundary outline).
37. However, before an entry (or part of an entry) is removed, Commons Registration Authorities must give the relevant land owner(s) notice of their intention to do so. Landowners will then have a period of 28 days starting with the date notice is sent to submit any revised information or documentation to

the relevant Commons Registration Authority which remedies the material error(s) identified.

## **Fees**

38. Where a landowner statement is deposited with a Commons Registration Authority, it must be accompanied by a relevant fee<sup>3</sup>, if one is specified. The 2018 Regulations do not specify fee amounts; instead, Commons Registration Authorities have the power to set their own fees for undertaking the work associated with processing and recording landowner statements.
39. However, we strongly encourage any fees set are reasonable, based on cost recovery and are kept under regular review to ensure they are commensurate with each Commons Registration Authority's costs.
40. Although there is no legal requirement to do so, Commons Registration Authorities are encouraged to publish their fees online for public viewing.

## **Where can copies of the landowner statement application form be found?**

41. A copy of the landowner statement application form is set out in Schedule 1 to the 2018 Regulations.
42. A copy of these Regulations can be found at: [www.legislation.gov.uk](http://www.legislation.gov.uk)

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<sup>3</sup> Regulation 4 of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

## **CHAPTER 2: EXCLUSION OF THE RIGHT TO APPLY UNDER SECTION 15(1) OF THE COMMONS ACT 2006**

### **What has changed?**

43. The commencement of Section 53 and Schedule 6 of the 2015 Act amended the law on registering land as a town or village green by applying section 15C of the 2006 Act to Wales and inserting new schedule 1B into the 2006 Act.
44. Section 15C(1) of the 2006 Act excludes the right to apply when a prescribed event, known as a 'trigger event', has occurred within the planning system in relation to the land to which an application would relate.
45. At any time when the right to apply is excluded in respect of land due to a trigger event, Commons Registration Authorities cannot accept any application to register the land as a town or village green, even where a trigger event occurred prior to the commencement of section 15C of the 2006 Act. The right to apply remains excluded until a corresponding 'terminating event' occurs in respect of the land.
46. A list of the trigger and terminating events applicable in Wales are set out in Schedule 1B to the 2006 Act, which is inserted by section 53 of, and Schedule 6 to, the 2015 Act.

### **What is a trigger event?**

47. Trigger events are events related to the development of land which occur within the planning system. Where any such event has occurred, the right to make an application to register land as a town or village green is excluded.
48. There are three trigger events in Schedule 1B to the 2006 Act, each of which relates to a specific planning mechanism (*see Table 1*). For each trigger event, there are a number of corresponding terminating events.
49. There are no trigger events in relation to permitted development rights. Therefore, the exclusion will not apply to land on which permitted development has taken place, unless a trigger event has occurred in relation to the land for another reason.
50. If a trigger event has occurred on land then the right to apply to register it as a green is excluded. Therefore, a Commons Registration Authority cannot accept any application to register that land as a town and village green. This rule applies even when a trigger event occurred prior to commencement of section 15C. However, any applications made under section 15(1) of the Commons Act which are submitted to the Commons Registration Authority before the 22 October 2018 are unaffected by the trigger events.

### **What is a terminating event?**

51. Each trigger event has corresponding terminating events. Where the right to apply has been excluded due to a trigger event occurring, if one of the corresponding terminating events occurs, this will mean the right to apply becomes exercisable again and it will be possible to apply to register land as a town or village green.

*Table 1:*

*Trigger and terminating events set out in Schedule 1B to the Commons Act 2006, as inserted by section 53 of, and Schedule 6 to, the Planning (Wales) Act 2015*

<b><i>Trigger Events</i></b>	<b><i>Terminating Events</i></b>
<p>1. An application for planning permission for development of the land is granted under the 1990 Act, 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 1990 Act.</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 2008 Act.</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>

### Who is affected by the change?

52. Both Commons Registration Authorities and prospective applicants will be affected by these changes in determining whether the right to apply has been excluded in relation to land.
53. Commons Registration Authorities cannot consider an application to register land as a town or village green where the right to apply has been excluded for the land, unless the application was made before 22 October 2018. Therefore, they will need to determine whether the right to apply has been excluded or not, even in circumstances where a prospective applicant is not aware of any exclusion.
54. Where Commons Registration Authorities know an application to register land as a town or village green is imminent, although the right to apply has been excluded in respect of the land, they may wish to advise prospective applicants the right to apply has been excluded. However, they will need to be certain the right is not exercisable if they elect to do this, however, this intervention could prevent wasted effort on the part of prospective applicants.

55. Although depositing a landowner statement under section 15A of the 2006 Act brings to an end any period of recreational use 'as of right' over the land to which the statement relates, section 15(3)(c) of the 2006 Act provides a period of grace in which an application to register land as a town or village green can be submitted, following the deposit of a landowner statement. In Wales, this period is two years<sup>4</sup>.
56. When determining whether an application under section 15(1) of the 2006 Act may be made within the period of grace allowed by section 15(3)(c) (i.e. where recreational use of the land as of right has ceased), any period during which the right to apply is excluded by a trigger event is to be disregarded.
57. Therefore, the two year period of grace would pause when a trigger event occurs, and if a corresponding terminating event subsequently occurred, then the period of grace would start running from where it left off.
58. For example, a trigger event occurs in relation to land at a time when six months of the grace period remains. If a corresponding terminating event occurs on that land, then the period during which the right to apply was excluded will be disregarded and there would be a further six months during which an application for registration of land as a green could be made.

#### **How will Commons Registration Officers know if the right to apply is excluded?**

59. Where an application is received to register land as a town or village green, Commons Registration Officers will need to contact the relevant local planning authority ("LPA") to which the application relates and the Planning Inspectorate, for written confirmation of whether any trigger or terminating events have occurred on the land to which the application relates.
60. LPAs and the Planning Inspectorate will need to know what land is affected before confirming whether any trigger or terminating events have occurred, therefore, Commons Registration Officers will be required to provide them with a map of the land to which an application relates.
61. If a trigger event has occurred but a corresponding terminating event has not, then the right to apply is excluded, in which case Commons Registration Officers must refuse to accept the application.
62. However, although a trigger event may have occurred in relation to land, a corresponding terminating event also could have occurred, meaning that the right to apply is again exercisable. If confirmation of whether a corresponding terminating event has occurred is not sought then Commons Registration Officers cannot know for certain that the right to apply is excluded.

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<sup>4</sup> Section 15(3A)(b) of the Commons Act 2006

63. In summary, in terms of section 15C of the Commons Act 2006, Commons Registration Officers can only consider an application to register land as a town or village green where either:

- No trigger event has occurred; or
- A trigger event has occurred, however, a corresponding terminating event has also occurred in relation to the land.

### **Should Commons Registration Authorities check whether the right to apply has been excluded before formally accepting applications to register land as a town or village green?**

64. It is advisable to seek confirmation whether the right to apply has been excluded or not in relation to land before formally accepting or acknowledging receipt of an application to register land as a town or village green because applications should not be accepted by Commons Registration Authorities if the right to apply has been excluded.

65. However, this will not prevent Commons Registration Authorities from speaking to applicants on the telephone to confirm physical receipt of an application, if requested by applicants, although Commons Registration Authorities must explain this would not constitute formal acknowledgement or acceptance of an application.

### **Who are the relevant Local Planning Authorities?**

66. Generally, land which could potentially be registered as a town or village green will be located within a single unitary authority boundary.

67. However, in circumstances where land extends beyond the boundary of a single unitary authority, each of the unitary authorities in which the land is located will be considered a relevant LPA. Therefore, each should be contacted to confirm whether a trigger or corresponding terminating event has occurred in relation to its portion of the land.

### **Circumstances where exclusion applies to only part of the land**

68. For the portion(s) of land which is not subject to exclusion, an application to register land as a town or village green should proceed. However, the portion(s) of land on which the right to apply has been excluded, Commons Registration Authorities must inform applicants the portion(s) of land on which the right to apply has been excluded cannot be considered for registration as a town or village green.

**What happens where a trigger event and its corresponding terminating event has occurred on land?**

69. In these circumstances, the right to apply for registration as a town or village green is again exercisable and Commons Registration Authorities may accept applications for consideration.
70. However, this is only in circumstances where only one trigger event has taken place in relation to the land. If another trigger event(s) has occurred with no corresponding terminating event the right to apply for registration is again excluded until a corresponding terminating event relating to the trigger event occurs.



## **CHAPTER 3: TRANSITIONAL PROVISIONS**

### **What happens where an application to register land as a town or village green is submitted before the commencement of the new legislation?**

71. Where an application to register land as a town or village is submitted to the relevant Commons Registration Authority before the new legislation has come into force, the new legislation will not affect the application, even if a trigger event has occurred before the new legislation comes into force (see paragraphs 45 –48).