



LAW TOOLKIT

2018

'New' Commons

Creating and Registering a 'New Common'



Professor Chris Rodgers

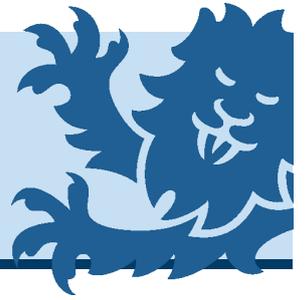


Research at
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There are two routes to creating a 'New' Common: You must create a common right(s) over the intended common, and *then* it has to be registered with the commons registration authority for the area concerned under either (i) Part 1 Commons Act 2006 or (ii) the Commons Registration Act 1965.



A How To Guide

STEP 1 CREATE A COMMON RIGHT(S)

The landowner executes a deed creating the common right in favour of a person who owns land near the common which can 'benefit' from the right e.g. a right of estovers over the intended new common.

STEP 2 REGISTRATION

Which Act applies – the 2006 or 1965 Act?

This is determined by the Commons Registration (England) Regulations 2014 (SI 2014/3038).

2.1 Part 1 of 2006 Act is in force in Cumbria, North Yorkshire, Devon, Kent, Cornwall, Hertfordshire, Herefordshire, Lancashire (excluding metropolitan districts), and Blackburn with Darwen. If the new common is in any of these areas, you must use the forms prescribed by the 2006 Act. **These are set out at (A) below.**

2.2 In all other registration authorities the registration of new common land is still governed by the 1965 Act. If the new common is not within any of the areas set out in the 2014 Order (as above) then you must use the forms prescribed in the 1965 Act. **These are set out at (B) below.**



(A) Registration under Commons Act 2006

By virtue of Commons Act 2006 s 6 (3) a right of common can be created by express grant over land if the land is **not** registered as a town or village green. **But** common rights cannot be acquired by prescription (long use) after Part 1 of 2006 Act is in force, and no new rights in gross (that is, not attached to land) can be created under Part 1 of the 2006 Act.

The common right(s) must be associated with a dominant tenement i.e. an area of land that is to be benefitted by the right ("appurtenant" to a dominant tenement).

An application to register new rights can only be made by (i) the owner of the land over which the rights are to be exercised (the servient land) or (ii) the owner of the land that the rights are to benefit (the dominant land): Schedule 4 para 1 Commons Registration (England) Regulations 2014 (SI 2014/3038). The consent of the owner of servient or dominant land (as case may be) must be evidenced in the application.

Application is made in Form CA1 available from DEFRA. This is a composite form that incorporates the deed of grant as Part A and application to register as Part B.

Form CA1 is set out below.

(B) Registration under the Commons Registration Act 1965

The Commons Registration (New Land) Regulations 1969 (SI 1969/1843) are still in force for registration of new common land ("land [that] becomes common land") outside the 'pilot' areas in England, and in the whole of Wales. But the 1969 Regulations do not apply to Town and Village Greens – these must be registered under the 2006 Act.

Any grant of new common rights over the land makes both the land and the new common rights registrable under section 1 CRA 1965 - reg 3 (1) SI 1969/1843. The procedure on registration is more complicated than that under the 2006 Act (above) in that two forms must be submitted – one to register the land over which the rights are to be exercised as 'common' land, and a second form to register the common rights.

Registering "new" Common Land: This is done using **Form 29 in the Schedule to SI 1969/1843**

The application can be 'by any person'

It must include certified copy of the deed of grant of new common right(s) and be accompanied by a statutory declaration made by the grantor of the rights.

Registering "new" Common Rights: This is done using **Form 31 in the Schedule to SI 1969/1843**

The application must be by the owner of the right(s) and must state the capacity in which application made (note 3 to Form 31)

It must include a certified copy of the deed of grant of new common right(s) and be accompanied by a statutory declaration made by the recipient of the rights.

Forms 29 and 31 is set out below.



Professor Chris Rodgers



Professor Christopher Rodgers is a Professor at Newcastle Law School. His research interests lie in property law, agricultural law and environmental law. Recent works include *Contested Common Land: Environmental Governance Past and Present* (with A.Winchester, E. Straughton, M. Pieraccini), Earthscan Publishing, 2011 and *The Law of Nature Conservation: property, environment and the limits of law* xxix and 321pp. (Oxford University Press, 2013).

The Realising New Commons project was funded by the Economic and Social Research Council.

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 Rodgers C, Mackay D, 'Creating 'new' commons for the twenty-first century: innovative legal models for 'green space'' (2017) *Journal of Environmental Planning and Management*: DOI:10/1080/09640568.2017.1333407

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Commons Act 2006: section 6**Grant of a new right of common and application for registration of the right in the commons register**

This section is for office use only

Official stamp

Application number

Register unit number
allocated at registration
(for new commons only)

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- **This form provides (in Part A) for the express grant of a new right of common by way of a grant made by deed and (in Part B) the application to register such right in the register of common land under section 6 of the Commons Act 2006.** Although there is no requirement that you use a solicitor or other professional adviser to complete the form, please be aware that the form creates rights and obligations on the parties. The commons registration authority can only assist in completion of the clerical aspects of the form and persons with legal queries should seek advice from a solicitor or other professional adviser before completing the form.
- A new right of common can be created only by a grant made by deed, or pursuant to an enactment. You need not use Part A of this form to make a grant by deed, but if you do not, you will instead need to attach to your application your own deed of grant, and to complete only Part B of this form. A grant of a new right of common is not effective in law until it has been registered in the register of common land by way of an application made using Part B of this form.
- Only the following persons can apply to register a new right of common granted for the purposes of section 6: the owner of the land over which the right of common will be exercisable (the Grantor) or the person who owns the land to which the right of common will be attached (the Grantee).
- If the right to be created is to graze animals then in order for the right to be registered you must give evidence that the common is capable of sustaining the new right, taken together, if relevant, with any existing rights of common exercisable over the same land.
- You will be required to pay a fee unless your application would result in the registration of new common land. Ask the registration authority for details. You would have to pay a separate fee should your application be referred to the Planning Inspectorate.

PART A: DEED OF GRANT

Note 1

The Grantor is the owner of the Servient Land (the land which is or will become the common) described in box 5.

If there is more than one Grantor, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the Grantor is a body corporate or an unincorporated association, and the company registration number if applicable.

Note 2

The Grantee is the owner of the Dominant Land (the land to which the right of common will be attached) described in box 6.

If there is more than one Grantee (e.g. if the Dominant Land is owned by joint tenants), list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the Grantee is a body corporate or an unincorporated association, and the company registration number if applicable.

1. Grantor

Name:

Postal address:

Postcode

2. Grantee

Name:

Postal address:

Postcode

Note 3

Enter the details of other persons who are a party to the deed of grant. For example, a mortgagee or holder of a relevant charge over the land may wish to be a party to the deed of grant.

Note 4

Describe the nature of the new right of common granted and any quantification or other conditions. For example "a right of common to graze 10 sheep with or without followers from October to May only, such right to be held in fee simple". A new right cannot be created for a finite number of years and will therefore endure in perpetuity akin to a freehold interest.

3. Additional parties to the deed of grant

Name:

Postal address:

Postcode

4. Right of Common

Note 5

Insert description and particulars of the area of land over which the right will be exercisable.

This is known as the Servient Land.

You should give a grid reference or other identifying detail such as the Land Registry title number, to enable the land to be located. If all or part of the Servient Land is existing common land please give the register unit number.

If none or only part of the Servient Land is already recorded in the register of common land, then you must supply an Ordnance map which shows all the land at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. The map must show the boundary accurately edged in red.

5. Servient Land

Name by which the land is usually known:

Location (postal address, Ordnance Survey grid reference or Land Registry title number):

Register unit number(s) (if relevant):

Select one of the options below:

1. I confirm that all of the Servient Land is existing registered common land and consists of the whole of one or more register units, and I have specified the register unit number or numbers above:

2. I confirm none of the Servient Land is existing registered common land and that the extent of the Servient Land is shown edged red on the attached map which is of the required scale:

3. I confirm that the Servient Land is a combination of existing registered common land and new land (i.e. not currently registered); that the new land is shown edged red on the attached map; and that in relation to the existing land, I have specified the register unit number or numbers above:

Note 6

Insert description of the land to which the right of common is to be attached. This is known as the Dominant Land. You should give a grid reference or other identifying detail such as the Land Registry title number, to enable the land to be located.

You must supply an Ordnance map of the Dominant Land, which must be at a scale of at least 1:10,560 and show the boundary accurately edged in blue.

The right of common will remain attached to this land irrespective of subsequent changes in ownership.

6. Dominant Land

Name by which the land is usually known:

Location (postal address, Ordnance Survey grid reference or Land Registry title number):

I confirm that the Dominant Land is shown edged blue on the attached map:

Note 7

This is the operative section of the grant. Please seek legal advice before completing this form if you are unsure about its effect.

In particular, the title guarantees referred to in this box impose obligations on the Grantor. There are two types of title guarantee, though either may be modified. In providing such guarantees the Grantor gives certain binding promises relating to the grant. If you have any concerns or queries about the effect of these title guarantees please seek legal advice before completing this form. Insert any modifications to the title guarantees in this box.

Note 8

Insert here any consideration payable and any agreed covenants, declarations (e.g. consent of the Grantor's chargee) and so on.

Please seek legal advice if you are unsure of the effect of provisions included in this box.

7. Grant

The Grantor grants the Right of Common as described in box 4 of this deed to the Grantee and his successors in title to the Dominant Land, with full/limited title guarantee (*delete as necessary*) out of the Servient Land for the benefit of the Dominant Land.

8. Additional provisions relating to the Grant

Note 9

The Grantor must execute this form as a deed. The Land Registry has issued guidance on the execution of deeds. However, please seek legal advice if you are unsure how to execute.

If there is more than one Grantor, including any parties mentioned in box 3, all must execute. If the Grant contains Grantee's covenants or declarations (i.e. included in box 8), it must also be executed as a deed by every Grantee.

Note 10

Insert the date of completion of the deed of grant in this box.

9. Execution of deed

10. Date of Grant

PART B: REGISTRATION

Note 11

Insert name of commons registration authority. If the right of common will be exercisable over existing registered Servient Land (i.e. existing common land) then a fee must be paid, which the registration authority can advise you on. If the right will cause new Servient Land to be created then no fee is required.

Note 12

If there is more than one applicant, list all their names and addresses in full. (An application may be made by the Grantor or the Grantee, or both; if there is more than one Grantor or Grantee all the Grantors or the Grantees must apply). Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association, and the company registration number if applicable. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 13 is not completed all correspondence and notices will be sent to the first named applicant.

11. Commons Registration Authority

To the:

Tick one of the following boxes to confirm that you have:

enclosed the appropriate fee for this application:

or

applied to register new common land, so no fee is required:

12. Name and address of the applicant

Name:

Postal address:

Postcode

Telephone number:

Fax number:

E-mail address:

Note 13

This box should be completed if a representative, for example a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

Note 14

For further details of the requirements of an application, including evidence, refer to paragraph 1 of Schedule 4 to the Commons Registration (England) Regulations 2014.

The Servient Land is the land which is or will become the common. The Dominant Land is the land to which the right of common will be attached.

13. Name and address of representative, if any

Name:

Firm:

Postal address:

Postcode

Telephone number:

Fax number

E-mail address:

14. Basis of application for registration and qualifying criteria

Tick one of the following boxes to indicate the capacity in which you are applying. Are you the:

the owner of the Servient Land (described in box 5 of Part A): the owner of the Dominant Land (described in box 6 of Part A): the owners of the Dominant and Servient Land applying jointly:

Note 15

Box 15 requires completion only if Part A of the Form is not used.

Describe the nature of the Right of Common and any quantification or other conditions. For example "a right of common to graze 10 sheep with or without followers from October to May only, such right to be held in fee simple". A new right cannot be created for a finite number of years and will therefore endure in perpetuity akin to a freehold interest.

15. Description of right of common to be recorded in the register

[Empty box for description of right of common]

Note 16

Box 16 requires completion only if Part A of the Form is not used (but a map of the Dominant Land is required anyway).

Insert description of the land to which the right of common is to be attached. This is known as the Dominant Land. You should give a grid reference or other identifying detail such as the Land Registry title number, to enable the land to be located.

You must supply an Ordnance map of the Dominant Land, which must be at a scale of at least 1:10,560 and show the boundary accurately edged in blue.

The right of common will remain attached to this land irrespective of subsequent changes in ownership.

16. Description of the Dominant Land

Name by which the land is usually known:

Location (postal address, Ordnance Survey grid reference or Land Registry title number):

I confirm that the Dominant Land is shown edged blue on the attached map:

Note 17

Box 17 requires completion only if Part A of the Form is not used (but where any new Servient Land is to be created a map of that land is required).

Insert description and particulars of the area of land over which the right will be exercisable. This is known as the Servient Land. You should give a grid reference or other identifying detail such as the Land Registry title number, to enable the land to be located. If all or part of the Servient Land is existing common land please give the register unit number.

If none or only part of the Servient Land is already recorded in the register of common land, then you must supply an Ordnance map which shows all the land at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. The map must show the boundary accurately edged in red.

17. Description of the Servient Land

Name by which the land is usually known:

Location (postal address, Ordnance Survey grid reference or Land Registry title number):

Register unit number(s) (if relevant):

Select one of the options below:

1. I confirm that all of the Servient Land is existing registered common land and consists of the whole of one or more register units, and I have specified the register unit number or numbers above:
2. I confirm none of the Servient Land is existing registered common land and that the extent of the Servient Land is shown edged red on the attached map which is of the required scale:
3. I confirm that the Servient Land is a combination of existing registered common land and new land (i.e. not currently registered); that the new land is shown edged red on the attached map; and that in relation to the existing land, I have specified the register unit number or numbers above:

Note 18

You must obtain consent from every relevant leaseholder and proprietor of any relevant charge over any part of the Servient Land. State the Land Registry title number where known. Use a separate sheet if necessary.

A “relevant leaseholder” means a leaseholder under a lease of more than seven years from the date on which the lease was granted. A “relevant charge” means, in relation to land registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002, and in relation to land not so registered, a charge registered under the Land Charges Act 1972 or a legal mortgage (within the meaning of the Law of Property Act 1925) which is not registered under the Land Charges Act 1972.

18. Name and address of every relevant leaseholder and proprietor of any relevant charge over any part of the Servient Land

Note 19

List or enter here all declarations from the persons listed under box 18 and the owners of both the Dominant Land and Servient Land (other than the applicant), who are referred to as the grantors or grantees in boxes 1 and 2 of Part A.

Either list the declarations attached to the application, or include in the box any declarations made and signed.

19. Declarations of consent from every person listed in box 18 and every owner of the Dominant and Servient Land

A large empty rectangular box with a black border, intended for the user to enter the declarations of consent as specified in the adjacent text.

Note 20

List all supporting documents which accompany the application.

These will include evidence of your capacity to apply. If the right to be created is for a right to graze any animal you must supply evidence that the Servient Land over which the right will be exercisable is able to sustain the exercise of the right.

If the applicant is not the owner of the Servient Land over which the right will be exercisable, a copy of the epitome of title or register of title for ownership of the Servient Land must be enclosed.

There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed.

List the documents in the box, or write in any evidence. Use a separate sheet if necessary.

20. Supporting documentation

--	--

Note 21

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

21. Any other information relating to the application**Note 22**

The application must be signed and dated by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association. Please add the date next to the signature.

22. Signature of Applicant(s)

Name(s):

Signature(s):

REMINDER TO GRANTOR AND GRANTEE

You are responsible for telling the truth in this form and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the form and all associated documentation.

Data Protection Act 1998

This form, any supporting information, and any representations made, cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you including this form and accompanying documents to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

This form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

SCHEDULE

Regulation 2

FORMS

FORM 29

Official stamp of registration
authority indicating date
of receipt

Application No.

Register unit No(s):

CL

*This section for
official use only*

CL

COMMONS REGISTRATION ACT 1965, SECTION 13
APPLICATION FOR THE REGISTRATION OF LAND
WHICH BECAME COMMON LAND AFTER 2nd
JANUARY 1970

IMPORTANT NOTE:—Before filling in this form, read carefully the notes at the end. An incorrectly completed application form may have to be rejected.

¹*Insert name of
registration
authority*

To the¹

Application is hereby made for the registration as common land of the land described below, which became so registrable after 2nd January 1970.

Part 1.

Name and address of the applicant or (if more than one) of every applicant.

(Give Christian names or forenames and surname or, in the case of a body corporate or unincorporate, the full title of the body. If part 2 is not completed all correspondence and notices will be sent to the first-named applicant.)

Part 2.

Name and address of solicitor, if any.

(This part should be completed only if a solicitor has been instructed for the purposes of the application. If it is completed, all correspondence and notices will be sent to the solicitor.)

Part 3. Particulars of the land to be registered, i.e. the land claimed to have become common land.

Name by which usually known

Locality

Colour on plan herewith

Part 4. On what date did the land become common land?

Part 5. How did the land become common land?

Part 6. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to have become common land. (If none are known, write "none".)

Part 7. For applications to register substituted land (see Note 5); to be disregarded in other cases.

Particulars of the "taken land", i.e. the land which ceased to be common land when the land described in part 3 became common land.

Name by which usually known

Locality

Colour on plan herewith (if any)

If registered under the 1965 Act, register unit No(s).

Part 8. List of supporting documents sent herewith, if any. (If none are sent, write "none".)

Part 9.

If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become common land) full particulars should be given here.

²The application must be signed by or on behalf of each individual applicant, and by the secretary or some other duly authorised officer of any applicant which is a body corporate or unincorporate.

Date19 .

Signatures².....

.....

.....

(See Note 10)

STATUTORY DECLARATION IN SUPPORT

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor or by the person who signed the application.

¹*Insert full name (and address if not given in application form).*

²*Delete and adapt as necessary.*

³*Insert name if applicable.*

I¹,
solemnly and sincerely declare as follows:—

1.2 I am ((the person) (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants))).

2. I have read the Notes to the application form.

3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 8 and 9 of the application.

⁴*Insert "marking" as on plan.*

4. The plan now produced and shown to me marked "4" is the plan referred to in part 3 of the application.

⁵*Delete this paragraph if there is no plan referred to in part 7.*

5.5 The plan now produced and shown to me marked "4" is the plan referred to in part 7 of the application.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835(a).

Declared by the said.....
.....
at
in the.....of.....
this.....day of.....19 ..

} Signature of Declarant

Before me,

Signature

Address

Qualification

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any plan as an exhibit.

(a) 1835 c. 62.

NOTES

1. Registration authorities

The applicant should take care to submit his application to the correct registration authority. This depends on the situation of the land which is claimed to have become common land. The registration authority for land in an administrative county is the county council; for land in a county borough, it is the county borough council, and for land in Greater London, it is the Greater London Council. However, if the land in question is partly in the area of one registration authority and partly in that of another, the authorities may by agreement have provided for one of them to be the registration authority for the whole of the land. An applicant concerned with land lying close to the boundary of an administrative area, or partly in one area and partly in another, should therefore enquire whether such an agreement has been made and, if so, which authority is responsible for the land.

2. Who may apply for registration

An application for the registration of any land which has become common land after 2nd January 1970 may be made by any person, but a person who wishes to apply for the registration of rights of common over land which became common land after 2nd January 1970 should use C.R. Form 31 and not this form, whether or not the land itself has been registered under the Act.

3. No double registration

If the land is already registered under the Act, whether in the Register of Common Land or in the separate Register of Town or Village Greens, and whether the registration is provisional, final, or under section 13 of the Act (which relates to land becoming common land or a town or village green after 2nd January 1970), an application for registration cannot be entertained, but this does not prevent the submission of an application later on, should the existing registration cease for any reason to be effective (as, for example, by the land being removed from the register under section 13 or by a provisional registration being cancelled or failing to achieve finality). If an earlier registration is believed to exist a search of the register may be obtained by means of C.R. Form 21 (a separate form must be used for each register).

4. Meaning of "common land"

For the purpose of an application after 2nd January 1970, common land may be taken to mean either—

- (a) land which, after 2nd January 1970, became subject to rights of common (see Note 6 below) whether those rights are exercisable at all times or only during limited periods; or
- (b) land which, after 2nd January 1970, became "substituted land", whether or not subject to rights of common (this category is explained in Note 5 below).

It does not include a town or village green or any land forming part of a highway. (There is a separate form available for applying for the registration under the Act of land which became a town or village green after 2nd January 1970.) "Land" includes land covered with water, so that common land can, for instance, include ponds and lakes.

5. How land can become common land

Land can become common land after 2nd January 1970 in any of the following ways:—

- (1) By or under an Act of Parliament otherwise than as substituted land (as to substituted land, see category (4) below).
- (2) By a grant by the owner of the land of rights of common over it.
- (3) By rights of common being acquired over it by prescription.
- (4) By substitution or exchange for other land which has ceased to be common land under—
 - (a) sections 147 and 148 of the Inclosure Act 1845(a); or
 - (b) paragraph 11 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946(b); or
 - (c) any other enactment providing, on the exchange of land, for the transfer of rights, trusts or incidents attaching to the land given in exchange from that land to the land taken in exchange and vice versa.

(a) 1845 c. 118.

(b) 1946 c. 49.

Land in category (4) is referred to in this form as "substituted land", and the land for which it is substituted, and which has ceased to be common land, is referred to as "the taken land". If this application is accepted for registration, and the taken land is registered in the Register of Common Land maintained by the same registration authority, the taken land will be removed from the register automatically provided the registration authority is satisfied as to the exact areas of both the substituted and the taken land. No separate application in regard to the latter is necessary in such a case.

6. Meaning of "rights of common"

There are many different kinds of rights of common, some existing only in particular areas. This is why there is no exhaustive list or definition of rights of common in the Act. However, it may be said that a right of common is a right which a person has (generally in common with others including the owner of the soil) to take part of the natural produce of another man's land. Examples are: a right to turn out sheep or other animals to graze (common of pasture, called in the Act a right to graze animals); a right to turn out pigs to eat acorns and beechmast (pannage); a right to take tree loppings, gorse, furze, bushes or underwood (estovers); a right to take turf or peat (turbary); a right to take fish (piscary). There is also a right of common in the soil, as it is called, which consists of the right of taking sand, gravel, etc. from another man's land. These are only a few of the most frequently encountered rights of common; there are many others, and any person in doubt should seek legal advice. On the other hand, many rights connected with land are not rights of common and are not subject to the Act; for example, rights of way (public or private), and rights to water cattle, horses or other animals on the land of another.

The Act provides that cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture are to be considered as rights of common. These are in essence various kinds of rights of pasture normally enjoyed to the exclusion of the owner of the land.

Rights held for a term of years or from year to year are not registrable under the Act, and, accordingly, land subject to such rights does not qualify for registration on that account, although it may do so in some other way, e.g. as substituted land.

7. Land descriptions

In addition to the particulars asked for at part 3 of the form, a plan of the land claimed to have become common land must accompany the application. The particulars in part 3 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of the plan. This must be drawn to scale, in ink or other permanent medium, and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land by means of distinctive colouring (a coloured edging inside the boundary will usually suffice) and it must be marked as an exhibit to the statutory declaration (see Note 10 below). If the land to be registered is substituted land (see Note 5 above), then a description of the taken land must be given in part 7, and a plan of this area, too, may have to be provided. If the taken land has already been registered under the Act (as it will have been in most cases) and comprises the whole of the land in one or more register units, a plan is unnecessary provided the register unit number(s) are quoted. If the taken land comprises only part of the land in a register unit a plan may be dispensed with if the land can be described by reference to some physical feature such as a road, river or railway; the description might, for example, read: "The land in register unit No. . . . lying to the south of the road from A to B". Where this method is not practicable, or the taken land is not registered under the Act, it must be described by a plan which must conform to the requirements mentioned above. Where two plans accompany the application, a different colour should be used in each.

8. Grounds of application: evidence

In part 5 should be set out, as concisely as possible, a statement of the facts relied on to show that the land became common land on the date stated in part 4; this date must be after 2nd January 1970, otherwise the application cannot be entertained. The statement should include particulars of every Act of Parliament, statutory order, order of court, deed or other instrument, and of every act or event, which is material for the purpose. The registration authority has power to call for such further evidence in support of the application as it may reasonably require. If the land is substituted land (see Note 5 above) there should be included in part 5 particulars of the enactment and of the compulsory purchase order, order of exchange or other instrument authorising the exchange or substitution, and of the instrument (if any) under which the exchange or substitution actually took place.

9. Supporting documents

The application must be accompanied by the original or (preferably) by a copy or sufficient

abstract of every document relating to the matter which the applicant has in his possession or under his control, or of which he has a right to the production. The following are examples of documents which, under this rule, may normally be expected to be among the documents accompanying applications in the particular cases mentioned:—

- (1) Where the land is stated to have become common land by virtue of a private or local Act or of a statutory instrument, the award or other instrument of allotment (if any) made thereunder.
- (2) Where the land is stated to have become common land by a grant of rights of common, a copy of the deed of grant.
- (3) Where the land is stated to have become common land by the acquisition of rights of common over it by prescription, and there is a declaration by a court of competent jurisdiction to that effect, an office copy of the order embodying that declaration. (In the absence of such a declaration, a claim based solely on the Prescription Act 1832(a) cannot be admitted, and a claim based on prescription otherwise than under that Act is unlikely to be admitted if any objection is received by the registration authority.)
- (4) Where the land is stated to be substituted land (see Note 5 above), the original or a duly authenticated copy (a) of the compulsory purchase order, order of exchange or other instrument authorising the exchange or substitution, and (b) of the instrument (if any) under which the exchange or substitution actually took place.

The foregoing list is not exhaustive and in special cases the applicant may need to consult the registration authority. Applicants are strongly recommended NOT to forward the original of any deed or other private document. Instead, a copy should be supplied, preferably indorsed with a certificate signed by a solicitor that it has been examined against the original. The applicant should indicate, either on the copy itself or in part 8 of the application, as convenient, who has the original and where it may be inspected. If any document relating to the matter is believed to exist, but neither the original nor a copy can be produced, the fact should be mentioned in part 9 of the application, where particulars of the missing document should be given and its non-production accounted for.

The registration authority has power to call for such further evidence as it may reasonably require.

10. Statutory Declaration

The statutory declaration must be made before a justice of the peace, commissioner for oaths or notary public. The plan (or each plan) accompanying the application and referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A plan is marked by writing on the face in ink an identifying symbol such as the letter 'A'. If there is more than one plan a different identifying letter must be used for each. On the back of the plan should appear these words:

This is the exhibit marked 'A' referred to in the statutory declaration of (*name of declarant*)
made this (*date*) 19 before me,

.....
(*Signature and qualification*)

11. Action by registration authority

The registration authority will on receipt of the application send an acknowledgment. If this is not received within 10 days the applicant should communicate with the authority. Unless the application has to be rejected after preliminary consideration, the registration authority will give publicity to it and will consider it further in the light of any objections which may be received. The applicant will be supplied with copies of all objections which fall to be considered and will have an opportunity of answering them. Later, the applicant will be informed whether the application has been accepted or rejected. If it is accepted, the land will be registered as common land, and the applicant will be supplied with particulars of the registration. If it is rejected, the applicant will be notified of the reasons for the rejection.

12. False statements

The making of a false statement for the purposes of this application may render the maker liable to prosecution.

(a) 1832 c. 71.

FORM 31

Official stamp of registration
authority indicating date
of receipt

Application No.

*This section for official
use only*

Register Unit No(s):

COMMONS REGISTRATION ACT 1965, SECTION 13
APPLICATION FOR THE REGISTRATION OF A RIGHT
OF COMMON OVER LAND, WHERE BOTH THE RIGHT
AND THE LAND BECAME REGISTRABLE AFTER 2nd
JANUARY 1970

*IMPORTANT NOTE:—Before filling in this form, read
carefully the notes at the end. An incorrectly completed
application may have to be rejected.*

¹*Insert name of
registration
authority.*

To the¹

Application is hereby made for the registration of the right of
common of which particulars are set out below.

Part 1.

**Name and address of the applicant or (if more than one) of
every applicant, and the capacity in which he applies.**

*(Give Christian names
or forenames and
surname or, in the
case of a body corporate,
the full title of the
body. If part 2 is not
completed all
correspondence and
notices will be sent to
the first-named
applicant.)*

Part 2.

Name and address of solicitor, if any.

*(This part should be
completed only if a
solicitor has been
instructed for the
purposes of the
application. If it is
completed, all
correspondence and
notices will be sent to
the solicitor.)*

Part 3.

**Particulars of the land over which the right of common is
exercisable.**

(a) Name by which usually known

(b) Locality

(c) Colour on plan herewith (if any)

If the land is registered under the 1965 Act, registration par-
ticulars—

²*Insert "Common Land"
or "Town or Village
Greens".*

(d) Register²

(e) Register unit No(s).

Part 4. **Description of the right of common, including, if it is exercisable only during limited periods, full particulars of the periods, and, if it is a right to graze animals, details of the number(s) and kind(s) of animals.**

Part 5. **Description of the farm, holding or other land to which the right is attached, if any. (If the right is not attached to any land, the fact should be stated here.)**

Name by which usually known

Locality, O.S. Nos. and reference to ordnance map (if given), and any further description

Colour on plan herewith (if any)

Part 6. **On what date did the right first become exercisable over the land described in part 3 above?**

Part 7. **How did the right first become exercisable over the land described in part 3 above?**

Part 8. **Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land described in part 3 above. (If none are known, write "none".)**

Part 9. **List of supporting documents sent herewith, if any. (If none are sent, write "none".)**

Part 10. **If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land described in part 3 above is believed to dispute the claim that it is subject to rights of common) full particulars should be given here.**

³The application must be signed by or on behalf of each individual applicant, and by the secretary or some other duly authorised officer of any applicant which is a body corporate or charity trustees.

Date19 ..

Signatures³

.....

.....

.....

(See Note 12)

STATUTORY DECLARATION IN SUPPORT

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or charity trustees, by its or their solicitor or by the person who signed the application.

¹Insert full name (and address if not given in the application form).

I, ¹ solemnly and sincerely declare as follows:—

²Delete and adapt as necessary.

1.2 I am ((the person) (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants)).

³Insert name if applicable.

2. I have read the Notes to the application form.

3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document which ought to be submitted or disclosed to the authority other than those (if any) mentioned in parts 9 and 10 of the application.

⁴Insert "marking" as on plan.

4. The plan now produced and shown to me marked ⁴ " " is the plan referred to in part 3 of the application.

⁵Delete this paragraph if there is no plan referred to in part 5.

5.⁵ The plan now produced and shown to me marked ⁴ " " is the plan referred to in part 5 of the application.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said..... }
..... }
at } Signature of Declarant
in the.....of..... }
thisday of.....19 }

Before me,

Signature

Address

Qualification

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any plan as an exhibit.

NOTES

1. Registration authorities

The applicant should take care to submit his application to the correct registration authority. This depends on the situation of the land over which the right of common is claimed. The registration authority for land in an administrative county is the county council; for land in a county borough, it is the county borough council, and for land in Greater London, it is the Greater London Council. However, if the land over which the right is claimed is partly in the area of one registration authority and partly in that of another, the authorities may by agreement have provided for one of them to be the registration authority for the whole of the land. An applicant concerned with land lying close to the boundary of an administrative area, or partly in one area and partly in another, should therefore enquire whether an agreement has been made and, if so, which authority is responsible for the land.

2. When to use this form

This form should not be used in cases where a right of common has been shifted from one piece of land to another in the circumstances mentioned in category (4) of Note 5 below, and both pieces of land are in the area of one registration authority. In such cases, re-registration of the right of common is automatic on registration of the substituted land. The matter is fully explained in Note 5. Nor should it be used where a right of common which has already been registered has been apportioned or varied, or, in the case of a registered right in gross (that is, not attached to any land), has been transferred. In such cases amendment of the register should be applied for on C.R. Form 19. In all other cases within Note 9 below this form should be used to apply to register a right of common whether or not the land over which the right is claimed to be exercisable has itself been registered, since it is not necessary for the land over which a right of common is exercisable to be registered before an application for the registration of the right itself is made: see Note 13 below.

3. Who may apply for registration

An application for the registration of a right of common may be made by the owner of the right or, where the right belongs to an ecclesiastical benefice of the Church of England which is vacant, by the Church Commissioners.

In certain cases a person may be entitled by law to apply on behalf of the owner of the right or in his stead. Examples are:

- (a) a receiver appointed under section 105 of the Mental Health Act 1959(a);
- (b) charity trustees where the right of common is vested in the Official Custodian for Charities;
- (c) trustees for the purposes of the Settled Land Act 1925(b) authorised by order under section 24 of that Act.

In all cases the applicant should state in part 1 the capacity in which he applies (e.g. as owner of the right). If he applies on behalf of, or instead of, another person he should also state in part 1:—

- (a) the Act of Parliament, statutory instrument, order of court or other authority under which he claims to be entitled to apply;
- (b) the name and address of the person on whose behalf or in whose stead the application is made; and
- (c) the capacity of that person (who will normally be the owner of the right).

Where the Church Commissioners apply with respect to a right of common belonging to a vacant benefice, the fact should be stated, and the name of the benefice given, in part 1. Where charity trustees apply the fact should be stated, and the name of the charity given, in part 1.

4. Meaning of "rights of common"

There are many different kinds of rights of common, some existing only in particular areas. This is why there is no exhaustive list or definition of rights of common in the Act. However, it may be said that a right of common is a right which a person has (generally in common with others including the owner of the soil) to take part of the natural produce of another man's land. Examples are: a right to turn out sheep or other animals to graze (common of pasture, called in the Act a right to graze animals); a right to turn out pigs to eat acorns and beechmast (pannage); a right to take tree loppings, gorse, furze, bushes or underwood (estovers); a right to take turf or peat (turbary); a right to take fish (piscary). There is also a right of

(a) 1959 c. 72.

(b) 1925 c. 18.

common in the soil, as it is called, which consists of the right of taking sand, gravel, stone, etc. from another man's land. These are only a few of the most frequently encountered rights of common; there are many others, and any person in doubt should seek legal advice. On the other hand, many rights connected with land are not rights of common and are not subject to the Act; for example, rights of way (public or private), and rights to water cattle, horses or other animals on the land of another.

The Act provides that cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture are to be considered as rights of common. These are in essence various kinds of rights of pasture normally enjoyed to the exclusion of the owner of the land.

Rights held for a term of years or from year to year are not registrable under the Act.

5. How land can become subject to rights of common

Land can become subject to rights of common after 2nd January 1970 in one of the following ways:—

- (1) By or under an Act of Parliament, otherwise than as substituted land (as to substituted land, see category (4) below).
- (2) By a grant by the owner of the land of rights of common over it.
- (3) By rights of common being acquired over it by prescription.
- (4) By substitution or exchange for other land which has ceased to be common land under—
 - (a) sections 147 and 148 of the Inclosure Act 1845; or
 - (b) paragraph 11 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946; or
 - (c) any other enactment providing, on the exchange of land, for the transfer of rights trusts or incidents attaching to the land given in exchange from that land to the land taken in exchange and vice versa.

Land in category (4) is referred to in this form as "substituted land", and the land for which it is substituted, and which has ceased to be subject to rights of common, is referred to as "the taken land". If both the taken and the substituted land are in the area of one registration authority, then when the substituted land is registered under the Act, a note will appear in the register to the effect that rights of common (if any) which subsisted over the taken land at the date of the substitution or exchange have shifted over to the substituted land, and no application for the re-registration of these rights will be necessary. Inquiry should be made of the registration authority whether the substituted land has been registered, and whether a note about the shifting of the rights appears in the register.

6. Land descriptions

- (a) For purposes of part 3. Except where the land has already been registered under the Act (see Note 7 below), the particulars asked for at (a), (b) and (c) of part 3 of the form must be given, and a plan must accompany the application. The particulars at (a) and (b) of part 3 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of the plan. This must be drawn to scale, in ink or other permanent medium, and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice), and it must be marked as an exhibit to the statutory declaration (see Note 12 below).

Where the land has already been registered (see Note 7 below) and comprises the whole of the land in one or more register units, a plan is unnecessary provided the register and register unit number(s) are quoted at (d) and (e) of part 3 of the form. If the application concerns only part of the land in a register unit a plan may be dispensed with if the land can be described by reference to some physical feature such as a road, river or railway; the description might, for example, read "The land in register unit No..... lying to the south of the road from A to B". Where this method is not practicable the land must be described by a plan prepared as mentioned above. Where the procedure of reference to an existing register unit is adopted, part 3 of the form should be adapted accordingly.

- (b) For purposes of part 5. If the right is attached to any farm, holding or other land, that land must be described in part 5. This may be done either by a plan prepared as explained in (a) above, or, alternatively, by reference to the numbered parcels on the most recent edition of the ordnance map (quoting the edition), supplemented, where necessary to describe part of a parcel, or any land not numbered on the ordnance map,

by a plan prepared in accordance with (a) above. Sufficient particulars of the locality must in any case be given to enable the land to be identified on the ordnance map. Where two plans accompany the application, a different colour should be used in each.

If the right is held in gross, that is, not attached to any land, that fact should be stated in part 5.

7. Inspection and search of registers

To ascertain whether land has been registered under the Act, anyone may inspect the registers free of charge at the office of the registration authority. Alternatively, an official certificate of search may be obtained from the registration authority. A requisition for such search must be made in writing on C.R. Form No. 21, a separate requisition being required for each register. If the land is registered, the certificate will reveal the register unit number(s) and whether any rights of common and claims to ownership are registered.

8. Rights for limited periods: grazing rights

Certain rights of common (usually grazing rights) are not exercisable at all times but only during limited periods. In the case of a right of common to which this applies, full particulars must be given in part 4 of the period or periods during which the right is exercisable. Further, if the right (by whatever name it may be known) consists of or includes a right to graze animals, or animals of any class, the applicant must state at part 4 the number of animals, or the numbers of animals of different classes, to be entered in the register.

9. Date for part 6

The date to be entered in part 6 is the date on which the right of common first came into existence and became registrable as exercisable over the land described in part 3. If this date is before 3rd January 1970 the application cannot be entertained by the registration authority. Moreover, the land over which the right is exercisable must have become registrable under the Act after 2nd January 1970, whether it has in fact been so registered or not. If either the right or the land was registrable under the Act before 3rd January 1970 it is now too late to apply for the registration of either.

10. Grounds of application: evidence

In part 7 should be set out, as concisely as possible, a statement of the facts relied on to show that the right of common came into existence and became registrable on the date stated in part 6 (as to this date, see Note 9 above). The statement should include particulars of every Act of Parliament, statutory order, order of court, deed or other instrument, and of every act or event, which is material for the purpose. The registration authority has power to call for such further evidence in support of the application as it may reasonably require.

11. Supporting documents

The application must be accompanied by the original or (preferably) by a copy or sufficient abstract of every document relating to the matter which the applicant has in his possession or under his control, or of which he has a right to the production, with the exception of documents which he would not be obliged to abstract or produce to a purchaser under a contract for the sale of the right of common made otherwise than by correspondence and containing no stipulations as to title. The following are examples of documents which, under this rule, may normally be expected to be among the documents accompanying applications in the particular cases mentioned:—

- (1) Where the right is stated to have become exercisable by virtue of a private or local Act or of a statutory instrument, the award or other instrument of allotment (if any) made thereunder.
- (2) Where the right is stated to have become exercisable by a grant of rights of common, a copy of the deed of grant.
- (3) Where the right is stated to have become exercisable by prescription, and there is a declaration by a court of competent jurisdiction to that effect, an office copy of the order embodying that declaration. (In the absence of such a declaration, a claim based solely on the Prescription Act 1832 cannot be admitted, and a claim based on prescription otherwise than under that Act is unlikely to be admitted if any objection is received by the registration authority.)

The foregoing list is not exhaustive and in special cases the applicant may need to consult the registration authority. Applicants are strongly recommended NOT to forward the original of any deed or other private document. Instead, a copy should be supplied, preferably indorsed

with a certificate signed by a solicitor that it has been examined against the original. The applicant should indicate, either on the copy itself or in part 9 of the application, as convenient, who has the original and where it may be inspected.

If for any reason a document cannot be produced, the fact should be mentioned in part 10 of the application, where particulars of the missing document should be given and its non-production accounted for.

The registration authority has power to call for such further evidence as it may reasonably require.

12. Statutory declaration

The statutory declaration must be made before a justice of the peace, commissioner for oaths or notary public. Any plan referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A plan is marked by writing on the face in ink an identifying symbol such as the letter 'A'. On the back of the plan should appear these words:—

This is the exhibit marked 'A' referred to in the statutory declaration of (*name of declarant*)
made this (*date*) 19 before me,

.....
(*Signature and qualification*)

If there is more than one plan care should be taken to choose a different letter for each.

13. Action by registration authority

The registration authority will on receipt of the application send an acknowledgment. If this is not received within 10 days the applicant should communicate with the authority. Unless the application has to be rejected after preliminary consideration, the registration authority will give publicity to it and will consider it further in the light of any objections which may be received. The applicant will be supplied with copies of all objections which fall to be considered and will have an opportunity of answering them. Later, the applicant will be informed whether the application has been accepted or rejected. If the application is accepted, and the land over which the right is exercisable is not already registered under the Act, this will be done, and, whether or not the land is already registered, the right of common will be registered and the applicant will be supplied with particulars of the registration. If the application is rejected, the applicant will be notified of the reasons for the rejection.

14. False statements

The making of a false statement for the purposes of this application may render the maker liable to prosecution.