



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

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

Sections 15A and 15B: landowner statements and registers (including statements and declarations under section 31(6) of the Highways Act 1980)

Section 15C: exclusion of the right to apply under section 15(1) to register new town or village greens

February 2014

© Crown copyright 2014

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at:

www.gov.uk/town-and-village-greens-how-to-register

Any enquiries regarding this document/publication should be sent to us at:

commons.villagegreens@defra.gsi.gov.uk

PB 13886

Version 6

Version 5 was amended to take account of the amended list of trigger and terminating events introduced by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014. Paragraph 6 now also refers to the Guidance for the completion of form CA16.

Version 4 was amended at paragraph 23 to qualify the statement that whilst it is possible to make a single application to deposit a highways statement, lodge a highways declaration and deposit a landowner statement, in relation to the former two, these can only be done in relation to different areas of land.

Version 3 was amended to make clear Defra's view that for a declaration to be effective as evidence against presumed dedication it must be lodged after the deposit of a statement, not at the same time.

Version 2 was amended to remove references to Annexes B and C, which featured in the interim guidance but were removed; and to make clear that the notice of application should be accompanied by a map of the land.

Version 1 was amended to correct paragraph 26 which incorrectly stated that, in relation to the increase of the 10 year period for highways declarations to 20 years, it applied retrospectively. This is not the case: the 20 year period only applies to applications submitted on or after 1 October 2013.

Contents

Introduction	1
Chapter 1: Landowner Statements and Highways Statements and Declarations	3
What has changed?	3
What is a landowner statement?	4
What changes have been made to statements and declarations under the 1980 Act?	5
Who is affected by the change?	6
The registers	7
The application procedure	8
Removing an entry from the register	11
Fees	12
Where can the application form be found?.....	12
Chapter 2: Exclusion of the right to apply under section 15(1) of the 2006 Act	13
What has changed?	13
What is a trigger event?	13
What is a terminating event?.....	15
Who is affected by the change?	15
How will I (the commons registration officer) know if the right to apply is excluded?	16
Don't I need to formally accept an application before checking whether the right to apply is excluded?	17
Which is the relevant planning authority?.....	18
What if the exclusion applies to only part of the land?.....	19
What happens where no trigger event has occurred on the land?	19
What happens where an application is submitted just before a trigger event occurs? ...	19
What happens where the period of grace commenced before both a trigger event and its corresponding terminating event occurred?	20

What happens where a trigger event and its corresponding terminating event has occurred on the land?.....20

What happens where more than one trigger event has occurred on the land?20

What happens where a trigger event occurred on land prior to the commencement of the new legislation?.....20

What happens where a local plan was adopted in, say 2009, which has identified the land in question for development?20

What happens where a corresponding terminating event occurred on land prior to the commencement of the new legislation?20

What if I receive an application under section 15(8) of the 2006 Act?.....21

Annex A: Template letter to local planning authorities and the Planning Inspectorate seeking their confirmation of trigger and terminating events22

Introduction

1. In July 2011 the Government published a consultation on the registration of new town and village greens (“greens”) due to increasing concerns about the impact of such applications on the planning system. The Government places great importance on the planning system to support efficiency, effectiveness and growth. This is partly why the Government committed to delivering the *Penfold review*¹ recommendation to reduce the impact of the greens registration system on the planning system. The Penfold review looked into whether non-planning consents discourage or delay investment in development projects.
2. It was announced in October 2012 that the law on the registration of new greens under the Commons Act 2006 (“the 2006 Act”) would be amended in England only through the Growth and Infrastructure Bill, which was introduced to Parliament on 18 October 2012. On 25 April 2013 the Bill received Royal Assent and consequently became the Growth and Infrastructure Act 2013 (“the 2013 Act”). The changes apply to England only, so the law in Wales is unchanged.
3. Section 14 of the 2013 Act amended section 15(3) of the 2006 Act to reduce the period of grace following the cessation of at least 20 years’ use as of right from two years to one year². This came into force on 1 October 2013. Applications submitted after this date which relate to land on which recreational use as of right ceased any more than one year previous to cessation of such use must therefore fail because the one year deadline has been exceeded.
4. Section 15 of the 2013 Act inserts sections 15A and 15B into the 2006 Act to introduce, respectively, landowner statements which bring to an end any period of recreational use ‘as of right’ over land, and the registers in which they are to be recorded. Section 13 of the 2013 Act amended the form and procedure in England for depositing statements and declarations under section 31(6) of the Highways Act 1980 (“the 1980 Act”) in order to align it with landowner statements. Sections 15 and 13, and the regulations which prescribe the rules for such applications, came into force on 1 October 2013 and are explained in Chapter 1.
5. Section 16 of the 2013 Act inserted section 15C and Schedule 1A into the Commons 2006 Act to exclude the right to apply under section 15(1) of the 2006 Act to register land as a green when a ‘trigger event’ has occurred in relation to that land. This came into force on 25 April 2013. Further trigger events were added in February 2014. These are explained in Chapter 2.

¹ The Penfold review was published on 18 July 2012: www.gov.uk/government/publications/penfold-review-of-non-planning-consents.

² Section 14 of the 2013 Act amended section 15(3) of the 2006 Act to reduce the period of grace where recreational use as of right has ceased before an application is made. The amendment took effect on 1 October 2013 by virtue of the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 2013/1488).

6. This guidance is for commons registration authorities in England. Chapter 1 should also be read by appropriate councils³ who maintain the registers held under section 31A of the 1980 Act. Separate guidance is available to applicants on the www.gov.uk website. Please see:
- *Guidance for the completion of form CA16 (the application form for depositing landowner statements and highways statements, and for lodging highways declarations);*
 - *Guidance to applicants in the pioneer areas (if the land is in Devon, Kent (but not including unitary authorities in these first two counties), Cornwall, Hertfordshire, Herefordshire, Lancashire (but not Blackpool), and Blackburn with Darwen); or*
 - *Guidance notes for the completion of an application to register land as a town or village green.*
7. This guidance is not an authoritative statement of the law, which is ultimately a matter for the courts.

³ "Appropriate council" is defined in section 31(7) of the Highways Act 1980 and "commons registration authorities" is defined in section 4 of the Commons Act 2006. In practice, the appropriate council and commons registration authority will be the same body.

Chapter 1: Landowner Statements and Highways Statements and Declarations

What has changed?

8. Section 15 of the 2013 Act amends the law on registering greens by inserting sections 15A and 15B into the 2006 Act⁴. Section 15A allows a landowner⁵ to deposit a landowner statement accompanied by a map which brings to an end any period of recreational use ‘as of right’ over the land to which the statement and map relate. Section 15B of the 2006 Act makes provision for the public registers in which information relating to landowner statements are to be recorded.
9. Section 13 of the 2013 Act amends the form and procedure in England for depositing statements and declarations under section 31(6) of the 1980 Act in order to align it with the new mechanism for depositing landowner statements. The regime in section 31(6) of the 1980 Act provides a means for a landowner to counter deemed dedication (under section 31(1) of that Act) of ways over its land as highways (see paragraph 16). In this Chapter a statement deposited under section 31(6) is referred to as a ‘highways statement’ and a declaration lodged under that provision is referred to as a ‘highways declaration’.
10. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013⁶ (“the 2013 Regulations”) prescribe the form and process for the depositing of, and recording of information relating to, landowner statements, highways statements and highways declarations. Such deposits are submitted to the “appropriate authority”, a term which amalgamates the separate definitions of the *appropriate council* for highways purposes and the *commons registration authority* for greens purposes, which generally are the same local authority. The 2013 Regulations also provide for:
 - a prescribed application form which allows landowners to submit to the authority a single application for both highways and greens purposes⁷;
 - a power for the authority to set a reasonable application fee;
 - when a landowner statement is treated as having been deposited with the authority;

⁴ Section 15 was commenced on 25 June 2013 for the limited purpose of making regulations (see the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013, SI 2013/1488, article 4(b)). Section 15 was brought into effect for all remaining purposes on 1st October 2013 by the Growth and Infrastructure Act 2013 (Commencement No. 3 and Savings) Order 2013, SI 2013/1766, article 3(b).

⁵ “Owner” is defined in section 61(3)(a) of the 2006 Act.

⁶ SI 2013/1774.

⁷ Regulation 2(2)(a) of the 2013 Regulations requires that an application to deposit a highways statement, highways declaration or green landowner statement on or after 1st October 2013 be in the prescribed form or in a form substantially to the same effect, with such insertions or omissions as re necessary in any particular case.

- the service of notice by the authority of an application to deposit a highways statement, highways declaration and landowner statement;
- the information relating to a landowner statement which must be recorded in the public register required to be maintained under section 15B(1) of the 2006 Act, the manner of keeping such a register and the circumstances in which entries may be removed from the register; and
- where an authority wishes to record such prescribed information in the existing register maintained for highways purposes under section 31A of the 1980 Act (permitted by section 15B(3) of the 2006 Act), the creation of a new part of the existing register for that purpose.

11. Sections 13 and 15 of the 2013 Act and the 2013 Regulations came into force on 1 October 2013.

What is a landowner statement?

12. A landowner statement is different to a highways statement or highways declaration deposited under the 1980 Act. A landowner statement applies specifically to greens and comprises:

- a statement which brings to an end any period of recreational use as of right over the land to which the statement applies; and
- a map which shows the land to which the statement applies.

13. One key component of the criteria for registering new greens under section 15(1) of the 2006 Act is that the land has been used 'as of right', which means without permission, without force and without 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 map and described in the statement.

14. Section 15A(2) of the 2006 Act provides that the deposit of a landowner statement does not prevent a new period of use commencing. Therefore if recreational use 'as of right' of the land were to continue then a new 20 year period of requisite user could begin to accrue. However, if a 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 greens registration criteria (i.e. because the clock is stopped once more before it reaches 20 years).

15. 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 one year period of grace allowed for greens applications which 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.

What changes have been made to statements and declarations under the 1980 Act?

16. The regime for depositing highways statements and highways declarations continues and any previous deposits remain valid. However, section 13 of the 2013 Act amends section 31 of the 1980 Act in order to align the form and procedure for making such deposits with that for depositing landowner statements.
17. Under section 31(6) of the 1980 Act, landowners⁸ can deposit a statement and map acknowledging which ways across their land (if any) which they admit to having been dedicated⁹ as highways. Landowners may then, within 20 years¹⁰ of the deposit of the statement and map (and within subsequent periods of 20 years¹¹ from each previous deposit), lodge a formal declaration to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the map has been dedicated as a highway since the date of the initial or previous (as the case may be) deposit. In the absence of proof of a contrary intention, a declaration will be sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.
18. In Defra's view, for a declaration to be effective as evidence against presumed dedication, the lodging must be a separate event, *after* the deposit of the statement (i.e. not at the same time), but no more than 20 years later.
19. The appropriate council, which is the top-tier local authority for the area (e.g. county council or London borough), records information relating to highways statements and highways declarations in a public register kept under section 31A of the 1980 Act and the Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007¹² ("the 2007 Regulations"). The 2013 Regulations amend the 2007 Regulations to allow for paper registers kept under section 31A to be held and inspected at a specified office (or if none is specified, the principal office) of the appropriate council, as well as consequential amendments arising from changes made by section 13 of the 2013 Act¹³.
20. There was previously no prescribed form for depositing highways statements and highways declarations were required to be in the form of a statutory declaration. The 2013 Regulations prescribe an application form which allows a landowner to make any or all of the following in relation to his land: a highways statement,

⁸ "Owner" is defined in section 31(7) of the 1980 Act as "a person who is for the time being entitled to dispose of the fee simple in the land."

⁹ In Defra's view, reference to "dedicated" here means dedicated by the landowner (or his/her predecessors), not highways created through other means, e.g. under statute.

¹⁰ This period was extended to 20 years in relation to land in England by virtue of section 13(2) of the 2013 Act and section 31(6A)(c) of the 1980 Act (as inserted by section 13(3) of the 2013 Act. Section 13 was commenced on 25 June 2013 for the limited purpose of making regulations (see SI 2013/1488, article 4(a)) and was brought into effect for all remaining purposes on 1st October 2013 (see SI 2013/1766, article 3(a) and the savings provision in article 4).

¹¹ Ibid.

¹² SI 2007/2334.

¹³ Regulation 8 of the 2013 Regulations amends the 2007 Regulation to remove references to statutory declarations and to extend the period in which highways declarations can be made following the deposit of an initial statement and map or the deposit of a previous declaration.

highways declaration, and landowner statement. The 2013 Regulations also impose notice requirements on the appropriate authority, as well as permitting the authority to specify a reasonable application fee if it so decides. The form requires the applicant to sign a statement of truth. The statement of truth places on the applicant the burden of ensuring that the information in the application is correct. Any incorrect facts could invalidate the effect of the application. Furthermore the authority has the power to remove entries which contain a material error – see paragraph 52.

21. The application form in the 2013 Regulations only applies to applications made on or after 1 October 2013. The new procedure does not apply to any statement or declaration made before that date.

Who is affected by the change?

22. Landowners, authorities and recreational users of land will be directly affected.
23. Landowners who wish to prevent the deemed dedication of any new highways over their land or prevent any part of it being registered as a green may want to submit a highways statement followed by a highways declaration and a landowner statement. They can now do any or all at the same time through the combined application form, provided the highways statement is deposited in relation to land which is different to that for which the highways declaration is lodged. For example, the highways statement is deposited in relation to Land A, the highways declaration is lodged in relation to Land B and the landowner statement is deposited in relation to both Land A and B.
24. Authorities are responsible for processing and publishing notices under the 2013 Regulations, as well as recording information relating to highways statements, highways declarations and landowner statements in the public registers.
25. Authorities which have straddling agreements with Commons Registration Authorities in Wales could be further affected. Section 15A(8) of the 2006 Act provides that any such straddling agreements, whether made under the Commons Registration Act 1965 or the 2006 Act (i.e. an Authority in Wales is responsible for land in England), will be disregarded if they would have the effect of requiring a landowner statement to be deposited with an Authority in Wales. In such a case an application would need to be made in respect of the English land to the relevant authority in England.
26. Recreational users of land will be affected by the deposition of landowner statements because it will bring an end to any period during which they have used the land as of right. Similarly, the deposition of either a highways statement or declaration will negative presumed dedication of the land as a highway. The notice requirements placed on authorities will ensure that users are notified of any deposition in relation to the land they use. 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 one-year period of grace allowed under section 15(3) of the 2006 Act.

The registers

The 1980 Act register

27. The keeping of the register held under section 31A of the 1980 Act remains subject to the rules prescribed in the 2007 Regulations, except that the expiry of the 10 year period mentioned in the register has been amended to refer to the expiry of a 20 year period¹⁴. Please this only applies to applications submitted after 1 October and declarations submitted before 1 October remain subject to the 10 years¹⁵. The register can now be held at either any specified office of the authority or at its principal office. This flexibility allows for both the highways and landowner statements registers to be kept at the same office.

The landowner statements register

28. You may use the 1980 Act register to record landowner statements but must create a new part of the register for that purpose.

29. The register must contain an index of its contents, and provide the job title and contact details (phone and email) of the person in the authority to whom enquiries can be made. The register should be held in such a way as to enable copies of any information held in it to be taken by or for any person who requests a copy in person at the relevant office of the authority. The web version must have a search facility that, as a minimum, allows postcode and keyword searches.

30. The register is to be held in both electronic and paper form. The paper copy must be kept at the relevant office of the commons registration authority, the address of which should be specified on the authority's website, or if no office is specified it shall be the authority's principal office. People who cannot access the authority's website can find out the address of the relevant office by telephoning the authority. The register should be available for inspection during normal office hours. The electronic copy should be published on the authority's website or a website maintained by the authority.

31. The register must contain:

- a copy of the statement;
- a copy of the map and any legend which accompanies or forms part of the map;

¹⁴ Regulation 8(5) of the 2013 Regulations amends the references to a 10 year period in regulation 3(3)(c) and 3(5) of the 2007 Regulations to ones of 20 years.

¹⁵ This is provided by a saving in article 4 of Growth and Infrastructure Act 2013 (Commencement Order No. 3 and Savings) Order 2013 (SI 2013/1766).

- the name and address (incl. postcode) of the person who made the statement;
- the date on which the authority received the application to deposit the statement and map; and
- details of the land on the map (including the Ordnance Survey grid reference of a point within each parcel); the name of the parish, ward or district; the address of buildings on the land which have a postcode; the name of the nearest town or city.

32. The details to be recorded in the register for landowner statements are almost the same as those for the register for highways statements and declarations. The difference is that the highways register, with respect to highways declarations (not highways statements), records the date on which the 20 year period elapses and a unique reference number allotted by the authority to the declaration.

The application procedure

33. There are four steps to the procedure: initial check, acknowledgement of the application, serving notice of the application and recording it in the register. Each stage is explained below.

Initial check

34. On receipt of an application, you will need to check whether the application form is:

- in the form prescribed by Schedule 1 to the 2013 Regulations, or in a form substantially to the same effect with such insertions or omissions as are necessary in any particular case¹⁶;
- signed by every owner (or by their duly authorised representative) of the land to which the application relates;
- accompanied by an Ordnance map at a scale not less than 1:10,560 (except where the application refers to a map which accompanied a previously deposited statement or declaration with the authority – see paragraph 39); and
- accompanied by the correct fee (if any).

35. Parts A and F of the application form must be completed by all applicants. Parts B to E are discretionary and allow for variation to account for the unique set of facts associated with each application. Parts B, C or D should be deleted where not applicable. Part B is to be completed where the application relates to a highways statement. Part C is to be completed where the application relates to a highways

¹⁶ See Regulation 2(2)(a) of the 2013 Regulations.

declaration and Part D is to be completed where the application relates to a landowner statement. Part E allows for additional information to be provided which is relevant to the application.

36. For applications which seek simultaneously to deposit a highways statement and lodge a highways declaration in relation to the same land, you should advise the applicant that for the application to be effective the declaration must be lodged separately, after the deposit of a statement, at any time within 20 years from the time of the deposit of the statement.
37. The application must be signed by the applicant (person A). This can be the landowner or a duly authorised representative of the owner. Where there are multiple owners, each owner must complete paragraphs 2 and 3 of Part A and complete and sign the application in Part F or a duly authorised representative (or representatives) may complete the form on behalf of all of the owners. Paragraph 3 of Part A to the prescribed form should explain in what capacity the applicant is applying e.g. landowner, managing agent, trustee. If the owner is a body corporate or an unincorporated association, the application must be signed by the secretary or another duly authorised officer.
38. Where the applicant is unable to read or write, the application must be supported by a certificate made by an authorised person¹⁷ who must certify that the application and, in particular, the statement of truth in Part F has been read to person A who appeared to understand the statement and the consequences of making a false one as well as understanding and approving the content of the application as accurate; and that person A signed or made their mark in the presence of the authorised person.
39. The Ordnance Survey map, besides, being at the scale above, must show the boundary of the relevant land in coloured edging. The exception here is where the application refers to a map previously deposited with the authority in relation to a highways statement or declaration (it does not matter if the map was deposited before 1 October 2013) or a landowner statement. If the application relates to multiple parcels of land, such parcels should be identified on the map by coloured edging and clearly described in paragraph 4 of Part A of the statement.
40. The application must also be accompanied by the correct fee (if any has been specified). See paragraph 53 for further advice.
41. The statement of truth in the application form, which the applicant must sign, places on the applicant the onus of getting the facts correct. If the statement or map in question contains a material error, then it could invalidate the application, in whole or in part, and any entry made in reliance on it might be removed by the authority (see paragraph 52).

¹⁷ An authorised person means a "conveyancer" as defined in rule 217(A) of the Land Registration Rules 2003.

42. An application is to be treated as having been deposited with the authority when it has been duly made (see paragraph 34). An application can be delivered to the authority by hand at an office of the authority, or by post. Where an application is sent by any means that do not guarantee delivery, the application will not be deemed to have been made if it is proved that the authority did not receive it.

Acknowledgement of the application

43. Provided all of the above has been adhered to, you should as soon as practicable send an acknowledgement of receipt to the applicant. Where it has not been adhered to then the application is not duly made and the authority is under no obligation either to acknowledge the “application” or process it further.

Serving notice of the application

44. You should, as soon as reasonably practicable after receiving a duly made application, publicise notice of receipt of the application in accordance with regulation 4(1)(b), (2) and (3) of the 2013 Regulations. The form of the notice is prescribed in Schedule 2 to the 2013 Regulations¹⁸. The notice provides key information relating to the authority and the application itself, including a map and textual description of the land. Where the application relates to more than one parcel, each separate parcel should be described. The date the application was given to the authority must also be inserted in the notice.

45. The notice of application must be publicised through the following ways:

- publication on the authority’s website;
- email a copy to any person who has provided an email address for the purpose of being notified (of all deposits); and
- so as to bring it to the attention of users of the land, post a copy of the notice at or near at least one obvious entry point to the land for at least 60 days.

46. There is no specified length of time for which the notice should be retained on the authority’s website. However, you should consider whether to keep it there for the same 60 day duration as the site notice.

47. You should maintain a single distribution list of email addresses of persons who wish to be notified by email of deposits of highways statements, highways declarations and landowner statements. When supplying an email address, the person opts in to receive notice of all deposits received by the authority.

48. The site notice is to be posted at “at least one obvious place of entry” to the land to which the application relates, or where there are no such places, at least one

¹⁸ Regulation 4(3) of the 2013 Regulations provides that the notice must be in the prescribed form or in a form substantially to the same effect with such insertions or omissions as are necessary in any particular case.

conspicuous place on the boundary of the land. You will need to consider how many site notices are required in each individual case in order to bring the application to the attention of users of the land. This is likely to depend on how many parcels of land the application relates to and how such land is accessed. For example, where an application relates to two contiguous parcels of land (parcels A and B) and parcel B can only be accessed via one entry point to parcel A, an authority may consider it sufficient for one notice to be placed at the obvious place of entry to parcel A. Remember to include a copy of the map of the land.

49. The site notice is required to be present for not less than 60 days. However, where the notice is removed, obscured or defaced (through no fault of the authority) before the 60 days have elapsed, the authority will be treated as having complied with the requirement.

Recording the application in the register

50. You are advised to record each duly made application in the relevant register (paper and website versions) as soon as practicable after receipt of it. You need to record:

- a copy of the statement;
- a copy of the map of the land and any legend which accompanies or forms part of the map;
- the name and address (incl. postcode) of the person who made the statement;
- the date on which the authority received the statement and map;
- details of the land on the map, including the Ordnance Survey grid reference of a point within each parcel; the name of the parish, ward or district; the address of buildings on the land which have a postcode; the name of the nearest town or city;
- (for highways declarations only) the date on which the 20 year period elapses; and
- (for highways declarations only) a unique reference number allotted to the declaration.

51. Regarding the mapping of land, there are no requirements relating to the colours of the boundary of the land and the authority is advised to continue with existing practice.

Removing an entry from the register

52. You have the power to remove an entry, or any part of an entry, which contains a material error in the map or statement in question, but must give the landowner at

least 28 days' notice before doing so. For example, if an authority receives an application which purports to deposit a highways declaration for parcels A, B and a landowner statement for parcel C, but at the time of the application the applicant was in process of buying parcel C and did not yet own it, then the statement for parcel C would in Defra's view be invalid and you could remove this part of the entry.

Fees

53. Applications must be accompanied by the appropriate fee¹⁹, if any is specified by the authority. The 2013 Regulations do not provide any fee amounts: instead the authority has the power to set fees. A fee specified by the authority must be reasonable for the application of that type. The power allows different fees for different types of application. The following are examples of why the authority may wish to consider setting different fees for different purposes:

- applications which relate to **either** highways deposits (highways statements or highways declarations) or the deposit of a green landowner statement; or
- applications which relate to deposits under **both** highways and greens regimes.

54. The authority is advised to keep fees under review to ensure that amounts are commensurate with the authority's costs.

Where can the application form be found?

55. The form is prescribed in Schedule 1 to the 2013 Regulations. A copy of the Regulations can be found at the www.legislation.gov.uk website (search SI 2013/1774).

¹⁹ Regulation 2(2)(d) provides that an application must be accompanied by such reasonable fee (if any) specified by the appropriate authority for an application of that type.

Chapter 2: Exclusion of the right to apply under section 15(1) of the 2006 Act

56. Unless stated otherwise all references in this chapter to ‘application’, ‘the right to apply’, and ‘exclusion’ should be taken to mean (respectively) an application under section 15(1) of the 2006 Act to register land as a green, the right to apply for the same and exclusion of the right to apply for the same.

What has changed?

57. Section 16 of the 2013 Act amended the law on registering new greens by inserting a new section 15C and Schedule 1A into the 2006 Act.

58. 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 that land.

59. At any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register that land as a green. The right to apply remains excluded until and if a corresponding ‘terminating event’ occurs in respect of the land.

60. The trigger and terminating events are set out in Schedule 1A to the 2006 Act, which is inserted by section 16 of, and Schedule 4 to, the 2013 Act. The list of trigger and terminating events was amended on 11 February 2014 by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 (SI 2014/257).

61. A copy of the legislation can be found at www.legislation.gov.uk.

What is a trigger event?

62. Trigger events are events related to the development of land which occur within the planning system. Where any such event has occurred in relation to land, the right to make an application for registration of that land as a town or village green is excluded.

63. The full list of trigger events is set out in the first column in Schedule 1A to the 2006 Act. Some examples of trigger events include:

- the first publication of an application for planning permission for the land, which will include circumstances where planning permission is subsequently granted;

- the publication by the local planning authority of a draft local plan or neighbourhood plan²⁰ proposal which identifies the land for potential development;
- the adoption or making by the local planning authority of a local plan or neighbourhood plan which identifies the land for potential development;
- a proposed application for development consent under the Nationally Significant Infrastructure project regime is first publicised by the applicant;
- an application for development consent under the Nationally Significant Infrastructure project regime which has been accepted by the Secretary of State (in practice the Planning Inspectorate) is first publicised by the applicant;
- a draft local development order or neighbourhood development order first published for consultation; and
- the publication of a notice of application for deemed planning permission in respect of Transport and Works Act 1992 orders.

64. There are fourteen trigger events in Schedule 1A (as amended by the 2014 Order), each of which relates to a specific planning mechanism. For each trigger event, there are a number of corresponding terminating events – explained below - also specified in Schedule 1A. The local planning authority or authorities and the Planning Inspectorate, as appropriate, will have information as to whether a trigger event or terminating event has occurred in relation to the land.

65. Note that 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 that land for another reason.

66. 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 or village green. This rule applies even where a trigger event occurred prior to the commencement of section 15C.

67. The legislation allows new trigger events to be added through secondary legislation, as well as existing trigger events to be amended or omitted.

²⁰ Schedule 1A to the 2006 Act refers to a 'development plan document' and 'neighbourhood development plan' but they are generally referred to as 'local plans' or 'neighbourhood plans'.

What is a terminating event?

68. Every trigger event has corresponding “terminating events”. Where the right to apply has been excluded because a trigger event has occurred, if one of the corresponding terminating events occurs this will mean that the right to apply again becomes exercisable. From that point it will be possible to apply to register land as a town or village green. As with trigger events, this rule applies even where a terminating event occurred prior to the commencement of section 15C. Note the position may be more complex where more than one trigger event has occurred in relation to the land (see paragraph 100).
69. Terminating events are set out in the second column of Schedule 1A to the 2006 Act (as amended by the 2014 Order). For example, the corresponding terminating events for the publication of an application for planning permission in relation to land are: (a) withdrawal of the planning application; (b) a decision to decline to determine the planning application is made under section 70A of the Town and Country Planning Act 1990; (c) where permission is refused, all means of challenging the refusal in the UK are exhausted and the decision to refuse planning permission is upheld (or the time limit for an appeal expires without such an appeal being made); and (d) where the planning application is granted, the period within which the development to which that permission relates expires without the development having been begun.
70. The legislation allows new terminating events to be added through secondary legislation, as well as existing terminating events to be amended or omitted.

Who is affected by the change?

71. Both commons registration authorities and prospective applicants are directly affected. The key question for both parties is whether the right to apply has been excluded in relation to the relevant land.
72. Commons registration authorities cannot consider an application where the right to apply has been excluded for that land. Therefore the commons registration authority will need to determine whether the right to apply has been excluded or not, even where an applicant is not aware of any exclusion.
73. Where the commons registration authority knows that an application is imminent, but that the right to apply has been excluded in respect of that land, it may wish to advise the would-be applicant that the right to apply has been excluded. It will need to be certain that the right is not exercisable if it elects to do this, but this could prevent wasted effort on the part of the applicant.
74. There will be cases where would-be applicants may not be aware of the exclusion and submit an application without prior discussion with the commons registration

authority. Even so, if the right has been excluded for that land then the commons registration authority must refuse to consider the application.

75. When determining whether an application under section 15(1) 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 is to be disregarded. In other words, any 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.

76. 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.

77. To a lesser extent local planning authorities and the Planning Inspectorate are also affected by the legislative change, because as overseers of the planning system, they will hold information on whether a trigger or terminating event has occurred in relation to land. The commons registration authority relies on local planning authorities and the Planning Inspectorate providing confirmation of whether trigger or terminating events have occurred in relation to land.

How will I (the commons registration officer²¹) know if the right to apply is excluded?

78. On receipt of an application, you will need to write to:

- each local planning authority for the land to which the application relates; and
- the Planning Inspectorate,

for written confirmation of whether any trigger or terminating events have occurred in relation to the land, and the details of any such events. They will need to know what land is affected so you will need to provide them with a copy of a map of the land. Those confirmations will enable you to decide whether the right to apply under section 15(1) of the 2006 Act has been excluded.

79. An example letter is provided at Annex A, which given the technical complexity of trigger and terminating events, and that such events are overseen by planning authorities and the Planning Inspectorate you are strongly advised to use. The example letter takes account of the additional trigger and terminating events which were inserted by the 2014 Order.

²¹ In the remainder of this Chapter, references to 'I' and 'you' mean the relevant commons registration officer or person carrying out that function.

80. The local planning authority will be able to advise on the trigger and terminating events added by the 2014 Order.
81. If a trigger event has occurred but a corresponding terminating event has not, then the right to apply is excluded, in which case you must refuse to accept an application.
82. It must be stressed that 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 you cannot know for certain that the right to apply is excluded. Note the position may be complex where more than one trigger event has occurred in relation to the land (see paragraph 100).
83. Each relevant local planning authority and the Planning Inspectorate will need to know the exact location and extent of the land, so a copy of the application map should be enclosed with your letter. If a relevant trigger event and/or a corresponding terminating event has occurred, the letter asks them to return your map (or provide their own) and clearly show the land on which the event(s) occurred. This will be important in cases where only part of the land in question is subject to a trigger or terminating event, or where a mixture of scenarios apply to different portions of the land, e.g. a trigger event applies to a small portion of the land but the remainder is not subject to a trigger event.
84. If confirmation is received from a local planning authority or the Planning Inspectorate that a trigger event has occurred (but no corresponding terminating event has occurred) in relation to the land, the right to apply is excluded and the applicant should be informed that the application cannot be accepted unless and until a corresponding terminating event occurs.
85. You can consider an application as normal where either:
- (a) no trigger event has occurred; or
 - (b) a trigger event has occurred but a corresponding terminating event has also occurred in relation to the land, which has therefore caused the exclusion of the right to apply to lift.

Don't I need to formally accept an application before checking whether the right to apply is excluded?

86. No, you are advised to seek confirmation on whether the right to apply is excluded in relation to the land prior to formally accepting or acknowledging receipt of an application. This is because if the right is excluded then the application should not be accepted, and this extends to written confirmation of receipt of the application.

87. The rationale for this approach is to avoid time and money being spent advertising and making representations in relation to an application where it subsequently turns out there was no right to apply.

88. However, as a matter of courtesy, you may wish to call the applicant to confirm physical receipt of the documents. In doing so, you should make it clear that this does not constitute formal acceptance or acknowledgement that the application is valid. You can explain that advice from each local planning authority and the Planning Inspectorate is needed before your authority can reach a view on whether or not to accept the application.

Which is the relevant planning authority?

89. You will need to contact each local planning authority which has responsibility for the land in question, and also the Planning Inspectorate. There could be more than one local planning authority which exercises functions in relation to the land in question. The basic position is as follows:

- within Greater London the London borough council will be the local planning authority;
- in metropolitan areas outside London the local planning authority will be the metropolitan district council;
- in non-metropolitan areas, the local planning authority functions will be shared by the district council and county council or held by a unitary authority; and
- certain other bodies, for example National Park authorities, the Broads Authority, and Mayoral Development Corporations will also exercise local planning authority functions in respect of land in their areas.

90. In areas where there are more than one local planning authorities with responsibility for the land (e.g. county and district councils), you will need to contact each of these, plus the Planning Inspectorate.

91. If the land in question crosses the boundary of several planning authorities then, as they will each be responsible for their portion of the land, each should be contacted to confirm whether a trigger event or corresponding terminating event has occurred in relation to its portion.

92. Where responsibility for town and village green registration and planning functions are housed in the same authority, in unitary authorities for example, you are still advised to seek written confirmation as to whether trigger or terminating events have occurred from your planning department. In such cases, you will still need to write to any other local planning authority with responsibility for part of the land, and to the Planning Inspectorate.

93. The Planning Inspectorate has responsibilities for certain trigger events. For example this is the case where planning permission has been refused by the local planning authority, but the matter is referred on appeal to the Planning Inspectorate. The Planning Inspectorate also deals with applications for development consent under the Nationally Significant Infrastructure project regime on behalf of the Secretary of State. This is why the Planning Inspectorate must always be contacted when determining whether a trigger or terminating event has occurred.

94. The Planning Inspectorate can be contacted at:

The Planning Inspectorate
Customer Support Team
Room 3/13 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Email: enquiries@pins.gsi.gov.uk

Telephone: 0303 444 500

What if the exclusion applies to only part of the land?

95. For the portion of land not subject to the exclusion, the application should proceed as usual. This is consistent with how commons registration authorities already deal with applications which can only be approved in part. But for the portion of land on which the right to apply has been excluded then the applicant should be informed that that portion of the land cannot be considered for registration as a new green.

What happens where no trigger event has occurred on the land?

96. The application should proceed to determination as normal.

What happens where an application is submitted just before a trigger event occurs?

97. If the application is made before the trigger event has occurred then it should be considered in the usual way.

What happens where the period of grace commenced before both a trigger event and its corresponding terminating event occurred?

98. The trigger event causes the period of grace to pause. But when the terminating event occurs and the right to apply is again exercisable then the period of grace picks up where it left off. See the example at paragraph 76.

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

99. Then the right to apply is again exercisable and the commons registration authority can accept an application for consideration as normal. Note this assumes that only one trigger event has taken place in relation to the land.

What happens where more than one trigger event has occurred on the land?

100. Where more than one trigger event has occurred, the right to apply will be excluded if and until a corresponding terminating event has occurred in relation to each trigger event.

What happens where a trigger event occurred on land prior to the commencement of the new legislation?

101. The right to apply is excluded in relation to that land. It does not matter how long ago a trigger event occurred prior to the commencement of section 15C – if no corresponding terminating event has occurred in respect of land since that trigger event, then the right to apply for registration of a green is not exercisable.

What happens where a local plan was adopted in, say 2009, which has identified the land in question for development?

102. The adoption of that local plan would constitute a trigger event and the right to apply would be excluded unless and until a corresponding terminating event occurs. Where, for example, that plan has been revoked or a policy identifying land for development has been superseded, then either of these would be a terminating event and the right to apply would no longer be excluded.

What happens where a corresponding terminating event occurred on land prior to the commencement of the new legislation?

103. Then the exclusion does not apply as the occurrence of the corresponding terminating event causes the exclusion to lift (assuming no other trigger event has occurred), and an application can be submitted as normal.

What if I receive an application under section 15(8) of the 2006 Act?

104. The change in the law does not affect such applications, so the application should be considered as normal.

Annex A: Template letter to local planning authorities and the Planning Inspectorate seeking their confirmation of trigger and terminating events

I write on behalf of [insert name of commons registration authority] which has received an [enquiry or application under section 15(1) of the Commons Act 2006 to register] land at [insert description of land] as a town or village green. I enclose a map of the relevant land.

Due to an amendment of the legislation on greens registration under the Commons Act 2006 by the Growth and Infrastructure Act 2013, the right to apply for the registration of a green is excluded if any one of a number of prescribed planning-related events (“trigger events”) has occurred in relation to the land. The right to apply becomes exercisable again only if a corresponding terminating event has occurred in relation to that land.

The trigger and terminating events are set out in Schedule 1A to the 2006 Act (as inserted by Schedule 4 to the 2013 Act). A copy can be read here:

www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted. The list of trigger and terminating events was extended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014. A copy can be read here:

www.legislation.gov.uk/uksi/2014/257/contents/made.

Please could you read through the trigger and terminating events and tick one of the three boxes below which describes the situation and set out in detail any relevant information in the box further below, and return the completed form and any relevant maps to me at the postal or email address above.

If a relevant trigger event and/or corresponding terminating event has occurred, please clearly mark on the map provided (or your own), the extent of the land on which the event took place. Where more than one trigger event has occurred, please confirm whether a corresponding terminating event has occurred in respect of each trigger event. Please note that where a trigger event or terminating event occurred prior 25 April 2013, it is still considered a valid event. For example, if a local plan (i.e. a development plan document) adopted in 2008 identifies the land in question for development, then that is a valid trigger event. In cases where a trigger event has occurred in relation to part, but not all, of the land, the first and second boxes should be ticked and the detail explained in the box. The map should clearly indicate the areas which are and are not subject to the trigger event.

Your answer will determine whether or not my authority can accept an application for registration of a green. This decision could be the subject of legal action, so I must stress the need for you to be certain about the information included in your return.

A copy of this letter has also been sent to [insert names of planning authority or authorities] and the Planning Inspectorate. Please notify me if you aware that any other authority has responsibility for development control or plan-making functions in respect of the land to which this application relates.

Could you please reply to the address above by [insert date two weeks from the date of the letter].

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
Further information (Please use this box to explain the type and date of the trigger or terminating events.)	
Details of officer completing this form Name: Address: Email: Phone:	