

## 7.11 Section 15: town or village greens

Extract of Defra's Guidance to Applicants in pioneer implementation areas, v1.4, October 2013

### Introduction

7.11.1 You can apply to register land as a town or village green under Section 15(1) provided that the right to apply for registration has not been excluded in relation to the land you wish to register pursuant to Section 15C(1) of the 2006 Act. Landowners can apply under 15(8) to register their own land and the procedure is simpler than Section 15(1) as the registration authority will not require evidence of the use of the land and such applications are unaffected by Section 15C.

### Procedure

#### ***Qualifying criteria for registration where the application is under Section 15(1)***

7.11.2 Anyone may apply to register land as a green meeting the criteria in Section 15(1) of the Act, provided the right to apply has not been excluded in relation to the land under Section 15C(1)<sup>71</sup>. The right to apply for registration of land as a town or village green is excluded when one of the trigger events set out in Schedule 1A of the 2006 Act has occurred (within the planning system) in relation to the land. The right to apply remains excluded until a corresponding terminating event (also specified in Schedule 1A) occurs in relation to the land.

7.11.3 You are strongly advised to contact the commons registration authority prior to applying for registration of a new town or village green to determine whether the right to apply has been excluded in relation to the land. If the right to apply for registration of land as a green has been excluded then the commons registration authority cannot consider your application until a terminating event has occurred in relation to the land.

7.11.4 When the commons registration authority receives an application for registration of land as a green it has to seek confirmation from every local planning authority for the land in question, as well as the Planning Inspectorate, as to whether a trigger or terminating event has occurred in relation to the land. The commons registration authority will then know whether the right to apply for registration of land as a green is exercisable at the time of your application.

7.11.5 Assuming the right to apply remains exercisable, in preparation for your application you will need to assess whether the recreational use of the land by local people meets the strict test for registration.

<sup>71</sup> Section 15C and Schedule 1A were inserted into the Commons Act 2006 by section 16 and Schedule 4 of the Growth and Infrastructure Act 2013 on 25 April 2013.

This extends to establishing whether use of the land has been 'as of right' (i.e. without permission, force or secrecy) rather than 'by right'<sup>72</sup>. Your application must show that use of the land meets one of the criteria set out in Section 15(2) or 15(3)<sup>73</sup>. These criteria are alternatives, so you will need to see which one (if any) applies to your particular circumstances.

7.11.6 Whether you apply under Section 15(2) or 15(3), your application must show that a significant number of local people have indulged in lawful sports or pastimes 'as of right' on the land for at least 20 years. These requirements reflect the ancient law of custom, where such a pattern of use created a presumption that the local inhabitants had established recreational rights over the land. You should look very carefully at the criteria for registration in Section 15. It will help your case if you are able to find a range of witnesses who can provide detailed statements about the qualifying use of the land.

***Period of use 'as of right'***

7.11.7 Your application will be examined by the registration authority against the criteria in Section 15(2) or 15(3) as you have indicated on the form. It must meet one of these tests:

- Use continuing — Section 15(2) applies where the land has been used 'as of right' for lawful sports and pastimes for 20 years or more before the application is made, and this use continues at the date you apply.
- Use ended no more than one year ago — Section 15(3) applies where recreational use 'as of right' for 20 years or more ended no more than one year before the date you apply<sup>74</sup>.

7.11.8 The deadlines for making an application under Section 15 are not flexible so if you do intend to apply for registration, you must keep to them. It is worth noting that, when determining whether an application is made within the period of grace allowed by Section 15(3)(c), any period during which the right to apply for greens registration is excluded under Section 15C(1), is disregarded. In other words, a trigger event causes the period of grace in Section 15(3)(c) to cease to run and such period would continue to run again when a corresponding terminating event occurs in relation to the land.

<sup>72</sup> The terms 'as of right' and 'by right' are interpreted in detail in the Guidance to registration authorities and the Planning Inspectorate for the pioneer implementation. The interpretation applies to all of England:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/166191/craguide.pdf.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/166191/craguide.pdf.pdf).

<sup>73</sup> Section 15(4) became redundant on 5 April 2012.

<sup>74</sup> This was previously two years under section 15(3) of the 2006 Act, which was amended to one year on 1 October 2013 due to the commencement of Section 14 of the Growth and Infrastructure Act 2013. Section 14 of the 2013 Act was commenced by article 6 of The Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Savings Provisions) Order 2013 (SI 2013/1488).

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.

7.11.9 The registration authority will also look for evidence of:

- the other criteria in Section 15(2) or (3) having been met, namely that:
  - a significant number of
  - the inhabitants of any locality, or any neighbourhood within a locality
  - indulged...in lawful sports and pastimes
  - as of right
  - on the land
  - for a period of at least twenty years;
- where relevant, the date of cessation of such use;
- where relevant, any interruption of such use owing to statutory periods of closure;
- where relevant, any planning permission affecting the land.

7.11.10 In order to understand the meaning of the elements described above you should read the additional information about these criteria in Chapter 8.10 of the *Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation*<sup>75</sup>.

***Grounds of application and evidence***

7.11.11 If your application is made under Section 15(1) of the Act, you will need to ensure that all of the evidence you have to support the nature and extent of use of the land 'as of right' is provided to the registration authority so that it can consider that evidence to see whether the land qualifies for registration. As part of this, you should check whether the landowner has submitted a 'landowner statement' in relation to the land. A landowner statement brings to an end any period of recreational use of the land as of right. However a landowner statement does not prevent a new period of use accumulating where recreation on the land continues. The effect of a landowner statement has two possible consequences depending on the duration of use as of right for recreation, so if the land has been used for:

- less than 20 years then you would insufficient evidence with which to apply (unless you accumulate 20 years use as of right following the landowner statement);

<sup>75</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/166191/craguide.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/166191/craguide.pdf).

- more than 20 years then the one year period of grace commences, during which you can apply under Section 15(1) and rely on the criteria under Section 15(3).

The commons registration authority holds a register of landowner statements (this is different to the register of town and village greens), which you can view in person at the specified office of the authority or on its website. The register contains the key information relevant to landowner statements, including when they were made. You are strongly advised to ascertain whether a landowner statement has been made in relation to the land you wish to register.

7.11.12 Witness statements, witness forms of evidence and photographs are likely to be helpful to your case. A sample of an evidence questionnaire to use in support of your claim can be obtained from the Open Spaces Society (see paragraph 10.2.2 below).

7.11.13 You should set out in your application, as briefly as possible, a summary of the case for registration and provide, on separate paper, a fuller statement of the facts supporting the claim. Your application must be made using form CA9 available from your registration authority. You should include information on the nature of the recreational activities that have taken place on the land, an estimate of the number of people undertaking these activities and of their frequency, and explain how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application.

***Voluntary registration where the application is under Section 15(8)***

7.11.14 If you are the owner of land, you may apply under Section 15(8) to register it voluntarily as a green. However you must obtain the consent of any leaseholder of, or charge holder over, the land, such as a tenant, or a mortgagee. You must also provide evidence that any 'relevant leaseholder', and the proprietor of any 'relevant charge' over the land, consent to the application. These terms are defined in Section 15(9) and 15(10) of the Act. In such cases you will need to consult these people in advance of the application to inform them of your intention to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a statement of the nature of their relevant interest in the land, and their formal consent to the application.

7.11.15 You will need to confirm in your application, which must be made using form CA9 available from your registration authority:

7.11.15 You will need to confirm in your application, which must be made using form CA9 available from your registration authority:

- that you are the owner of the land and are applying to register the land as green;

and either

- that you have obtained and included with the application all necessary consents from any relevant leaseholder of, or proprietor of any relevant charge over, the land; or
- that no such consents are required.

7.11.16 In some cases the registration authority may decide to ask you for further evidence of your ownership before it can accept your application.

**Notices**

7.11.17 In addition to the standard requirements (see paragraph 6.5.4 above), and whether you are applying under either Section 15(1) or (8), you will additionally be required to send a copy of the notice to:

- the owner of any land affected by the application (this will not apply to such an owner who is also the applicant under Section 15(8));
- any occupier or lessee of that land;
- any local authority (other than the registration authority) in whose area that land lies (including a parish council, the chairman of a parish meeting, or a National Park authority).