

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

21 November 2018

Report of the Head of Legal Services – Mr Craig Griffiths

Matter for Decision

Wards Affected:

All wards

Implementation of the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017

Purpose of the Report

1. To obtain approval of Members for the delegation of authority to determine applications made under the Commons Act 2006 and ancillary statutory regulations and authority to deal with the administration of such applications and the maintenance of the Commons Register.

Executive Summary

2. This report will explain the current legislation in relation to common land in Wales and the processes that we need to put into to place as a Commons Registration Authority to implement this legislation.

Background

3. As Members may be aware, the registration of common land was undertaken under the remit of the Commons Registration Act 1965. The 1965 Act was intended to establish definitive registers of common land and town and village in England and Wales, rights of common and to record details of ownership of the commons. Applications were invited for provisional registration, objections were made if appropriate and dispute provisional registrations were referred to a Commons Commissioner for determination. Unopposed provisional registration automatically became final registrations.
4. In practice, however, the task of establishing registers was complex and the 1965 Act proved to have deficiencies. For example, some land provisionally registered under the Act was wrongly struck out by the Commons Commissioner, other common land was overlooked and not registered and many greens were registered incorrectly as common land. The scope for correcting such errors was limited.
5. The Commons Act 2006 was passed by the UK Government in order to correct deficiencies of the 1965 Act. The 2006 Act is gradually being implemented in Wales through the introduction of numerous statutory regulations.
6. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 came into force on 5 May 2017. These regulations enable applications and proposals to be made to amend the commons registers from this date.
7. Should an application be made under these Regulations, there are a number of interested parties that the CRA must inform of the application. Some of these applications may not cause any objections to be raised and can just be determined by the delegated Cabinet Board. However, there is the potential that these parties may raise objections to the application. In such cases, it must be decided whether a hearing or inquiry should be held by the CRA to determine such applications or whether, in certain circumstances, the matter should be referred for determination by the Planning Inspectorate Wales. Should the matter be determined by a hearing/inquiry held by the CRA, the recommendations of such a hearing/inquiry will still need to be ratified by the delegated Cabinet Board.

8. Furthermore, the Constitution, as it currently stands, contains very limited reference to the delegation of work relating to common land. The writer would see a need not only to delegate the determination of applications made under the Commons Act 2006 and/or any ancillary statutory regulations to an officer but also the administrative tasks associated with dealing with such applications and the maintenance of the Commons Register in general.

Financial Impact

9. There is no additional expenditure that will be required in relation to these applications. However, there will be an additional income in respect of the application fees that are due when applications are made under the Regulations.

Equality Impact Assessment

10. An Equality Impact Assessment screening form was completed to assist the Council in complying with its public sector equality duty. The screening indicated that there was no requirement to carry out a full equality impact assessment. Please see Appendix 1.

Workforce Impacts

11. As stated above, the Constitution contains very limited reference to the delegation of powers for work related to common land and the associated application. It should be remembered that the Commons Act 2006 is being implemented by the Welsh Government in a piecemeal fashion and it is therefore anticipated that there will be a number of statutory regulations brought into force in the future implementing small parts of the 2006 Act at a time.
12. The writer anticipates a number, albeit small, of applications being made under the Regulations and as such, a process for determining such applications needs to be put into place. As stated above, there is the possibility of applications being determined without any objections being raised. In such cases, the writer would propose the power to determine such applications be determined by the appropriate Cabinet Board.
13. Where objections are raised or where the CRA is minded to refuse the application, the matter needs to be determined at a hearing or public inquiry. Guidance provided by the Welsh Government recommends that

an independent inspector (such as a barrister) can conduct public inquiries and hearings on behalf of the CRA. Following the hearing/inquiry, the inspector would make recommendations which would then need to be ratified. It is again proposed that the power to determine such applications be delegated to the appropriate Cabinet Board.

14. It should be noted that the Council, under its remit as the Local Authority, may wish to raise its own objections to a specific application. As such, it would need to seek legal advice from Legal Services in relation to making representations at a public inquiry/hearing and it would therefore not be appropriate for the determination of any applications to be undertaken by an officer within Legal Services.
15. However, it should also be noted that the CRA is under a duty to maintain an updated register. This function is currently undertaken by an officer within the legal services team who deals with the administration of the register and any applications currently made for the apportionment of grazing rights over common land. It is proposed that the administrative tasks associated with any applications under the 2006 Act and associated statutory regulations are also dealt with by an officer within the Legal Services team to ensure that the applications are processed in accordance with the strict legislative procedure set out in the Regulations.

Legal Powers

16. As referred to above, there is a legislative framework that needs to be implemented by the Council acting in its capacity as a Commons Registration Authority.

Risk Management

17. Should we not implement the legislative framework as set out above, the Commons Registration Authority would not be complying with its statutory duties. There is therefore the potential that the Council's decision not to implement the legislative framework could be open to judicial challenge, the result of which could also result in financial penalties.

Consultation

18. There is no requirement under the Constitution for external consultation on this item.

Recommendations

19. It is recommended that Members approve the delegation of powers to undertake the administration and maintenance of the Commons Register under the Commons Registration Act 1965 and any administrative tasks in relation to applications received under the Commons Act 2006 and any ancillary statutory regulations to the Head of Legal Services.

Reasons for Proposed Decision

20. The recommendation above is required in order to implement the legislative framework which has been set down by the Government and ratified by the Welsh Government. To not implement the same would be going against statute and could leave the Council open to judicial challenge.

Implementation of Decision

21. The decision is proposed for implementation after the three day call in period.

Officer Contact

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