

Commons and Greens Sub-Committee

Meeting to be held on 31 January 2012

Electoral Division affected: None

Commons Act 2006

Commons Registration (England) Regulations 2008

Amended by Commons Registration (England) (Amendment) Regulations 2009

Opportunity to make oral representations under Regulation 28

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Executive Summary

To decide on how an applicant or other party be offered the opportunity to make oral representations.

Recommendation

The Sub-Committee is asked to:

- i. Consider the various options and concerns on the making of oral representations as set out in the report; and
- ii. Agree the Registration Authority's procedure for the making of oral representations.

Background and Advice

The Commons Act 2006 (the 2006 Act) makes provision for the registration of common land and of town and village greens. Registration Authorities were created to maintain two registers, one for common land and the other for village greens. The County Council is the Registration Authority for the County of Lancashire and has previously delegated powers and functions concerning alteration of the registers to the Commons and Town Greens Sub-Committee.

The 2006 Act makes provision for applications to be made and in Section 24 states that regulations will be made to provide for the determination of any application. These are the Commons Registration (England) Regulations 2008 as amended.

Regulation 28(1) states that the determining authority must, in determining any application or proposal, take into account any oral representation made.

Regulation 28(6) provides that the opportunity for oral representations is to be offered where the authority decides to determine without holding a public inquiry.

Regulation 28 (7) states –

The determining authority –

- (a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and
- (b) may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person's civil rights an opportunity to make oral representations.

This report sets out the options available to Registration Authorities on how an applicant or other party be offered the opportunity to make oral representations to it.

It may be considered that these Regulations will apply when where the Solicitor advising the Registration Authority in the application or proposal is minded that their recommendation will be to refuse the application or proposal; or is of the view that the decision will represent a determination of a person's civil rights (such person not being the applicant). An opportunity to make oral representations will need to be offered unless a hearing or inquiry is already/to be held into the application or proposal.

Guidance from DEFRA on the matter of oral representations says –

"An opportunity to be heard means that the applicant is able to present a case to the decision taker, to explain orally the key aspects of the application, and to address any points of contention (but not necessarily to question any other person). It may not be necessary for such an opportunity to be heard to be open to third parties, nor any other person making representations on the application, unless the authority wishes to afford them the same opportunity. However, if the authority considers that the civil rights of any third party are brought into question by the application or by any proposal (e.g. if the application relates to the registration of land as common land, and the owner objects to the application), the authority should afford a similar opportunity to be heard to that person."

And also, that;

"Where a registration authority decides to permit an applicant or other parties an opportunity to be heard, there are no particular requirements in relation to publicity or procedure, other than those implied by Regulation 28(7)."

The Solicitor advising on several applications under the Commons Act 2006 has reached the view that her recommendation may be that the application be refused and so the offer of an opportunity to make oral representations should now be made but the procedure to be adopted requires the decision of the Sub-Committee.

It is advised that the wording of the Regulation 28 requires that a decision be made taking such representations into account but does not state that the oral

representations have to be made directly to the members of the Sub-Committee or when it is made. What is clear is that it is one opportunity only. There are no follow up opportunities for other parties to address any matters raised in the representations.

It is advised that the procedure adopted by the County Council as Commons Registration Authority needs to satisfy the Statutory Regulations and be fair and reasonable.

There are concerns to be considered –

- If representations are made to an officer rather than the Sub-Committee a note would need to be taken so that the representations can be taken into account. Contents of any such Note may be subsequently disputed. This appears however no different from a dispute about other matters taken into account.
- It may be considered that perhaps the representations be made to the Solicitor and a member of the Sub-Committee.
- Should the Solicitor be able to ask the representee questions at the meeting to clarify what they are saying?
- If instead it is thought appropriate that representations be made to the full Sub-Committee before it considers an application, if the oral representations raise something previously unknown yet relevant, the decision may need to be deferred. Presentations before the full Sub-Committee may be considered intimidating by some applicants and raises issues as to whether such a formal presentation may be unfair to parties without legal representation.
- Should other parties be invited to hear the oral representations made?

The Sub-Committee is asked to consider the above issues and other relevant concerns and to decide how best to put in place a procedure which is fair and reasonable and satisfies Regulation 28.

Consultations

None

Implications:

This item has the following implications, as indicated:

Risk management

Consideration has been given to the risk management implications associated with this proposal. The Sub-Committee is advised that, provided the decision is taken in accordance with the advice and guidance given, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process. The procedure adopted may raise issues at a later date.

**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
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N/A

Reason for inclusion in Part II, if appropriate

N/A