

# THE COMMONS BILL

## Summary

Our common land is an important part of our national heritage. As a key feature of many important landscapes, it is valued for recreation and nature conservation — and as a vital resource for agriculture, especially in upland areas. However, the whole area of legislation and the common law on commons is notoriously complex. And people think of quite different things when “common land” is mentioned. That’s why, further down this page, we try to answer the question “What are commons?”

The Bill will protect our common land for current and future generations to enjoy by:

- enabling commons to be managed sustainably at the local level
- providing many commons with additional protection against misuse, encroachment and unauthorised development
- making much-needed improvements to the current system of registration, enabling earlier mistakes to be rectified and allowing ‘missed’ commons to be registered, thus providing increased opportunities for public access

## What are commons?

Commons are rooted in the early mediaeval history of England and Wales: Parliament passed the first Commons Act in 1235. Commons are land owned by one person (or a number of owners), over which others have certain rights (e.g. grazing rights). The landowner may be a private individual (commons are *not* publicly or communally owned, unless they have been acquired by a public body), and the people who use the land are common right-holders or “commoners”. Generally, both commons and common rights must be registered with local authorities.

About 3% of the land area of England and 8% of Wales is common land, covering around 400,000 ha (about 1,500 square miles) — see figure 1. Much of our common land is found in the uplands (such as the north Pennines and Dartmoor, and the Black Mountains in Wales). About half of common land is within our National Parks, and about a third is wholly or partially within Areas of Outstanding Natural Beauty. In these areas in particular it remains an important part of agricultural and cultural life. There are also substantial areas of common in lowland England and Wales, valued for recrea-



**Figure 1: common land in England and Wales**

tion, biodiversity, landscape and heritage. Many areas of common land are very small (less than a hectare in size), often providing much treasured areas of open space for local communities.

There is no automatic public right of access to common land, but rights do exist over about one-fifth of commons, and access will become available to the rest over the next two years through the Countryside and Rights of Way Act 2000.

## Why do we need a Commons Bill?

A Royal Commission reported on common land in 1958 and, acknowledging its special character and the importance of protecting these areas in the public interest, the Government agreed to legislate for the registration of commons under the Commons Registration Act 1965. This was not entirely successful as the task was complex and in retrospect it is clear that the legislation was inadequately thought through. On many upland commons, inflated rights were registered far in excess of the capacity of the common. Moreover, the Act explicitly postponed action on the Commission's recommendations to improve management and introduce public access in the wake of registration. The question of public access has now been settled by the Countryside and Rights of Way Act, but legislation to enable commons to be locally and sustainably managed remains essential and long overdue. We plan to achieve this by establishing a framework for self-regulating statutory commons associations, and prohibiting some of the abuses which create a barrier to effective management of common land at present.

## The Bill will address the following key issues:

- **Biodiversity:** half of England's common land is designated as Sites of Special Scientific Interest (SSSI), of which nearly two thirds is in ecologically poor (unfavourable) condition or is actively declining. The very nature of common land, where each commoner is entitled to act in his own best interests without regard for other commoners or the wider public interest, means that improved management is elusive, and can only be brought about by near unanimity among the commoners — which is often impossible to attain. In consequence, many commons, particularly in the uplands, are overgrazed or otherwise poorly managed, seriously affecting their nature conservation and landscape value (replacing attractive heather moorlands with dull, poor quality grassland), and also causing animal health and welfare problems. ***The Bill will enable new statutory management schemes at the local level so that commoners can self-regulate through majority decision making. It will also provide for new last resort powers of intervention for the Secretary of State/National Assembly and English Nature/Countryside Council for Wales, and put a stop to practices which make commons ungovernable (such as leasing out or selling rights of common to farmers remote from the community). These measures will greatly improve management and will make a significant contribution towards the Government's target of bringing those SSSIs that have been degraded back into good (favourable) ecological condition.***
- **Public access:** the Countryside and Rights of Way Act 2000 will deliver a public right of access on foot to most common land where one does not exist already. But the registration of some commons was overlooked in the 1960s, and the public will remain excluded. Many mistakes were also made in registrations, causing the new right to apply unfairly to wrongly registered common land. There is currently no

mechanism to correct either of these problems. ***The Bill will enable some commons originally missed out from registration to be registered now, so ensuring that they are protected from inappropriate changes of use, contribute to landscape and nature conservation, and become available for public access. The Bill will also enable wrongly registered land to be removed from the registers, subject to safeguards.***

- **Loss of common land:** the Commons Registration Act 1965 allows some common land to be deregistered if the landowner buys out the commoners' rights. Once deregistered, the land loses its special protection, and is vulnerable to agricultural "improvement" or development. Around two-thirds of commons could be at risk, threatening long-standing green spaces. ***The Bill will stop the deregistration of common land (unless it was wrongly registered in the first place), ensuring its continued protection.***
- **Neglected commons:** because commons are protected from development (unless they are deregistered), they have a relatively low value, and some owners have never been identified. Around 25,000 hectares of common land in England and particularly Wales has no known owner. With no owner, a common is particularly vulnerable to abuse — unlawful grazing, encroachments, fly-tipping etc. — and at present there is no-one to take the lead in promoting improved management arrangements. ***The Bill will give local authorities or English Nature/Countryside Council for Wales new powers to manage the land in the interests of the wider community.***

## COMMONS BILL: FREQUENTLY ASKED QUESTIONS

### Why is new common land legislation needed?

The main reason we need a Bill is to ensure continued protection for our common land and to enable it to be managed sustainably. If we do not take action much of our common land could deteriorate due to either overgrazing or undergrazing, resulting in damage to habitats and biodiversity.

### When will the Bill be introduced?

The Government remains committed to introducing legislation on common land as soon as Parliamentary time allows. The legislative programme is decided prior to the start of each session of Parliament, taking into account the Government's overall priorities. At this stage it is not possible to say exactly when the Bill might be introduced.

### What will be included in the Bill?

Our intention is that the Bill should focus on measures in two key areas:

- measures to enable common land to be managed more sustainably, in particular with regard to grazing;

- measures to bring the existing commons registers up to date, and to enable the registration and deregistration of commons and town and village greens in strictly limited circumstances.

### **What about the other proposals in the Common Land Policy Statement?**

We remain committed to taking forward the proposals in the Policy Statement relating to both works and fencing on common land (“section 194”) and town and village greens. We are currently considering the best way of achieving this, and in particular whether some of the proposed changes could be delivered without the need for primary legislation.

### **Will there be any further consultation?**

We have already consulted stakeholders extensively. The proposals in the Common Land Policy Statement flowed from a public consultation exercise in 2000. A Stakeholder Working Group was established to develop detailed recommendations on agricultural management, and this was followed by a further round of public consultation in 2003. We are currently planning to publish a draft Bill for pre-legislative scrutiny and/or public consultation, though final decisions on this will be taken nearer the time.