

## Commons Act 2006

UK Public General Acts ▶ 2006 c. 26 ▶ Part 3 ▶ Section 38

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**Changes to legislation:** There are currently no known outstanding effects for the Commons Act 2006, Section 38. 

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#### Prohibition on works without consent

- (1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.
- (2) In subsection (1) "restricted works" are—
  - (a) works which have the effect of preventing or impeding access to or over any land to which this section applies;
  - (b) works for the resurfacing of land.
- (3) The reference to works in subsection (2)(a) includes in particular—
  - (a) the erection of fencing;

- (b) the construction of buildings and other structures;
    - (c) the digging of ditches and trenches and the building of embankments.
  - (4) For the purposes of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).
  - (5) This section applies to—
    - (a) any land registered as common land;
    - (b) land not so registered which is—
      - (i) regulated by an Act made under the Commons Act 1876 (c. 56) confirming a provisional order of the Inclosure Commissioners; or
      - (ii) subject to a scheme under the Metropolitan Commons Act 1866 (c. 122) or the Commons Act 1899 (c. 30);
    - (c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.
  - (6) The prohibition in subsection (1) does not apply to—
    - (a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;
    - (b) works on any land where the works are carried out under a power conferred by or under any enactment applying to common land;
    - (c) works authorised under a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899 without any requirement for any person to consent to the works;
    - (d) works for the installation of electronic communications apparatus for the purposes of an electronic communications code network.
  - (7) In subsection (6)(a) the reference to an enactment does not include Part 2 of this Act.
  - (8) For the purposes of subsection (6)(b), an enactment applies to common land if it is expressed to apply (generally) to—
    - (a) registered common land;
    - (b) common land; or
    - (c) any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.
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- (9) Subject to the following provisions of this Part, consent given to works under subsection (1) of this section constitutes consent for the purposes of that subsection only.

#### Modifications etc. (not altering text)

- C1 S. 38 excluded (1.10.2007 for E.) by 1971 c. vi. s. 23(2C) (as inserted by Commons Act 2006 (c. 26), ss. 44, 56, Sch. 4 para. 4(3); S.I. 2007/2584, art. 2)
- C2 S. 38 restricted (E.) (1.10.2007) by The Works on Common Land (Exemptions) (England) Order 2007 (S.I. 2007/2587), art. 2, Sch. 1 (subject to arts. 3, 4)
- C3 S. 38 excluded by 1971 c. vi. s. 23(2C) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by Commons Act 2006 (c. 26), s. 56, Sch. 4 para. 4(3) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i) (with art. 4(5))

#### Commencement Information

- I1 S. 38 not in force at Royal Assent see s. 56(1); s. 38 in force for E. at 1.10.2007 by S.I. 2007/2584, art. 2 (with art. 3)
- I2 S. 38 in force at 1.4.2012 for W. by S.I. 2012/739, art. 2(c) (with art. 4(1)(3))

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**Consent: general**

- (1) In determining an application for consent under subsection (1) of section 38 in relation to works on land to which that section applies, the appropriate national authority shall have regard to—
  - (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - (b) the interests of the neighbourhood;
  - (c) the public interest;
  - (d) any other matter considered to be relevant.
- (2) The reference in subsection (1)(c) to the public interest includes the public interest in—
  - (a) nature conservation;
  - (b) the conservation of the landscape;
  - (c) the protection of public rights of access to any area of land; and
  - (d) the protection of archaeological remains and features of historic interest.
- (3) Consent may be given under section 38(1)—
  - (a) in relation to all or part of the proposed works;
  - (b) subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.
- (4) In considering the effect in relation to any land of proposed works under this section, the appropriate national authority may consider that effect in conjunction with the effect in relation to that land of any other works for which consent has previously been given under section 38(1) above or section 194 of the Law of Property Act 1925 (c. 20).
- (5) Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.
- (6) Regulations may specify a time limit for the making of applications under subsection (5).
- (7) Consent may be given under section 38(1) in relation to works which have been commenced or completed; and any consent so given has effect from the time of commencement of the works.

#### Modifications etc. (not altering text)

- C1 S. 39 applied by 1971 c. vi s. 23(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by Commons Act 2006 (c. 26), s. 56, Sch. 4 para. 4(3) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i) (with art. 4(5))
- C2 S. 39 applied by 1967 c. xxix, Sch. art. 12(2A) (as inserted (1.10.2007 for E., 1.4.2012 for W.) by Commons Act 2006 (c. 26), s. 56, Sch. 4 para. 2(3) (with s. 60); S.I. 2007/2584, art. 2(d)(i); S.I. 2012/739, art. 2(h)(i)
- C3 S. 39 applied (1.3.2019) by Church Property Measure 2018 (No. 8), ss. 30(3), 53(2); S.I. 2019/97, art. 2

#### Commencement Information

- I1 S. 39 not in force at Royal Assent see s. 56(1); s. 39(6) in force for certain purposes for W. at 12.8.2007 by S.I. 2007/2386, art. 2; s. 39 in force for E. at 1.10.2007 by S.I. 2007/2584, art. 2
- I2 S. 39(1)-(5) (7) in force at 1.4.2012 for W. by S.I. 2012/739, art. 2(d)
- I3 S. 39(6) in force at 1.4.2012 for W. in so far as not already in force by S.I. 2012/739, art. 3(b)