EXPLANATORY MEMORANDUM TO

THE COMMONS REGISTRATION (GENERAL) (AMENDMENT) (ENGLAND) REGULATIONS 2007

2007 No. 1032

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The regulations revoke provision for statutory searches of the commons registers held by commons registration authorities, with effect from 1 June 2007. The existing statutory searches will be replaced by modification of existing non-statutory arrangements for searches.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Commons registration authorities are responsible for maintaining registers of common land and town or village greens under the Commons Registration Act 1965 ('the 1965 Act'). The functions of registration authorities are re-enacted in part 1 of the Commons Act 2006 ('the 2006 Act', which repeals the 1965 Act), but the relevant provisions have not yet been brought into force for general purposes. Registration authorities are defined in both the 1965 and 2006 Acts as (in England) county councils, district councils for areas for which there is no county council and London Borough councils.

4.2 Purchasers of land or residential property may undertake a statutory search of the commons registers using a procedure prescribed in regulation 32 of the Commons Registration (General) Regulations 1966 (SI 1966/1471), made under authority of the 1965 Act . They must complete a form 21, prescribed in Schedule 1 to the General Regulations, as substituted by the Commons Registration (General) (Amendment) Regulations 1989 (SI 1989/2167), which must be submitted to the commons registration authority in writing with the prescribed fee. A duplicate of the form is returned by the authority, duly completed, again in writing.

4.3 The 2006 Act updates the legislation relating to common land, and repeals the 1965 Act. There is no provision in the 2006 Act for statutory searches of the register, and in due course, the existing search form 21 will cease to exist. Consequently, Defra has reached an agreement, as explained in paragraph 7, to provide for an alternative non-statutory form of search to replace the statutory procedure.

5. Territorial Extent and Application

5.1 This instrument applies to England. Responsibility for revocation in Wales rests with the National Assembly for Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Registered common land and town or village greens are defined by the commons registers held by commons registration authorities. The registers show the extent of common land and greens, and any rights of common which are exercisable over the land (such as rights to graze cattle).

7.2 The registration of land affects the use which can be made of the land. For example, registered common land is subject to restrictions on 'works' (such as fencing), and it is an offence to build on, or otherwise interfere with the enjoyment of, greens. People wishing to buy land may therefore wish to enquire (ahead of their purchase) whether the land is registered — particularly where the land is in a rural area, or known to be close to a recognised area of common land or a green.

7.3 Accordingly it is important that potential purchasers of land should be able to determine the status of the land which they propose to buy and the statutory search procedure makes that possible.

7.4 Forms CON29 parts I and II are non-statutory forms by which representatives of local authorities and conveyancers agree to the supply of information held by local authorities in England and Wales in return for a fee. The forms are routinely used for local authority searches on nearly every purchase of land or residential property. The CON29 forms are negotiated between (principally) the Local Government Association and the Law Society and are non-statutory. Central Government has no direct role in their upkeep. Because of the existence of the statutory search procedure, there is currently no provision for searching the registers of common land and town or village greens in the CON29 forms.

7.5 Home Information Packs (HIP), which will ensure that the vendors of residential property make available essential information about the property to potential purchasers, will become compulsory in England and Wales (on new property brought to the market) after 1 June 2007 (see the Home Information Pack Regulations 2007, made under authority of the Housing Act 2004). The launch of Home Information Packs will require consequential amendments to the CON29 forms.

7.6 The revision of the CON29 forms has provided an opportunity to have the searches of the registers of common land and town or village greens included in them. Accordingly, Defra has reached agreement for an additional question relating to the commons registers to be included in the existing form CON29 part II. Part II contains optional search questions, which are not answered by the local authority unless specifically selected (and where an additional fee is paid in respect of the additional questions asked). Defra expects the modified part II to be made available from 1 June,

and these regulations revoke the existing statutory search arrangements from the same date.

7.7 Proposals for changes to the search arrangements were first presented in the *Common Land Policy Statement 2002*, in which the Government committed to enabling search fees to be raised at an appropriate rate without the need for secondary legislation[1]. The abolition of the existing statutory arrangements was signalled by the omission of powers from the Commons Bill, which was commented on in the Explanatory Notes[2] and considered as part of the Regulatory Impact Assessment of the Bill. The new arrangements have been agreed and developed with the partners responsible for the management of the CON29 forms, including the Local Government Association, the Law Society, the Council of Licensed Conveyancers and the Council of Property Search Organisations, and in co-ordination with the Department for Communities and Local Government. Drafts of the new questions to be included in form CON29 part II have been discussed with members of Defra's Part 1 implementation focus group (including representatives of commons registration authorities and landowners) and the Commons and Greens Registration and Management Association, and at a workshop held at the National Seminar on Common Land in September 2006. Briefing on the changes has been placed on Defra's website[3], and Defra will work with the CON29 form partners to increase awareness of the changes in advance of the 1 June 2007.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) was prepared for the Commons Bill. Copies of the RIA were deposited in the House libraries and are available on the Defra website. The RIA noted that the change could result in "wide variance in the charges made by commons registration authorities for such searches", with search fees increasing for some users of the service, but delegation of responsibility for setting fees is in line with Government policy. The RIA also noted that the change would facilitate electronic searches (which under the present stand-alone system, must be conducted manually), and that it would promote greater awareness and use of the search, so reducing the likelihood of purchasers being unaware of the status of the land.

8.2 The fee for a search using form 21 was set in 2003 at £14, representing slightly less than the fee most frequently proposed in response to a consultation conducted by the Department for the Environment, Transport and the Regions in 2000. Under the Local Authorities (Charges for Land Searches) Regulations 1994 (SI 1994/1885), registration authorities are obliged, in relation to searches made using form CON29, to set a fee which has regard to costs. Where the costs of a search are set at a level which exceeds the present prescribed fee, Defra takes the view that the full cost should be borne by the person commissioning the search, rather than council tax payers in general.

[1] Paragraph 29. See www.defra.gov.uk/wildlife-countryside/issues/common/policy.htm.
[2] See paragraph 113.
[3] See www.defra.gov.uk/wildlife-countryside/issues/common/index.htm.

9. Contact

9.1 Hugh Craddock at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 5663 or e-mail: hugh.craddock@defra.gsi.gov.uk can answer any queries regarding the instrument. Further information about the replacement search arrangements, and the Commons Act 2006 generally, is also available on the Defra website, at: www.defra.gov.uk/wildlife-countryside/issues/common/index.htm .

26 March 2007