Appendices:

Appendix A
Members, Observers and Sub-Committees of the Forum

Maurice Mendoza	(In the Chair)
Members	
Kate Ashbrook	Open Spaces Society
Tony Barker[1]	Crown Estate Commissioners
John Clark[2]	National Association of Local Councils
Henry Cleere	Council for British Archaeology
John Ellis	English Commoner
Peter Floyd	Association of County Councils
Christopher Hall	Ramblers' Association
Edward Harris	Welsh Commoner
Owen Hughes[3]	Council for the Protection of Rural Wales
Alison Kemp	Council for the Protection of Rural England
Keith Lomas	Association of District Councils
James May	National Farmers' Union
Ian Mercer	Dartmoor National Park Officer
Margaret Parrish	Country Landowners' Association
Fiona Reynolds	Council for National Parks
Terry Robinson	Countryside Commission
Brian Sears[4]	Association of Metropolitan Authorities
John Taylor	Farmers' Union of Wales
David Wallace	British Horse Society/Byways and Bridleways Trust
Derek Wells	Nature Conservancy Council
Terry Wilkinson[5]	Sports Council
John Workman	National Trust

[1]Succeeded July 1985 by Jeff Stumbke
[2]Succeeded July 1984 by Paul Clayden
[3]Succeeded October 1985 by Simon Meade
[4]Succeeded January 1985 by Phil Swann and in May 1986 by Ian Thomas
[5]Succeeded October 1985 by Clive Whaley

Observers (Alternates or successors in parentheses)

Alan Flexman (Cyril Hart)	Department of the Environment
Andy Lebrecht (Richard Cowan)	Ministry of Agriculture, Fisheries and Food
Elizabeth Taylor (Neil Thomas, Gerry Thomas, Pauline Barrett)	Welsh Office
John Mathias	Welsh Office Agriculture Department
Sandy Morrison (Geoff Hatfield)	Forestry Commission
Len Clark	(Secretary)

Registration Sub-Committee

Gerard Ryan	(In the Chair)
Kate Ashbrook	
Paul Clayden	
Peter Floyd	
Edward Harris	
James May	
Terry Robinson	

Management Constitution Sub-Committee

Maurice Mendoza	(In the Chair)
Kate Ashbrook	
Paul Clayden	
Edward Harris	
James May	
Terry Robinson	

Appendix B
Papers submitted to the Forum

Paper Number	Source	Subject
CLF 1	Countryside Commission	A Commons Forum – Constitution
CLF 2	Chairman	Note on the present position
CLF 3	Secretary	Proposed programme of meetings
CLF 4	Association of County Councils	Commons registration – proposals for change
CLF 5	Forestry Commission	Forestry
CLF 6	Council for British Archaeology	The archaeological significance of common land
CLF 7	Council for the Protection of Rural England	Contribution of commons to rural landscape
CLF 8	J H Ellis	General comments
CLF 9	E Harris	Anomalies in the working of the Commons Registration Act 1965
CLF 10	Council for National Parks	Common land – the national park interest
CLF 11	Ramblers' Association	Access to the commons
CLF 12	Chairman	Note of a visit to Wales 7-9 March 1984
CLF 13	Countryside Commission	Research to support CLF (Letter to Chairman)
CLF 14	J H Ellis	Loss of registered common land
CLF 15	Association of County Councils (P J Floyd)	Law of Property Act 1925 sections193/194
CLF 16	Farmers' Union of Wales	Improved management of Welsh common land
CLF 17	National Farmer's Union	Agriculture and the management of commons
CLF 18	Forestry Commission	Common land – management schemes for woodland
CLF 19	Nature Conservancy Council	Notes on ecological management of common land for wildlife
CLF 20	Council for National Parks	Management of common land - landscape issues
CLF 21	Minerals Consultant (Country Landowners' Association)	Protection of surface mineral workings
CLF 22	Countryside Commission	Management of commons for recreation and access
CLF 23	Secretary	Registration Sub-Committee: Progress report
CLF 24	Secretary	Management of commons – note on present position
CLF 25	G Gadsden	Outline proposals to facilitate certain land registrations (amdt to CRA 1965)
CLF 26	IMI plc Birmingham	Letter re common land used as firing range
CLF 27	Land Use Consultants	Research into commons conservators and commoners' associations and committees
CLF 26	Secretary	Fencing on commons
CLF 29	Countryside Commission	Access to common land
CLF 30	Forestry Commission	Public access
CLF 31	British Horse Society/Byways and Bridleways Trust	Access to rural common land
CLF 32	Open Spaces Society, Ramblers' Association, Council for the Protection of Rural England, Council for the Protection of Rural Wales, Council for National Parks, Council for British Archaeology and National Association of Local Coucils	Legal access to common land
CLF 33	National Trust	NT commons – the Trust's experience
CLF 34	Secretary	Registration Sub-Committee: Progress report
CLF 35	Land Use Consultants	Commons with bodies of conservators etc but not studied
CLF 36	The Sports Council	Active recreation on commons and village greens
CLF 37	D M T Bowen	Letter re Plumstone Mountain
CLF 38	Dr J W Aitchison et al	Report on commons registers
CLF 39	Chairman	Access and management – scheme for legislation
CLF 39a	Chairman	Scheme for legislation – Mark II
CLF 40	British Horse Society/Byways and Bridleways Trust	Comments on CLF 23, 30, 32 and 33
CLF 41	Miss F Reynolds (Council for National Parks)	Management of the agricultural resource
CLF 42	Chairman	Fencing on commons
CLF 43	Game Conservancy	Submission to Forum
CLF 44	Countryside Commission	Note re policy on access
CLF 45	Nature Conservancy Council	View on public access

Paper Number	Source	Subject
CLF 46	Land Use Consultants	Study of schemes of management
CLF 47	Dr J W Aitchison	Common land – designated conservation areas
CLF 48	Members	Observations on CLF 39
CLF 49	Chairman	Interim report to Countryside Commission
CLF 50	Chairman	Note on programme
CLF 51	J Morley	Letter about grouse moor interests
CLF 52	Timbers Growers UK	Letter
CLF 53	Youth Hostels Association	Letter
CLF 54	Royal Society for Nature Conservation	Common land and conservation
CLF 55	National Farmers' Union	Compensation for loss or damage
CLF 56	E Harris and J Taylor	Fencing of, and on common land
ECLF 57/ 57a	Rural Planning Services	The future of rural common land
CLF 58	Registration Sub-Committee	Report on deficiencies in operation of the Commons Registration Act 1965
CLF 59	—	Dartmoor Commons Bill
CLF 60	Management Constitution Sub-Committee	Report to Forum
CLF 61	Miss M L Parrish	Comments on report of Registration Sub-Committee
CLF 62	Registration Sub-Committee	Supplementary report on village greens
CLF 63	National Coal Board	Submission to Forum
CLF 64	J May (National Farmer's Union)	Memorandum on animal diseases and drought
CLF 65	J Workman	Position of the National Trust
CLF 66	Association of Metropolitan Authorities	Submission on CLF 39 et seq
CLF 67	Secretary	Proposed list of contents for Forum report
CLF 68	J Taylor (Farmer's Union of Wales)	Proposed amendments to CLF 39D
CLF 69	Open Spaces Society/Ramblers' Association/ Council for the Protection of Rural England	Proposed amendments to CLF 39D
CLF 70	Secretary	Draft report
CLF 71-79		Comments on draft report

In addition 87 papers were considered by the Registration Sub-Committee and 11 by the Management Constitution Sub-Committee

Appendix C
Report of the Registration Sub-Committee to the Common Land Forum on deficiencies in the operation of the Commons Registration Act 1965

12 August 1985

To the Chairman and Members
of the Common Land Forum

Mr Chairman, Ladies and Gentlemen,

You appointed us in April 1984 to consider deficiencies in the operation of the Commons Registration Act 1965 and to report to you with our proposals for remedying them. We have completed our work in respect of matters associated with the registration of common land and now have the honour to present our report.

It seemed to us appropriate that we should also give attention to legal provisions affecting town and village greens. Earlier this year you accordingly invited us to do so and we shall consequently be pleased to submit a short supplementary report on that subject.

Gerard Ryan QC
Chairman

Kate Ashbrook
Secretary, The Open Spaces Society

Paul Clayden
Deputy Secretary
National Association of Local Councils

Peter Floyd
County Solicitor
Oxfordshire County Council

Christopher Hall
Vice Chairman
The Ramblers' Association

Edward Harris
Partner, Edward Harris and Son, Solicitors,
Swansea

James May
Deputy Director
Legal Division
The National Farmers' Union

Terry Robinson
Recreation and Access Branch
Countryside Commission

CONTENTS

INCORRECT REGISTRATION

The problem

001 It is often claimed by those concerned with the interests of commons and commoners that the provisions in the Act for registration of commons and rights of common have proved deficient since they allowed registration of many applications which ought never to have been allowed. We agree with this view.

002 Section 13(a) of the Act allows an entry to be removed from the register where land has lawfully ceased to be subject to common rights. Subject to this, however, section 10 provides that final registration of land or rights 'shall be conclusive evidence of the matters registered'. No amendment of a final entry on the register is permissible, however grotesque the error, unless it comes within the narrow confines of section 14 of the Act. (Section 14 enables the High Court to order amendment where fraud induced a person not to make, or to withdraw an objection or if the court considers that a registration authority has incorrectly amended a register under section 13).

Definition of incorrect registration

003 'Incorrect registrations' are those which in our view ought never to have appeared on the register in their final form. They fall under a number of categories,being cases in which :

1. land which was registered as common was neither (a) waste land of a manor not subject to rights of common, nor (b) land subject to rights of common which at the date of provisional registration of the common existed or could in practice have existed;

2. land was registered as common consequent upon a claim for rights of common which claim was subsequently disallowed;

3. misconceived applications were made through a misunderstanding of the nature of commons or rights of common;

4. applications were made in ignorance or in the knowledge that they were unjustified or where applicants were indifferent to the justification. Sometimes these were ostensibly made in the public interest : occasionally from less public-spirited motives;

5. administrative or clerical errors occurred; or

6. obsolete or badly drawn maps were used.

004 We have set out the categories as descriptive rather than exclusive and any particular case may fall into two or more categories. For reasons set out below we have reached the conclusion that it is inappropriate to deal with each category individually or with all comprehensively. We think that a different approach is required as is explained subsequently in paras 010-014.

The registration process

005 It should be explained how incorrect registrations have come about. The Act allowed any person to make an application to register land provisionally as 'common' (ie land subject to rights of common or manorial waste not subject to rights of common) or to claim common rights. A mere assertion of belief was sufficient to secure provisional registration and if no objection was raised that provisional registration became final through effluxion of time. The view generally held among registration authorities was that they had a purely administrative role in the registration process - provided that an application was in the proper form they were bound to register, however ill-conceived or unfounded the application.

006 The principal safeguards built into the system were the availability of the registers to public inspection and the right of any person aggrieved to object to a provisional registration and secure a hearing before a Commons Commissioner. These safeguards proved ineffective in many cases. Many landowners naturally considered that an Act relating to commons would only concern them if they had land which was or might be subject to common rights. Where a landowner was well aware that no rights had ever been exercisable over his land by other people, it is understandable that he saw no need to search the register. The problem was often magnified in the case of major estates; at the same time many individual property-owners remained ignorant of the Act, despite publicity.

007 It must be clearly understood that the Act and regulations did not provide for a landowner or occupier to be given any notice that an application for registration was being made which affected his land. Despite the requirement for public advertisement, a search of the register was the only way in which a landowner could confirm whether or not his land was affected.

008 Evidence of the wide distribution of incorrect registration is contained in the Appendix and includes examples of land which has been registered as subject to rights of common although it is, in fact, public highway or a private house and garden or a school or a wholly built up area. These instances are not intended as a comprehensive list but are merely type examples. (See App. paras A.02-A.06 inclusive.) We suspect from our investigations that more instances may come to light as time passes.

009 It seems clear, in retrospect, that the Act should have provided some means to prevent totally unjustified applications being accepted and subsequently achieving provisional registration. It should also have contained a requirement for registration authorities to inform landowners that registrations had been made affecting their land. In saying this we are mindful of the difficulties in discovering the ownership of land particularly where, for example, it lies amongst a vast tract of moorland or in a neglected corner of a village. Nevertheless, there are methods well-precedented in compulsory acquisition procedures, which could have been employed effectively to notify the vast majority of landowners.

Possible solutions

010 We have considered whether a general re-opening of the registers would achieve a more complete and accurate record than has resulted from the operation of the Act. To recommend this course of action, however, would be to suggest that the Act had broadly failed in its main purpose of securing the registration of commons and common rights. We do not believe that this is so and are satisfied that the great majority of registrations are legitimate.

The objections to a general reopening of the registers are in any case strong. There would be natural public indignation that the efforts (in time and money) over the last ten years to secure effective registers had proved abortive. In addition there are many practical difficulties: for example, many witnesses will have died over the last ten years, documentary evidence may have been lost or dispersed on the assumption that the registration process had been completed and was conclusive, and owners of common land and rights of common may have entered into commitments on the same basis.

011 Nevertheless while we consider that to embark afresh upon the registration process would require evidence of far more profound defects in the Act than we have been able to detect, our view is that limited amendment of the registers is desirable in the interests of justice. We can find no general formula to allow automatic removal of land from the registers which would hold a proper balance between public and private interests. We consider that land should be removed from the register only as a result of a judicial process in which an applicant shows that the land was at the date of provisional registration neither waste land of a manor nor subject to rights of common and that the land is either occupied with a house or other building or is, and was, used for a purpose incompatible with its existence as a common.

012 A suitable definition of incorrect registration might be as follows:

'incorrect registration' means that land, whether or not containing a building, is incorrectly registered as common land if:

1. it forms and formed at the date of provisional registration the land on which a private dwelling house stands or of a part or the whole of the garden or other land enjoyed with a private dwelling house, OR

2. it is land which is used and which was in use at the date of provisional registration for a purpose incompatible with, or to the exclusion of, the exercise of any rights of common upon it; AND

3. in either case, no rights of common were lawfully exercisable upon it at the date of provisional registration nor did it constitute manorial waste at that date.

Note: 'common land', 'rights of common' and 'provisional registration' are intended to bear the same meaning as in the Act.

013 The applicant seeking amendment of the register as mentioned in para 011 would in every case be the owner of the land and he would undertake the burden of proof in securing the amendment. We propose that a suitable judicial body to hear applications would be the Tribunal referred to in paras 114-121.

014 We have considered whether a simpler method of amending the register should be provided where the incorrect registration arose from an administrative or clerical error (perhaps in the office of the registration authority) or through the use of obsolete or badly drawn maps. An excellent example of a clerical error relates to Pentwyn Mawr common (CL74 West Glamorgan) (see App. para A.07) where an application for rights of common for 500 sheep was incorrectly transcribed by the registration authority as 50. An example of administrative error relates to Aberdovey Common (CL 97 and CL 124 Gwynedd) (see App. para A.09) where two overlapping applications for registration of the same common were each registered as if they concerned separate commons, rather than resulting in one registration with the noting of subsequent application. The 'slip rule' found in reg 36 of the Commons Registration (General) Regulations 1966 (as amended) is not wholly effective in these cases but we feel, with some regret, that to extend its scope would open the way to abuse without sufficient compensating advantage. This leads us to suggest that the Tribunal should be empowered to hear cases in which administrative or clerical errors are alleged with a view to ordering the register to be amended where it is just and equitable to do so.

Over-quantification of rights

015 So far this chapter has dealt with the unjustified registration of land as common. A further problem arises where rights were clearly and lawfully in existence at the time of registration but the extent claimed for them was far wider than the burdened land could support.

016 Although rights of common vary widely, the most usual right, and the only one which evidence shows gives rise to problems in this context, is the right to graze animals. The underlying theory is that owners of various lands (comprising the dominant tenements) enjoy a right, in common with each other and sometimes also with the owner of the soil, to pasture animals on the common land (the servient tenement) in order to make more economic and effective use of their own dominant tenements. Thus the extent of rights of common has generally, but not always, had to have regard not only to the capacity of the common land to provide pasture for the animals but also to the capacity of the commoners' own dominant tenements to maintain the animals when not out at common. This latter requirement has always been subject to regional variations, for example, where animals are over-wintered on the common the capacity of the dominant tenement is less relevant. It has also been modified by changes in agricultural practice and by the creation of rights of common independent of a dominant tenement but the capacity of the dominant tenement is nonetheless still of great significance. Equally the practical restriction of rights of common by reference to the capacity of the common land over which they are exercised must, in our view continue.

017 The shortcomings of the Act, however, prevented the capacity of a dominant tenement from being taken into account by the registration authority. The consequences include the following.

1. Many owners of rights, faced with the statutory requirement to quantify the number of animals they could put out to graze, took a highly optimistic view which neither accorded with their actual practice nor with the capacity of the common. (See App. para A.10)

2. Because of the random sequence of applications submitted to registration authorities, some commons were registered in several distinct or overlapping parts. In some cases commoners then registered the rights, which they held over the whole common, over each of the separate parts or over some only. (See App. para A.11)

3. Regulations under the Act allowed persons other than the owner of rights of common to register them: in consequence registration was sometimes duplicated. (See App. para A.12)

018 The result is that many commons would be hopelessly overstocked if commoners all chose to exercise their registered rights. Therefore we consider it essential in the interest of commons, those owning rights of common and those who may in future be granted rights of access, that there should be an opportunity to amend the rights section of the register to ensure that the extent of the rights is consonant with the capacity of the common. We deal further with the means of achieving this object and the safeguards necessary in Chapter 2 paras 023, 024 and 026 et seq.

019 A further problem arises when an owner of land subject to common rights has not taken advantage of the right to register his ownership but later finds some third party has unjustifiably secured registration as owner. Although registration does not of itself give a title to the land, it will certainly mislead those who search the register and seek to negotiate with the 'owner'. It is principally a matter of private dispute however and does not appear to be an appropriate subject for determination under commons legislation. It is, however, desirable for a Court or other judicial body determining ownership to have an express power to order rectification of the register.

MULTIPLE RIGHTS REGISTRATIONS

The weaknesses in the registration process

020 One of the basic weaknesses of the Act was that it permitted an application for registration of rights of common to be made upon mere assertion and without proof. If no objection was made the application became finally registered without further action on the applicant's part. No evidence was required; nor could regard be had by the commons registration authority to the total number of rights registered over a common vis-a-vis the capacity of the common, nor to the ability of a dominant tenement to benefit from the right of common claimed. An application was only the subject of objection on the initiative of another party. It might be observed that objection was made less frequently than occasion might be thought to have demanded.

021 Circumstantial evidence suggests that these loosely-drawn provisions enabled many rights of common to be registered which would never have succeeded had evidence been required in support of an application sufficient to justify registration. However, we have already indicated our view that it would be wrong to attempt any general reopening of the registration process. In reaching this conclusion we have taken into account not only the passage of time since the application procedure was completed but also the prospect that an amendment of the register might deprive a person of a valuable right which he had in fact been exercising for some years.

Exceptions to the general rule that registers should not be reopened

022 To the general rule that the registers should not be reopened we would however propose three exceptions. They arise in the following circumstances.

023 Case 1, double registration of rights

There are cases where rights have been 'double registered' ie one and the same right of common has been the subject of two applications and two registrations. This error could have arisen in a number of ways: for example both the owner and the tenant of a dominant tenement may have registered the right, or one or more commoners may have registered the rights of others. In other cases confusion over the boundaries of a common may have led to separate applications being granted over what was essentially the same piece of land and confusion over whether a particular area was one or several separate commons has sometimes led to the same result. (See App. para A.13)

024 Case 2, registrations derived from inflated claims

We have explained in Chapter 1, paragraphs 015-018 how inflated claims came to be registered and the problems created. (See App. para A.14)

025 Case 3, tenants' rights over registered land

A tenant enjoying rights similar to rights of common over other land belonging to his landlord, cannot lawfully register those rights as

rights of common, since to constitute rights of common the dominant and servient tenements must be in different ownership. We are, however, aware of a number of instances where these tenants' rights have been mistakenly registered as rights of common. It also appears that the practice, both of those seeking registration and of registration authorities, has been inconsistent. (See App. para A.15)

Proposed solution

026 In respect of the first class of these exceptions, outlined in para 023 above, we find no difficulty in reaching the conclusion that rectification of the register is desirable. Indeed, had a more extensive 'slip rule' been available and employed by the commons registration authorities, much of the problem which now exists could have been avoided. At the present day, however, as rectification of the register would necessitate striking off rights registered under the Act as 'final and conclusive', we do not consider that it would be proper to leave the responsibility with a registration authority, whose duties are primarily administrative. We recommend, therefore, that either a registration authority or an owner of the soil in the common or an owner of rights of common should be entitled to apply to the Tribunal for an order amending the register. Applications should be made through the registration authority who would have power to support or oppose but no discretion as to whether or not the application went forward.

027 The terms on which amendment of a register could be allowed should be strictly defined and should only extend to cases where:

1. the same rights of common attaching to a particular dominant tenement are registered more than once, consequent on two or more separate applications covering substantially the same area of common land, or where

2. individual parts of a common have been separately registered and rights of common properly exercisable over the entire common have been registered in toto against some or all of the parts separately registered in the land section.

028 The second class of exception to the general rule that there should be no rectification of the register is concerned with excessive quantification of rights of common (see para 024). While we recognise that, in this instance, rectification would mean the loss of rights which may have been actually exercised, we remain strongly of the view that the interests of the common, its owner, the owners of rights of common and the public require that the extent of the rights exercisable over a common should be consonant with the capacity of the common to support them. If this requires some loss by individuals of existing rights which they have, in theory, enjoyed then we consider this loss to be one which must be accepted. The enjoyment of a right to overgraze is in most cases unlikely to have preceded registration under the Act.

029 In respect of the third class of exception (see para 025) our interpretation of the Act suggests that it was clearly intended to prevent registration of tenants' rights akin to rights of common. In the interests of accuracy and consistency of practice any such rights mistakenly registered should be deleted from the register. However the existence of these tenants' rights is frequent, their ineligibility for registration is primarily based on what the layman might think to be a fine legal distinction and when tenanted farms are sold, the purchasers frequently expect and are granted legal rights of common. (See App. para A.15)

030 For these reasons, while we accept that tenants' rights should not be included among rights of common on the register, we feel that it should be possible for a note of their existence to be included on the register, in the same manner in which, for example, subsequent applications for registration of the same common were noted in accordance with section 4(4) of the Act. We also consider that tenants' rights should be taken into account on apportionment (para 063-066).

The amendment of the registers

031 The degree to which an accurate assessment can now be made of the true extent of rights of common existing some 10 - 15 years ago must vary with the individual common. We bear in mind that the Commons Commissioners are still adjudicating on such rights. Where it is impossible to make an accurate assessment but it can be shown that the common cannot support all the rights registered, then there needs to be a proportionate reduction of each right with a safety net to prevent rights of modest extent being effectively abolished.

032 Those entitled to seek amendment in relation to the matters set out in paras 026 and 028 should be those having a direct interest in the good management of the common, ie the owner of the soil of the common, an individual owner of rights of common or a properly constituted management committee. Those entitled to ask for a note to be entered under para 030 should be those who would be entitled to apply for registration of the right if the right were a right of common.

033 We consider that amendment of the registers, as discussed in para 026, 028 and 029 should also be entrusted to the Tribunal (discussed in paras 114-121). The reasons given in para 026 for preferring the Tribunal to the registration authority as the determining body, seem to us to apply with even more force in this case.

DE-REGISTRATION AND SECTION 13 OF THE ACT

De-registration of common land

034 The Act defines common land as either land subject to rights of common or waste land of a manor not subject to rights of common.

035 Land which is subject to rights of common is protected both by statute and under the common law since both the owner of the soil of the common and the owner of rights of common have legal interests in the common which cannot lawfully be prejudiced by unilateral action. Land which was subject to rights of common on 1 January 1926 is also specifically protected from encroachment by the Law of Property Act 1925, section 194. Waste land of a manor not subject to rights of common enjoys less protection, there being by definition no commoners.

036 Prior to the passing of the Act an owner of the soil of a common who bought out all the rights of common could claim that as all the legal interests in the common land were now in his ownership, the common had thereby ceased to exist and he held an unencumbered freehold estate. This was, in practice, the only way open to a private owner to 'de-common' land.

De-registration and section 13 of the Act

037 Section 13 of the Act provides for amendment of the registers if registered land 'ceases to be common land' and where registered rights of common 'are ..... extinguished or released.' The generally accepted argument, after the passing of the Act, was that, in the absence of positive evidence that land was waste land of a manor not subject to common rights, an owner who had in his ownership both the soil of the common and all the common rights, could apply to the registration authority to remove the registration both of the common land and the rights of common.

The Corpus Christi decision

038 In 1982, however, the Court of Appeal decided the case of Corpus Christi College -v- Gloucestershire County Council. In essence the court decided that, because section 10 of the Act makes final registration of land as a common conclusive, then failure to secure final registration of rights of common over it was irrelevant. The decision of the Court of Appeal in this case is discussed and commented on in the Appendix. (See App. para A.16)

039 In the Corpus Christi case rights of common were provisionally registered over a tract of land; by virtue of that provisional registration and for no other reason the land was registered as common land under the provisions of section 4(2) of the Act (which provided for the automatic registration as common, of land over which rights of common were provisionally registered but in respect of which no application had been made for registration of the land as common).

040 In that case although the rights of common were provisionally registered they were never made final; in the cases we are discussing

in these paragraphs both the common and rights of common have been finally registered but the latter subsequently extinguished. Nonetheless we feel that the principle underlying the decision in Corpus Christi would be extended by the Courts to cover these cases. However the point is not free from doubt. (See App. para A.16)

The need for legislation

041 If our understanding of the law is correct then there would be little risk of de-registration of commons as a result of agreement between the owner of the soil and the owner(s) of the rights of common. It is not however certain that this view would be taken by the courts. In any case if the view is taken that the retention of common land is in the public interest - which is the view we hold - we would regard it as unsatisfactory for the decision to depend upon judicial interpretation of the Act because that interpretation would necessarily be constrained by the subject matter. Should the courts ultimately decide that de-registration under section 13 of the Act was permissible in a case where the relevant interests had merged at common law, irrespective of the status of the land as manorial waste, or even upon proof that the land was not waste of a manor, a major threat to the continued existence of many commons would arise.

042 In our view legislation is highly desirable and urgently necessary both to clarify the law and to afford protection to commons against this form of potential destruction. The latter of these two aims can be achieved in a relatively simple fashion without losing the protection of common land status where compulsory purchase powers are exercised.

Statutory common land

043 We consider that a prohibition against the acquisition by one person of all interests in a common would be unwarranted as well as being unprecedented in property law. The purpose can, in any case, be achieved in a simpler way. We propose that from an appointed day land ceasing to be subject to rights of common by reason of unity of seisin shall become 'statutory common land' that is, it will retain all the other attributes of common land notwithstanding the absence of rights over it. It would be equivalent to manorial waste though not held under a manorial title.

Protection of waste land of a manor

044 Common land is defined in the Act as meaning not only land subject to rights of common but also 'waste land of a manor not subject to rights of common'. 'Waste land of a manor' is a long standing term of art but for our purposes can be defined as land which is unoccupied, uncultivated, unfenced and in the ownership of a lord of a manor.

045 Where this definition no longer applies, and this can be easily achieved by the lord of the manor divesting himself of ownership, land of this kind automatically ceases to be common and loses the protection of the Act.

046 We do not believe Parliament intended to allow de-registration in this way. We have already recommended in para 043 that in some circumstances common land should receive protection as 'statutory common land'. We now propose that, in a similar fashion, upon registered common land ceasing to be waste land of a manor, it should automatically assume the status of statutory common land.

Protection of wrongfully registered land

047 In paras 041-042 we stated that in our view legislation was highly desirable to clarify the law following the case of Corpus Christi College -v- Gloucestershire County Council and in the Appendix we have discussed the implications of that case. (See App. para A.16) Without seeking to decry the court's interpretation of the Act, we do not believe that it was the intention of Parliament that an unsuccessful attempt to claim rights of common should nevertheless in some but not in all cases, lead to the creation of common land which could not be proved to have existed previously. However the Corpus Christi case is just one example of the results of incorrect registration, a subject discussed at some length in Chapter 1 where we considered that the right to reopen the registers should be strictly limited. Despite the injustices which might arise as a result of the rigid application of the principle of the Corpus Christi decision, we consider that the public interest requires that the principles enunciated in paras 010-013 should remain applicable in this class of case.

SEVERANCE

048 In this chapter we consider rights in gross, that is rights of common owned independently of any land. We have already referred in para 016 to the underlying theory that rights of common exist over the servient tenement (the common) for the benefit of the dominant tenement. Pure theory might thus have precluded the existence of rights in gross (ie rights of common owned independently of any land) but historically the matter is more complex and such rights can be of great antiquity. We see no prospect of their abolition.

The dangers of severance

049 That is not to say, however, that we would accept the perpetuation of the ability to create rights in gross or to sever existing rights from the dominant tenement to which they presently belong. There is always some danger of abuse or neglect of any piece of land which is subject to rights exercisable by a number of individuals. Where the owners of rights need have no personal interest in the area in which the common land lies, nor concern with the common itself save as a source of profit, the dangers of neglect and abuse are intensified. Further, if a common is seen by owners of rights purely as a source of profit or convenience compensatable in financial terms, this diminishes resistance to abolition of the rights of common and to the loss of the common land itself. (See App. para A.18)

050 The problem is compounded in some cases by the excessively high quantification of rights of common finally registered. While the owners of these rights might not wish, or be in a position, to exercise the rights to the full, a general extension of the practice of severance of rights could lead to gross overstocking of a common. The Dartmoor Commons Bill recognises these dangers in proposing to prohibit severance of rights of common from the land with which they are held (cl 8). (See App. para A.18)

Prohibition of severance and leasing of rights

051 In order to avoid the problems identified above, we feel that in theory and practice, it is desirable to prohibit the severance of existing rights from the holdings to which they attach (ie are appurtenant) and the consequent creation of rights in gross.

052 The formal leasing and informal lending of rights of common by commoners also occur in current practice either with or to the exclusion of the dominant tenement. Where either the lease or loan is of rights only without the land to which the rights are attached the practice is open to the same criticism, though to a lesser degree because of its temporary nature, as the creation of rights in gross on a sale.

053 We recognise, however, that there are circumstances in which leasing is acceptable to preserve the condition of the common. We consider, therefore, that a complete prohibition of leasing or lending rights separate from the dominant tenement would be undesirable. Nonetheless to guard against the dangers discussed above we feel that such a lease

or loan should only be permitted to another owner of rights in the same common and additionally only in accordance with the terms of a management scheme. Where no management scheme exists or where a scheme unreasonably prevents leasing or lending, we consider that it would be right to provide for an application for consent being made to the Tribunal. Should consent be granted it would be subject to any terms which the Tribunal might impose. This proposal is not, however, intended to restrict the power of an owner of the soil of a common to make use of the residual grazing.

APPORTIONMENT

054 The principles on which rights of common should be apportioned has proved to be one of the more intractable problems we have considered. Our discussions indicated that problems over grazing rights differed both in nature and possible solution from problems of other and less usual rights of common. In this chapter, therefore, we distinguish and comment separately on the two categories.

Definition of apportionment

055 In this part of the report the term 'apportionment' is used, when referring to rights of common, in the sense of a division of the benefits of the right when a dominant tenement is split into parts in separate ownership.

Failure to identify the dominant tenement

056 However, before proceeding to outline our proposals for controlling the apportionment of rights of common, we must mention a particular problem brought to our notice. In several instances rights of common have become finally registered although the dominant tenement has not been adequately or correctly identified on the register. For example, in one case two separate dominant tenements have been described merely as 'bungalow and land'; in another the OS numbers purporting to describe the dominant tenement do not exist; in a third the references are to parts of OS numbers without further definition; and in a fourth case the plans of two separate dominant tenements have been found to overlap. (See App. para A.17)

057 The Act and Regulations (section 19(2) and regulations) provide for a proper description of the dominant tenement to be given and failure to secure this is a defect in the administration of the Act for which ultimately the commons registration authority concerned must bear responsibility.

058 Our proposals discussed below (para 061-082) rest on the assumption that the dominant tenement can be accurately identified. While we have been unable to assess how widespread was the failure to identify the dominant tenement in a satisfactory way, we consider that any failure must be remedied in order to make our proposals effective.

059 We suggest, therefore, that insofar as commons registration authorities do not already have the responsibility of identifying these cases, responsibility should be laid specifically upon them together with power to amend the register accordingly.

060 We consider that such amendments to the register are administrative rather than quasi-judicial and should therefore be dealt with by the commons registration authorities. In taking this view we have concluded that a more accurate definition of the extent of the dominant tenement is of concern only to the owner of the tenement and the commons registration authority and is unlikely to affect the interests of third parties.

No distinction between agricultural and non-agricultural dominant tenements

061 Rights of common of pasture differ from the other rights of common

discussed subsequently in paras 076-082 since they frequently form an integral part of the working of an agricultural unit, can be of very substantial economic benefit and must, for the purpose of registration, be quantified (see section 15 of the Act).

062 There are however many rights of common of pasture which do not fall within the first two of these criteria: nevertheless we found it impossible to suggest any rational sub-division and we feel that our conclusions have equal merit whether the dominant tenement is a large farm with rights to pasture many hundreds of sheep or a private house putting out a single pony on the common.

Division of agricultural land remaining in agricultural use

063 It is appropriate first to comment on the situation which arises when, although the dominant tenement is divided into parts, these parts remain in use for agricultural purposes. We believe that in discussing apportionment in these circumstances we should seek as the primary object the maintenance of the link between the right of common and the ability of the dominant tenement to benefit from the exercise of that right. This objective is in line with the theory of the origins of the right of common discussed in para 016 and will help to support the principle that commoners should have a direct interest in the preservation of the common and its environment as discussed in para 049.

064 We suggest that in the circumstances mentioned in para 063 the right of an owner, on division and sale of his dominant tenement, to retain or sell off the rights of common, should be restricted. In future rights should be apportioned to the holdings into which the dominant tenement is divided according to what would be the reasonable agricultural requirement of those holdings, judged objectively. In some cases the appropriate method of apportionment would be by reference to the extent of the registered parcels of the dominant tenement which is being divided.

065 We recognise that this would be a restriction on the right of free alienation of property which is generally enjoyed but we believe that it is in the private as well as the public interest that commons should not only be properly managed but be capable of survival as useful parts of individual farms whenever possible. We see our proposal as an important element in securing this objective.

066 Where the right is a right of common of pasture but the dominant tenement is not an agricultural unit (eg a private dwelling house having the right to pasture one or more horses) we consider that the principles set out above in paras 063-065 nonetheless apply. The application of these principles must, however, vary slightly. Where the right of pasture is for one animal only, then on a division of the dominant tenement into parts the right of common should be assigned to one specific part. Where the right is to pasture more than one animal a division of the right of common may be allowed. In all cases, however, assignment or division of a right of common must follow the guiding principle that the new dominant tenement is capable of benefiting from the exercise of the right. (See App. para A.18)

The role of the Tribunal

067 To require that the apportionment of rights of common between the parts of a divided dominant tenement should, in each case, be carried out by some impartial party would be ideal, but in practice we think it would prove wasteful of time and unnecessarily costly. Nevertheless there should be some oversight of transactions and means of enforcement of the principle. We suggest, therefore, that in every sale of part of the dominant tenement or of the whole of the dominant tenement in parts, the vendor and purchaser jointly should submit to the Tribunal their proposals for the apportionment of the rights of common. If the application shows the proposal to be in accordance with the principle set out in paras 064 and 066, approval would be formal and be required to be given or be deemed to be given within a limited period. Any departure from the principle would require justification and specific approval but would still need to be dealt with promptly.

068 We consider that the Tribunal should be empowered only to accept or reject a proposed apportionment and not to impose a solution of its own motion. The Tribunal should, where possible, give its consent without a hearing only arranging a hearing in cases where it is thought essential. Where, but only where, the Tribunal holds a hearing would a management committee or any owner of a right of common be entitled to be heard. As will be seen from para 121, in contentious proceedings, the Tribunal should be empowered to award costs, not merely where a party has acted 'frivolously, vexatiously or oppressively' but also where it is appropriate to do so having regard to all the circumstances. We would not expect this wider power to be exercised as a matter of course but consider that it should be available to meet the exceptional case.

069 We suggest that to secure compliance with the requirement for an independent approval for the apportionment, rights of common should not be exercisable by either vendor or purchaser from the date of a purported transfer until the apportionment had been approved by the Tribunal and either the time for objection had expired or any objections had been settled.

070 Where a vendor of part of a dominant tenement fails to disclose the existence of rights of common then, in addition to the sanction mentioned in para 069, it should be the duty of a management committee and the right of any commoner with rights on the common to propose a suitable apportionment to the Tribunal.

Development for non-agricultural purposes

071 Where the dominant tenement is developed, either in whole or in part, for non-agricultural purposes, a different situation arises. Any part of the dominant tenement retained for agriculture will remain subject to the controls discussed in paras 063-066 above. Where, however, land comprising part of the dominant tenement is developed for purposes which make the continued exercise of rights of common attaching to the property inappropriate, we consider that no justification for these rights remains and they should be abolished and the register amended accordingly. (See App. para A.18)

Compliance with restrictions on apportionment

072 To secure compliance with the proposal in para 071 we make the following suggestions.

1. At present, under section 27 of the Town and Country Planning Act 1971, every applicant for planning permission, in respect of a piece of land of which he is not the owner, must certify to the local planning authority that he has informed the owner of his application. We suggest that the scope of that certificate should be enlarged so as to require every applicant, whether or not he is the owner of the land, to certify whether or not the land the subject of the planning application has rights of common attached to it.

2. If rights of common do exist appurtenant to the land, the local planning authority should be required to send a copy of the application and any subsequent permission to the commons registration authority. This would require an amendment of the Town and Country Planning (General Development) Order 1977.

3. If the commons registration authority were satisfied that the proposed development of the dominant tenement was for an 'inappropriate purpose', it would issue a notice of intention to remove the rights from the register to the applicant, to the owner (if not the applicant) and to all others having rights over the common.

4. Subject to a right of appeal to the Tribunal, the register would be amended upon the commencement of the development.

073 We suggest that 'inappropriate purpose' should ordinarily mean 'development of the dominant tenement for purposes inconsistent with the continued exercise of rights of common'. Special provision will need to be made for development where restoration of the land to agricultural purposes is a planning requirement, such as is required in some mineral working permissions. In these circumstances the relevant rights of common should be placed in abeyance between the date of commencement of the development and that of restoration of the land to agricultural use in accordance with the planning permission; the latter date to be certified by the local planning authority.

074 We also suggest that the rights of common should be extinguished automatically upon the commencement of development of the dominant tenement for an 'inappropriate purpose' whether or not that development was authorised under the Town and Country Planning Act and whether or not the rights of common were disclosed. In addition we recommend that it should be a criminal offence knowingly to give an incorrect certificate in the circumstances referred to in para 072.1.

Statutory common land

075 We should make it clear that if the development of a dominant tenement for non-agricultural purposes results in the disappearance of all common rights this should bring about no change in the status of the servient tenement as common land. If necessary such common land must be regarded as 'statutory common land', a concept referred to above in our comments on section 13 of the Act. (para 043).

Rights other than grazing

076 Rights of common other than grazing are less frequently met with, are generally of less commercial importance and are usually maintained in a closer relationship with the private needs of the dominant tenement. Examples include; estovers (the right to collect wood for building, estate maintenance and fuel), pannage (the right for pigs to feed on beechmast and acorns), piscary (the right to take fish), turbary (the right to cut turf) and the right to dig stone. These are the principal examples but do not constitute an exhaustive list.

077 To quantify these in any meaningful way is difficult if not impossible. The dangers of such rights existing in gross are obvious, including in particular the burdening of the servient tenement (the common land) with excessive demands arising from present-day circumstances. We have already proposed that the creation of rights in gross by severance of existing rights from the dominant tenement should be prevented. (para 051).

078 A vendor's ability to apportion these rights of common among the divided parts of a dominant tenement is in law open to doubt, as is the continued existence of such rights upon any change in the nature or division of the dominant tenement. For example, it seems arguable that the demolition of a dwelling house and its re-building on the same scale but on a different part of the dominant tenement would be sufficient to destroy a right of common of estovers.

079 The subject is discussed in a number of old and seemingly conflicting cases. We feel it regrettable that the law should remain in a state of doubt, if only because it gives opportunity to a determined landowner to take advantage of the uncertainty to the detriment of the common.

080 A just and equitable principle appears to us to be that while no increased burden, actual or potential, should be put upon the common land by reason of any dealings in the dominant tenement, existing rights should where practicable be maintained and confirmed.

081 The application of this principle would make it impossible for rights of common of the kind under consideration to be subject to proliferation upon division of the dominant tenement even where the rights are capable of quantification and meaningful apportionment. We regard this as the right and proper consequence.

082 We recommend therefore, that in addition to the general prohibition against the creation of rights in gross by severance (para 051 above), there should also be an absolute prohibition against the apportionment of any right of common other than a right of grazing. Where the dominant tenement is split into two or more plots in separate ownerships, the right of common should be attached to a specific plot which will then become the new dominant tenement, and the extent of the right will be assessed by reference to the circumstances at the date of division of the original dominant tenement. Failure to attach the right of common to a particular plot should result in the right ceasing to be exercisable but without prejudicing the status of the common (see para 075).

REGISTRATION OF NEW RIGHTS OF COMMON

083 Section 4 of the Act provides that no application for registration of rights of common 'shall be entertained' after the specified date (now long past). Section 1(2) of the Act provides that rights of common not registered by the date determined by the Minister (also long past) shall cease to be exercisable.

084 Specific provision is made in section 13(b) of the Act for the registration of common land newly created after the specified dates and for the registration of rights of common over it.

085 It seems to us that Parliament could not have intended to bring about a situation in which new rights of common could be registered over a newly created common but not over an existing registered common. We recommend that legislation be enacted to allow for the registration of newly created rights of common whether the registration of the common land has been made in the past or is being sought concurrently with the registration of common rights over it. An example would occur where, on the sale of a farm, the sitting tenant who acquires it is granted rights over a common inplace of the contractual right to graze which he formerly enjoyed as tenant.

086 During the initial registration process the duty of settling disputes was placed upon a Commons Commissioner by section 5 of the Act. For subsequent registrations the duty was placed upon commons registration authorities by the Commons Registration (New Land) Regulations 1969. Not only is this a judicial function for which commons registration authorities are ill-suited but an authority may itself, in another capacity, be an interested party in an application.

087 The administrative responsibility for receiving and processing applications for registration under the 1969 Regulations or under any regulations giving effect to para 085, should in our view remain with commons registration authorities even though an authority may itself have an interest in the matter. A time limit should be imposed to prevent undue delay in dealing with applications.

088 It seems proper to us, however, that all disputes concerning registration, arising under the 1969 Regulations or under our proposals in para 085 should, in a similar fashion to disputes arising from the initial registration process, be determined by a Commons Commissioner. At the time when the only function of the Commissioners is the resolution of such disputes, we suggest it should be transferred to the Tribunal.

THE FUTURE OF THE REGISTERS

Obsolescence of the Registers

089 The effect of the Act was to secure compulsory registration of common land and compulsory registration of common rights and provide for voluntary registration of the ownership of common land. The register was created by reference to a fixed period of time and is becoming increasingly obsolescent.

090 In this respect no problem arises in connection with the registration of common land itself. The limited ways in which land can cease to be common require the active participation of the landowner. It is always likely to be to his advantage to have the entry removed and section 13 of the Act provides adequate means for doing this. This section also provides for the registration of newly created common land.

091 A different situation, however, arises in relation to rights of common. The Act required rights of common to be registered with the sanction that if not registered they would cease to be exercisable. Once they had been registered, a succeeding owner could not have his name registered in the rights section. This is so whether the rights devolve by inheritance or pass through purchase. (See App. para A.19)

092 In respect of the registration of the ownership of common land, the position is even more unsatisfactory. Many owners failed to register ownership in the anticipation of a successful objection to the land being registered as common. Many disputed cases still remain outstanding. Further, there is no machinery for amending the register on change of ownership, let alone any question of obligation. On a sale, the original owner's name is removed (s12 (b) of the Act) but in any other devolution of title no amendment can be made.

The effect of the Land Registration Acts

093 Furthermore section 12 of the Act requires a purchaser of common land registered under that Act to register his ownership at the Land Registry. The Act provides that all information in the registers is open to public inspection while, by contrast, the policy of the Land Registration Acts has been that information about the ownership of interests in land is confidential to the owner (and others with a legal interest in the title registered). Thus, public knowledge of the ownership of common land would progressively diminish as more and more common land is sold.

The need for the registers to be a living record

094 In their report (cmd 462) which gave rise to the Act, the Royal Commission on Common Land worked on the assumption:

> 'that as a general rule, if anyone is to be persuaded to embark on a scheme for managing and improving common land he will need to know with greater certainty than hitherto who are the other holders of rights in the land, the nature of their rights and over exactly what land they are exercisable. The knowledge would also be of advantage to all interests whether they are the public, the commoners, the owners of the soil or any other bodies who may wish to negotiate for the use or acquisition of the land or part of it either temporarily or permanently ...All this points to the necessity of a public record of the land and its boundaries, of the ownership of the soil and of the common rights.' (Para 258)

095 We consider that these needs, as foreseen by the Royal Commission are, if anything, more urgent now than when originally identified. The benefits of the original registration, limited as they were, are rapidly being lost through passage of time. If a further registration exercise is to be avoided, the principle should be clearly adopted in accordance with the views of the Royal Commission, that the registers must constitute a living record of common land, ownership of the soil and of the common rights.

096 To secure this object will require:

1. compulsory registration of the ownership and alteration in the ownership of common land;

2. compulsory registration of the creation of interests in common land; and

3. compulsory registration of the transfer of ownership, apportionment, extinguishment or release in whole or in part of rights of common.

The principle must be maintained that the whole of this information should be open to public inspection. Suitable sanctions may have to be imposed to secure compliance with the registration requirements. We consider that failure to register should render the purported transaction ineffective until registration had taken place.

Relationship of the Act to the Land Registration Acts

097 Discussions have taken place with the Land Registry from which it appears that the Chief Land Registrar has sympathy with the arguments in favour of making available to the public, information about the ownership of common land and sees no practical difficulties arising. Subordinate legislation would be required to authorise searching at the Land Registry for this purpose and the Chief Land Registrar has indicated to us that he would be prepared, in principle, to support the promotion of such legislation.

098 We propose that upon a commons registration authority certifying to the Land Registry that a piece of land is, or is contained within, a registered common, the Land Registry would disclose to any person making application, the name and address of the owner or owners of that land. Certification would normally be by way of a certificate

of search in the lands section of the commons register or if the commons registration authority was itself seeking information, by letter.

099 This proposal would enable any person, by means of a simple process at negligible cost, to ascertain the ownership of common land the title to which is registered under the Land Registration Acts.

The problem of common land with unregistered title

100 These proposals would create at little expense the living register of the ownership of common land but only of that common land the title to which is already registered under the Land Registration Acts or which becomes so registrable.

101 In respect of land which is not so registered, the choice appears to lie between an extension of the present system under the Act of voluntary registration of ownership, the immediate extension to all common land of compulsory registration under the Land Registration Acts or an acceptance of the present unsatisfactory situation in the knowledge that as time passes more and more common land will obtain registered title under existing legislation.

102 We do not recommend making compulsory the present voluntary system of registration of ownership. It is not a purely administrative process nor are commons registration authorities equipped with the staff or expertise to examine titles on the scale required.

103 Our discussions with the Land Registry have led us to believe that to require the immediate compulsory registration under the Land Registration Acts, of the title to every common registered under the Act, would be a very substantial undertaking, even if spread over a timescale of years. It would also run counter to a principle upon which the extension of compulsory registration of title has taken place, ie that registration only becomes compulsory upon the happening of some event affecting the title.

104 While immediate compulsory registration would be an ideal solution, we feel that the problems involved, including possible dislocation of the Land Registry's current programme for extension of registration, are too great to enable us to press strongly for this solution to be adopted immediately. We recommend therefore reliance, for the moment, upon the gradual extension of registration of title to common land when ownership changes on sale.

Responsibility for maintenance of the registers

105 Our proposals in paras 097-104 relate to the register of ownership of common land. In paras 095-096 we also propose compulsory registers of interests in common land and of the transfer of and other dealings in common rights. The maintenance of these registers is an administrative task for which the existing commons registration authorities are well equipped and we recommend that this responsibility be placed upon them. These registers can, however,

only be created and maintained from information supplied by private individuals. The earlier registration process showed how false and misleading information can be innocently supplied and we are firmly of the view that every application for inclusion in either of these registers should be supported by evidence. In normal cases the evidence would be the document effecting the transaction which it is sought to register.

Compulsory acquisition of common land

106 Where common land is acquired by means of a compulsory purchase order, the land ceases to be common. In most such cases other land is added to the common by way of compensation.

107 Errors have arisen in the lands section of commons registers where acquiring authorities have not informed commons registration authorities of these changes. We recommend that legislation should place a specific responsibility on those exercising compulsory purchase powers to inform commons registration authorities, at the time of confirmation of a compulsory purchase order (or at the date of making an order where no confirmation is required) of every area of common so acquired and of every piece of land provided by way of compensation.

STINTED PASTURE

108 By stinted pasture we mean a piece of land in the equitable ownership of a number of persons each of whom owns an undivided share or shares in common with his fellow owners. The exercise of grazing rights over the land flows from ownership, or vice versa, and is measured according to the proportionate ownership of each individual owner. Sometimes this proportion relates to the land, sometimes to the grazing. There is thus an essential legal distinction between stinted pastures and common land; in the latter case rights of common are exercised by virtue of a legal right over the land and not by virtue of ownership.

109 In various parts of the country there occur forms of ownership and use of land by more than one person which possess some of the attributes defined above and which locally are known as stints or stinted pastures. Insofar as they fall neither within the definition in para 108 nor within the statutory definition of common land, we do not seek to deal with them in this report.

110 The definition of rights of common in section 22 of the Act does not refer to stinted pastures by name and although the definition is inclusive rather than exclusive, the differing nature of the legal interests casts further doubt upon whether the Act covers stinted pastures or not.

111 The relatively scanty evidence which we have been able to obtain suggests a wide variation in efforts to register and in the nature of the rights registered.

112 Although the concept of stinted pastures is of great antiquity, most owe their creation to awards under the Inclosure Act 1845 or similar local Inclosure Acts. No awards under Inclosure Acts have been made for very many years so that stinted pastures owing their existence to statute will have been enclosed and hence not subject to public access for a lengthy period.

113 Given the distinct legal nature of stinted pastures, their enclosure and the lack of any public access we have concluded that the inclusion of stinted pastures within the provisions of the Act, is inappropriate and we recommend amendment of section 22 of the Act to secure their removal from the registers.

A TRIBUNAL FOR COMMONS

Constitution and jurisdiction

114 In several places in this report we have proposed areas of new jurisdiction which should be exercised over commons and rights of common. We now consider by whom this jurisdiction should be exercised.

115 Initially we envisaged an entirely new commons tribunal independent of all other judicial bodies, and which would encompass the whole range of matters relating to commons, whether of a judicial or quasi-judicial nature and include the functions of the present Commons Commissioners.

116 Further consideration, however, has convinced us that the creation of such a tribunal, though perhaps an ideal solution, could be criticised as being too elaborate a structure for the amount of business likely to arise. We therefore propose first that the existing jurisdiction of the Commons Commissioners remains untouched.

117 The problems to which we draw attention in our report and the solutions we propose, give rise to jurisdiction in the following areas:

1. Amendment of the register on application by the landowner on grounds of incorrect registration.	Chapter 1 para 013
2. Amendment of the register on grounds of administrative or clerical error.	Chapter 1 para 014
3. Amendment of the register to remove double registrations of rights of common.	Chapter 2 para 023 & 033
4. Amendment of the register to secure a balance between the registered rights of common and the capacity of a common.	Chapter 2 para 024 & 033
5. Approval of the leasing or lending of rights of common separately from the dominant tenement.	Chapter 4 para 053
6. Proposals for apportionment of rights of common upon a division of a dominant tenement.	Chapter 5 paras 067-070
7. Appeal against a decision of a commons registration authority that development was for an 'inappropriate purpose'.	Chapter 5 para 072

The Agricultural Land Tribunal

118 These powers include not only judicial matters but also the exercise of discretion based in part on agricultural experience and local knowledge and in our view, jurisdiction could best be exercised by the Agricultural Land Tribunal.

119 The advantages of this Tribunal are numerous. It is an existing judicial body having an established code of practice and its own administrative machinery; it is regionally rather than nationally based; the tribunal normally consists of a legally qualified chairman and two members having agricultural experience; it is accustomed to parties appearing before it without representation and it conducts its proceedings accordingly.

120 While it is difficult to make an accurate assessment of the amount of business which will arise from our proposals, we do not believe that its volume would place a substantial burden upon the Tribunal.

121 The normal rule of the Agricultural Land Tribunal is that each party meets its own costs. We would expect this practice to be applied also to its commons jurisdiction although the Tribunal should be able to exercise a reserve power to award costs incurred by one party to the proceedings against another party as envisaged in para 068.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

122 In this chapter we seek to summarise the results of our investigations and present our conclusions designed to improve the operation of the Act.

Chapter 1. Incorrect registration.

123 Weakness in the drafting of the Act and regulations allowed the registration as common of too many pieces of land which either were not or in some cases could not have fallen within the statutory definition.

124 We recommend that

1. Provision should be made to enable the removal from the registers, of land incorrectly registered as common land but only within strict limitations and subject to judicial process (para 011-013).

2. The 'slip rule' might with benefit be amended to allow the Tribunal to order amendment of a register where administrative or clerical error is alleged (para 014).

3. Apart from cases falling within these two exceptions no challenge should be allowed to the registers of common land (para 011).

4. An unequivocal power should exist to order rectification of the register of ownership of common land upon proof that the registered owner has no justifiable title (para 019).

5. The power to order rectification should be exercised by a court or other judicial body (para 019).

Chapter 2. Multiple rights registration.

125 A basic weakness in the Act resulted in the final registration of many unjustified claims to both the existence and the extent of rights of common. Nonetheless, a general reopening of the register of rights of common would not be in the public interest. Exceptions are however necessary to ensure that the rights of common registered are no greater than the capacity of the common. The position of agricultural tenants enjoying rights akin to rights of common is anomalous.

126 We recommend that

1. Provision should be made to enable amendment of the register of rights of common where either the same rights of common have been registered more than once over the same area of land (para 027) or the total extent of rights registered over a common is greater than the common can sustain (para 028).

2. Where the registered rights are more extensive than the common can sustain, there should be a proportionate reduction of each right

with a safety net to prevent rights of modest extent being effectively abolished (para 031).

3. There should be a limited class of persons entitled to seek amendment of the registers, confined to those having a direct interest in the good management of the common (para 032).

4. Tenants' rights mistakenly registered as rights of common should be deleted from the registers but the special position of tenants enjoying such rights should be recognised (para 029 & 032)

5. Amendment of the registers should be entrusted to the Tribunal (para 033).

Chapter 3. De-registration and Section 13.

127 The legislation relating to the de-registration of commons is in need of clarification and the decision in Corpus Christi College v Gloucestershire County Council needs to be consolidated and extended by statute. Waste land of a manor not subject to rights of common is in particular need of protection.

128 We recommend that

1. Legislation should create a new category of 'statutory common land', ie land in the lands section of a commons register which thus has the attributes of a registered common although it is neither subject to rights of common nor waste land of a manor (paras 043 and 046).

2. The principle enunciated in Corpus Christi College v Gloucestershire County Council namely that final registration of a common is conclusive notwithstanding the failure to establish rights of common over it and irrespective of the former status of the land should be confirmed by legislation (paras 041-042).

3. From an appointed day land ceasing to be subject to rights of common by reason of unity of seisin should automatically become statutory common land (para 043).

4. From an appointed day, waste land of a manor not subject to rights of common should, upon ceasing to fall within that definition, forthwith become statutory common land (para 046).

Chapter 4. Severance

129 In the interests of the continued existence and good management of commons, the existing links between dominant tenements and their associated common should be maintained so far as possible. Existing rights in gross are undesirable but their continued existence is inevitable. There should however be no fresh creation of rights in gross and the leasing and lending of rights of common away from their dominant tenements should be controlled.

130 We recommend that

1. There should be an express statutory prohibition against the

creation of rights in gross by way of severance of rights of common from the dominant tenements to which they attach (para 051).

2. The formal leasing or informal lending of rights of common by commoners should only be permitted in favour of another holder of rights in the same common and additionally in accordance with the terms of a management scheme. The Tribunal should have power to deal with applications in appropriate cases (para 053).

Chapter 5. Apportionment

131 A particular problem arises where a dominant tenement has not been satisfactorily identified so that a proper apportionment can not be carried out.

132 As a general principle, rights of common of pasture should only continue to attach to land which remains in agricultural use. Where agricultural land is divided the rights should attach to the various parts in proportion to their agricultural needs. Where the rights of pasture presently attach to non-agricultural land, they may be retained or divided where the new dominant tenements can reasonably exercise the rights. Rights of common other than grazing should be incapable of apportionment. On division of the dominant tenement into parts, the rights should attach to one part only with no increase in the burden on the servient tenement. While this will be a restriction upon the general right of free alienation of property, it is necessary in the public interest and specifically in the interest of good management of commons.

133 The Tribunal should exercise oversight of all apportionments and suitable sanctions would be required.

134 We recommend that

1. Commons registration authorities should be required to examine their registers, to identify cases where the dominant tenement has not been adequately identified and given power to amend the register accordingly (para 059).

2. On the development of a dominant tenement formerly in agricultural use for non-agricultural purposes, the attaching rights of common of pasture should cease to exist (para 071). Where the dominant tenement is not in agricultural use, the rights should continue if, and only if, the dominant tenement can benefit from them (para 066). On non-agricultural development of part only of the dominant tenement, an appropriate proportion of the rights should be lost (para 071).

3. Where a dominant tenement is divided, those holdings remaining in agricultural use should have the rights of common of pasture apportioned to them according to the reasonable agricultural requirements of the holdings, judged objectively (para 064).

4. For the avoidance of doubt, there should be specific legislative provision prohibiting the apportionment of rights of common other than pasture. Legislation should also provide that upon the division of a dominant tenement into parts, rights of common other than

pasture must be assigned to one specific part and that no greater liability on the servient tenement should arise than exists at that date (para 082).

5. The Tribunal should exercise a supervisory role to ensure compliance with the principle of apportionment but should be bound to grant approval as a matter of course to any proposal which did not clearly breach the principle (para 067-068).

6. Statutory provision should ensure that commons registration authorities are in a position to delete rights from the register where a dominant tenement is developed for non-agricultural purposes (para 072).

7. Where rights of common are transferred, neither the vendor nor the purchaser of the rights of common should be entitled to exercise the rights until the apportionment has been approved by the Tribunal (para 069) and suitable sanctions should be provided to secure compliance (para 074).

8. Where the application of these recommendations results in the disappearance of all rights over a common, the common should become statutory common land (paras 075 and 128).

Chapter 6. Regulation of new rights of common

135 The Act provides for the registration of new common land and of new rights of common over it, but does not allow the registration of new rights over an existing common. This inconsistency could only have arisen by accident.

136 Commons registration authorities were given the duty of determining disputes arising from the registration of new rights of common, subsequent to the original registration process. This is an inappropriate duty for administrative bodies.

137 We recommend that:

1. Legislation be enacted to allow for the registration of newly created rights of common whether the registration of the common land has been made in the past or is being sought concurrently with the registration of common rights over it (para 085).

2. All disputes arising from new registrations be determined by a Commons Commissioner (para 088).

3. All applications for new registrations be processed within strict time limits (para 087).

Chapter 7. The future of the registers

138 The benefits of registration are rapidly being lost through the increasing obsolescence of the registers. The situation can only be retrieved by the extension of the existing registers and their adaptation to formal compulsory registers containing details of the

ownership of common lands, rights of common and interests in common land. The register of ownership should be incorporated within the Land Registry system but with rights of public access. The other registers should be permanently maintained by the commons registration authorities. A problem still exists over the rate at which commons with unregistered title should be brought within the Land Registry system and details of ownership thus opened to public inspection. There is a need to ensure that commons registers are kept up to date when compulsory purchase powers are exercised.

139 We recommend that

1. There should be a living record of common land and ownership of rights of common and a duty should be laid upon commons registration authorities to set up and maintain the necessary registers based on those that already exist. Sanctions should be imposed to ensure that information is supplied to registration authorities (para 095-096).

2. The registers should be open to public inspection (para 096).

3. Adequate safeguards should be provided to prevent incorrect applications for registration being accepted (para 105).

4. The register of ownership of common land should be created by regulations made under the Land Registration Acts requiring the Land Registry to supply upon application by any person, details of the ownership of any land certified by a commons registration authority, to be registered common (para 098-099).

5. Further consideration should be given to quickening the pace of compulsory registration of title of common land, in the interests of public access to details of ownership (para 104).

6. Bodies acquiring common land under compulsory purchase powers should be under a statutory obligation to report the change of status to commons registration authorities (para 107).

Chapter 8. Stinted pastures

140 Stinted pastures occupy an anomalous position and it is not clear whether they were intended to fall within the Act. However, they lack certain attributes of true common land and are likely to have been enclosed for very many years.

141 We recommend that the inclusion of stinted pastures within the provisions of the Act is inappropriate and the Act should be amended to secure their removal from the registers (para 113).

Chapter 9. A tribunal for commons affairs

142 It is desirable that the several judicial and quasi-judicial matters springing from our recommendations should be dealt with by a tribunal embodying both legal and agricultural expertise, regionally rather than nationally based and being accustomed to litigants in person requiring a less formal atmosphere and procedure. We consider that such a body already exists in the Agricultural Land Tribunal.

143 We recommend that

1. The Commons Commissioners should be retained to exercise their present jurisdiction (para 116).

2. The new areas of jurisdiction which we recommend in our report be the responsibility of the Agricultural Land Tribunal (para 117).

APPENDIX Appendix - 1

Introduction

A.01 If only on the grounds of excessive length, this appendix does not seek to be a compendium of all the evidence submitted to the sub-committee or within the personal experience of members of that body. On the contrary, we have sought to illustrate, by means of single examples drawn from the considerable detail which we have considered, the problems which we believe prevent the intentions of the Act from being fully realised.

The paragraph numbers in the headings to the appendix refer to the paragraph numbers in the main report.

A.02 Para 008 highway registered as common

Braygate Lane East Keal and Toynton All Saints CL 112 - Lincolnshire.

The land registered as common extends approximately 1 mile and averages 40 ft in width. The whole of the land is shown as a public bridleway in the definitive map kept by the County Council under the National Parks and Access to the Countryside Act 1949 (as amended). Registration is final but no rights of common were ever applied for.

A.03 Para 008 highway verge registered as common

Pennyhooks Lane, Shrivenham CL 92 Oxfordshire (formerly Berkshire).

The land registered as common consists mainly of the strips of grass verge lying within the highway boundary on each side of the carriageway.

A.04 Para 008 existing private dwelling houses and gardens included in registered common

Roydon Common CL 291 Norfolk

The land registered as common includes, along the south-eastern boundary of Tottington Lane, private dwelling houses and gardens in existence prior to 1965. It appears that no objection to the application was made, from a combination of two factors: first, the application for registration was for a greater area than was locally considered as the common; secondly, the map accompanying the application for registration was out of date and did not show property existing in 1965 (note: this land was subsequently taken off the register but the grounds for so doing are not clear to the Committee).

Other cases are known eg Gill Cottage, Crosby Garrett Common CL 4 Cumbria.

A.05 Para 008 school and grounds included in registered common

Coed-y-Polyn Common CL 89 Powys,

The land registered as common includes within its boundaries a school building, currently in use, together with playground and outbuildings existing before 1965. A right of common of pasture is finally registered over the common.

A.06 Para 008 registration of enclosed agricultural land as common

A number of areas of land comprising Cote How CL 455, Cockley Moss CC 456, Chapel Moss CL 457, Bellwater Moss CL 448, Cowfold Moss CL 449, areas registered without name as CL 105, CL 453, CL 451 and CL 465. In the case of CL 451 the register comprises no less than 6 distinct and widely separated pieces of land. The total area exceeds 200 hectares. All the lands registered as common are remote from any other commons, are in a number of separate ownerships and had all been enclosed arable or pasture land since before 1965. Application for registration in respect of the commons and of the applicants as owners became final in the absence of objections. There are no registered rights of common.

A.07 Para 014 clerical error

Pentwyn Mawr Common CL74 West Glamorgan.

An application for rights of common of pasture for 500 sheep was accepted by the registration authority. In the course of handling the application, the authority accidentally transcribed the number as 50 sheep and the right of common became finally registered for that number.

A.08 Para 014 clerical error

Newnhamhill Common CL 50 Oxfordshire.

The application for registration of Newnhamhill Common excluded the private house called Little Orchard. However, in error, the map prepared by the commons registration authority and forming part of the statutory register, included this property within the boundary of the common. The authority acknowledge their mistake but are unable to amend the register, as registration has become final. No rights of common are registered. Map 5c shows the position in greater detail.

A.09 Para 014, administrative error

Aberdyfi Common CL 97, Cefn Rhos (or Aberdyfi) Common CL 124 Gwynedd.

Aberdyfi Common (CL 97) was provisionally registered, as a result of an application, in 1968 and subsequently rights of common were provisionally registered. These rights were registered as a result of applications by 6 applicants.

In 1969 application was made for registration of Cefn Rhos (or Aberdyfi) Common, for an area inclusive of, but slightly greater in extent than, CL 97. Section 4(4) of the Act provides that in such circumstances the commons registration authority should have registered only that part of the land claimed as common as was not then included in CL 97; in respect of the balance of the land, the application should have been noted against CL 97.

This was not done; the registration authority accepted the second application in its entirety and registered it as CL 124. Subsequently rights of common over CL 124 were provisionally registered on applications made by 7 claimants, all of whom were different from the 6 claimants of rights of common over CL 97.

Following objection the registration of CL 124 and the rights of common over it remain provisional. In 1970 registration of CL 97 became final in the absence of objection but the registration of rights of common remains provisional.

The registration authority acknowledge the error but are unable to amend the register.

The Commons Commissioners have declined to exercise jurisdiction to consider objections to the provisional registrations.

A.10 Para 017 registrations derived from inflated claims

Coity Wallia Commons CL 20 and CL 21, Mid Glamorgan.

These commons extend over 2365 acres and were subject to provisionally registered rights of common of pasture amounting to 4487 cattle, 1777 horses, 24,122 sheep and 872 pigs. Objections to the quantification but not to the existence of the rights of common were made by the owners of the soil of the commons and by the Conservators of the commons.

Exceptionally, at a hearing before a Commons Commissioner agreement was reached by all parties and accepted by the Commissioner, about a proper rate of stocking of the common at 1 unit per acre. 1 unit was accepted as 1 cow or horse or 3 sheep or pigs. This gave a maximum of 2365 units compared to the 14,594 units applied for. No record exists that the commons previously suffered from overstocking.

A.11 Para 017 excessive claims based on division of commons into parts

The Black Mountain CL 18 et al, Dyfed

The whole of the areas edged black on Map 6 are generally accepted and treated as one common and known as the Black Mountain. However, since applications for registration of land as common depended upon individual initiative, the area became registered as a number of separate commons, each with its own CL number, as shown on the map.

Where applications for rights of common for a given number of sheep extended over the whole of the Black Mountain the applications became final (in the absence of objection) for that number of sheep in each

and every CL unit thereby multiplying the entitlement by the number of CL units. In a similar fashion, an application which covered only two CL units would give the applicant twice the number of sheep to which he was actually entitled. Few objections were made, the problem not being appreciated at the time.

A.12 Para 017 double registration of rights

The Black Mountain CL 18 Dyfed.

The Act places no restriction on whom may apply to register a right of common. Instances occur on the register for this common where both the owner and the tenant of the dominant tenement made separate application, without the knowledge of the other, for registration of the same right of common. The registration authority probably had no means of knowing of this duplication.

A.13 Para 023 double registration of rights

See paras A.11 and A.12 of this Appendix.

A.14 Para 024 registrations derived from inflated claims

See para A.10 of this Appendix.

A.15 Paras 025 and 029 tenants' rights over registered land

The Somerset Trust own an agricultural estate extending into five Welsh counties in each of which they own commons. The tenants of farms within this agricultural estate are given, by contract, rights similar to rights of common of pasture over these commons.

The Trustees sought to register the tenants' contractual rights as rights of common. In the area of one registration authority, registration has become final and the authority consider they have no power to amend the register. The registration of similar claims in an adjoining authority is still provisional and the authority propose to seek their removal from the register.

In most, if not all, cases the rights are essential to the economic survival of the farm.

A.16 Paras 038-040 the Corpus Christi decision

Corpus Christi College Oxford v Gloucestershire County Council [1982] 2.WLR.849 [1982] 3 AER 995.

Rights of common were provisionally registered over Temple Ham Meadow, Little Rissington, Gloucestershire by the parish council. As required by section 4(2)(b) of the Act, the land was also provisionally registered as a necessary consequence of the rights registration. The College objected to the rights registration, but not to the land registration; it knew that the land was subject to some rights of common but wished to challenge the claim by the parish council that all the residents of the parish had such rights.

Since the land registration was not objected to it became final and conclusive on 1 October 1979, in accordance with section 10 of the 1965 Act.

In February 1976, a Commons Commissioner held an inquiry into the rights registration. He refused to confirm it and consequently it was cancelled. The College then applied under section 13 of the Act to the registration authority (Gloucestershire County Council) to remove the land from the register, on the ground that on cancellation of the rights registration the land had ceased to be common land. The authority refused the application.

The College next sought a declaration from the county court that the land had ceased to be common land. The declaration was refused on the ground that Section 10 of the Act had made the land registration conclusive. The College appealed to the Court of Appeal.

The unanimous verdict of the Court of Appeal (Lord Denning MR, Oliver and Kerr LJJ) was to uphold the decision of the county court judge and thus to dismiss the appeal. The reasoning of the judges was not identical. Lord Denning approached the matter from the point of view of a person looking at the register. Since no rights of common were registered, he would assume that the land was waste land of a manor not subject to rights of common, that being the only way to reconcile the non-existence of rights with the entry in the land section of the register. As the land is by section 10 of the Act conclusively presumed to be common land, it must conclusively be deemed to be waste land of a manor. Oliver and Kerr LJJ both took the view that an application under Section 13 would have to show that land had ceased to be common land since the date of registration. In the present case, the College was precluded from so doing by section 10. Since the rights registration had become void, the College would in effect have to show that at the date of registration the land was waste land of a manor, and that subsequently it had ceased so to be. The only evidence the College could produce was that the land was not manorial waste immediately before that date. Such evidence was inadmissible by virtue of section 10. Accordingly, the land must at that date be common land, and nothing had subsequently occurred which had altered that status.

It appears to the committee that the appeal failed because, in essence, the land had not 'ceased' to be common land. The land registration was made solely in consequence of the rights registration and there was no evidence that the land was waste land of a manor. The College could not therefore show that the land was manorial waste immediately before registration and, without evidence to this effect, the land could not be said to have ceased to be common land.

The case appears to have established the principle that land which is incorrectly registered and over which no rights of common are registered (ie which is not within the definition in section 22 (1)(b) of the Act) cannot be taken off the register. Not having been common land within section 22 at the date of registration, such land cannot subsequently cease to be common land so as to come under section 13; it was never common land in the first place. We say 'appears',

because if the land is deemed to be manorial waste (Lord Denning's view) can it cease so to be in the same circumstances as land that is truly manorial waste? As we point out in paras [044-045] of the report, land ceases to be manorial waste if it ceases to have any connection with the manor. Where the lord of the manor divests himself of ownership of the land, the land normally ceases to be manorial waste and thus falls outside the definition of common land in section 22. It is not clear, however, whether an identical transaction in relation to 'deemed' manorial waste would have the same legal effect.

A.17 Para 056 failure to identify dominant tenement

Pennard Burrows and Cliffs, Gower CL 15, West Glamorgan.

The dominant tenement is described as 'bungalow and land' in two instances. No further address is given nor are any OS numbers quoted.

Mynydd, Alt-y-Craig, Ystalfera. CL 23 West Glamorgan.

The OS numbers given on the original applications do not exist.

Pentwyn Mawr et al. CL 74 West Glamorgan.

One dominant tenement is described as 'comprising OS nos ... Pts 1508, pt 5846, pt 1567, pt 3820 ...' without indicating which part of the OS numbers were intended to be included.

Mynydd-y-Drum. CL 78 Powys.

On this common two dominant tenements numbered 26 and 47 overlap to a substantial degree. The registration remains provisional. Further, the dominant tenement numbered 47 also overlaps considerably with the dominant tenement numbered 22. This registration has become final.

A.18 Paras 049-050 the dangers of severance
Paras 066 and 071 increased burdens of common rights upon development of a dominant tenement

Port Meadow, Goose Green and Wolvercote Common CL 1, CL 2, CL 3 Oxfordshire.

These commons offer a graphic illustration of the risks to which a common is vulnerable upon division or development of a dominant tenement. Originally the dominant tenements consisted of residential and agricultural properties in a small village. The village has been substantially developed as a suburban housing estate. Following this development a large number of rights of common for one horse or cow were registered in favour of individual houses notwithstanding that few of the applicants for registration had facilities to keep animals.

The commons total 429 acres and the Commoners Association have been advised that the capacity of the common does not exceed 400 cattle or horses, that figure being a maximum acceptable only at certain periods of the year. Rights of common with final registration, however, allow for 4183 cattle or horses.

The Association is aware of severance of registered rights which now have appreciable value in the area. They instance owners of common rights with no property in the community area and living as far away as Wales.

A.19 Para 091 obsolescence of the registers

Pennard Burrows and Cliffs CL 13 - West Glamorgan

The local highway authority, in seeking to make a compulsory purchase order on common land, were required to serve notices on all persons owning rights of common. Forty five provisional registrations of rights of common appeared in the commons register. Eleven of those registered (24%) were no longer owners of rights of common, for reasons including death, severance of rights and sale of the dominant tenement as a whole or in part with or without apportionment of rights.