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## TOWN AND VILLAGE GREENS

### The legal protection afforded to TVGs Stephen Whale

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## The Victorian Acts

Registered greens protected by provisions in two  
Victorian Acts in particular:  
Section 12 of the Inclosure Act 1857  
Section 29 of the Commons Act 1876

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### Section 12 of the Inclosure Act 1857



Provides a means of preventing nuisances in town or village  
greens: creates for this purpose a criminal offence covering  
various actions, including:

- Wilfully causing injury or damage to town or village green fences
- Wilfully laying rubbish on a green
- Wilfully and without lawful authority leading or driving any animal on a green
- Interrupting the use or enjoyment of a green as a place of exercise and recreation
- Injuring a green

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### Laying an information



- Various people or bodies may lay an information:
  - a) The person in whom the soil of the green is vested;
  - b) The “churchwarden or overseer of the parish”, which is to say the parish council, parish meeting, community council or district council (as applicable): Local Government Act 1972, section 189(3);
  - c) A “local authority” (as defined) may institute proceedings if title is not registered and the owner cannot be identified: Commons Act 2006, section 45;
  - d) Any inhabitant of the parish.

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### Without lawful authority



- Landowners, tenants and licensees may graze animals if compatible with village green rights; it has to be very low key grazing in order to be compatible: R (Laing Homes Ltd) v Bucks CC [2003] 3 PLR 60 at [67]
- DEFRA’s view is that a person taking an animal onto a green in exercise of their right to enjoy lawful sports and pastimes does not commit an offence. This would cover dog-walkers and possibly horse-riders.
- No exposure to prosecution where the existence of the green is not established and known: “Trap Grounds” [2004] Ch 253 at [47]?

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### Immaterial harm or interference



- Driving over a track across a green not in breach of section 12 (or section 29), as there was not a “sufficient reason to regard the existence and use of the track as injuring the green or interrupting its use or enjoyment by others”: Massev v Boulden [2003] 1 WLR 1792 at [31]
- Mowing a green to facilitate its use for lawful sports and pastimes not in breach of section 12 (or section 29): Laing Homes at [58]
- Material harm or interference tests
- Public interest test for prosecution

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**Section 29 of the Commons Act 1876**



- Deems certain matters to be a public nuisance, which is a criminal offence (as well as a civil tort):
  - a) An encroachment on or enclosure of a green;
  - b) Any erection on a green or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of the green.

Action to restrain a public nuisance may be taken by a local authority (section 222 Local Government Act 1972), members of the public suffering special damage or the Attorney General.



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**Road traffic offences**



- Section 34 of the Road Traffic Act 1988 makes it an offence to drive without lawful authority a mechanically propelled vehicle on to or upon various categories of land, including "land of any other description" (which includes greens: Massey at [22])
- Lawful authority includes permission from the owner or a private right of way
- No offence or conviction if the person drives within 15 yards of a road for the purpose only of parking the vehicle, to save life, extinguish a fire or meet any other like emergency: section 34(3)-(4)



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**Penalties**



- Section 12 of the 1857 Act: a fine not exceeding level 1 on the standard scale (currently £200) plus a payment (to be determined by the justices in case of dispute) to cover the damage caused



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**Postscript**



- “There is virtually no authority on the effect of the Victorian legislation.”

(Lord Hoffmann in Trap Grounds [2006] 2 AC 674 at [57])



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**Conclusion**



- There *are* criminal law provisions protecting registered greens, albeit principally somewhat obscure Victorian provisions.



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