



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 1

#### ACCESS RIGHTS

#### CHAPTER 5

##### LOCAL AUTHORITY FUNCTIONS: ACCESS AND OTHER RIGHTS

#### **13 Duty of local authority to uphold access rights**

- (1) It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.
- (2) A local authority is not required to do anything in pursuance of the duty imposed by subsection (1) above which would be inconsistent with the carrying on of any of the authority's other functions.
- (3) The local authority may, for the purposes set out in subsection (1) above, institute and defend legal proceedings and generally take such steps as they think expedient.

#### **14 Prohibition signs, obstructions, dangerous impediments etc.**

- (1) The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—
  - (a) put up any sign or notice;
  - (b) put up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation;
  - (c) position or leave at large any animal;
  - (d) carry out any agricultural or other operation on the land; or
  - (e) take, or fail to take, any other action.
- (2) Where the local authority consider that anything has been done in contravention of subsection (1) above they may, by written notice served on the owner of the land,

require that such remedial action as is specified in the notice be taken by the owner of the land within such reasonable time as is so specified.

- (3) If the owner fails to comply with such a notice, the local authority may—
- (a) remove the sign or notice; or, as the case may be,
  - (b) take the remedial action specified in the notice served under subsection (2) above,
- and, in either case, may recover from the owner such reasonable costs as they have incurred by acting under this subsection.
- (4) An owner on whom a notice has been so served may, by summary application made to the sheriff, appeal against it.
- (5) Rules of Court shall provide—
- (a) for public notice of the making of summary applications for the purposes of this section;
  - (b) for enabling persons interested in the exercise of access rights over the land to which a summary application relates, and persons or bodies representative of such persons, to be parties to the proceedings;
  - (c) for limiting the number of persons and bodies who may be such parties.

## **15 Measures for safety, protection, guidance and assistance**

- (1) The local authority may take such steps (which may include the putting up and maintenance of notices and fences) as appear to them appropriate—
- (a) to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable;
  - (b) to indicate or enclose, or to give directions to, any such land.
- (2) Where the local authority consider that a fence, wall or other erection is so constructed or adapted (whether by the use of barbed wire or other sharp material or by being electrified or otherwise) as to be likely to injure a person exercising access rights, they may by written notice served on the owner of the land on which it is placed, require the owner to take, within such reasonable time as is specified in the notice, such reasonable action as is so specified, being action calculated to remove the risk of injury.
- (3) Subsections (3)(b), (4) and (5) of section 14 above apply in respect of a notice served under subsection (2) above as they apply to a notice served under those subsections.
- (4) The local authority may install and maintain, in any land in respect of which access rights are exercisable, gates, stiles, moorings, launching sites or other means of facilitating the exercise of these rights, and seats, lavatories and other means of contributing to the comfort and convenience of persons exercising them.
- (5) The local authority may, in relation to inland waters in respect of which access rights are exercisable, provide staff for life saving and any boats or equipment which are appropriate for life saving.
- (6) In exercising their powers under this section, the local authority shall—
- (a) have regard to the extent to which there are existing facilities in their area for the purposes of assisting persons to exercise access rights; and
  - (b) have regard to the needs of persons with disabilities.

- (7) The local authority may carry out the operations authorised by subsections (4) and (5) above within the land over which the access rights are exercisable only with the consent of the owner.

## **16 Acquisition by local authority of land to enable or facilitate exercise of access rights**

- (1) Where it appears to the local authority to be necessary or expedient for the purpose of enabling or facilitating the exercise of access rights in respect of any land to which this section applies that the land be acquired by them, the authority may—
- (a) acquire it by agreement (whether by purchase, feu, lease or excambion); or
  - (b) with the consent of Ministers, acquire it compulsorily.
- (2) The land to which this section applies is land other than—
- (a) land in respect of which access rights do not extend by virtue of section 6(1)(a)(ii), (d), (e) or (f) above;
  - (b) land which has been exempted by order made by the local authority under section 11(1) of this Act.
- (3) A local authority shall hold and manage any land acquired by them under this section so as best to facilitate the exercise of access rights.
- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall apply in relation to a compulsory purchase under this section as if this section had been in force immediately before that Act.

## **17 Core paths plan**

- (1) It is the duty of the local authority, not later than 3 years after the coming into force of this section, to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their area.
- (2) Such a system of paths may include—
- (a) rights of way by foot, horseback, pedal cycle or any combination of those, being rights which are or may be established by or under any enactment or rule of law;
  - (b) paths, footways, footpaths, cycle tracks or other means of access (however described but not falling within paragraph (a) above) which are or may be provided by or under any enactment other than this Act;
  - (c) paths which are or may be delineated by a path agreement under section 21 or a path order under section 22 below;
  - (d) other routes, waterways or other means by which persons may cross land.
- (3) In drawing up the plan, the local authority shall have regard to—
- (a) the likelihood that persons exercising rights of way and access rights will do so by using core paths;
  - (b) the desirability of encouraging such persons to use core paths; and
  - (c) the need to balance the exercise of those rights and the interests of the owner of the land in respect of which those rights are exercisable.
- (4) The plan may consist of or include maps showing core paths and, where it does not, shall refer to such maps.

## 18 Core paths plan: further procedure

- (1) The local authority shall—
  - (a) give public notice of the plan drawn up by them under section 17 above and any maps it refers to;
  - (b) make the plan and any such maps available thereafter for public inspection for a period of not less than 12 weeks; and
  - (c) consult—
    - (i) the local access forum for their area;
    - (ii) persons representative of those who live, work, carry on business or engage (or would be likely to engage) in recreational activities on the land on which it is proposed that there be core paths;
    - (iii) Scottish Natural Heritage; and
    - (iv) such other persons as the local authority think fit,in each case inviting objections and representations to be made to them within such period as they specify.
- (2) If no objections are made or any made are withdrawn, the local authority shall adopt the plan.
- (3) If an objection is made and not withdrawn, the local authority shall not adopt the plan unless Ministers direct them to do so.
- (4) Where an objection remains unwithdrawn, Ministers shall not make such a direction without first causing a local inquiry to be held into whether the plan will, if adopted, fulfil the purpose mentioned in section 17(1) above.
- (5) Ministers may, in any other case, cause such an inquiry to be held.
- (6) Subsections (2) to (13) of section 265 (local inquiries) of the Town and Country Planning (Scotland) Act 1997 (c. 8) apply to an inquiry held under subsection (4) or (5) above as they apply to one held under that section.
- (7) Following the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the local authority to adopt the plan either as drawn up under section 17 above or with such modification as Ministers specify in the direction.
- (8) On adopting the plan, the local authority shall—
  - (a) give public notice of its adoption;
  - (b) compile a list of core paths;
  - (c) keep the plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price; and
  - (d) send a copy of each of those documents to Ministers.
- (9) Where Ministers decline to make a direction under subsection (3) or (7) above, the local authority shall draw up a revised plan and shall do so in accordance with such procedure and within such time limits as Ministers specify.
- (10) Such specification shall include provision under which Ministers may (but need not) direct the local authority to confirm the revised plan.

**19 Power to maintain core paths etc.**

The local authority may do anything which they consider appropriate for the purposes of—

- (a) maintaining a core path;
- (b) keeping a core path free from obstruction or encroachment;
- (c) providing the public with directions to, or with an indication of the extent of, a core path.

**20 Review and amendment of core paths plan**

- (1) The local authority shall—
  - (a) at such times as they consider appropriate; and
  - (b) on Ministers requiring them to do so,review the plan adopted under section 18 above (or that plan as amended under this section).
- (2) Where, following a review of a plan under subsection (1) above, the local authority consider that—
  - (a) a core path should be removed from the plan; or
  - (b) the line of a core path, or part of that line, should be diverted,the authority may amend the plan by removing the core path from the plan or, as the case may be, by diverting the line of the core path on the plan.
- (3) The local authority may not amend the plan under subsection (2) above unless they are satisfied that it is expedient so to do having regard to—
  - (a) the extent to which it appears to them that persons would, but for the amendment, be likely to exercise access rights using the core path; and
  - (b) the effect which the amendment of the plan would have as respects land served by the core path.
- (4) Where the local authority stop up, or divert, a core path by order under section 208 of the Town and Country Planning (Scotland) Act 1997 (c. 8) they shall amend their plan accordingly.
- (5) Subsection (8) of section 18 above applies in relation to the amendment of a plan under subsection (2) or (4) above as it applies in relation to the adoption of a plan under that section.
- (6) Where, following a review of a plan under subsection (1) above, the local authority consider that the plan should be amended so as to include a further path, waterway or other means of crossing land such as is mentioned in section 17(2) above, the authority shall draw up an amended plan.
- (7) Sections 17(3) and (4) and 18 above apply in relation to a plan drawn up under subsection (6) above as they apply to a plan drawn up under section 17(1) above.

**21 Delineation by agreement of paths in land in respect of which access rights exercisable**

- (1) The local authority may enter an agreement (a “path agreement”) with a person having the necessary power for the delineation and maintenance or, as the case may be, for

the delineation, creation and maintenance of a path within land in respect of which access rights are exercisable.

- (2) A path agreement shall be on such terms and conditions as to payment or otherwise as may be specified in it.

## **22 Compulsory powers to delineate paths in land in respect of which access rights exercisable**

- (1) Where, in the circumstances set out in subsection (2) below, it appears to the local authority that, having regard to the rights and interests of the owner of land in respect of which access rights are exercisable and persons likely to exercise these rights, it is expedient to delineate a path within that land, the authority may, by order (a “path order”), do so.
- (2) These circumstances are that it appears to the local authority to be impracticable to delineate the path by means of a path agreement.
- (3) Where the local authority make a path order—
- (a) delineating an existing path, they have the duty of maintaining it;
  - (b) delineating a new path, they have the duty of creating and maintaining it.
- (4) Regard may be had, in determining whether a local authority has control of a path for the purposes of the Occupiers' Liability (Scotland) Act 1960 (c. 30), to the duties imposed by subsection (3) above.
- (5) A path order may be revoked by the local authority.
- (6) A path order shall be in such form as is prescribed but shall contain a map showing the delineation of the path.
- (7) Where access rights—
- (a) have, by virtue of any provision of this Part of this Act, not been exercisable over any land consisting of a public path created under sections 30 to 36 of the Countryside (Scotland) Act 1967 (c. 86); but
  - (b) become exercisable over that land,
- the public path creation agreement or the public path creation order or public path diversion order by which the public path was created shall, for the purposes of the exercise of access rights, be treated as a path agreement or, as the case may be, a path order.
- (8) Schedule 1 to this Act has effect for the purposes of providing further as to path orders.
- (9) In section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c. 33) in paragraph (g) of the definition of “overriding interest” (which paragraph provides that public rights of way etc. are overriding interests) there is inserted at the end “or in respect of the exercise of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2) by way of a path delineated in a path order made under section 22 of that Act”.

## **23 Ploughing etc.**

- (1) Where land is, in accordance with good husbandry, being ploughed or having its surface otherwise disturbed and it is convenient to plough, or otherwise disturb the surface of, a core path or a right of way which forms part of the land, nothing in this

Part of this Act prevents that path or, as the case may be, right of way from being ploughed or from having its surface otherwise disturbed.

- (2) The owner of land being a path or, as the case may be, right of way which has been ploughed or which has had its surface otherwise disturbed in accordance with subsection (1) above shall, however, within the period of 14 days beginning on the day on which the path or, as the case may be, right of way is ploughed or has its surface otherwise disturbed or such longer period as the local authority may allow, reinstate the path or, as the case may be, right of way.
- (3) An owner who fails to comply with subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If the owner fails to comply with subsection (2) above, the local authority may, after giving the owner 14 days' notice of their intention to do so—
  - (a) take all necessary steps to reinstate the path or, as the case may be, right of way; and
  - (b) recover from the owner their reasonable expenses in doing so.
- (5) Nothing in this section prejudices any limitation or condition having effect otherwise.

## **24 Rangers**

- (1) The local authority may appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable.
- (2) The purposes for which such rangers may be so appointed are—
  - (a) to advise and assist the owner of the land and other members of the public as to any matter relating to the exercise of access rights in respect of the land; and
  - (b) to perform such other duties in relation to the exercise of those rights in respect of that land as the local authority determine.
- (3) A person appointed under this section as a ranger may, for the purpose of exercising any function conferred by or under subsection (2) above, enter any land in respect of which access rights are exercisable.

## **25 Local access forums**

- (1) Each local authority shall establish for its area a body, to be known as the “local access forum”, to carry out the functions set out in subsection (2) below.
- (2) Those functions are—
  - (a) to advise the local authority and any other person or body consulting the forum on matters having to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths under sections 17 and 18 above;
  - (b) to offer and, where the offer is accepted, to give assistance to the parties to any dispute about—
    - (i) the exercise of access rights;
    - (ii) the existence and delineation of rights of way;
    - (iii) the drawing up and adoption of the plan referred to in paragraph (a) above; or
    - (iv) the use of core paths,

towards the resolution of the dispute.

- (3) A local access forum consists of such persons as are appointed to it by the local authority.
- (4) The matters to which the local authority have regard when making appointments to the local access forum shall include—
  - (a) ensuring reasonable representation in the forum of—
    - (i) bodies representative of persons with an interest in any of the matters mentioned in subsection (2)(b)(i) to (iv) above;
    - (ii) persons having such an interest;
    - (iii) bodies representative of the owners of land in respect of which access rights are exercisable or in which there is a core path; and
    - (iv) owners of such land, and
  - (b) ensuring a reasonable balance among those mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above.
- (5) The local authority may appoint one or more of its own members to a local access forum.
- (6) More than one local access forum may be established for the area of a local authority.
- (7) The local authority may pay to members of the local access forum such expenses and allowances as the local authority determine.
- (8) Ministers may give guidance to local authorities to assist them in the performance of their functions under this section.

## **26 Power of entry**

- (1) Any person authorised by the local authority to do so may enter any land for a purpose connected with the exercise or proposed exercise of any of the authority's functions under this Part of this Act.
- (2) A person so authorised may, subject to subsection (3) below, enter land only—
  - (a) at a reasonable time; and
  - (b) on giving reasonable notice to the owner of the land.
- (3) Subsection (2) above does not apply—
  - (a) in case of emergency; or
  - (b) in relation to the exercise by a local authority of any of their powers under sections 15(1)(a) and (4) and 19 above in relation to land which is a core path.
- (4) A person may, on entering any land by virtue of subsection (1) above, take onto the land any machinery, other equipment or materials required for the purpose for which the power of entry is being exercised.

## **27 Guidance**

- (1) Ministers may give guidance to local authorities on the performance of any of their functions under this Part of this Act.
- (2) Such guidance may be given generally or to a particular local authority.



- (3) A local authority to which such guidance is given shall have regard to it.
- (4) Before giving such guidance, Ministers shall—
  - (a) consult each (or the) local authority to whom they propose to give it; and
  - (b) lay a draft of the proposed guidance before the Scottish Parliament;and the guidance shall not be given until after a period of 40 days beginning with the day on which the draft was so laid.
- (5) If, within that period, the Parliament resolves that the guidance proposed should not be given, Ministers shall not give it.
- (6) In calculating any period of 40 days for the purposes of subsection (4) or (5) above, no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.