

LAND REFORM (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1 Access Rights

Section 22: Compulsory powers to delineate paths in land over which access rights are exercisable

92. This section gives a local authority, where they consider it impracticable to delineate a path by agreement under section 21, to make an order (a “path order”) delineating it. The local authority may make a path order only if they consider, having regard to the rights and interests of the owner of the land over which the proposed path passes and persons likely to exercise access rights on or over the land, it appropriate to do so.
93. Where a path order is made, subsection (3) places a duty on a local authority which made the order to maintain the path delineated in the order and, if necessary, to create it. Section 17(2) provides that a path delineated in a path order may form part of the local authority’s core paths plan.
94. The [Occupiers’ Liability \(Scotland\) Act 1960 \(c.30\)](#) makes provision as to the duty of care which an occupier or person in control of land must show to persons on the land. Subsection (4) provides that regard may be had a local authority’s duties to create or maintain a core path in determining whether they are in control of the path and therefore owe the duties set out in the Act of 1960.
95. Subsection (5) allows local authorities to revoke any path order.
96. Subsection (6) provides that a path order must be in the form prescribed in regulations made by Ministers, but requires in any case that it contain a map showing the delineation of the path.
97. Subsection (7) provides that where access rights become exercisable at a time after the coming into force of this Part on or over a path on land in respect of which access rights were not previously exercisable the agreement or order made under sections 30 to 36 of the [Countryside \(Scotland\) Act 1967 \(c.86\)](#) which created the path is to be treated as a path agreement or, as the case may be, a path order.
98. Subsection (8) subjects the making of a path order to the procedures set out in schedule 1.
99. Subsection (9) amends the definition of “overriding interest” in section 28 of the [Land Registration \(Scotland\) Act 1979 \(c.30\)](#) to provide that the right of a member of the public in respect of the exercise of access rights by way of a path delineated in a path order is to be regarded as an “overriding interest” for the purposes of that Act. Section 3 of that Act provides that an interest in land which is registered in the Land Register is subject to any overriding interest in the land (whether or not the overriding interest is noted on the title sheet to the land) Section 6(4) of that Act sets out circumstances in which an overriding interest must or may be entered on the title sheet of land to which it relates.