

LAND REFORM (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1 Access Rights

Section 1: Access rights

6. This section establishes statutory rights of access to land for recreational purposes, for the purposes of carrying on a relevant educational activity, for the purposes of carrying on, commercially or for profit an activity which the person exercising the right could carry on otherwise than commercially or for profit and a right to cross land for the purpose of getting from one place to another (subsections (1) to (4)). “Relevant educational activity” is defined in subsection (5). “Land” is defined in section 32 to include bridges and other structures built on or over land, inland waters (including non-tidal parts of rivers and lochs), canals and the foreshore.
7. Subsection (6) clarifies that access rights apply above and below ground, as well as on the surface of the land. This means that access rights extend to such activities as caving and paragliding.
8. Subsection (7) provides that access rights are exercisable on and over all land other than land of the type described in section 6 or which is otherwise excluded under that section.

Section 2: Access rights to be exercised responsibly

9. Subsection (1) provides that access rights must be exercised responsibly.
10. Subsection (2) makes provision for determining what constitutes the responsible exercise of access rights. The presumption is that a person will be exercising access rights responsibly if they are not interfering unreasonably with the rights of others. Paragraph (a) goes on to provide that a person engaging in any conduct falling within section 9 or within any byelaw made under section 12(1)(a)(i) or does anything that undoes steps taken by Scottish Natural Heritage under section 29, will not be exercising access rights responsibly. Paragraph (b) also provides that regard will be had to whether a person has disregarded the guidance set out in the Scottish Outdoor Access Code which applies to persons exercising access rights or has disregarded any request by Scottish Natural Heritage under section 29.
11. Subsection (3) further clarifies what is meant by the reference to the responsible exercise of access rights.

Section 3: Reciprocal obligation of owners

12. This section places a reciprocal requirement on owners of land in respect of which access rights are exercisable to act responsibly in using and managing the land or otherwise conducting their ownership of it.
13. Subsection (2) makes provision for determining whether an owner is acting responsibly. The presumption is that an owner is acting responsibly if that owner is not interfering

unreasonably with the exercise of access rights over their land. Paragraph (a) goes on to provide that a contravention of sections 14(1) or (3) or 23(2) is to be treated as being irresponsible. These sections relate to actions undertaken for the purpose, or main purpose, of preventing or deterring the exercise of access rights; failure to comply with a notice in respect of such an action served by a local authority; and failure to give timeous notice to a local authority of the ploughing of a path, or failure to reinstate the path. In addition, contravention of any bylaw made under section 12(1)(a)(ii) is to be treated as being irresponsible. Paragraph (b) provides that regard will be had to whether the owner has disregarded guidance set out in the Access Code and incumbent on the owners of land.

14. Subsection (3) further clarifies what is meant by the reference to the use, management and conduct of the ownership of the land in a way, which is responsible.

Section 4: Modification of sections 9, 14 and 23

15. This section provides a power for Ministers to modify any of the provisions of sections 9, 14 and 23 by way of an order for the purposes of sections 2 and 3. Section 98(5) provides that such an order cannot be made unless a draft of it has been approved by the Scottish Parliament. Under subsection (2), such an order could apply generally or be restricted to certain areas or to certain classes of land or could apply to particular ways of exercising access rights or to particular types of land management activity. Subsection (3) requires Ministers to consult interested persons (or associations representing such persons) and such other persons as they think fit prior to making an order under subsection (1).

Section 5: Access rights, reciprocal obligations and other rules and rights

16. This section sets out the relationship between the access rights created by this Act and existing rights as well as making provision for the effect of access rights on occupiers' liability, subject to section 22(4). As a general rule, access rights will not diminish or displace existing rights.
17. Subsection (1) provides that the exercise of access rights does not of itself amount to trespass.
18. Subsection (2) provides that the operation of Part 1 of the Act will not affect the duty of care owed by an occupier to any person present on the land except where the land is a path delineated in a path order made under section 22 (section 22(4) makes provision which states that regard may be had to the duties imposed on a local authority making a path order to create and maintain a path by virtue of section 22(3), in order to determine whether a local authority has control of a path for the purposes of the [Occupiers' Liability \(Scotland\) Act 1960 \(c.30\)](#) . The duty of care imposed by that Act will apply in relation to persons exercising access rights but the extent of that duty is not affected (other than as mentioned above).
19. Subsections (3) and (4) provide that access rights do not diminish or displace existing rights of access to land or public rights in relation to the foreshore.
20. Subsection (5) provides that the exercise of access rights created by this Act over particular land will not by itself be used to claim a public right of way or servitude or a public right of navigation.
21. Subsection (6) provides that land over which access rights are exercisable is not, by virtue of that fact, a road for the purposes of the [Roads \(Scotland\) Act 1984 \(c.54\)](#).
22. Subsection (7) ensures that any person who, being on foot on any land over which access rights are exercisable—

obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or

wilfully obstructs the lawful passage of any other person,

is guilty of an offence under section 53 of the [Civic Government \(Scotland\) Act 1982 \(c.45\)](#).

Sections 6 and 7: Land over which access rights not exercisable

23. [Section 6](#) sets out categories of land over which access rights are not exercisable and is supplemented by section 7.
24. Paragraph (a) of section 6(1) excludes from access rights buildings of all kinds and other structures, works, plant and fixed machinery, as well as caravans, tents or other places used to give a person privacy or shelter.
25. Paragraph (b)(i) and (ii) of that section excludes land surrounding and associated with non-domestic buildings, structures, works, plant and fixed machinery.
26. In relation to school buildings, paragraph (b) (iii) of that section excludes land contiguous to and used for the purposes of a school. School playing fields at some distance from a school are not covered by this exclusion but may be governed by the exclusion in section 6(1)(e). “School” is defined in section 7(4) by reference to the [Education \(Scotland\) Act 1980 \(c.44\)](#) and means an institution which provides primary or secondary education or education for children below school age.
27. [Section 6\(1\)\(b\)\(iv\)](#) excludes such land which is adjacent to a domestic building, caravan, tent or other similar place as is sufficient to give persons living there reasonable measures of privacy and enjoyment. Section 7(5) provides that the location and other characteristics of the place to which the land relates are, amongst other matters, relevant to determining how much land is sufficient in this context.
28. [Section 6\(1\)\(c\)](#) excludes private gardens to which there is a right of common access, such as Queen Street Gardens in Edinburgh.
29. [Section 6\(1\)\(d\)](#) provides that the regulation of public access by or under any other enactment is not diminished or replaced by access rights. There are, for example, other enactments which prohibit, exclude or restrict public access over military establishments and railways. Access rights will be subject to those regulations. Section 7(6) clarifies that this exclusion does not prevent access rights being exercised in a manner which would not contravene the other enactment. Section 6(1)(e) excludes land which has been developed or set out as a sports or playing field or for a particular recreational purpose. Paragraph (a) of section 7(7) qualifies this exclusion in relation to sports and playing fields by providing that it applies only where the fields are being used. It further qualifies the exclusion in relation to other land developed or set out for a recreational purpose by providing that the exclusion does not apply in relation to access rights which would not interfere with the use to which the land is being put. Paragraphs (b) and (c) of that section provide that the section 6(1)(e) exclusion applies in relation to certain vulnerable surfaces including golf greens, bowling greens and other similar grass surfaces and certain types of artificial surfaces. Section 7(8) provides that certain developments undertaken for the purposes of fisheries management do not bring the land within section 6(1)(e).
30. [Section 6\(1\)\(f\)](#) provides that land in respect of which a charge was levied for public admission for at least 90 days prior to 31 January 2001 and for which a charge continues to be levied for the same period after that date, will be excluded from access rights. Section 7(9) further qualifies that provision by providing that persons who have had access to land without payment in the past can continue to do so.
31. [Section 6\(1\)\(g\)](#) and (h) excludes land on which building, civil engineering or other works are underway.

- 32. **Section 6(1)(i)** excludes land on which crops have been sown or are growing. Further clarification on the meaning of “land on which crops are growing” is provided in section 7(10).
- 33. Subsection (1) of section 7 provides that access rights are exercisable over land which is excluded by section 6 if that land is a core path, including core paths over land otherwise excluded from access rights.
- 34. Subsections (2) and (3) of that section limit the extent of the exclusion in section 6 in respect of land on which a development is being carried out which requires planning permission. Accordingly, the exclusion only applies while the development is being carried out and only to the extent that the development is in conformity with any planning permission.

Section 8: Adjustment of land excluded from access rights

- 35. This section confers power on Ministers to make an order modifying sections 6 and 7. Section 98(5) provides that they may not make such an order unless a draft has been approved by a resolution of the Scottish Parliament.
- 36. Subsection (2) provides that an order under subsection (1) may be made in general terms, or it may refer to particular areas, locations or classes of land in respect of which access rights are exercisable.
- 37. Subsection (3) requires Ministers to consult interested persons (or associations representing those persons) and such other persons as they think fit prior to making an order under subsection (1).

Section 9: Conduct excluded from access rights

- 38. This section sets out the conduct which is outwith the scope of access rights. Any person purporting to exercise access rights who engages in the conduct listed in this section will, by virtue of section 2(2)(a), be treated as not exercising those rights responsibly
- 39. Paragraph (e) provides that persons on land for the purposes of carrying on an activity commercially or for profit are to be treated as conducting themselves irresponsibly if they take away anything in or on the land for that purpose.
- 40. Paragraph (g) provides that access rights are not exercisable on land which is a golf course for any of the purposes specified in section 1(3). In other words, the Act provides only for a right to cross golf courses.

Section 10: The Scottish Outdoor Access Code

- 41. Subsection (1) places a duty on Scottish Natural Heritage to draw up the Scottish Outdoor Access Code setting out in relation to access rights guidance on the circumstances in which those exercising access rights and the owners of relevant land may be regarded as acting in a way that is either responsible or irresponsible.
- 42. Subsections (2) to (4) set out the procedures which apply in respect of the preparation and approval of the Access Code, including the requirement for ministerial approval.
- 43. Subsection (5) requires that any Code approved by Ministers must also be approved by a resolution of the Scottish Parliament before it comes into operation.
- 44. Subsection (7) places a duty on Scottish Natural Heritage and local authorities to publicise the Access Code, and requires Scottish Natural Heritage to promote understanding of it.
- 45. Subsections (8) and (9) places duties on Scottish Natural Heritage to keep the Access Code under review, to consult such persons as it thinks fit when carrying out the review,

and to make such modifications as it thinks fits (subject to the same procedures as apply to its initial approval).

Section 11: Power to exempt particular land from access rights

46. Subsection (1) enables local authorities, whether on applications from third parties or on their own initiative, by order, to exempt a particular area of land from access rights for a particular purpose.
47. Subsection (2) requires a local authority, where an order would have effect for six or more days, to consult the owner of the land in question, the local access forum and any other person considered appropriate, to publicise the intended purpose and effect of the proposed order and to invite and consider objections on the proposed order.
48. Subsection (3) requires that any order which would have effect for six or more days requires confirmation by Ministers.
49. Subsection (4) requires local authorities to send to Ministers copies of any objections received in pursuance of subsection (3) and any other representations received relating to an order requiring confirmation by Ministers.
50. Subsection (5) places a duty on the Ministers, prior to confirming any such order, to consider any objections or representations received and provides that they may hold an inquiry to enable them to decide whether to confirm the order. If an inquiry is held, subsection (6) applies the same procedures as apply to local inquiries under planning legislation.
51. Subsection (7) sets out Ministers' powers in relation to an order which requires their confirmation (and, in particular, allows them to confirm it with modifications) and subsection (8) makes provision for the date from which an order takes effect.
52. Subsection (9) requires local authorities to publicise the order as soon, as is practicable after it has been made or, as the case may be, confirmed by Ministers.
53. Subsection (10) allows local authorities to revoke, amend or re-enact any order made by them under this section.
54. Subsection (11) provides that where it is proposed that an order is revoked, amended or re-enacted, and the order would continue to have effect for six or more days, then subsections (2) to (9) will apply in these cases.
55. Subsection (12) provides that all orders made under this section will, subject to subsection (13), have a maximum duration of two years
56. Subsection (13) sets the maximum duration of orders which re-enact an order made under subsection (1).

Section 12: Bylaws in relation to land over which access rights are exercisable

57. This section confers power on local authorities to make bylaws. Paragraph 8 of schedule 2 amends the Civic Government (Scotland) Act 1982 in consequence of this new bylaw making power.
58. Subsection (1) sets out the general purposes for which bylaws can be made and subsection (2) sets out some particular examples of matters which might be addressed by bylaws.
59. Subsection (3) clarifies that any bylaws made under this section must not interfere with the exercise of any public right of way or of navigation, or with any functions of a statutory undertaker as defined in section 32.
60. Subsection (4) applies the process for the confirmation of bylaws by Ministers set out in the [Local Government \(Scotland\) Act 1973 \(c.65\)](#) to the making of bylaws under this

section, subject to the modifications specified in subsection (5). Subsections (6) and (7) set out consultation requirements. Subsection (8) sets out the circumstances when those consultation requirements can be relaxed.

Section 13: Duty of local authority to uphold access rights

61. This section places a duty on local authorities to uphold the exercise of access rights, so far as doing so is consistent with their other functions, on and over any route, waterway or other means by which access rights may be exercised. A local authority may institute and defend legal proceedings and take any other steps which they think fit for the purposes of carrying out the duty.

Section 14: Prohibition signs, obstructions, dangerous impediments etc.

62. Subsection (1) prohibits an owner from doing, or from refraining from doing, certain things for the purpose, or for the main purpose, of preventing or deterring the exercise of access rights.
63. Subsection (2) allows a local authority which considers an owner to have contravened subsection (1), by written notice, to require the owner to take such remedial action as the authority may specify within such reasonable time as may be specified.
64. Where an owner fails to comply with a notice served under subsection (2), subsection (3) enables the local authority to take the remedial action specified in the notice and to recover any reasonable costs from the owner.
65. Subsection (4) provides a right of appeal against a notice served under subsection (2) by summary application to the sheriff.
66. Subsection (5) enables Rules of Court to set out the procedures regarding the giving of public notice of appeals and third party involvement in such appeals.

Section 15: Measures for safety protection, guidance and assistance

67. Subsection (1) permits local authorities to take steps to warn and protect the public against any danger on any land in respect of which access rights are exercisable, and to indicate or enclose recommended routes over, or to give directions to, such land.
68. Subsection (2) provides a similar power to that in section 14(2) in respect of remedial action to remove things which local authorities consider likely to injure persons exercising access rights. Subsection (3) applies the same procedures as set out in section 14(3)(b) to (5).
69. Subsections (4), (5) and (7) permit local authorities, with the consent of the owner of land, to take measures to facilitate the exercise of access rights on and over the land and to provide staff or life saving equipment in respect of inland waters subject to access rights.
70. Subsection (6) places a duty on local authorities exercising powers conferred on them by this section to have regard to the extent to which there are existing facilities in their areas for the purposes of assisting persons to exercise access rights and to the needs of persons with disabilities.

Section 16: Acquisition by local authority of land to enable or facilitate exercise of access rights

71. Subsection (1) enables local authorities to acquire land either by agreement or, with the consent of Ministers, compulsorily, where necessary or expedient to enable or facilitate the exercise of access rights.
72. Subsection (2) prevents certain land in respect of which access rights are not exercisable from being acquired under this section.

- 73. Subsection (3) requires the local authority to hold and manage any land acquired under this section in a way that best facilitates the exercise of access rights.
- 74. Subsection (4) applies to any compulsory acquisition of land the procedures set out in the [Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947 \(c.42\)](#), which generally apply to the compulsory purchase of land by local authorities.

Section 17: Core paths plan

- 75. Subsection (1) places a duty on each a local authority to draw up, within three years of this section coming into force, a plan for a system of paths sufficient to provide reasonable public access throughout its area. Each path within such a system is to be known as a core path. Section 7(1) provides that access rights are exercisable in respect of all core paths.
- 76. Subsection (2) lists examples of paths or routes which may be included in the system of core paths. These include paths and routes over land in respect of which access rights would not otherwise be exercisable,
- 77. Subsection (3) sets out the criteria to which a local authority must have regard in drawing up their core paths plan. Subsection (4) provides that a core paths plan must take the form of, include, or refer to maps showing the core paths.

Section 18: Core paths plan: further procedure

- 78. Subsection (1) requires a local authority to publicise their core paths plan and any maps it refers to, and to make them available for public inspection for at least 12 weeks. In addition, the local authority must consult the local access forums, persons representative of those living and working on the land affected by the plan, Scottish Natural Heritage and anyone else they think fit.
- 79. Under subsection (2), where there are no unresolved objections, the local authority is required to adopt the plan. Where an objection is not withdrawn, subsection (3) provides that the local authority must not adopt their core paths plan unless directed to do so by Ministers under subsection (7).
- 80. Subsection (4) prevents Ministers from directing a local authority to adopt a core paths plan unless they hold a local inquiry into whether the paths in the plan are sufficient to give the public reasonable access throughout the local authority's area. Subsection (5) provides a general power for Ministers to hold a local inquiry in any other case.
- 81. Subsection (6) provides that the procedures for carrying out local inquiries which are set out in the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#) will apply to any inquiry held under this section.
- 82. Subsection (7) allows Ministers, following publication of the report of the local inquiry, to direct the local authority to adopt the plan as originally drawn up or in a modified form.
- 83. Subsection (8) requires a local authority on adopting their core paths plan, to give public notice of its confirmation and to compile a list of core paths. The list, plan and maps to which it refers must be made available for public inspection; copies are to be made available for sale at a reasonable price, and copies are to be provided to Ministers.
- 84. Where Ministers decline to direct the local authority to adopt the plan, subsection (9) requires the local authority to draw up a revised plan. Provision is made to allow Ministers to specify the procedure and time limits for preparing and confirming revised plans (subsections (9) and (10)).

Section 19: Power to maintain core paths etc.

85. This section allows local authorities to do anything which they consider appropriate for the purposes of maintaining a core path, keeping a core path free from obstruction or encroachment and providing the public with directions to, or with an indication of the extent of, a core path.

Section 20: Review and amendment of core paths plan

86. Subsection (1) requires a local authority to review the adopted core path plan when they consider appropriate and when required to do so by Ministers.
87. Subsection (2) allows a local authority to amend their core path plan where they consider that a core path should be closed or diverted. Subsection (3) provides that a plan cannot be so amended unless the local authority, having had regard to the extent to which persons would, but for the amendment, be likely to exercise access rights using the core path and the effect which the amendment of the plan would have with regard to land served by that core path, consider it expedient to make the amendment.
88. Subsection (4) provides that, where a core path is stopped up or diverted by order under section 208 the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#), the local authority must amend their plan accordingly.
89. Subsection (5) requires a local authority on amending their core paths plan, to give public notice of the plan as amended and to compile an amended list of core paths. The amended list, plan and maps to which it refers must be made available for public inspection; copies are to be made available for sale at a reasonable price, and copies are to be provided to Ministers.
90. Subsections (6) and (7) provide that where a local authority proposes to add a new path to the core path plan then they must draw up an amended plan. When preparing this they must apply the provisions detailed in section 17(3) and (4) of this Act and carry out the consultation procedures set out in section 18 of this Act in respect of the amended plan.

Section 21: Delineation by agreement of paths in land over which access rights are exercisable

91. This section makes provision for a local authority to enter into an agreement for the delineation and maintenance (and, if necessary, creation) of a path over land in respect of which access rights are exercisable. Such an agreement will be on the terms and conditions agreed between the local authority and the person with whom they enter into the agreement. Those terms and conditions may, amongst other things, provide for the making of payments. Section 17(2) provides that a path which is delineated in such an agreement may form part of the local authority's core paths plan.

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.

Section 23: Ploughing etc.

100. Subsection (1) allows an owner to plough, or to carry out other land management practices, on land incorporating a core path or a right of way. However, where core paths or rights of way are disturbed this way, subsection (2) places a duty on the owner to reinstate the path or right of way within 14 days beginning on the day the path was first disturbed or within such longer period as the local authority may allow.
101. Subsection (3) provides that an owner who fails to reinstate the path within the required period is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
102. Subsection (4) provides that if an owner fails to reinstate a path within the period set, the local authority may, after giving the owner 14 days notice of their intention, take all steps necessary to reinstate the path or right of way and recover their reasonable expenses from the owner.

Section 24: Rangers

103. This section gives local authorities the power to appoint rangers in relation to any land in respect of which access rights are exercisable. Rangers functions are to provide advice and assistance on matters relating to access rights and to perform such other duties in relation to those rights as the local authority appointing them may specify.
104. Subsection (3) provides rangers with power to enter any land in respect of which access rights are exercisable to carry out their functions.

Section 25: Local access forums

105. This section provides for the establishment of at least one local access forum by each local authority.

- 106. This section places a duty on each local authority to establish a local access forum consisting of a reasonable balance of persons and bodies representing the interests of persons with an interest in public access on and over land and owners of land over which access rights are exercisable.
- 107. The functions of a forum are to provide advisory and dispute resolution services in relation to the exercise of access rights, the existence of rights of way and the drawing up and adoption of core paths plans.
- 108. Subsection (5) allows a local authority to appoint one or more of its own members to a forum, and subsection (6) allows a local authority to establish more than one forum for its area.
- 109. Subsection (7) enables a local authority to pay expenses and allowances to the members of the local access forum.

Section 26: Power of entry

- 110. This section confers power on persons authorised by local authorities to enter any land for a purpose connected with the exercise or proposed exercise of any of the authorising authority's functions under Part 1. Such a person may however enter land under this power only at a reasonable time and on having given reasonable notice to the owner of the land unless entry is needed in case of emergency or for the purpose of warning the public of and protecting the public from danger, taking measures to facilitate the exercise of access rights or fulfilling certain duties relating to core paths.
- 111. Subsection (4) permits persons authorised to enter land to take onto land any machinery, other equipment or materials required for the purpose for which they are entering the land.

Section 27: Guidance

- 112. **Section 27** permits Ministers to give guidance to local authorities on the performance of any of their functions under Part 1. This guidance may be given generally or to a particular local authority and local authorities are required to have regard to it. Ministers are required to consult with each local authority to which they propose to give guidance and also to lay a draft of the proposed guidance before the Scottish Parliament. The guidance cannot be given until 40 days from the date of laying, and during this time the Parliament may direct that the guidance may not be given.

Section 28: Judicial determination of existence and extent of access rights and rights of way.

- 113. Subsection (1) allows persons to apply to the sheriff for a determination of whether access rights are exercisable over particular land, of whether persons exercising those rights are doing so responsibly or of whether the owner of land in respect of which access rights are exercisable is using, managing or conducting ownership in a responsible way.
- 114. Subsection (2) allows persons to apply to the sheriff for determination of whether any path or bridleway or other means of crossing land is or is not a right of way by foot, horseback, cycle or any combination of these.
- 115. In either case, the proceedings are those for an action of declarator initiated by summary application to the sheriff. The local authority must receive notice of an application and are entitled to be a party to the proceedings.
- 116. The procedures which govern such proceedings are to be supplemented by Rules of Court made in pursuance of subsection (8).

117. Subsection (9) makes clear that the remedies provided by this section do not preclude a person who may seek to use those remedies from pursuing any other judicial remedy which may be available to them in respect of rights and duties under Part 1.

Section 29: Powers to protect natural heritage and cultural heritage etc.

118. Subsection (1) confers a power to Scottish Natural Heritage to put up and maintain notices to protect the natural heritage of land in respect of which access rights are exercisable. Section 32 provides that the “natural heritage” of land includes its flora and fauna, its geological and physiographical features and its natural beauty and amenity.
119. Subsection (2) confers a power on Ministers similar to that in subsection (1) for the purposes of protecting the cultural heritage of land on which access rights are exercisable. Section 32 provides that “cultural heritage” includes structures and other remains resulting from human activity, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes. Historic Scotland may perform this function on behalf of Ministers.
120. Subsection (3) provides that any notice put up under subsection (1) or (2) may warn the public about any adverse effect their presence on that land might have on the natural or cultural heritage which the notice seeks to protect.

Section 30: Existing bylaws providing for public access to land

121. This section requires that all bylaws relating to public access to land must be reviewed by the person that made them within 2 years of the coming into force of this section and, if necessary, modified to ensure consistency with the provisions of this Act.

Section 31: Application of section 15 to rights of way

122. This section provides that the provisions in sections 14 and 15 (which impose duties on local authorities and owners of land in respect of which access rights are exercisable) apply in respect of non-vehicular rights of way over land in respect of which access rights are not exercisable as they apply in relation to access rights.

Section 32: Interpretation of Part 1

123. This section defines certain terms used in Part 1.
124. Land is defined to include land covered by non-tidal waters. The definition of owner provides that, where the owner is not in natural possession of the land, the person entitled to that possession (being the owner or a tenant) is to be treated as the owner.