

SCHEDULE 1

(introduced by section 22(8))

PATH ORDERS

Procedure

- 1 Before making a path order, the local authority shall give notice of their intention to do so, together with a copy of the proposed order, to the owner of the land within which is the path proposed for delineation by the order (the “owner”).
- 2 That notice shall specify—
 - (a) a time, being not later than 28 days after the giving of the notice, within which; and
 - (b) the manner in which,objections to the proposed order may be made by the owner to the local authority.
- 3 If no such objections are made or any made are withdrawn, and the local authority make the order, it shall have effect.
- 4 If, however, an objection is made and not withdrawn, the order if made shall not have effect unless confirmed by Ministers.
- 5 Ministers—
 - (a) may; and
 - (b) if any objection made is not withdrawn, shall,afford the owner an opportunity of being heard by a person appointed by Ministers for the purpose.
- 6 Ministers shall, after considering the report of that person, either confirm or decline to confirm the order and, where they confirm it, may do so with modifications.
- 7 On its confirmation, the path order shall have effect.
- 8 As soon as a path order has effect, the local authority shall give notice of that fact to the owner together with a copy of the order.

Statutory undertakings

- 9 No path order shall be made which would delineate a path over land in or over which there is apparatus belonging to or used by any statutory undertaker for the purpose of the undertaking unless the undertaker has consented to the making of the order.
- 10 Such consent shall not be unreasonably withheld and any question whether it is so withheld shall be determined by Ministers.
- 11 The operator of any telecommunications code system for the purposes of which apparatus was kept installed in, under or over a path immediately before the path creation order which delineated the path was revoked retains after that revocation the same powers as before it; but the owner is entitled to require the alteration of the apparatus.
- 12 Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) applies for the purposes of paragraph 11 above as it applies for the purposes of the code.
- 13 Paragraph 21 of that code (restriction on removal of apparatus) applies in relation to any entitlement conferred by paragraphs 11 and 12 above to require the alteration,

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moving or replacement of any telecommunications apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.

SCHEDULE 2

(introduced by section 99)

AMENDMENT AND REPEAL OF ENACTMENTS

Trespass (Scotland) Act 1865 (c. 56)

- 1 Section 3 (which creates the offence of occupying or camping on land without the consent of its owner or occupier) of the Trespass (Scotland) Act 1865 is renumbered as subsection (1) of that section and after that subsection there is added—

“(2) Subsection (1) above does not extend to anything done by a person in the exercise of the access rights created by the Land Reform (Scotland) Act 2003 (asp 2).”

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)

- 2 In section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, after paragraph (d) there is inserted—

“(e) by the Scottish Ministers under section 35 or 72 of the Land Reform (Scotland) Act 2003 (asp 2);”.

Countryside (Scotland) Act 1967 (c. 86)

- 3 The Countryside (Scotland) Act 1967 is amended as follows.

- 4 Subject to paragraphs 6 and 7 below, the following provisions—

- (a) Part II (access to open country);
- (b) sections 30 to 38 (creation, closure and diversion of public paths);
- (c) section 43 (ploughing of rights of way);
- (d) in section 54 (byelaws), in subsection (6), the words “or the next and succeeding section”;
- (e) section 55 (default powers); and
- (f) in Schedule 3 (which includes provision for making and confirming access orders under Part II), in sub-paragraph (1) of paragraph 1, the words “an access order”, in sub-paragraph (3) of that paragraph the words “an access order or” and in sub-paragraph (1A) of paragraph 2, the words from “as” to “order”, where thirdly occurring,

are repealed.

- 5 In section 47 (interpretation of Part III which deals with paths, routes and rights of way) there is inserted at the end “and references to a right of way do not include references to access rights within the meaning of section 1 of the Land Reform (Scotland) Act 2003 (asp 2)”.

- 6 The coming into force of the repeal of Part II does not—

- (a) prevent compensation thereafter being claimed or becoming payable under section 21 of the Act (compensation for depreciation or disturbance as a

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result of access order to be assessed only after five years' operation of order);
or

- (b) otherwise affect the operation thereafter of sections 21 to 23 and 70 of that Act in relation to claims for or payment of compensation.

7 Notwithstanding the repeal of section 30 to 38, those sections continue to have effect—

- (a) to the extent that the rights and facilities afforded to the public under those sections are not secured by section 1 above;
- (b) in relation to land in respect of which access rights are, under section 6 above, not exercisable; and
- (c) in relation to rights of way.

Civic Government (Scotland) 1982 (c. 45)

8 The Civic Government (Scotland) Act 1982 is amended as follows—

- (a) in section 120 (savings for Crown and other rights), the words from “and, with respect” to the end are repealed;
- (b) in section 121 (control of the seashore, adjacent waters and inland waters)—
 - (i) subsection (4); and
 - (ii) in subsection (5), paragraph (iii),are repealed;
- (c) in section 121, in subsection (11), for the words from “adjacent” to the end there is substituted “and adjacent waters.”; and
- (d) in section 123 (interpretation), the words from ““inland waters”” to “banks thereof;” are repealed.

Public Order Act 1986 (c. 64)

9 In section 14A (prohibiting trespassory assemblies) of the Public Order Act 1986, after subsection (9) there is inserted—

“(9A) In relation to Scotland, the references in this section to the public’s rights (or limited right) of access do not include any right which the public or any member of the public may have by way of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2).”.

Criminal Justice and Public Order Act 1994 (c. 33)

10 The Criminal Justice and Public Order Act 1994 is amended as follows.

11 After section 61(4) (circumstances in which persons who, although not originally trespassers on land, have become such may be directed by police to leave) there is inserted—

“(4A) Where, as respects Scotland, the reason why these persons have become trespassers is that they have ceased to be entitled to exercise access rights by virtue of—

- (a) their having formed the common purpose mentioned in subsection (1) above; or
- (b) one or more of the conditions specified in paragraphs (a) and (b) of that subsection having been satisfied,

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the circumstances constituting that reason shall be treated, for the purposes of subsection (4) above, as having also occurred after these persons became trespassers.

(4B) In subsection (4A) above “access rights” has the meaning given by the Land Reform (Scotland) Act 2003 (asp 2).”.

12 In section 64 (which, amongst other things, confers powers on the police to seize and remove sound equipment brought or brought back on to land after a removal direction under section 63) there is inserted after subsection (5)—

“(5A) Entering land in Scotland with sound equipment in the circumstances mentioned in subsection (4)(b) above is not an exercise of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2).”.

13 In section 68 (offence of aggravated trespass) after subsection (1) there is inserted—

“(1A) The reference in subsection (1) above to trespassing includes, in Scotland, the exercise of access rights (within the meaning of the Land Reform (Scotland) Act 2003 (asp 2)) up to the point when they cease to be exercisable by virtue of the commission of the offence under that subsection.”.

The Conservation (Natural Habitats, Etc.) Regulations 1994 (S.I. 1994/2716)

14 The Conservation (Natural Habitats, Etc.) Regulations 1994 are amended as follows.

15 In regulation 3(2) there is inserted at the end—

“Part 1 of the Land Reform (Scotland) Act 2003 (asp 2) (access rights).”

16 After regulation 69 there is inserted—

“Core and other paths

69A (1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to a local authority’s proposal—

- (a) to draw up or change a plan for core paths under section 17 of the Land Reform (Scotland) Act 2003 (asp 2);
- (b) to enter a path agreement under section 21 of that Act;
- (c) to create or maintain a path delineated under such an agreement;
- (d) as to how any such path is to be created or maintained;
- (e) to make a path order under section 22 of that Act;
- (f) as to how any path delineated under such an order is to be created or maintained.

(2) Regulations 50 and 51 (requirement to review certain decisions) apply to any decision by a local authority in relation to any of the things mentioned in paragraph (1).”.

Town and Country Planning (Scotland) Act 1997 (c. 8)

17 After subsection (3) of section 208 of the Town and Country Planning (Scotland) Act 1997 there is inserted—

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“(4) This section applies in relation to any land which is a core path (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003 (asp 2)) as it applies in relation to footpaths and bridleways.”.