



Land Reform (Scotland) Act 2003

2003 asp 2

PART 1

ACCESS RIGHTS

CHAPTER 6

GENERAL AND MISCELLANEOUS PROVISIONS

28 Judicial determination of existence and extent of access rights and rights of way

- (1) It is competent, on summary application made to the sheriff, for the sheriff—
 - (a) to declare that the land specified in the application is or, as the case may be, is not land in respect of which access rights are exercisable;
 - (b) to declare—
 - (i) whether a person who has exercised or purported to exercise access rights has exercised those rights responsibly for the purposes of section 2 above;
 - (ii) whether the owner of land in respect of which access rights are exercisable is using, managing or conducting the ownership of the land in a way which is, for the purposes of section 3 above, responsible.
- (2) It is competent, on summary application made to the sheriff, for the sheriff to declare whether a path, bridleway or other means of crossing land specified in the application is, or is not, a right of way by foot, horseback, pedal cycle or any combination of those.
- (3) The proceedings for a declaration under subsection (1) or (2) above are those for an action of declarator initiated by summary application to the sheriff.
- (4) A summary application for a declaration shall be served on the local authority.
- (5) The local authority are entitled to be a party to proceedings for a declaration.
- (6) Where the person seeking a declaration is the owner of the land, it is not necessary to serve the application on any person but the local authority.

Status: This is the original version (as it was originally enacted).

- (7) In any other case, the person seeking the declaration shall serve the application on the owner of the land.
- (8) Rules of court shall provide—
- (a) for the circumstances in which (including any time periods within which) a summary application may be made for the purposes of this section;
 - (b) for public notice of the making of summary applications for the purposes of this section;
 - (c) for enabling persons interested in the exercise of access rights over specific land or, as the case may be, in the existence of a right of way over specific land and persons or bodies representative of such persons to be parties to the proceedings;
 - (d) for limiting the number of persons and bodies who may be such parties.
- (9) This section is without prejudice to any remedy otherwise available in respect of rights conferred and duties imposed by or under this Part of this Act.