



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.

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- (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.

29 Powers to protect natural and cultural heritage etc.

- (1) Scottish Natural Heritage may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable.
- (2) The Scottish Ministers may put up and maintain notices for the purposes of protecting the cultural heritage of land in respect of which access rights are exercisable.
- (3) Any notice put up under subsection (1) or (2) above may warn persons of any adverse effect that their presence on the land or any activities they might conduct there might have on the natural or, as the case may be, cultural heritage sought to be protected.

30 Existing byelaws providing for public access to land

It is the duty of every person, body or authority having power under any enactment to make byelaws which may provide for or relate to public access to land in respect of which access rights are exercisable and which is owned or managed by that person, body or authority—

- (a) within 2 years of the coming into force of this section, to review those of its byelaws which so provide or relate and are in force at the time of the review; and
- (b) to modify any of those byelaws which are inconsistent with the provisions of this Act (including any made under it) as they apply to that land so as to make them consistent.

31 Application of sections 14 and 15 to rights of way

Sections 14 and 15 above apply in relation to rights of way by foot, horseback, pedal cycle or any combination of those as they apply in relation to access rights.

32 Interpretation of Part 1

In this Part of this Act—

“Access Code” means the Scottish Outdoor Access Code issued by Scottish Natural Heritage under section 10 above;

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“canals” means inland waterways within the meaning of section 92 (interpretation) of the Transport Act 1962 (c. 46);

“core path” means a path, waterway or any other means of crossing land such as is mentioned in section 17(2) above which is set out in a plan adopted under section 18 above or, as the case may be, such a plan as amended under section 20 above;

“cultural heritage” includes structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes;

“inland waters” means any inland, non-tidal loch, river (to the extent that it is non-tidal), lake or reservoir, whether natural or artificial and whether navigable or not, and includes the bed and the shores or banks thereof;

“land” includes—

- (a) bridges and other structures built on or over land;
- (b) inland waters;
- (c) canals; and
- (d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

“local authority” in relation to specific land in respect of which access rights are or would, but for a provision of or order made under this Act, be exercisable means—

- (a) where the land is, on the day on which this section comes into force, within an area designated as a National Park under the National Parks (Scotland) Act 2000 (asp 10), the National Park authority for that National Park; and
- (b) in any other case, the council (being a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)) whose area includes that land;

“natural heritage” includes the flora and fauna of land, its geological and physiographical features and its natural beauty and amenity;

“owner”, in relation to land, means—

- (a) the owner of the land; and
- (b) where the owner is not in natural possession of the land, the person who is entitled to such natural possession;

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power;
- (b) the operator of a telecommunications code system;
- (c) an airport operator (within the meaning of the Airports Act 1986 (c. 31)) operating an airport to which Part V of that Act applies;
- (d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c. 44);
- (e) Scottish Water;
- (f) a holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29);
- (g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act 2000 (c. 38) (to the extent that the person holding the licence is carrying out activities authorised by it);
- (h) the Scottish Environment Protection Agency; or

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(i) a universal postal service provider within the meaning of the Postal Services Act 2000 (c. 26);
and “undertaking” means the undertaking of such a statutory undertaker; and
“telecommunications code system” and “operator”, in relation to such a system, have the same meanings in this Part of this Act as they have in the Telecommunications Act 1984 (c. 12).