



Part 1 Land Reform (Scotland) Act 2003

Summary of Responses to the Consultation on Draft Regulations setting out the form of Path Orders under section 22(6) of the Act, and the form of the Notice to be issued to land owners under Schedule 1 of the Act

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Section 1: Introduction

This is a summary report on the consultation carried out by the Scottish Executive for laying Path Order Regulations at the Scottish Parliament, to provide the form of path orders made under section 22 of the Land Reform (Scotland) Act 2003. The form of the non-statutory notice to be issued to land owners under Schedule 1 of the Act was also part of the consultation.

The consultation period ran from 10 October 2005 to 16 January 2006 and a copy of the consultation with draft Regulations and notice were placed on the Scottish Executive's website. The Executive consulted a wide range of organisations and a total of 28 responses were received.

This report provides a table of the responses at section 3, and a table of key issues arising from the consultation at section 2. A copy of this Summary Report is available on the Scottish Executive's website, in the "publications" pages, and copies of all the responses are available to view at the Scottish Executive's library at K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD. The amended draft Path Order Regulations will be laid by the Scottish Ministers at the Scottish Parliament shortly.

**Landscapes and Habitats Division
The Scottish Executive Environment and Rural Affairs Department
July 2006**

Section 2: Table of key issues arising from the consultation

1	Key Issue / Request	Requested by	Outline response
2.	Define who is 'owner' – who needs to be notified, has right to object, etc	Law Soc., NLC NFUS	Propose amend Guidance – clarify that 'owner' has same meaning as in the Act. s. 32, and state that it includes 'the owner, tenant, licensee or occupier' in line with p.33 of Guidance.
3.	In Notice – clarify notification procedure if owner cannot be found:- is display at an office for inspection necessary?	East Renf., Law Soc., SRPBA, Highland C.	Agree this may not be needed ? Whom is the notice to be served on, to state that the documents are available for inspection?
4.	Need for an on-site notice	East Renf.	No action proposed - these comments perhaps fail to understand that notification is only for the 'owner' parties, not for the public, and would tend to invite non-valid representations.
5.	Include a 'Statement of Reasons' in the Order and in the Notice	RICS, Fife	Agree - propose include as standard in the Order and in the Notice
6.	Compensation: -unfair/unequal if no comp. available -unacceptable if it takes land out of production needed if an objection is over-ruled	NFUS, SRPBA, RICS.	There is no provision in the Act for compensation, but the accompanying briefing for the Order will need to explain very clearly the case for compensation not being available, since questions in Parliament can be expected – eg: - Acc Auth takes on maintenance and liability responsibilities - S22 orders only available where public access rights exist already, unlike the 1967 Act s.31 Orders - path agreements (s.21) do include the opportunity for compensation - 1967 s.31 compensation was only retrospective after 5 years
7.	Need to specify the path's proposed characteristics (width, fenced, surface, etc.)	CNPA, SNH, CSFT, Fife	Agree - this may be useful in many cases, even if not in every case. Propose provide a square bracket insertion to the Order Schedule and to the Notice ?
8.	Need to include in Notice information on 'the legal effect of the Notice'	NLC	Agree – propose amend Notice to include statement that : “The further effect of the order as proposed will be that the Authority will have the duty of maintaining this path, and in the case of a new path of creating the path. Regard may be had to these duties in determining whether the Authority has control of the path for the purposes of the

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			Occupiers' Liability (Scotland) Act 1960".
9.	Need to specify the registration of the Order in the Land Register - Access Authority to pay costs of registration, as in Countryside Act 1967, s.38(5)	Abdn City	Agree - propose add this to the Guidance
10.	Need for a 'notice of coming into effect' as in 1967 Act, Sch 2.3 1982 Regs.	SNH	No action – this was only required in association with compensation provisions, to start the five-year period.
11.	Need for a procedure to revoke a Path Order? (cf. 1967 Act s.22(5))	FCS	Action needed?
12.	Points to be covered by amendments / additions to the SE Guidance		
13		Fife, RICS	Provide guidance on the scope, form and content of 'statement of reasons', to be included in Schedule and in Notice
14.		SNH	Provide guidance on public consultation input
15.		NFUS	Provide guidance on including a description of the route, preferably with an example - see 1967 Act s.38.4
16.		RICS	Provide guidance on what is likely to be meant by 'impracticable' in rel to failure to make an access agreement
17.		Edin City, P&KC	Provide guidance to reinforce 2003 Act s.22(3), that 'delineating' includes a duty to maintain, and if applicable to create.
18.		NLC	Provide guidance on the position over works access to the path for maintenance etc, clarifying the position regarding s.26 powers of entry.
19.		Ramblers Assoc, Sustrans	Provide guidance to encourage the use of path orders
20.		Scotways	Review guidance on the remaining role of Path Creation Orders under the 1967 Act which is already provided in the Guidance
21.			

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No	Organisation	SUMMARY OF RESPONSE	Issues
1	Aberdeen City Council	<p>Some form of register of paths subject to Path Orders may be useful so the public and new land owners are aware of them. Problems occur with rights of way when land is sold and the new owner is unaware of the existence of a right of way. The Land Register could be a means of avoiding this problem with paths subject to Path Orders. Although it is likely that such routes will form Core Paths and therefore be known to the public through the Core Paths Plan, it may be useful to consider an additional form of register that would alert new land owners to such paths.</p> <p>Some guidance on whether the Council should consult with the public when it intends to take compulsory action. If this is required, what method should be used to make the public aware of our intentions? At present, if we intend to stop up or divert a Right of Way, we must post a Notice at either end. Are adverts required? These are costly and would therefore have resource implications.</p> <p>Although there is provision for an Objector to state his/her name and address, it would also be useful to know the capacity in which they object eg landowner, occupier, tenant, user etc.</p>	Register, public notices and consultation, details of objectors
2	ACPOS	No comments.	
3	AMI	N/A	
4	CNPA	<p>Cairngorms National Park Authority has considered the draft Regulations and has only a few comments to make. The offered template is a useful model and allows the addition of extra caveats as considered necessary by the authority in question.</p> <p>Land over which a Path Order can be made</p> <p>Under the new access legislation, it is expected that a Path Order could be made over any 'land' falling within access rights - therefore it is conceivable that a Path Order could be made to secure access on a 'water' route such as a stretch of river. This should be made clear in the Regulation and could be assisted by more widespread use of the term "route" in the text which has a broader meaning than that of "path", and would be more applicable in some settings.</p> <p>Specification of the Path</p>	Template, water routes, description of route, specification or path, creation and maintenance, appeals

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		<p>In the Schedule to the Path Order, provision is needed for further detail on the specification of the path or route in question - for example the measurements of the route (width and length); the type of surface; the anticipated users and the associated infrastructure on the route. This would help demonstrate the intention of the access authority in relation to plans for the route (construction, upgrading, maintenance etc.) and clarify to both users and land managers what can be expected as a result of the path order.</p> <p>Appeal mechanism</p> <p>It would be useful to clarify whether an appeal mechanism is available to affected owners under the present Regulation, or through other legal provisions, as a safeguard against breach of statutory procedure.</p> <p>Central Scotland Forest Trust broadly agrees with the wording of the draft Regulations and notice to landowners. However, it would be helpful to enclose with the notice, in addition to a copy of the draft order and of the map, information about what kind of path is intended (eg surface type, width and any associated fencing, gates etc.) and about who will be responsible for maintenance and liable for duty of care. This extra information would help to clarify what was required of the landowner. If this extra information were enclosed along with the map, reference to this should be made on the notice itself.</p>	<p>Specification of path, maintenance, duty of care</p>
5	CSFT		
6	East Ayrshire Council	No comments.	
7	East Renfrewshire Council	<p>Specific comments</p> <p>Point 1. Add under Form of Path Orders - (3) In the case of any conflict between the map and the description of route of path in the schedule to the path order, the (schedule) shall prevail.</p> <p>Point 2. Add under Form of Path Orders - (4) Where following reasonable enquiry the ownership of proposed route of path cannot be ascertained or the address of the owner of the land is not known, notice in terms of Schedule 1 to the Act may be given by causing a copy of the notice to be displayed at or near the proposed route of path.</p> <p>Point 3. Add under Schedule Title – (Act)</p> <p>Point 4. Add under Schedule Title – (Name of Authority making Order)</p>	<p>Suggestions about wording, conflict between map and description, unknown addresses, type of route</p>

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	<p>Point 5. Add in Schedule “Now therefore, the authority in exercise of the powers conferred by section 22 of the Act and of all other powers enabling them in that behalf hereby makes the following order:”</p> <p>Point 6. Delete existing text in Schedule 2.</p> <p>Point 7. Add new text in Schedule 2. “This order shall come into effect on the date it is made by the (name of authority making order) / confirmed by the Scottish Ministers (delete as appropriate)”</p> <p>Point 8. Delete existing text under Schedule 3. “(Signed for the authority) ... (date) ... (witness)”</p> <p>Point 9. Add new text in place of point 8, “(authenticate in the manner appropriate to the authority specifying the place and date)”</p> <p>Point 10. Delete existing text in paragraph 1 of the Notice “in accordance with the provisions” and replace with “under”</p> <p>Point 11. Add in paragraph 3 of the Notice “[is enclosed (where address known)]”</p> <p>Point 12. Add in paragraph 3 of the Notice “during office hours (where address not known and owner cannot be found) and site notice erected (otherwise no need to have available for inspection as only the owner can object).”</p> <p>General Comments</p> <p>The procedure set out in the Countryside (Scotland) Act 1967 and the Countryside (Scotland) Regulations 1982 contains more detailed requirements (most of which are not relevant here), however, I consider that where the owner of the land is not known or cannot be traced, that it would be relevant to provide that service of a Notice can be made by affixing or displaying it in terms similar to those contained in Schedule 3 to the 1967 Act .</p> <p>Further, the 1982 Regulations provided that in the case of any conflict between the map and particulars</p>	
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		<p>contained in the Schedule to the Order that the Schedule should prevail. It would be helpful to have a provision that the plan or schedule should prevail, in the event of any discrepancy as regards Path Orders.</p> <p>The 1982 Regulations also provide for limitations and conditions in Part II of the prescribed style Public Path Order. There may be situations where, for example, a route is suitable for pedestrian but not equestrian access and so this might be an appropriate provision to include in the style of Order under the 2003 Act.</p>	
8	Edinburgh City of, Council	<p>The City of Edinburgh Council welcomes the introduction of regulations on this matter which will provide clarity for all parties concerned.</p> <p>Overall, the draft regulations appear to be clear and concise. We would ask however that the following comments be taken into account.</p> <p>Path orders are likely to be used where a consensual agreement has not been possible. The wording in the first paragraph of the Schedule might be improved by stating more clearly, that following consideration of the rights and interests of owners <i>and</i> users, the local authority considers it to be in the <i>overall public interest</i> to pursue the order.</p> <p>One of the key management issues concerning path order is likely to be upgrading and maintenance. It is noted that under section 14(3) of the Act, local authorities will have the duty to <i>maintain</i>, and if necessary <i>create</i> a path subject to an order. Indeed, one of the key uses of orders could be where it has not been possible to reach agreement about proposed upgrading works on established, strategically important routes. In such cases it would be important that the order provides the legal basis for carrying out such works. The draft regulations appear only to be concerned with <i>delineation</i> and do not refer to <i>maintenance</i> or <i>upgrade specifications</i>. It is suggested that this may be insufficient if path orders are to be a fully effective tool in support of access management.</p>	1 st paragraph Schedule, maintenance and upgrade
9	Fife Council	<p>I would wish to comment as follows in terms of Fife Council 's interests: -</p> <p>The Council has limited experience of the making of similar types of Order under the Countryside (Scotland) Act 1967 and in this connection it is therefore not possible to base comments on practical experience gained.</p>	Creation and maintenance, statement of circumstances

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		<p>The draft Regulations and Schedule appear to be generally satisfactory in setting out key provisions and in leaving sufficient flexibility for modifications as the circumstances may require.</p> <p>Clearly considerable negotiation will normally have preceded the decision by a local authority to commit to the use of compulsory powers. The proposed `statement of reasons' to accompany the draft Notice would, however, seem significant in being the only communication with the land owner at the stage of giving notice in which an explanation of the reasons for delineating the path and why a path agreement is considered impracticable are formally given.</p> <p>Opportunity might also be taken in the `statement of reasons' to define and explain any path creation and maintenance works associated with the Order which the Council would propose to undertake.</p> <p>It is considered that the explanation might serve in some instances to make a land owner seek to revert to an agreement or at least to assist in focusing and clarifying any objections made to the Order. In this connection it is suggested that further guidance on the basic scope, form and content of the `statement of reasons' could be beneficial.</p>	
10	Forestry Commission Scotland	<p>I have no expertise in the legal wording and so will confine FCS comment on the process. Will the process be available to national park authorities as well as local authorities? It is not clear from the Act section 22 or Schedule 1, nor from the draft regulation order of the detail of the requirements on a local authority. I think there is merit in detailing this if possible in the regulation to address:</p> <ol style="list-style-type: none"> 1. Any public notices and consultation involved, of how a path order once in place is advertised and where and in what form these are made publicly available. 2. A common Scotland wide method of mapping, preferably on GIS to allow SE to easily collate a central record of path creation orders. 3. It is not clear what process has to be undertaken and evidence gathered to support the case for the need for a path creation order. Is there a link to core paths? 4. There should be a clear process for revoking an order in the future, and that should account for any public expenditure on path creation. 	Requirements on local authorities, public notices and consultation, GIS mapping, evidence for case, revoking orders

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11	Highland Council	Supports the proposed draft regulations.	
12	Law Society of Scotland	<p>The Rural Affairs Sub-Committee of the Law Society of Scotland (“the Committee”) makes the following comments:-</p> <p>It is suggested that the notice of intention to make an order makes clear that it requires to be served not only on the actual owner of the land but also on the person in natural possession of the land if different i.e. any tenant. That follows from the definition of “owner” in Section 32 of the Land Reform (Scotland) Act 2003 (“the Act”).</p> <p>It is not clear why the third paragraph of the draft notice apparently gives the option to refer to a copy of the order having been deposited for inspection at a particular address. Paragraph 1 of Schedule 1 to the Act requires the notice of intention of making a path order to be served on the owner of the land to be accompanied by a copy of the proposed order.</p>	Tenants, 3 rd paragraph of notice
13	LLTNPA	No comments.	
14	NFUS	<p>1. NFUS is strongly of the view that an option for reimbursement of actual and quantifiable losses should exist in relation to paths created or delineated through path orders as it does in the case of path agreements.</p> <p>2. In summary, the NFU Scotland view is:</p> <ul style="list-style-type: none"> • It is unacceptable that reimbursement of actual and quantifiable losses does not exist as an option in relation paths created or delineated through path orders as it does in the case of path agreements. • Regulations should specify the level and type of detail that is required in the description of the route. • In addition to the landowner, agricultural tenants and all others with a legal interest in the land affected (e.g. holders of mineral or sporting rights) should be notified of a proposed path order. It should therefore be the duty of the local authority or national park authority to identify those with a legal interest in the land for the purpose of informing them of a proposed path order. 	Reimbursement of losses, description of route, parties with legal interest

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		<p>General</p> <p>3. It appears that, in effect, the term ‘delineation’ could mean either the establishment of the ‘line’ of the path as a ‘concept’ or as a physical feature on the ground. Where a path order results in the construction of a path, which effectively takes land out of agricultural production, it is only fair that reimbursement of actual and quantifiable losses should be made available as it is with path agreements.</p> <p>4. There may be a number of circumstances that make an access agreement difficult to establish, and owners and occupiers of land should not be penalised by being denied a fair reimbursement of actual and quantifiable losses in relation to a resulting path order.</p> <p>5. Were it to be established that reimbursement of actual and quantifiable losses could be paid in relation to the effects of a path order, the reimbursement should apply to all those with a legal interest in the land. Where the land is leased this would mean the landowner and the tenant.</p> <p>Form of Path Orders</p> <p>6. In addition to ‘the owner(s) of land in respect of which access rights are exercisable’, the local authority or national park authority should be required to ‘have regard to the rights and interests of agricultural tenants and others with a legal interest in the land (such as holders of mineral or sporting rights).</p> <p>7. As it is the occupier(s) of the land who will mainly be affected by the delineation of a path, it is vital that, in addition to the landowner, all those with a legal interest in that land, in particular any agricultural tenant(s), be sent formal notice of a proposed path order.</p> <p>8. It should therefore be the responsibility if the order-making authority to identify the landowner, together with all those with a legal interest in the land, in order to notify them of a proposed path order.</p> <p>9. Agricultural tenants, and others with a legal interest in the land, who have objected to the making of a path order, should be afforded the same opportunity as landowners to be heard by a person appointed by</p>
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		<p>Scottish Ministers for that purpose.</p> <p>Description of Route of Path</p> <p>10. Regulations should specify the level and type of detail required in the description of the route – for example directions and distances, perhaps with path furniture and surfaces. This is because features or landmarks that appear on a map will change over time (for example field boundaries will move or disappear) making it difficult to determine the exact line of the path from the schedule map in future years unless the description is fairly accurate. An example of a description could be given by way of guidance. E.g:- <i>The path starts from the B765 at Grid Reference xxxxxxxx and proceeds in a north north westerly direction for 500 metres to Grid Reference xxxxxxxx. It goes through a (12' metal field) gate and proceeds in a westerly direction for 350 metres to Grid Reference xxxxxxxx where it passes through a (wooden kissing) gate and then proceeds in a north westerly direction for 650 metres to join a minor road leading to Muirbank village through a (10' wooden field) gate at Grid Reference xxxxxxxx.</i></p>	
15	North Lanarkshire Council	<p>My comments in relation to the consultation are as follows.</p> <p>Part one - The Land Reform (Scotland) Act 2003 (Path Orders) Regulations 2005, page 1, subheading "Citation and Commencement" paragraph one, line two should read "shall come into force on () 2006" as opposed to "2005".</p> <p>Part Two - Schedule (Regulation 2) FORM OF PATH ORDER UNDER SECTION 22(1) OF THE LAND REFORM (SCOTLAND) ACT 2003, Page 2 Paragraph 1, line one, "Whereas it appears to (name of local authority)", this should also include the address of the local or park authority.</p> <p>Paragraph one should also include a more specific, rather than "(general description of area/region)".</p> <p>Paragraph six, subsection 3, it may be more expedient for order to be signed by a proper officer and sealed rather than the order being witnessed.</p> <p>Part Three - NOTICE OF PROPOSED PATH ORDER LAND REFORM (SCOTLAND) ACT 2003, line</p>	Citation and commencement, Schedule address, description of area, signature, Notice addresses, tenant farmers, paragraph 3 addresses, paragraph 4 objections, legal signature, legal advice

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		<p>one, the notice should also include the landowner's address. It may be useful to advise tenant farmers of the notice at this point.</p> <p>Paragraph one, line one, again the address of the local/park authority should be included in the notice.</p> <p>Paragraph three should be altered to read "reasons for the making of the order (is enclosed) and has been deposited at the following addresses and may be inspected free of charge during normal office hours for a period of 28 days." This will allow those affected by the order to visit a local office, as is often the case with Planning Applications.</p> <p>Paragraph four should read "Any objection to the making of the above order must be made in writing stating the reasons for the objection, may be accompanied by any relevant supporting information and be sent to the Authority at (address of the Authority) before the (date*) and must state the grounds on which it is made."</p> <p>The order should be able to be signed by an officer with delegated powers as opposed to a "proper officer."</p> <p>Finally, a note informing landowner of legal effect of notice, advising they seek legal advice should also be incorporated into the notice.</p>	
16	Ordnance Survey	<p>Ordnance Survey is Britain's national mapping agency. We maintain the definitive geographical framework for Great Britain, as well as capturing and marketing a wide range of geographical information. Our Director General is official advisor to government on all aspects of survey, mapping and geographic information. Ordnance Survey is a Government department and executive agency, and since 1999 has operated as a trading fund.</p> <p>In our view, the draft regulations are non-contentious, and include in Regulation 2(2) the sensible suggestion that the map in a path order should be at a scale of 1:10,000 or larger. We agree that it is appropriate to stipulate this minimum scale in order to ensure that sufficient detail is shown to clearly define the course of the proposed path.</p>	Scale
17	Orkney Islands	No comments.	

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18	Perth and Kinross Council	<p>Having consulted our Legal Service I write to support the Draft Regulations and the Form Notice and Order as set out.</p> <p>I sought clarification from the Council’s lawyers on how Path Orders made under Section 22 of the Act could be used not just for delineation but for the creation and maintenance of paths. Whilst Path Agreements made under the 2003 Act can cover delineation and maintenance or as the case may be delineation, creation and maintenance, Path Orders would appear to be limited to delineation only. Section 33 of the 1967 act makes specific reference to the “making up and maintenance of public paths” but this section has been repealed insofar as it applies to access land.</p> <p>The Council’s Legal Service provided detailed advice with particular reference to Section 26 of the Act and I am now reassured that there is no problem with the Regulations.</p> <p>I am aware that there is concern amongst Access Officers in different local authorities that there is not a specific mention in Section 26 as to exactly the circumstances in which officers can enter land and what kind of work they can undertake whilst there. If Access Authorities are to make best use of the powers given under Section 22 this issue should be clarified when the Guidance to Local Authorities and National Park Authorities is revised. NB the existing Guidance does not include a chapter on Section 26.</p>	Creation and maintenance, LRSA section 26 power of entry, access authority guidance
19	Ramblers Association	<p>Ramblers Scotland have no remarks to make regarding the wording of the order. However, we would like to take this opportunity to express our concerns over the potential use of path creation orders in more general terms.</p> <p>We are concerned that unless the Scottish Executive gives a clear commitment to the use of these powers, and clear guidance is provided, local authorities may be unlikely to make full use of path creation orders. Our experience shows that this has been the case with path creation orders under the Countryside (Scotland) Act 1967. We are also concerned that compulsory purchase orders are currently a much underused mechanism to enable paths to be created, upgraded and formalised. We understand that local authorities are reluctant to use these powers at present. Unless there is a clear steer from the Executive, it is likely that path creation orders under the Land Reform Act will also remain largely unused.</p>	Clear message from Scottish Executive that path orders will be used on a regular basis, access authority guidance

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		<p>We recognise that use of orders and compulsory purchase may be seen as measures of last resort where a path agreement cannot be reached, but we believe that it is crucial that there is a clear message from the Scottish Executive that they will indeed be used to ensure that path networks meet the requirements of communities. In the past, enhancement of access opportunities – particularly path development – has all too often been compromised or seriously impeded by intransigent landowners. We can supply examples from around the country of where this is a current problem. In building new roads, the first step is to automatically serve compulsory purchase orders along the route, followed by negotiation with landowners. We need to move much more closely to this situation for paths. While there will be many situations where negotiation and agreement are possible, the Scottish Executive should make it clear that path creation orders or compulsory purchase should be used on a normal, regular basis. We consider that this will be vital for the successful implementation of the Act.</p> <p>The local authority guidance on the use of local authority powers does not give clear instructions on the kind of instances whereby these orders should be used. It simply says that “this provision is expected to be only required when all other avenues have been explored and exhausted”. We would urge the Scottish Executive to give clearer guidance on the kind of criteria which would suggest when path creation orders should be used in order to encourage local authorities to employ these orders more widely, and show that there is an expectation that they will be used.</p>	
20	RICS	<p>The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations.</p> <p>As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.</p>	Criteria for path agreement being impracticable, statement of circumstances, compensation, path agreements

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		<p>Having considered this consultation document at length, RICS Scotland wishes to make the following brief comments.</p> <p>We note that the Land Reform (Scotland) Act 2003 does not state what criteria Local Authorities should use when determining where a path agreement is “impracticable”. RICS Scotland suggests that it may be helpful for this to be clarified in the Regulations.</p> <p>RICS Scotland also notes that the notice of a proposed path order is to include a statement from the Local Authority of the circumstances why it is necessary to delineate the path and the reasons why the order is necessary. We would welcome the inclusion of this information in the path order also.</p> <p>Furthermore, we suggest that it may be of benefit to clarify whether the landowner will be entitled to compensation should an objection to the making of the order be overruled.</p> <p>Finally, it is our view that consensus should always be sought between the Local Authority and the landowner and all reasonable endeavours should be made for path agreements to be reached. It is hoped that open dialogue between the two parties involved will ensure that path orders are not unnecessarily used.</p>	
21	Scottish Natural Heritage	<p>We welcome this further step towards full implementation of access rights under the Land Reform Act, and have only a few comments.</p> <p>Public consultation on Path Orders</p> <p>The proposed notice to owners suggests that the draft Order may be made available for inspection at a designated location, but it is not clear what steps, if any, the access authority should take to notify the wider public of the proposed Order. Experience suggests that wider public involvement can help to realise better outcomes which more closely match the aspirations of users. It might therefore be helpful if the Regulations could make reference to procedures for alerting and involving the public in this process.</p> <p>Path specifications</p> <p>The Schedule to the Path Order currently includes a description of the route of the path, but there is no</p>	Public notice and consultation, path specifications, notice of coming into operation, appeals

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		<p>provision for detail on its physical specification, including such matters as width, surfacing and the range of anticipated use. Some reference to specification would be helpful in a number of ways, and would demonstrate the full intention of the access authority in relation to the path. The fact that an order is being proposed suggests that the route is of considerable importance, and it is reasonable to expect that the authority should have a plan for its construction or upgrading and subsequent management. This information could also help both users and land managers to understand precisely what can be expected as a result of the path order, and may encourage helpful comments to improve the specification and amenity, eg. on surfacing or location of seats and viewpoints.</p> <p>Notice of Coming into Operation</p> <p>Schedule 1.8 of the 2003 Act requires the access authority to notify the owner of the Order coming into effect, but there is currently no prescribed form for this purpose within these draft Regulations. The Countryside (Scotland) Regulations 1982 (No. 1467 (S.166)) require a "Notice of Coming into Operation" to be issued following the confirmation of Public Path Creation Orders under the Countryside (Scotland) Act 1967, and provide a template for this notice. This advises that appeals based on the validity of the Order can be made to the Court of Session within 6 weeks. It would be useful to clarify whether an appeal mechanism is available to affected owners under the present Regulations, or through other general legal provisions, as a safeguard against breach of statutory procedure.</p>	
22	ScotWays	<p>We are particularly interested in the actions open to local authorities under the 2003 Act - where access rights are exercisable - and those remaining under the Countryside (Scotland) Act 1967 - where access rights are not exercisable.</p> <p>The proposed Regulations must take account of the provisions of the LRA (Scotland) Act 2003 including, under Schedule 2 of that Act, the repeal of certain provisions for path orders etc previously enshrined in the 1967 Act.</p> <p>Local authorities can make agreements and path orders under Sections 21 and 22 of the 2003 Act in respect of paths where access rights are exercisable. As a consequence, Schedule 2 of the 2003 Act repeals the provisions in the 1967 Act relating to path orders and agreements; but the appropriate provisions under the latter Act continue to have effect in relation to land excluded from access (see Schedule 2, para. 7 (b) of the</p>	Countryside (Scotland) Act 1967

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		2003 Act). This suggests that authorities could use this to make a path agreement/order in respect of, for example, a path passing through curtilage (notwithstanding the Scottish Executive's Guidance which states that orders should only be made when all other avenues have been explored and exhausted). The two sets of powers are mutually exclusive. The 2003 power cannot be used in relation to land outwith access rights, but the 1967 powers have been repealed in relation to land within access rights. This raises issues as to what a local authority must do if it wishes to make a path order or agreement in respect of a path where access rights are only excluded on part of it - as in the case of a path passing through a farm steading. Perhaps they will be required to make two (or more) separate path agreements/orders under the different statutory provisions?	
23	Shetland Islands Council	N/A	
24	South Lanarkshire Council	From experience of using the Public Path Creation Order provisions of the Countryside (Scotland) Act 1967 it would appear that these procedures are very similar in style to those now proposed for the new legislation. Within that context I would make the following observations. In order to facilitate local authorities in constructing, upgrading or maintaining paths created using the provisions of section 22 of the land reform legislation, I would ask that consideration is given to the inclusion of an additional clause in the schedule accompanying the path order regulations explicitly conferring powers on the local authority to enter other land adjacent to the delineated path for the purpose of constructing, upgrading or maintaining the path. The reason for requesting this additional provision is that on occasions when this authority has used the provisions of the previous legislation to create paths by order it has sometimes been problematic to construct or repair the path due to legal challenge by the land owner attempting to obstruct and deny access over other land adjacent to the path. The inclusion of the suggested addition would remove this difficulty and in a real way make this aspect of the provisions of the legislation more workable.	Access during works
25	SRPBA	The SRPBA recognises that the form of path orders and the form of the notice to landowners will largely be	Compensation,

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	<p>determined by the requirements of the underpinning legislation, that is section 22 of the Land Reform (Scotland) Act 2003 (the Act) and Schedule 1 to this Act, as introduced by section 22(8) of the Act. There are, however, a number of comments that the SRPBA would wish to be considered with regard to the form of path orders and the form of notice to landowners, and these are set out below.</p> <p>Draft regulations setting out the form of path orders under section 22 (6) of the Land Reform (Scotland) Act 2003</p> <p>Compensation for landowners affected by a path order</p> <p>On 13 May 2005, in an e-mail response to questions by the National Access Forum, Dr Sally Thomas, of the Scottish Executive Environment & Rural Affairs Department, advised that as part of the work underway by the Scottish Executive Legal Services to prepare regulations governing the form of path orders, the issue of compensation for those affected by a path order would be looked at.</p> <p>While acknowledging that there was no provision in the Act for compensation, Dr Thomas did intimate that, should it transpire that compensation is not payable, some similar provisions [to those set out in the Scottish Executive Guidance to Local Authorities & National Park Authorities, section 21 path agreements : model agreement] for reimbursement of quantifiable losses could be established.</p> <p>There is no indication in the draft form of path order or in the supporting correspondence from the Scottish Executive of arrangements for provision for compensation, or for reimbursement of quantifiable losses. If this omission were to remain this would effect unequal treatment of landowners affected by a path order. The SRPBA feels that the Scottish Executive should clearly state what arrangements would be available for compensation or reimbursement of quantifiable losses.</p> <p>The SRPBA looks forward to receiving further comment from the Scottish Executive on this matter.</p> <p>Draft form of the notice to landowners issued under Schedule 1 of the Act</p> <p>The SRPBA suggests that paragraph 4 should read "A copy of the draft order and of the map referred to therein together with a statement of the reasons for the making of the order [is enclosed] and [has been</p>	<p>Schedule paragraph 4 statement of circumstances</p>
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		deposited at address and may be inspected free of charge during office hours]"s. It is essential that landowners on whom a notice of proposed path order is served should be provided with all relevant detailed information. A requirement for access authorities to directly supply such detailed information to the landowner and to make this information more widely available will therefore satisfy both landowner and public interests.	
26	Stirling Council	No comments.	
27	Sustrans	<p>Sustrans are developing the National Cycle Network (NCN) and other cycle facilities throughout Scotland which, to attract high levels of use for both recreational and active travel purposes, need to be of a high quality and well promoted.</p> <p>Whilst the Land Reform Act gives cyclists and other non-motorised users the right to access the countryside, it does little to assist in the creation of high quality paths. These still require agreement with landowners to build and upgrade, to promote and to manage. We have taken out very many such agreements as part of the NCN.</p> <p>Our experience has been however that, where landowners are reluctant to enter into such agreements, local authorities have rarely used the Path Creation Order (PCO) process and we understand only a handful of PCO's have been processed under the Countryside Scotland Act. This appears likely to continue, as your own monitoring of progress of Part 1 of the Land Reform Act, shows that there have been no Path Orders under section 22 since the Act came into being.</p> <p>We suggest therefore that the Executive should consider the following:</p> <ul style="list-style-type: none"> • Simplification of the Path Order process so that it becomes a useful and valid tool in the creation of paths • Issuing guidance and encouragement to the authorities in the use of Path Orders 	Simplified process, encouragement to use path orders, access authority guidance
28	West Lothian	No comments.	

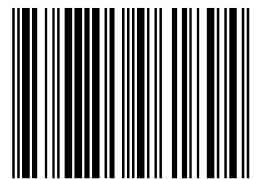
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