



SCOTTISH EXECUTIVE

Environment Group

Countryside & Natural Heritage Division

Victoria Quay
Edinburgh EH6 6QQ

Telephone: 0131-244 4439
Fax: 0131-244 4071
malcolm.duce@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Your ref:
Our ref:

12 December 2005

Dear Sir/Madam,

CONSULTATION ON DRAFT GUIDANCE FOR CORE PATHS PLAN LOCAL INQUIRIES

I am writing to advise you that the Scottish Executive is undertaking a consultation on draft Guidance for Core Paths Plan Local Inquiries.

Background

Under the terms of section 17 of the Land Reform (Scotland) Act 2003 ('the Act'), local authorities must, not later than February 2008, draw up a plan for a system of paths ("core paths") sufficient for the purpose of giving the public reasonable access throughout their area. Under the terms of section 18 of the Act the local authority shall give public notice of the plan, make the plan and any maps available for public inspection, and consult upon it, inviting objections and representations to be made to them within a specified time period. If an objection is made and not withdrawn, the local authority shall not adopt the plan unless Ministers direct them to do so.

Where there is an unwithdrawn objection, Ministers shall not make such a direction without first causing a local inquiry to be held into whether the plan will, if adopted, fulfil the purpose of a core paths plan. Such a local inquiry may also be directed in other cases. Following publication of the local inquiry report, Ministers may direct the local authority to adopt the plan with or without modifications. A local inquiry may also be called when a local authority proposes to amend a core path plan following a review.

The Scottish Executive has drawn up draft Guidance on the procedures to follow in these Core Paths Plan Inquiries. We are now seeking comments on a draft of the proposed Guidance, and a copy of the draft Guidance is enclosed. This Guidance is non-statutory.

A copy of the Act can be obtained from The Stationery Office at TSO Scotland Bookshop, 71 Lothian Road, Edinburgh EH3 9AZ tel: 0870 606 5566 or e-mail: Edinburgh.bookshop@tso.co.uk or can be viewed on the website of the Queen's Printer for Scotland : http://www.oqps.gov.uk/scotlegislation/acts_scotparliament.htm.

Responding to this consultation

We are inviting written responses to this consultation by Monday 6 March 2006. **Please send your response to:**

malcolm.duce@scotland.gsi.gov.uk

or

Malcolm Duce, Countryside and Natural Heritage Division, Scottish Executive, 1J South, Victoria Quay, Edinburgh EH6 6QQ

If you have any queries contact Malcolm Duce on 0131 244 4439

We would be grateful if you could clearly indicate in your response which parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

For future engagement:

If you wish to access this consultation online, go to <http://www.scotland.gov.uk/view/views.asp>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is, if you prefer to submit your response by e-mail to Malcolm.duce@scotland.gsi.gov.uk

SEConsult

A new email alert system for SE consultations ([SEconsult](#)) was launched in December 2003. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult will complement, but in no way replace SE distribution lists, and is designed to allow stakeholders 'keep an eye' on all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We encourage you to register as soon as possible.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library and on the Scottish Executive publications web pages by [date], unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

Yours faithfully

MALCOLM DUCE

B. RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title:

1. Are you responding as: (please tick one box)

- (a) an individual (go to 2a/b)
(b) **on behalf of** a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)
No, not at all

2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (please tick one of the following boxes)

- Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondents ***will be*** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
No

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

- Yes
No

C. The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses¹. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

If you have any comment about how this consultation exercise has been conducted, please send them to the contact details above.

¹ www.scotland.gov.uk

DRAFT -

CODE OF PRACTICE FOR LOCAL INQUIRIES INTO CORE PATHS PLANS UNDER THE LAND REFORM (SCOTLAND) ACT 2003

Introduction

1. This Code of Practice provides detailed guidance on the operation of procedures for local inquiries which may be held under section 18(4) of the Land Reform (Scotland) Act 2003 ('the Act'). Such local inquiries will be held in cases where objections have been made to a draft core path plan, and have not been withdrawn.

Context

2. Under section 17 of the Act, local authorities and national park authorities have the duty to draw up a plan for a system of paths ('core paths') sufficient for the purpose of giving the public reasonable access throughout their area. Section 18 of the Act sets out the procedure for the formal public notification and consultation over the draft core paths plan.

3. The formal consultation process allows for members of the public to raise objections to the draft core paths plan. If an objection is raised and subsequently withdrawn then access authorities shall proceed to adopt their core paths plan as required by subsection 18(2). The plan preparation process should have identified and resolved problems as far as possible. Authorities are encouraged to enter into dialogue to ensure that, as far as appropriate, suitable resolutions can be found to any points of formal objection which remain outstanding. This may involve a specified change to the plan, or some other particular resolution, with the objector then formally withdrawing the objection.

4. However, if a valid objection is raised and not withdrawn, then access authorities must not adopt their core paths plan unless directed to do so by the Scottish Ministers. Scottish Ministers will not direct an access authority to adopt its core paths plan without first holding a local inquiry. Ministers may in any other case cause such an inquiry to be held. The local inquiry will investigate specifically whether the core paths plan will, if adopted, fulfil the purpose mentioned in section 17(1) of the Act, that is of being sufficient to give the public reasonable access throughout the authority's area.

5. Under present statutory arrangements the inquiry will be organised to conform with section 265, subsections (2) to (13), of the Town and Country Planning (Scotland) Act 1997. That provides for, amongst other things, the appointment by the Minister of a reporter, notifications to involved parties, enabling the use of written statements, and Ministerial orders requiring payment of expenses by any party.

Time Periods for the Section 18 Procedures

6. Prior to any inquiry, the procedures under section 18 of the Act will have followed a standardised sequence with time periods broadly as follows:

a) The consultation period, with maps and consultation material available, will run for 12 weeks, as specified in section 18(1) of the Act. The public notification and consultation material will set out the address to which objections or supporting representations are to be sent, and the date before which they must be submitted if they are to be considered. In exceptional circumstances the authority may agree to accept a late objection, for example where it relates to a matter which is already the subject of objection. If no valid objections are made, or any made are withdrawn by the objector, then the access authority shall adopt the plan.

b) If valid objections are made, access authorities are encouraged to pursue dialogue in order to achieve suitable resolutions wherever appropriate and practicable. This will be a consensual process. The period allowed would not be indefinite, and generally should extend to no more than 2 months.

c) If, at the conclusion of that process, valid objections remain, then the access authority should notify the Minister within 4 weeks. This notification will be accompanied by two copies of the relevant documentation, including a copy of the draft plan, explanatory supporting material, and copies of the outstanding objections. The access authority should also provide a statement on each objection, explaining its case as to why the objection cannot be accepted or resolved. As far as practicable, this documentation may be provided in electronic format. A notification letter or email shall be sent by the access authority to the Scottish Executive Inquiry Reporters Unit (SEIRU) at the same time.

d) A local inquiry will then be arranged to take place as soon as possible thereafter, and the aim would be to hold the inquiry within six months of the notification to Ministers. The inquiry will be held on behalf of the Minister by a Reporter supplied by the SEIRU, and will consider all objections which the relevant authority has accepted as valid and which have not been withdrawn.

Validity of objections

7. To be valid, an objection will need to –

- have been submitted in writing within the due time period
- require a change to the core paths plan
- be focussed upon the purpose, competencies and sufficiency of the core paths plan.

8. In that last respect, the Act at section 18(4) states that a core paths plan inquiry would examine whether the plan will fulfil the purpose contained in section 17(1) – ie *that the proposed core paths system will be sufficient for the purpose of giving the public reasonable access throughout the area of the access authority*. On that basis, an objection relating solely to a single individual path, or a section of it, in general would not be valid, unless it had substantive implications for the wider sufficiency of the core paths system. However, access authorities wherever possible should aim to resolve issues over individual paths even if they do not justify an inquiry. When inviting objections and representations, the public notice (6a above) should clearly state these validity criteria, in order to avoid invalid objections being submitted because of lack of knowledge.

9. The objection must contain the name and address of the objector, and preferably should include a telephone number where contact can be made during office hours.

The objection should state:

- the precise matters to which the objection relates - by reference to specific proposal references in the draft core paths plan, or to the grid references of the relevant proposals, or to an omission of some matter from the plan;
- the grounds on which the objection is made - with it being important that the full grounds of the objection are presented at this stage ; and
- the details of the change that is sought - ie the revisions to the core paths that would provide an acceptable alternative, or requested additions to correct an omission or to produce a sufficient proposal.

10. It is for the relevant access authority to consider and decide upon the validity of any objections submitted, on the basis of the criteria in paragraph 7 above. Any one who considers that the authority have failed to comply with this guidance should write to the authority in the first instance. If the matter cannot be resolved the Scottish Public Services Ombudsman may be able to assist in the case. (The Ombudsman office is at 4 Melville Street Edinburgh EH3 7NS). However, the Ombudsman can only examine and comment on procedural matters, not on the technical merit of the plan or any objections.

11. After the closing date, copies of all the objections and representations made to the Plan will be available for inspection at the offices of the authority and at any other convenient locations specified by them. This allows objectors to identify others with a common interest so that they can jointly seek to resolve matters with the authority, or present their case jointly at an inquiry. No objection can be treated as confidential.

12. If the authority considers that insufficient information has been made available to explain an objection the objector may be asked to provide additional information. The authority officials shall wherever appropriate meet objectors to correct misunderstandings and to discuss the scope for agreed changes that might result in the withdrawal of objections.

Selecting the appropriate inquiry procedure

13. The form of the local inquiry on the core paths plan will be determined by the Reporter, after consideration of the nature of the objections. **In normal circumstances, it is expected that objections will be considered by the Reporter by means of written submissions and a site inspection.** This procedure offers a simple and established means of determining fairly, impartially and efficiently objections to the core paths plan.

14. Should the objections raise complicated issues or require discussion, the Reporter may decide that consideration should involve an oral process. In this case, the Reporter appointed to the case will normally opt for the hearings procedure, allowing parties to elaborate on particularly complex or technical issues which could not otherwise easily and effectively be considered by exchanges of correspondence.

Such hearings will generally be similar to the arrangements and procedures for planning appeal hearings, as explained further below.

15. It is envisaged that a formal inquiry procedure, involving an adversarial approach achieved by cross-examination, will be required only in exceptional circumstances. As with the written submissions and hearing procedures, the decision over a formal inquiry will rest with the Reporter informed by the views of the parties. The process used will be the most appropriate for considering the matters in dispute and producing a recommendation.

Written submissions procedure

16. All the written material submitted to Ministers under paragraph 6c above, and copied to the SEIRU, will comprise the material for the inquiry by written submissions for the consideration of the Reporter. The Reporter will provide notification of the commencement of the inquiry by written submissions procedure to each objector and to the access authority. The notification to each objector will include a copy of the statement provided by the access authority in relation to that objection.

17. Each objector will then have a period of four weeks in which to provide a written submission, in response to the access authority's statement over why the objection could not be accepted or resolved. This written submission should not repeat the terms of the objection, which are already in the possession of the Reporter. It should generally be restricted to a concise response to the written statement from the access authority, explaining why in the view of the objector the objection should be accepted or suitably resolved. All correspondence in written submissions cases should clearly state the relevant SEIRU case reference number (as noted in the Reporter's commencement letter).

18. Where a party expects to have difficulty in complying with a prescribed time limit, that fact, and the reasons for it, should be notified to the Reporter at the earliest opportunity. Only in exceptional circumstances which could not reasonably have been foreseen, or in the case of public or other recognised local holidays, is a time limit likely to be extended.

19. The Reporter, where he/she considers it appropriate, may request one or more third parties to submit statements and documents to the Inquiry. In such circumstances the access authority will be asked to send additional copies of the objections and relevant documents to those third parties. For instance, third parties in this context might include bodies such as Scottish Natural Heritage who may have a relevant contribution to make. The Reporter may arrange for copies of any third party's statement to be sent to the access authority and to relevant objectors.

20. If the access authority or the objector(s) wishes to respond in writing to any aspect of such a third party's statement, this should be done within 2 weeks of the receipt of that statement. Copies of the response should be submitted to the Reporter, who may arrange for it to be copied to the other relevant parties.

21. All the above submissions and exchanges of documents should aim to utilise electronic format and transmission as far as is practicable, to make efficient use of

time and resources. If the Reporter is not provided with the necessary information in sufficient time before the hearing it may cause delay or even deferral.

Site visits

22. The purpose of the site visit if required is to familiarise the Reporter with the characteristics of the area in question, and to relate points raised in the submissions to the situation on the ground, once the written material has been submitted. The objectors and the access authority are usually consulted about the date of the visit and invited to attend. The Reporter is not able to take oral evidence at the site visit and he/she will not participate in any discussion, argument or debate on the merits of the case. Where those parties agree, the Reporter's site visit may be unaccompanied.

Hearings procedure

23. It will be for the Reporter, on behalf of the Scottish Ministers, to decide whether a hearing would be an appropriate means of conducting the inquiry, based upon the Reporter's assessment of the submissions received. A hearing is likely to be used when there is particularly complex evidence which would benefit from oral discussion. The hearing may cover all the issues involved in a case, or may focus on specific issues where discussion would be helpful. The procedure is intended to allow the Reporter to lead a structured discussion about the matters at issue. The aim is to provide a fair hearing and to ensure the Reporter has all the information necessary for his/her report, in a flexible and less formal atmosphere.

24. If the Reporter decides that the Inquiry will require a hearing, the objector and the planning authority will be notified and given an opportunity to comment on the proposal to use the hearings procedure. Each party should, within 14 working days of that notification, inform the Reporter of their acceptance that the hearing procedure is appropriate.

25. If there are any additional documents to which parties intend to refer at a hearing, copies should be submitted to the Reporter and to the other party or parties at least 4 weeks before the hearing is due to start.

Arranging the hearing

26. Not less than 4 weeks notice of the arrangements for the hearing will be given. The Reporter will send details of the arrangements to the objectors and the access authority. The hearing may use more than one venue during the course of the inquiry, and should be located to be convenient for the parties to the hearing. The Reporter will also give such other publicity to the hearing as he/she thinks advisable, and may provide information on where and when copies of any statements and documents that will be referred to during the hearing may be inspected.

27. The arrangements for the hearing and the conduct of it will be designed to create the right atmosphere for discussion, and to eliminate or reduce the formality sometimes encountered at a local inquiry. To this end, the accommodation provided for the hearing should be informal, and the Reporter and the parties should wherever

possible sit round a table. Small committee rooms are usually satisfactory, whereas council chambers, which often have a more formal atmosphere, should generally be avoided.

Procedure at the hearing

28. The Reporter will conduct the hearing, and at the outset explain that the hearing will take the form of a discussion which he/she will lead. The Reporter will then summarise his/her understanding of the relevant issues from reading the papers and any pre-hearing site visit, and will indicate those matters where further explanation, resolution or clarification is required. This will not preclude the parties from referring to other aspects which they consider relevant, provided that adequate prior notice and particulars have been given.

29. Written material should have been circulated and exchanged beforehand, and so it will not normally need to be read out at the hearing. Parties should avoid introducing new material or documents not previously referred to, as this may necessitate adjournment of the hearing to a later date and frustrate the objectives of the hearing procedure.

30. Objectors may present their case through an agent or advisor, but such representation is not essential. Legal representation should not normally be necessary at a hearing. The objector will usually be asked to start the discussion. Those participating in the hearing will have the opportunity to comment on the submissions made by other parties, and they will be able to ask questions informally (through the chair) throughout the proceedings, subject only to the questions being relevant and the discussion being conducted in an orderly manner. The Reporter will indicate when he/she considers that sufficient clarification of a topic has been achieved and will then move on to the next issue. The Reporter will also discourage repetitive or irrelevant evidence and questioning. The objector will be allowed to make any final comments before the discussion is closed (although formal closing submissions are not appropriate).

31. Before the end of the hearing the Reporter will consider whether there should be a further, accompanied, visit to the site, and will advise parties of the arrangements. If appropriate, he may decide to allow further limited discussion of relevant matters on site before formally closing the hearing.

Expenses

32. In general, parties are expected to meet their own expenses.

33. The Act enables the Scottish Ministers to make orders relating to expenses, but these are likely to be awarded exceptionally, and probably only in cases where one party has acted unreasonably, and that unreasonable behaviour has demonstrably caused others to incur unnecessary expense.

Notification of decision

34. The Reporter will prepare a report and recommendation for the Minister who will subsequently notify all those who took part in the inquiry of his decision. As stated in the Act, after receiving the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the access authority to adopt the core paths plan either as drawn up or with such modifications as Ministers may specify in the direction. It should be noted that any significant modifications may require to be reflected in adjustments to the Strategic Environmental Assessment which will accompany the core paths plan.