



SCOTTISH EXECUTIVE

Environment Group

Chief Executives Local Authorities
& National Park Authorities
Members Access Forum

Countryside & Natural Heritage Unit
Victoria Quay
Edinburgh EH6 6QQ

Telephone: 0131-244-6545
Fax: 0131-244-4071
PublicAccess@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Your ref:
Our ref:

16 February 2004

PART 1 LAND REFORM (SCOTLAND) ACT 2003 – CONSULTATION ON DRAFT GUIDANCE FOR LOCAL AUTHORITIES/NATIONAL PARK AUTHORITIES

The Land Reform (Scotland) Act 2003 establishes rights of responsible access rights to land and inland water for recreation and passage.

Under section 27 of the Act Ministers may give guidance to local authorities on the performance of any of their functions under Part 1 of the Act. We are now inviting comments on a draft of the proposed guidance.

During the passage of the draft Bill through Parliament in 2002, much emphasis was given to the importance of the guidance that would be given to local authorities. In producing this draft guidance the Executive has worked closely with representatives of local authorities and Scottish Natural Heritage. The emphasis on the Act is on the local management of access, and the success of the new access legislation will depend on how local authorities carry out their duties and functions under the Act since they will have the key role in facilitating and managing access rights on a day to day basis.

This draft guidance provides local authorities with information to assist them in fulfilling their duties under the Act, and also in carrying out their other functions under the Act. It is hoped that this consultation will widen the debate on the management and implementation of access rights at a local level.

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 7 May. **Please send your response to either e-mail to:**

PublicAccess@scotland.gsi.gov.uk

Or, by post to

Ian Fairweather, Scottish Executive, Countryside & Natural Heritage Division, Area 1-J, Victoria Quay, Edinburgh, EH6 6QQ

If you have any queries contact Ian Fairweather on 0131 244 6545.

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.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library 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 sincerely

IAN FAIRWEATHER

Annex A 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



SCOTTISH EXECUTIVE

Part 1 LAND REFORM (SCOTLAND) ACT 2003

*Draft Guidance for Local
Authorities and National
Park Authorities*

Contents

1. Introduction
2. Short summary of Local authority powers and duties under Part 1 Land Reform (Scotland) Act 2003
3. Section 10 – The Scottish Outdoor Access Code
4. Section 11 - Power to exempt particular land from access rights
5. Section 12 - Byelaws in relation to land over which access rights are exercisable
6. Section 13 – Duty of local authorities to uphold access rights
7. Section 14 - Prohibition signs, obstructions, dangerous impediments etc.
8. Section 15 - Measures for safety, protection, guidance and assistance
9. Section 16 – Acquisition by local authority of land to enable or facilitate exercise of access rights
10. Section 17 – Core paths plan
11. Section 18 – Core paths plan: further procedures
12. Section 19 – Power to maintain core paths etc.
13. Section 20 - Review and amendment of core paths plan
14. Section 21 – Delineation by agreement of paths in land in respect of which access rights are exercisable
15. Section 22 – Compulsory powers to delineate paths in land in respect of which access rights are exercisable
16. Section 23 - Ploughing etc.
17. Section 24 – Rangers
18. Section 25 - Local access forums
19. Section 30 – Existing byelaws providing for public access to land
20. Glossary of terms

Introduction

The Land Reform (Scotland) Act 2003 received Royal Assent on 25th February 2003. Part 1 of this Act establishes statutory rights of responsible access to land including inland water. These rights will be brought into effect once the Scottish Outdoor Access Code has been approved by the Scottish Parliament. It is expected that the rights will come into effect in autumn 2004.

The emphasis in Part 1 of the Act is very much on the local management of access. With the duties and powers that local authorities already have under existing legislation in respect of access, it is appropriate that they should continue to be the main bodies responsible for the implementation of the new access arrangements under the 2003 Act outwith National Parks. Within the Parks, responsibility will rest with the park authorities.

Section 27 of the Act permits Ministers to give local authorities guidance on the performance of any of their functions under Part 1 of the Act. The guidance has been prepared in consultation with COSLA and with Scottish Natural Heritage.

The legislation is not limited to the establishment of access rights, but also addresses the need for better provision of infrastructure to facilitate the exercise of access rights. As a result there is growing public expectation that the provision for public access will be improved significantly over the coming years. An important element in the facilitation of access will be the core paths plans to be drawn up by local authorities under section 17 of the Act. Core paths will enable and encourage all members of the public, regardless of ability, to exercise their rights of access.

Ministers recognise that implementation of the new arrangements for access carry cost implications for local authorities. In their settlement for 3 years up to 2003 - 04 local authorities were given additional funding of £13.7 million for access related activity. In the current settlement they have been allocated a total of £22m to prepare for implementation of the access legislation. Authorities will have until 2007 to draw up core paths plans and Ministers wish to work with them in identifying the costs associated with core paths provision.

2. Powers and duties of local authorities/national park authorities under Part 1 of Act

Duties

Section 10: The Scottish Outdoor Access Code

It is a duty of local authorities to publicise the Access Code once it has come into operation on a date fixed by Ministers.

Section 13: Duty to uphold access rights

Local authorities have a duty to uphold access rights. They have a duty to assert, protect, keep open and free from obstruction any route, waterway or other means where access can be reasonable exercised. Local authorities also have powers to institute and defend legal proceedings.

Section 17 : Core paths plan

Local authorities have a duty, not later than 3 years after implementation of this section, to draw up a plan for a system of core paths sufficient to provide reasonable public access throughout their areas.

Section 18: Core paths plan: further procedure

Local authorities have a duty to publicise their plan and any maps, and to make them available for public inspection for at least 12 weeks. In addition, the local authority must consult the local access forums, persons representative of those living and working on the land affected by the plan, Scottish Natural Heritage and anyone else it deems appropriate. When the plan is adopted the local authority must publicly notify its adoption, compile a list of core paths, make the plan available for public inspection and send a copy to Ministers. If there are any objections to the plan, it cannot be adopted until confirmed by Ministers.

Section 20: Review and amendment of core paths plan

Local authorities have duty to review the core path plan and following that review can remove or divert a core path. The core path plan must be amended if any core path is stopped up or diverted under section 208 of the Town and Country Planning (Scotland) Act 1997 or the Countryside (Scotland) Act 1967. If a core path is added to the core path plan the procedures of consultation under section 18 must be followed.

Section 25: Local access forums

This section places a duty on each local authority to establish a local access forum consisting of a reasonable balance of persons and bodies representing the interests of persons with an interest in public access on and over land and owners of land over which access rights are exercisable.

The functions of a forum are to provide advisory and dispute resolution services in relation to the exercise of access rights, the existence of rights of way and the drawing up and adoption of core paths plans.

A local authority may appoint one or more of its own members to a forum, and also may establish more than one forum for its area. They may pay expenses and allowances to the members of the local access forum.

Section 30: Existing byelaws providing for public access to land

All byelaws relating to public access to land must be reviewed by the person that made them within 2 years of the coming into force of this section and, if necessary, modified to ensure consistency with the provisions of this Act.

Powers

Section 11: Power to exempt particular land from access rights

The powers in section 11 are intended to address a number of situations which range from the local village fete to the events such as the Ryder Cup. Local authorities may by making an order exclude land for a period of less than six days. Any order which excludes land for six days or more will require Ministerial confirmation. Any confirmed order must be reviewed after two years.

Section 12: Byelaws in relation to land over which access rights are exercisable

Section 12 provides powers for local authorities to make byelaws for the preservation of public order and safety, prevention of damage, and prevention of nuisance or danger. Any byelaw made under this power must not interfere with a public right of way or navigation or the role of statutory undertakers. Byelaws made under this procedure will be subject to the consultation procedures set out in section 12 of the Act.

Section 14: Prohibition signs, obstructions, dangerous impediments etc.

If an owner of land does anything for the purpose or main purpose of deterring the public from exercising their right of access, local authorities have powers to require, by written notice, the owner to take remedial action. If the owner fails to comply, the local authority can remove signs or notices or take other remedial action. An owner on whom a notice has been served by a local authority may appeal against it by summary application to the sheriff.

Section 15: Measures for safety, protection, guidance and assistance

Local authorities have powers to take steps to warn and protect the public against any danger on any land in respect of which access rights are exercisable, and to indicate or enclose recommended routes or to give directions to this land. They can install and maintain gates, stiles, moorings, launching sites, seats, lavatories and any other means of facilitating the exercise of access rights, and for the comfort and convenience of the public. They can also provide life guards and boats and equipment.

Section 16: Acquisition by local authority of land to enable or facilitate exercise of access rights

This section provides local authorities with powers to acquire land either by agreement or, with the consent of Ministers, compulsorily, to enable or facilitate the exercise of access rights.

Section 19: Powers to maintain core paths etc.

Local authorities have powers to maintain a core path, keep it free from obstruction and provide the public with directions.

Section 21: Delineation by agreement of paths in land in respect of which access rights exercisable

Local authorities may enter into an agreement for the delineation and maintenance (and, if necessary, creation) of a path over land in respect of which access rights are exercisable. Such an agreement will be on the terms and conditions agreed between the local authority and the person with whom they enter into the agreement. Those terms and conditions may, amongst other things, provide for the making of payments.

Section 22: Compulsory powers to delineate paths in land in which respect of which access rights exercisable

A local authority, where they consider it impracticable to delineate a path by agreement under section 21, may make an order (a “path order”) delineating it. The local authority may make a path order only if they consider, having regard to the rights and interests of the owner of the land over which the proposed path passes and persons likely to exercise access rights on or over the land, it appropriate to do so.

Where a path order is made, local authorities will have a duty to maintain the path delineated in the order and, if necessary, to create it. They may also revoke any path order.

The Occupiers’ Liability (Scotland) Act 1960 (c.30) makes provision as to the duty of care which an occupier or person in control of land must show to persons on the land. Subsection (4) provides that regard may be had to a local authority’s duties to create or maintain a core path in determining whether they are in control of the path and therefore owe the duties set out in the Act of 1960.

A path order must be in the form prescribed in regulations made by Ministers, but requires in any case that it contain a map showing the delineation of the path. The procedures for making an order are detailed in Schedule 1 of the Act.

Section 23: Ploughing etc.

Section 23 allows an owner to plough, or to carry out other land management practices, on land incorporating a core path or a right of way. However, where core paths or rights of way are disturbed this way, there is a duty on the owner to reinstate the path or right of way within 14 days beginning on the day the path was first disturbed or within such longer period as the local authority may allow.

An owner who fails to reinstate the path within the required period is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

If an owner fails to reinstate a path within the period set, the local authority may, after giving the owner 14 days notice of their intention, take all steps necessary to reinstate the path or right of way and recover their reasonable expenses from the owner.

Section 24: Rangers

Local authorities have the power to appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable. Ranger's functions are to provide advice and assistance on matters relating to access rights to perform such other duties in relation to those rights as the local authority appointing them may specify.

Section 26: Powers of entry

Persons authorised by local authorities may enter any land for a purpose connected with the exercise or proposed exercise of any of the authorising authority's functions under Part 1. Such a person may, however, enter land under this power only at a reasonable time and on after giving reasonable notice to the owner of the land, unless entry is needed in case of emergency or for the purpose of warning the public of, or protecting the public from, danger; taking measures to facilitate the exercise of access rights; or fulfilling certain duties relating to core paths.

Persons authorised to enter land may take onto land any machinery, other equipment or materials required for the purpose for which they are entering the land.

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

This section allows persons to apply to the sheriff for a determination of whether access rights are exercisable over particular land, of whether persons exercising those rights are doing so responsibly or of whether the owner of land in respect of which access rights are exercisable is using, managing or conducting ownership in a responsible way.

It further allows persons to apply to the sheriff for determination of whether any path or bridleway or other means of crossing land is or is not a right of way by foot, horseback, cycle or any combination of these.

In either case, the proceedings are those for an action of declarator initiated by summary application to the sheriff. The local authority must receive notice of an application and are entitled to be a party to the proceedings.

3. Section 10 The Scottish Outdoor Access Code

10 (7) It is the duty of-

- (a) Scottish Natural Heritage (SNH) and local authorities to publicise the Access Code;*
- (b) SNH to promote understanding of it.*

The duties of publicising and promoting understanding of the Scottish Outdoor Access Code will be key to successful implementation of the new rights of public access to the outdoors – rights that come with responsibilities. Although the Act separates these duties, appropriate publicity is an integral part of the education process that will promote understanding. For example without suitable publicity to make the people aware of the Code the process of promoting understanding of its content cannot begin. As such, both duties will support an education process to:

- raise awareness of the Code;
- help people to understand and take on board their responsibilities.

Given the complexity and extensive nature of the Code, it is essential that there is consistency, compatibility and cohesion in the activities that deliver the messages on responsibilities. To achieve this, Local Authorities and SNH should work closely in the preparation, implementation and evaluation of their programmes to publicise and promote understanding of the Code. This process will use logos and designs to help with visual recognition and consistency.

Whilst the duties formally rest with SNH and Local Authorities, many other organisations and individuals will have a role in promoting the responsibilities that accompany the new rights. This role will support the concept of cascading information that underpins the marketing strategy proposed by SNH for the promotion of understanding of the Code.

There are many ways in which a wide understanding of the new Code can be achieved. The use of traditional, as well as a range of inventive and innovative approaches, should be used to provoke and capture the attention of the different audiences. It is equally important that the messages conveyed relate to people's everyday experiences so that they can see the relevance of it to their everyday situation and a message needs to be revealed in a memorable way to have greatest impact.

Means of delivery: -

As a minimum, Local Authorities should:

- make the Code available for examination in all their Offices, Libraries and community centres;
- publicise its existence in newsletters, websites and other relevant publications;
- ensure that appropriate staff (rangers, access officers, planners etc) are briefed and trained in its content and can answer any questions and queries.

The marketing strategy prepared by SNH identifies 10 key target audiences. To maximise the roll out of the education programme to these 10 key audiences, local authority ranger

services, access officers and appropriate staff should assist SNH by cascading the code's messages using the visual identity in the most appropriate manner. This may include: presentations, talks, signage, displays and use of websites.

Under section 10 (8) of the Act:

SNH shall keep the Code under review and may modify it from time to time.

To assist with this, Local Authorities should evaluate their publicity, keep a record of their operations to publicise the Code and supply this information to SNH when requested.

Key Target audiences:

- General public – contains the casual user and by definition is a mass market group requiring the use of mass market techniques;
- Dog owners (25% of general public were accompanied by a dog on their last visit to the countryside);
- Active pursuits – enthusiastic and committed activist – not a member of a particular club or association;
- Land and Water managers;
- Commercial recreational interests – covers outdoor retailers, mountain guides, freelance outdoor instructors, youth hostels, wildlife tourism operators etc;
- Recreation managers – access officers, rangers, local authority staff, wardens;
- Education providers – formal and informal education and groups where learning is an integral element of the organisation;
- Visitors to Scotland;
- Outdoor clubs and associations – non profit organisations whose membership is interested in a particular activity e.g. Scottish Canoe Association;
- Legal advisors – from local authority lawyers to the Police.

4. Section 11 Power to exempt particular areas of land from access rights

11(1) *The local authority may (whether on application made to them or not) by order under this section made in respect of a particular area of land specified in the order exempt it for a particular purpose specified in the order from the access rights which would otherwise be exercisable in respect of it during such times as may be specified in the order.*

Section 11 of the Act enables local authorities, whether on applications from third parties or on their own initiative, by order, to exempt a particular area of land from access rights.

It is likely that the main use of these powers will be to exclude land from access rights for either a few days or on a more permanent basis to allow a charge to be levied for admission. Examples are provided below. However, there may be other reasons why local authorities may consider it appropriate to exempt areas of land from access rights, for example in the interests of safety or security.

It should be emphasised that, given the duty of local authorities under the Act to uphold access rights, the power to exempt land for access rights under this section of the Act should be used sparingly and applied in respect of the minimum area of land, and for the minimum period, necessary.

When considering making an order local authorities should have regard to whether or not alternative routes might be required to facilitate access over or around land affected by such an order.

Examples of when these powers might be exercised

Short term exclusions

The Act establishes rights of access to all land except that specifically excluded by section 6. Where an event is held on land over which access rights may be exercised, there may be a need to exclude the land from access rights for the duration of the event to allow for the levy of an entrance charge.

It is not envisaged that an order will be required for all events for which an entrance fee is to be charged. It is only where there is considered likely to be a problem in imposing a charge for entry from those attending that an order should be considered.

At some sporting events there could be other issues, such as security, where there might be a need to control access. For example, some major golf tournaments, of which the Ryder Cup in 2014 is one of the most obvious, might justify an order not only to allow spectators to be charged but to help ensure the safety of the players.

Longer term exclusions

Longer exclusions again could relate to entry charges. There may be a need to have a mechanism to introduce entry charges where there has been no charge in the past. This might be needed so as not to undermine the ability of organisations such as the National Trust for Scotland to agree to take on new properties if there is no facility to charge visitors in order to offset the costs of upkeep of the property.

Another example might be where a new archaeological site is opened up, which could possibly become an important local visitor attraction. If there existed no means of excluding the site from access rights to allow visitors to be charged it might simply have to be filled in again. This would be a loss not only to the public, but also to the area. Local authorities are best placed to decide on whether there is a good case for excluding certain land from access rights in such circumstances.

Privacy and commercial activities

Section 6 (a) and (b) of the Act specifically provides that access rights are not exercisable on land that forms the curtilage of a non-domestic building. In the cases of houses, the Act excludes sufficient adjacent land to enable persons living there to have reasonable measures of privacy to ensure that their enjoyment is not unreasonably disturbed. Section 7(4) of the Act further provides that the location and other characteristics of the house will be taken into account when deciding the extent of land which is excluded from access rights.

There may be particular circumstances where these provisions in the Act may not provide the degree of privacy necessary to the success of certain commercial enterprises, such as some hotels and estates whose financial viability depends on the guarantee of privacy for their clients. In cases such as these local authorities may be faced with applications from such parties to have particular areas of their land excluded from access rights.

Local authorities should treat these cases on an individual basis. They are best placed to weigh such issues as the threat of responsible access to the viability of the enterprise; the importance of the enterprise to the local economy; and the loss to the public of excluding the land from access rights. It is likely that only in a very few circumstances is an order likely to be considered appropriate.

Child security

Section 6 of the Act excludes from access rights not only schools but all contiguous land used for the purposes of the school for the reasons of child security. However, there are other circumstances where child security might have to be considered. For example, education authorities and youth organisations run outdoor centres which are usually residential. Depending on the layout and position of such a centre it may be considered appropriate to exclude the land associated with it from access rights to ensure the security of the children. On the other hand it might be argued that a strong public presence actually helps to improve security.

Where exclusion of the land from access rights is considered the appropriate action, an order under section 11 provides a suitable mechanism. However, byelaws made under section 12 of the Act should also be considered as a possible approach to any problem.

Consultation

Local authorities need not consult in respect of any proposed order which would have the effect of excluding land from access rights for a period of 5 days or less.

However, where a proposed order would exclude land from access rights for 6 days or longer, the consultation requirements are set down in section 11(2) shown below. The local access forum established under section 25 of the Act will play an important role in advising the local authority on any proposed orders under section 11

The consultation requirements set out in section 11(2) are as follows: -

(2) Before making an order under this section which would have effect for a period of six or more days, the local authority shall—

(a) consult the owner of the land to which it would relate, the local access forum established by them and such other persons as they think appropriate; and

(b) give public notice of the intended purpose and effect of the proposed order,

inviting objections to be sent to them within such reasonable time as is specified in the notice; and shall consider any such objections and any other representations made to them.

It should also be pointed out that section 11 requires that any order having effect for 6 days or longer requires to be confirmed by Ministers. In confirming an order Ministers will wish to be satisfied that the consultation has been carried out in accordance with the requirements set down in section 11 of the Act.

Finally local authorities will be required to review any such orders not later than 2 years from their date of coming into force, and thereafter at intervals of not more than 2 years, at which date they will expire unless re-enacted.

5. Section 12 Byelaws in relation to land over which access rights are exercisable

12(1) The local authority may, in relation to land in respect of which access rights are exercisable, make byelaws—

- (a) making provision further or supplementary to that made—*
 - (i) by sections 2 and 9 and under section 4 above as to the responsible exercise of access rights; and*
 - (ii) by section 3(2) and under section 4 above as to the responsible use, management and conduct of the ownership of the land;*
 - (b) specifying land for the purposes of section 6(j) above;*
 - (c) providing for—*
 - (i) the preservation of public order and safety;*
 - (ii) the prevention of damage;*
 - (iii) the prevention of nuisance or danger;*
 - (iv) the conservation or enhancement of natural or cultural heritage.*
- (2) Byelaws made under section (1)(c) above may, in particular—*
- (a) prohibit, restrict or regulate the exercise of access rights;*
 - (b) facilitate their exercise;*
 - (c) so as to protect and further the interests of persons who are exercising or who might exercise access rights, prohibit or regulate—*
 - (i) the use of vehicles or vessels;*
 - (ii) the taking place of sporting and recreational activities;*
 - (iii) the conduct of any trade or business;*
 - (iv) the depositing or leaving of rubbish or litter; and*
 - (v) the lighting of fires and the doing of anything likely to cause a fire,*
on the land.

Section 12 of the Act sets out local authority powers to make byelaws only in relation to all land and inland water over which access rights are exercisable including core paths identified as such in local authority core paths plans. It sets out the purposes for which byelaws can be made, the procedure to be followed and obligations to consult certain persons and bodies.

The powers to make byelaws set out in section 12 relate specifically to access rights established by the Act and should not be made for any other purpose. It is also not expected that local authorities will make byelaws on land owned and managed by other public agencies that have their own byelaw making powers. If there was a problem that is identified on such land then it would be up to the appropriate agency that has responsibility to make byelaws on the land in question to address the issue.

As set out in section 12, the purposes for which byelaws may be made fall into three categories:

Firstly, as set out in section 12(1)(a)(i) byelaws may make provision setting out what may not be responsible conduct over a particular area of land by persons exercising their access rights. They may also similarly make provision determining what is not responsible conduct in respect of the use, management of the ownership of land, over which access rights are exercisable.

Secondly, byelaws may also specify land over which access rights are not exercisable for the purposes of section 6(j).

Thirdly, byelaws under section 12 may also provide for those purposes specified in section 12(c)(i) to (iv) of the Act namely, the preservation of public order and safety, the prevention of damage, the prevention of nuisance or danger and the conservation or enhancement of natural or cultural heritage.

The byelaw-making powers in section 12 of the Act are capable of being exercised generally in relation to land (and inland water) or in respect of a specific part of the land over which access rights are exercisable and may affect different provisions for different parts of the land (or inland water) over which access rights are exercisable. They should be limited to those specific areas where the need arises, rather than be applied over extensive areas on a precautionary basis.

In certain circumstances local authorities may be in doubt over the use of the byelaw-making powers available to them under section 12 of the Act with regards to the interpretation of the purposes for which byelaws can be made, (e.g. the conservation of natural or cultural heritage). In cases such as these they should seek early advice from the appropriate bodies, (e.g. Historic Scotland, Scottish Natural Heritage) or anyone else they think appropriate.

In making byelaws under section 12 local authorities must, at all times, have regard to their general duty under section 13 of the Act to uphold the exercise of access rights in so far as doing so is consistent with their other functions, on and over any route, waterway or other means by which access rights may be exercised. It requires local authorities to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised so far as doing so is consistent with other local authority functions. In making byelaws, local authorities must ensure that these are consistent with the purpose of the legislation (in line with the provisions of s.30). Consistency will mean accord with both the letter and the underlying purposes of the legislation.

There may, however, be circumstances where it might be appropriate for a local authority to use byelaws to modify or limit the exercise of access rights whether in limiting certain activities, or affecting how and where access rights might be exercised, or excluding access rights over an area. In all cases such as these local authorities will need to exercise their judgement carefully to the provision for access in that area and consider the best mechanism to managing that particular problem in that area. Local authorities may wish to consider whether byelaws are the most suitable management tool or whether in the case where they are

proposing to exclude access over a particular area for a limited period they should consider the use of their power under section 11 of the Act to exempt particular areas of land from access rights, (Guidance on section 11 powers is provided at chapter 4). In either case local authorities should give thought to providing alternative routing, where this is appropriate.

Circumstances in which the use of byelaws could be appropriate might be:

- After other measures of management or advice were not shown to be effective; or
- Where persistent breach of responsible behaviour or responsible management action arises and staff operating on the ground need the support of the byelaw provision;
- Where there has been significant use of a particular area of land and some form of management of that use is felt to be appropriate, in the interests of facilitating the exercise of access rights;
- Where there is conflict between different categories of recreational users using same area of land (water), e.g. jet-ski users and canoeists, (byelaws could be used to “zone areas” for particular use) and this may pose a nuisance or danger to other users;
- Consideration might be given to using byelaws to manage access over land which is being regularly or permanently used by children for example, such as youth centres or scout camps, so as to safeguard the interests of the children;
- Where persistent usage of, for example, a stretch of river or riverbank has resulted in damage to wildlife and their habitats, on land of local importance, other than that already protected by a natural heritage designation and where byelaws already exist;
- Consideration may be given to restricting the use of certain vehicles over areas of land where access rights are being regularly exercised and the use of vehicles on the same piece of land may pose a threat to public safety.

Point to Consider– Management Rules

There may be some circumstances, although it is not expected that there should be many, in which local authorities may wish to consider the appropriateness of introducing management rules under the provisions contained at section 112 of the Civic Government (Scotland) Act 1982, before considering proposing byelaws. These allow local authorities, without the need for confirmation by Scottish Ministers, to regulate the use of and conduct of persons while in or on land and premises which is owned, occupied, managed or controlled by a local authority. Management rules are designed for minor offences in areas such as parks, community halls etc. where a breach would not justify the immediate criminal sanctions of byelaws, e.g. keep off the grass. However a breach constitutes an offence if the offender refuses to desist from contravening the management rule, or to leave the grounds or premises, when requested to do so by an authorised officer of the local authority. Local authorities can also take out exclusion orders against persistent offenders, a breach of which would be a criminal offence.

The power to make management rules is additional, not an alternative, to the power conferred under any enactment to make byelaws for any purpose. Where byelaw-making powers also exist, such as in section 12 of the Act, it is for local authorities to determine what would be the most appropriate mechanism for addressing the particular problem, taking any advice from the Executive as they consider necessary.

Consultation requirements for byelaws under section 12(6), (7) & (8)

(6) The local authority shall, at the same time as they first make the proposed byelaws open to public inspection, consult the persons and bodies mentioned in subsection (7) below on the proposed byelaws.

(7) Those persons and bodies are—

(a) every community council whose area includes an area to which the proposed byelaws would apply;

(b) the owners of land to which the proposed byelaws would apply;

(c) such persons as appear to them to be representative of the interests of those who live, work, carry on business or engage in recreational activities on any land affected by the proposed byelaws;

(d) the local access forum established by them;

(e) every statutory undertaker which carries on its undertaking on land to which the proposed byelaws would apply;

(f) Scottish Natural Heritage; and

(g) such other persons as they think fit.

(8) The local authority are, for the purposes of subsection (6) above, to be taken as having consulted a person of whom or a body of which they have no knowledge or whom or which they cannot find if they have taken reasonable measures to ascertain whether the person or body exists or, as the case may be, the person's or body's whereabouts.

In order to address public concern that the byelaw making powers under section 12 might be seen to be too restrictive the consultation requirement being placed on local authorities under section 12(6) & (7) ensures that there are safeguards in place for all those interested parties to comment on byelaws proposed to be made by local authorities. It also ensures that local authorities must take account of these comments and may adjust the byelaws in light of such views and comments.

Byelaw-making procedure

All byelaws made under section 12 of the Act, whether on land or inland water are subject to the same process for making, and confirmation of byelaws by Ministers, set out in sections 202 to 204 of the Local Government (Scotland) Act 1973, subject to the modifications specified in subsection (5) of section 12 of the Land Reform (Scotland) Act 2003. Amongst other things, those sections provide for:

- an objection procedure;
- a register of byelaws;
- the revocation of byelaws; and
- offences against byelaws.

Ministerial consideration of confirmation of byelaws

The Scottish Ministers are the confirming authority by virtue of section 202(15) of the Local Government (Scotland) Act 1973. When local authorities put forward made byelaws for confirmation, Ministers will wish to be satisfied prior to confirming any byelaws proposed under section 12 that:

- The byelaws are intra vires with the Act and that the consultation process set out in section 12 of the Act has been carried out fully;
- That they do not duplicate or conflict with the general law, existing byelaws or any local Act, or common law;
- That the nuisance they address merits criminal sanctions, that the byelaws and penalties are fair and reasonable and that they will be enforced;
- That they directly address a genuine and specific local problem and do not attempt to deal in general terms with essentially national issues.

Public Rights of Way and Rights of Navigation

Local authorities should be aware that byelaws made under section 12 of the Act must not interfere with the exercise of any public right of way or of navigation, or with any functions of a statutory undertaker as defined in section 32 of the Act.

Public rights of navigation are just that – rights, and must be respected. It is not appropriate to simply override them. However, byelaws can manage those rights without overriding them – the two are not mutually exclusive. The exercise of a right of navigation as in going from one end of a stretch of water to another, is one thing and quite different from the many recreational pursuits undertaken. This basically means that on a stretch of water where there is a right of navigation that people can still exercise that right, however, for reasons of safety they may need to be directed to avoid certain areas.

National park authorities – powers to make byelaws

National Park authorities will be responsible for the making of byelaws within their area under section 12 of the Act. The National Park authorities are required to consult with, amongst others, the relevant local authorities prior to making any byelaws in the area of the National Park. National Park authorities will also be able to make byelaws under schedule 2(8), and management rules under schedule 2(10) to the National Parks (Scotland) Act 2000 for land within the area of a National Park.

As an aid to local authorities the table below sets out a summary of the different byelaw making powers and also the available powers to make management rules under existing legislation in Scotland and which body is responsible for making byelaws and management rules in each circumstance.

Governing legislation	Section	Category of land	Byelaw making authority
Local Govt. (Scotland) Act 1973,	Section 201	Land other than that where byelaws can be made for same purpose under another enactment. Land outside area of National parks	Local authorities
Civic Government (Scotland) Act 1982	Section 121	Adjacent waters and seashore outside area of National parks	Local authorities
National Parks (Scotland) Act 2000	Schedule 2(8)	Land within area of National parks	National Park authorities
Land Reform (Scotland) Act 2003	Section 12	Land and inland water within access rights established by Act.	Local authorities & National Park authorities
Countryside (Scotland) Act 1967	Section 54	Country Parks provided for under section 48 of same Act, outside National Parks and those country parks inside National parks designated as such prior to establishment of National park where that country park is situated. Byelaw-making powers in respect of paths, land and waterways that are subject to access agreements or orders	Local authorities
Civic Government (Scotland) Act 1982	Sections 112-118	Power to make management rules for the use of and conduct of persons on any land or premises owned, occupied or managed by the local authority or is otherwise under their control and to which public have access whether on payment or not.	Local authorities & National Park authorities

6. Section 13 Duty of local authority to uphold access rights

13(1) It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.

The establishment of access rights enables all members of the public to enjoy the countryside and to take part in informal recreation both on land and inland water. Local authorities have a key role in ensuring that these access rights are facilitated on the ground. In order to ensure that these requirements for informal recreation can take place the Act places an emphasis on the local management of access. It is recognised that local authorities require sufficient powers to be able to manage access in each of their areas. The legislation provides them with these new powers and duties.

Local authorities will have the main role in the management of access over all land not just paths. The duty placed on local authorities to assert, protect, keep open and free from encroachment those routes by which access may be reasonably exercised will ensure that access will work on the ground. However, the method of undertaking this work will be for each local authority to determine.

Local authorities will have their own procedure by which to involve elected representatives. Often the key to dealing successfully with any problem that arises will be early intervention by the local authority. Consideration should, therefore, be given to the scope for initiatives at official level without reference to Committee to prevent minor problems escalating into major problems.

Assert, protect, keep open and free from encroachment

Land managers have a clear duty to manage land over which access rights can be exercised responsibly. It is essential that in order for the public to exercise their access rights that they should be open and free from obstructions. The powers in sections 14 to 23 of the Act provides local authorities with powers and duties to ensure that the public can exercise their rights of access over land and inland water.

Impact of duties under the Act on other functions

13(2) A local authority is not required to do anything in pursuance of the duty imposed by subsection (1) above which would be inconsistent with the carrying on of any of the authority's other functions.

The duties under this section of the Act does not conflict with a local authority's other functions. An example of this is when they are considering planning applications for development on land over which access rights are exercisable they will still be able to give consent for developments.

Institute legal proceedings

13(3) The local authority may, for the purposes set out in subsection (1) above, institute and defend legal proceedings and generally take such steps as they think expedient.

The Act provides local authorities with powers to commence court action if they are unable to fulfil their duties of being able to assert, protect and keep open and free from obstruction or encroachment land on which access rights can be exercised. It is for the authorities to determine when it is appropriate to take this action.

7. Section 14 Prohibition signs, obstructions, dangerous impediments.

14(1) The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—

- (a) put up any sign or notice;*
- (b) put up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation;*
- (c) position or leave at large any animal;*
- (d) carry out any agricultural or other operation on the land; or*
- (e) take, or fail to take, any other action.*

Background

Owners of land should not impede or restrict the public from exercising access rights. Section 14 of the Act provides local authorities with a power to take action if an owner of land does anything for the purpose or the main purpose of preventing or deterring the public from exercising access rights. This provision is additional to the requirements of section 3 of the Act, which provides that landowners should use and manage land responsibly in respect to access rights. Section 14(1) provides a potential list of these types of activity.

Actions which may prevent or deter the public from exercising access rights.

The following are examples of types of action which may prevent or deter the public from exercising their access rights:

- erecting signs or notices which deter the public from entering land over which access rights are exercisable;
- erecting fences or walls or planting, hedges trees or other vegetation;
- blocking culverts;
- leaving any animal for example a bull in a field crossed by a core path.
- parking vehicles, trailers, equipment, building or fencing materials in such a way as to unreasonably impede access;
- storing or depositing dung, straw or any animal food stuffs on a path, road or gateway so as to unreasonably impede access;
- locked gates.

Prevention

Fences, walls hedges, trees

Owners of land have a right to manage their land. Natural features such as hedges and trees and manmade features such as dry stone walls define for example fields where livestock are kept. If, however, the public have been exercising their access rights over an area of land and

an owner of land commences growing hedges then it may be considered that they have been deliberately planted to prevent or deter access rights.

Deterrence

Signs

The use of signage can be a useful tool to manage public access and to welcome the public to the countryside. A signpost which provides information about an area and where to undertake recreational activity can give guidance to the public and provide reassurance about where they can and cannot exercise their access rights. However, where a sign seeks to deter the exercise of access rights without good reason then a local authority in fulfilling its duty to uphold access rights under section 13 of the Act, should take steps to have it taken down.

Leaving animals roaming freely

Farm animals, in particular bulls, which are left to roam freely in an area where the public regularly exercise access rights may be used as a means of deterring access where the public access land. The Health and Safety Executive's advice note Agricultural Information sheet No 17 provides useful information on the potential hazards which can occur to workers and members of the public when cattle including bulls are kept in fields where the public exercise access rights. Farmers do, of course, have to keep their animals somewhere. It is expected that where a farmer keeps any particularly dangerous animal in a field crossed by a core path or a right of way that the local authority may regard such action as an obstruction to responsible access.

Contacting the owner of the land

14(2) & (3)

(2) Where the local authority consider that anything has been done in contravention of subsection (1) above they may, by written notice served on the owner of the land, require that such remedial action as is specified in the notice be taken by the owner of the land within such reasonable time as is so specified.

(3) If the owner fails to comply with such a notice, the local authority may—

(a) remove the sign or notice; or, as the case may be,

(b) take the remedial action specified in the notice served under subsection (2) above,

and, in either case, may recover from the owner such reasonable costs as they have incurred by acting under this subsection.

A local authority should first identify the responsible party, be it owner, tenant, licensee or occupier of the land before serving a written notice. A letter should be written advising that the main purpose in meeting with the owner of the land is to find out their reasons for restricting public access (Appendix A). In discussing the matter the local authority should ensure that any individual upon whom the notice is to be served is aware of their responsibilities under Part 1 of the Land Reform (Scotland) Act 2003 and the public's right to be able to exercise their access rights on the land in question. The local authority should also make all parties aware of the guidance in the Scottish Outdoor Access Code.

Serving a written notice

If the local authority is satisfied that the action of any individual was for the purpose or the main purpose of deterring the exercise of access rights and the said individual is unwilling to remedy the situation a written notice (Appendix B) may be served on the responsible party. The local authority may wish to consider sending this letter by recorded delivery. The notice must be served:

- not less than 14 days before the date on which its due to take effect.

The written notice must clearly specify the actions which the local authority requires the tenant, licensee or occupier of the land to undertake in order to allow the public to exercise their right of access over the land. The notice must also clearly state the date by which the remedial action must be undertaken.

Appeals

The owner of land on whom a notice has been served may appeal by summary application to the Sheriff. The procedures for appealing by summary application are contained in the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules (1999). The Statutory Instrument number is 929 of 1999.

Removal of the obstruction

If the terms of the written notice are not fulfilled the local authority can itself take the necessary steps and recover any reasonable costs incurred from the owner of the land.

Appendix A

IMPORTANT NOTICE

Name
Address

(Name the local area)
Prevention/Deterrence of public access rights
Land Reform (Scotland) Act 2003 Section 14

I am writing to request a meeting to discuss a possible contravention of section 14 of the Land Reform (Scotland) Act 2003 on your land. Part 1 of the Act provides for rights of responsible access over land and inland water for recreation and passage and other purposes. [Provide details of the prevention/deterrence].

Section 14 of the Act provides that it is an offence for an owner of land to do anything for the purpose or the main purpose of preventing or deterring the public exercising their rights of responsible access over land. There are certain areas of land which are excluded from the Act, however I understand that the land named above is included within access rights. If it is found that the public are being prevented from exercising their rights of access, then the local authority may serve a written notice on you requesting that the deterrent, obstruction or impediment be removed within 14 days to enable access rights to continue. If following the written notice, access rights still cannot continue then the local authority may take action and recover the costs from you.

I would be grateful, therefore, if you would write to me at the above address or contact me on tel: xxxxxxxxx to arrange a date to discuss the matter.

Should you have any further queries, please do not hesitate to get in touch as soon as possible.

Yours faithfully

Appendix B

Model Written Notice

LAND REFORM (SCOTLAND) ACT 2003

WRITTEN NOTICE

ISSUED BY: [name of Council/National Park authority]

1. **THIS IS A FORMAL NOTICE** which is issued by the [name Council/National Park authority] because it appears to them that there has been a breach of section 14(1) of the Land Reform Scotland Act 2003.

2. THE LAND AFFECTED

Land at [address of land], shown edged red on the attached plan.

3. THE BREACH OF PREVENTING OR DETERRING THE EXERCISE OF ACCESS RIGHTS

[State what has prevented or deterred the exercise of access rights].

4. REASONS FOR ISSUING THIS NOTICE

[State why the notice is being issued i.e. it appears to the Council/National Park authority that the above breach of section 14 of the Land Reform (Scotland) Act has occurred within the last xx months.]

5. WHAT YOU ARE REQUIRED TO DO

1. State what the owner is required to do i.e. remove sign from a core path.
2. Time compliance: xx weeks after this notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on XX, unless an appeal is made against it beforehand.

7. **YOUR RIGHT OF APPEAL BY SUMMARY APPLICATION**

You can appeal against this notice, but any appeal by summary application must be received, or posted to be received by the sheriff clerk **WITHIN 21 DAYS OF THE NOTICE TAKING EFFECT**. Schedule 1 to this notice gives information on your rights of appeal. Read it carefully.

8. **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this written notice, it will take effect on [the specified effective date] and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in the notice. Failure to comply with a written notice which has taken effect can result in [specify action] by the Council/National Park authority.

Dated: [date of issue]

Signed: [Council/National Park's authorised officer]

on behalf of [Council/National Park's name and address]

8. Section 15 Measures for safety, protection, guidance and assistance.

15(1) The local authority may take such steps (which may include the putting up and maintenance of notices and fences) as appear to them appropriate—

- (a) to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable;*
- (b) to indicate or enclose, or to give directions to, any such land.*

15(2) Where the local authority consider that a fence, wall or other erection is so constructed or adapted (whether by the use of barbed wire or other sharp material or by being electrified or otherwise) as to be likely to injure a person exercising access rights, they may by written notice served on the owner of the land on which it is placed, require the owner to take, within such reasonable time as is specified in the notice, such reasonable action as is so specified, being action calculated to remove the risk of injury.

Background

It is important that local authorities in managing public access are responsible for making the public aware of potential hazards in areas where they can exercise access rights. In order to ensure public safety in these areas, section 15 provides local authorities with powers to enable them both to warn and protect the public against any danger on any land in respect of which access rights are exercisable. It also provides for authorities to indicate, enclose, or to give directions to, this hazardous land.

Hazards which may cause injury to the public while exercising their access rights

If anything which may injure those exercising access rights is identified by local authorities, consideration should be given to making the public aware of the dangers in using any particular route. It will be for each local authority to decide how to communicate this to the public. Examples of this could be, making them aware at starting points used for particular walk or the use of signs.

Land occupiers and managers may use land management practices, which may prove hazardous to the public when they are exercising access rights. This could include:

- the use of barbed wire or other sharp material in inappropriate locations;
- stiles in poor repair;
- dangerous bridges or boardwalks with loose boards;
- steps which are broken;
- locked gates;

This list is not exhaustive.

Written notice

If an owner of land, after being made aware of that the public while exercising access rights may be injured on their land, and the hazard it has not been removed or repaired then local authorities may serve a written notice. Action as per section 14 should be used. The model letter (Appendix A to section 14) and the written notice (Appendix B to section 14) can be adapted for this use.

Installation and maintenance

15(4) The local authority may install and maintain, in any land in respect of which access rights are exercisable, gates, stiles, moorings, launching sites or other means of facilitating the exercise of these rights, and seats, lavatories and other means of contributing to the comfort and convenience of persons exercising them.

To enable the public to exercise their rights access local authorities have powers to install and maintain on any land and inland water over which access rights are exercisable means which will provide comfort and convenience to members of the public exercising access rights.

Types of facilities which may be installed or maintained include:

Land

- Gates;
- Stiles;
- Seats;
- Lavatories;
- Signs and waymarkers;
- Any other method of facilitating access.

Local authorities should refer to Annex A to this section which provides references for guidance and advice on design solutions which meet the access needs of all visitors to the countryside.

Inland water

- Moorings, launching sites or any other method of facilitating access to inland water

and also

- provide trained lifeguards and the boats and equipment for life saving;

Local authorities should ensure that the lifeguard training is accredited with recognised with life saving certificates.

Consideration should be given to the abilities of members of the public who will exercise their access rights in this area, and to the use of particular areas of water in determining where to allocate reserves.

Existing facilities

15(6) In exercising their powers under this section, the local authority shall—

- (a) have regard to the extent to which there are existing facilities in their area for the purposes of assisting persons to exercise access rights; and*
- (b) have regard to the needs of persons with disabilities.*

In deciding the requirements for the local area, local authorities should take into consideration the facilities which already exist and the needs of all range of abilities within the local community and potential visitors to the area.

Consulting the owner of the land

15(7) The local authority may carry out the operations authorised by subsections (4) and (5) above within the land over which the access rights are exercisable only with the consent of the owner.

Prior to installing any equipment on land over which exercise rights are exercisable, local authorities must consult with the owner of the land and obtain their consent to do the work. If, however the equipment is installed on a core path then they does not require to seek consent.

Annex A - Publications on Access and Rights of Way

Countryside Access Design Guide by Scottish Natural Heritage ISBN 1 85397 339 4 (£15.00)

Anton A. E. Prof. (new edition revised by D. J. Cusine)(1996) *Rights of Way: A Guide to the Law in Scotland* Scottish Rights of Way Society (£5 inc. p&p) ISBN 0 9502811 6 6

Kit Campbell Associates (1997) *Countryside Recreation and Access Strategies: Guidance for local Authorities* Scottish Natural Heritage (free) ISBN 1 85397 243 6

Kit Campbell Associates (1997) *Countryside Recreation and Access Strategies: Summary* Scottish Natural Heritage (free) ISBN 1 85397 244 4

Agate E. (Revised 1996) *Footpaths A Practical Conservation Handbook* British Trust for Conservation Volunteers ISBN 0 9501643 9 9 (£10.95)

Davies P. & Loxham J. with Huggon G. (1996) *Repairing Upland Path Erosion: A Best Practice Guide*. Lake District National Park, National Trust & English Nature, Publication number 03/96/659 (£19.95) ISBN 0 906421 42 X

Nightingale D. (1995) *Rights of Way Design Guide* Northamptonshire County Council (£12)

McKenzie D, Rowan-Robinson J, Sanders M (1996) *Liability and Access to the Countryside* Scottish Natural Heritage (£?) Review number 74 ISSN 1350-3111

Oxley P, R. (2002) *Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure* Department for Transport. Product code IM/01 (£?)

Ove Arup & Partners (1997) *The National Cycle Network: Guidelines & Practical Details Issue 2* Sustrans (£?) ISBN 0 9527106 9 2

Paths for All Partnership (2000) *Signpost Guidance: Planning, Location, Design, Installation & Maintenance* The Paths for All Partnership (£free)

Paths for All Partnership (2003) *Promoting Paths for People: A Marketing Guide & Toolkit* The Paths for All Partnership (£?)

Reiach Hall Blyth Partnership (1985) *Lavatories in the Countryside: A Design Guide* Countryside Commission for Scotland (now SNH) (£?) ISBN 0 902226 73 8

Reiach Hall Blyth Partnership (1989) *Footbridges in the Countryside: Design & Construction* Countryside Commission for Scotland (now SNH) (£?) ISBN 1 85397 040 9

Scottish Executive (1999) *Cycling by Design: A Consultation Paper* Scottish Executive (£25) ISBN 0 7480 8943 8

Scottish Natural Heritage (2000) *Car Parks in the Countryside: A Practical Guide to Planning, Design & Construction* Scottish Natural Heritage (£9.99) ISBN 1 85397 087 5 B

Scottish Natural Heritage (2000) *A technical Guide to the Design & Construction of Lowland Recreation Routes* Scottish Natural Heritage (£7.99) ISBN 1 85397 085 9

Scottish Natural Heritage, Scottish Enterprise & the Paths for All Partnership (2001) *Lowland Path Construction: A Guide to good Practice* Scottish Natural Heritage (£?)

Scottish Natural Heritage(2003) *Countryside Access Design Guide* Scottish Natural Heritage (£15) ISBN 1 85397 339 4 This replaces the Battleby Display Sheets

Sustrans (1994) *Making Ways For the Bicycle* Sustrans (£10 inc. p&p)

Path Industry Skills Group (now Upland Paths Advisory group) (1999) *Upland Pathwork: Construction Standards for Scotland* Scottish Natural Heritage (£15) ISBN 1 85397 062

Upland Paths Advisory group (2002) *Upland Path Management - Standards for Delivering Path Projects in Scotland's Mountains* Scottish Natural Heritage (£?) ISBN

Visitor Safety in the Countryside Group (2003) *Managing Visitor Safety in the Countryside: Principles and Practice* Visitor Safety in the Countryside Group (£12.50 + p&p)

Health & Safety Executive (1996) *Keeping Cattle in Fields with Public Access* Agricultural Information Sheet No. 17 HSE Books (free)

Paths for All Partnership SNH (2002) *Local Access Forums: A Guide to Good Practice* The Paths for All Partnership (£free)

9. Section 16 Acquisition by local authority of land to enable or facilitate exercise of access rights

16(1) Where it appears to the local authority to be necessary or expedient for the purpose of enabling or facilitating the exercise of access rights in respect of any land to which this section applies that the land be acquired by them, the authority may—

- (a) acquire it by agreement (whether by purchase, feu, lease or excambion); or*
- (b) with the consent of Ministers, acquire it compulsorily.*

Local authorities are reminded that the power available to them under section 16(1) should only be used where they are of the view that it is necessary or expedient so to acquire land in order to facilitate full enjoyment of access rights established by Part 1 of the Act.

This right to acquire land does not extend to land that falls within the category of land set out in sections 6(1) (a) (ii), (d), (e) or (f) and land that is exempt from access rights by way of an Order made under section 11 of the Act.

The use of the word “expedient” in this section means that local authorities must consider whether in all circumstances it is appropriate to acquire the land in question. It is appropriate to allow local authorities this discretion since the emphasis in the Act is on the local management of access.

In determining whether it is appropriate to exercise the powers under section 16, local authorities will have to consider many different interests. They will have to; for example, weigh the interests of the public, local access taking, including those visitors to the area, with the interests of landowners/occupiers, recreational users and conservation and natural heritage interests.

It is because of the aforementioned reasons that it is expected to be very much a last resort power and it is, therefore, not anticipated that this power will be exercised other than in unusual circumstances. For example, a swapping (excambion) to rationalise boundaries in an access area.

It is for the above reason that it is most unlikely that the circumstances will frequently arise where the need will be to acquire land by Compulsory Purchase Order rather than by agreement. However, local authorities are being given the power to acquire an interest in land by both methods. Section 16 also confirms that before a local authority proposes to acquire land by way of a Compulsory Purchase Order then they must firstly obtain the consent of Ministers to do so.

When acquiring land by way of a Compulsory Purchase Order, local authorities are reminded that The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies to any Order made under section 16 of the Land Reform (Scotland) Act 2003.

10. Section 17 Core Paths Plan

17(1) It is the duty of the local authority, not later than 3 years after the coming into force of this section, 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.

Every local authority in Scotland is required under section 17(1) of the Act to draw up a plan for a system of paths (core paths) sufficient for the purposes of giving the public reasonable access throughout their area. This must be done within 3 years of the coming into force of Part 1 of the Act.

Core paths are paths or routes, waterways or any other means of crossing land to facilitate the exercise of access rights under the Land Reform (Scotland) Act 2003 and identified as such in local authority core path plans. Only those paths identified in the core paths plan will form the system of core paths. In other words, it is the core paths plan that will form the system of core paths.

While recognising that access rights will not be restricted to core paths, a system of core paths throughout Scotland is an essential element in the new arrangements for access established by the 2003 Act. Accordingly local authorities should give priority to their development in pursuance of their duty under section 17(1) of the Act. Most people prefer to use paths, and a well-marked, clearly defined system of routes identified in a published core paths plan alongside maps of the system, will encourage more people into the countryside. Equally important, the provision of paths will assist in the management of access, particularly over agricultural land.

Timetable for the core paths plan

The core paths plan is to be drawn up within 3 years of the legislation coming into force. During that time period there should be an ‘informal consultation’ process of local and stakeholder consultations to provide the basis for the draft core paths plan. Once drawn up, the draft core paths plan will be subject to a period of ‘formal consultation’ the requirements for which are set out in section 18 of the Act. Thereafter, the core paths plans, following the procedure for adoption also set out in section 18 should be adopted by the local authorities.

“sufficient for the purpose of giving the public reasonable access throughout their area”

Scotland has around 100,000km of paths and tracks and extensive inland water: lochs, rivers and streams. While access rights will apply to the majority of land and inland water, the purpose of core paths system is to provide a network of priority paths and waterways which will offer assured and welcoming access. The system should provide for a variety of recreational uses (e.g. walking, cycling, horseriding, swimmers and canoeing) as well as utilitarian everyday uses, and for all ages and abilities.

The assessment of the network being “sufficient for purpose” should be based on local consultations, and would aim to meet the needs of the whole community. Local authorities should only consider the provision of core paths for particular categories of user, where there is a demand for that use in their area (e.g. where there is not a demand for a core path suitable for horse riders or cyclists, then there will be no need to cater for it). This assessment by the local authority in drawing up the system should particularly involve the Local Access Forum as a major consultee. Core paths should contribute to achieving key public policy objectives including health, sustainable transport, social inclusion and rural regeneration. The system will need to be achievable and sustainable, so will also take account of resource availability.

It is expected that many core paths will be located close to where people live, and where they can be used by visitors and tourists. There should be a particular emphasis on the core paths network on the urban fringe providing connections with the wider countryside, and providing links through green corridors and public open spaces. The system should also link coherently across boundaries.

Section 17(2) - Paths that may be included within Core paths plan

(2) *Such a system of paths may include—*

(a) rights of way by foot, horseback, pedal cycle or any combination of those, being rights which are or may be established by or under any enactment or rule of law;

(b) paths, footways, footpaths, cycle tracks or other means of access (however described but not falling within paragraph (a) above) which are or may be provided by or under any enactment other than this Act;

(c) paths which are or may be delineated by a path agreement under section 21 or a path order under section 22 below;

(d) other routes, waterways or other means by which persons may cross land.

Types of Paths:

17(2)(a) There is no presumption that all current rights of way must become core paths, and they should be assessed on their usefulness in providing meaningful core routes. Rights of way which cross land that is outside the general access rights are likely to have particular importance. The local authority maintains information on rights of way. It may be that where a right of way is 'claimed' but not fully asserted its designation as an agreed core path would be the simpler way to establish and recognise the path's status.

17(2)(b) This sub-section gives the opportunity to designate other existing paths which are not rights of way as core paths. This will be a major focus of attention, since it will make sense to designate existing paths, tracks, launching points, etc where suitable. Existing paths and waterways represent a substantial resource and investment, they are immediately available, and they are likely to reflect existing demands to a significant extent.

However, again there is no presumption that all major paths would necessarily become core paths. As with all paths, routes such as designated Long Distance Routes, National Cycle Network routes, or urban road cycle lanes should be assessed through a consultation process to allow area-based assessment of their appropriateness for the core paths network.

Adopted minor public roads or pavements might be designated as core paths where they meet particular needs and are of a suitable condition – perhaps with motorised traffic being either restricted or regulated to provide safe and priority access for non-motorised modes. It may well be that for instance a minor road is designated as an interim measure to provide a particular link route, until a better segregated path can be provided in due course.

There is no requirement that all core paths must interconnect either nationally or at local authority level to form complete networks, as long as provision is made "throughout" the area. However, there is an expectation that core paths will provide meaningful loops and networks, and link, where it might be appropriate and/or feasible to neighbouring communities, or to neighbouring authorities' core paths if boundary issues exist close to settlements, and connect to other places of interest where demand will be high.

17(2)(c) The use of path agreements and path orders is covered later in this guidance

17(2)(d) A fresh appraisal of where new access links would be beneficial is enabled by this subsection. 'Other routes, waterways or other means by which persons may cross land' provides the basis for addressing current requirements, even where no paths may exist at present, so as to establish a 'sufficient' system. New access links are likely to be a key theme within the informal consultation processes, and the subject of consultation with land managers and developers to ensure the widest mutual benefits.

Factors which should be considered in drawing up the plan are:

- The needs of users, including existing and future needs (these may have emerged through an outdoor access strategy, or may require a fresh review);
- That core paths should provide a range of path types for a variety of users, including all abilities access, (i.e. they should be fit for use);
- That core paths should assist the interests of sound land management, without compromising accessibility. Through facilitating and encouraging access along suitable and agreed routes, the core paths should aim to achieve mutual benefits.

The Scottish Outdoor Access Code should be referred to for guidance on the use of core paths, particularly in relation to the interests of land management and nature conservation, and the responsible use of different path types by different types of user.

Other Factors in Identifying Core Paths:

Outdoor Access Strategies: Local authorities and partners are encouraged to prepare and update outdoor access strategies which provide a broad context for identifying core paths. SNH have published advice on the preparation of outdoor access strategies. Local authorities have made significant progress in recent years in preparing and implementing outdoor access strategies, particularly in relation to planning and establishing local path networks for all types of users. This work provides a good foundation for progressing the core paths plan, particularly in respect to audits of supply and demand, priorities for provision and for the promotion of facilities.

Other relevant strategies: These may include any relevant Cultural, (e.g. Gaelic) or Tourism related strategy, Community Plan, Development Plans and Physical Activity Strategy. Account should also be taken of other relevant agency strategies, such as the Forestry Commission, British Waterways, VisitScotland, etc.

Developers: Local authorities should also seek reasonable opportunities for developers to create, divert and manage core paths, through appropriate planning conditions and planning agreements within the Town and Country Planning (Scotland) Act, 1997, subject to the scale and nature of developments.

Resources: The core paths system will need to be achievable and sustainable at suitable standards in the long term. Consequently, the resource base which will be needed to establish, manage and maintain the system will be a material consideration in shaping the network. The resources will include capital funding for initial planning and works, and revenue support for the suitable regular management and maintenance operations, as well as staff resources. These considerations mean that priority based decisions will require to be made.

Local authorities will have three years from the date of legislation coming into effect to draw up the core paths plan. This time-scale is designed to allow for a broadly based assessment and substantive informal consultations. At the start of this period, local authorities should identify a broad range of consultees consulting as widely as possible on the needs of local people and visitors for core paths. This should:

- Take into account any other relevant access consultations carried out by local authorities e.g. access strategies and local path networks - there will be no need to replicate recent consultations;
- Identify settlements and/or particular geographical zones for further consultations (as informed by outdoor access strategies where they exist);
- Include the local access forum and key stakeholders such as SNH in agreeing the scope and extent of consultations.

It is recommended that these consultations are open to a broad cross-section of society, including:

- People who do not currently access the outdoors because they are excluded socially or economically;
- different types of access users, including people of all ages and abilities;
- land managers and occupiers.

The pre-draft informal consultations should be as widely inclusive as possible. In recent years many local authorities have carried out participatory consultations on outdoor access, organising local area workshops, and using participatory appraisal techniques. It is recommended that this continues, and that local authorities should also consider broader opportunities afforded through community planning forums, regeneration partnerships, and community council networks. Neighbouring local authorities should liaise to ensure that core paths consultations are complementary and to avoid duplication of effort.

Prior to drawing up the draft core paths plan, these consultations with all parties would aim to reach as much agreement as possible over the approach and priorities for the core paths - those which are already in a fit condition for use, and those which may be improved or brought into full intended use within the period of the core paths plan. Taking sufficient time to achieve full agreement at this informal consultation stage may avoid subsequent formal objections, and the need for an inquiry.

Priority use of s16 land acquisition; s24 Rangers; s26 powers of entry

These sections of the Act each provide powers for local authorities, and it is expected that the powers will be exercised particularly to address the needs of the core paths system as a priority. It should be noted that under s16, land may be acquired by agreement not only through purchase, but alternatively by leasing the land, or by negotiating a land exchange. More detailed guidance is provided in the section relating to sections 16 and 24 in this document

Relationship between core path plans and local plans

The interface between core path plans and land use planning is important. It is expected that the core paths plan will be incorporated by the planning authority into the appropriate local plan as soon as is practical. The appropriate local plan is that within which the system of paths is located. It may be the case that coverage is required in more than one local plan to reflect the core paths plan. Where there are cross-boundary implications, good liaison between local authorities is expected to ensure that appropriate local plan coverage and implementation of the core paths plan is achieved.

Core paths plans should contribute to local plan objectives and be compatible with other local plan policies, for example, on open space / transport integration etc. When being prepared core paths plans must take into account relevant broader local plan objectives. Such plans will be material considerations in considering planning applications.

The preparation of core paths plans, including consultation, finalisation and adoption will provide the opportunity for planning authorities to consider issues and representation in detail. It is not expected that further consideration will be given to similar issues and representation when incorporating a core paths plan into a local plan. Further issues and representation may be brought forward which relate to issues which the broader interests of a local plan bring into play which were not considered in terms of a core paths plan. In such circumstances the planning authority are at liberty to consider them. It is, however, expected that core paths plans as adopted will be incorporated into local plans.

Any review of a core paths plan should have regard to local plan interests and any subsequent amendment to a core paths plan should be similarly incorporated into the local plan for the area.

Relationship between Core Paths planning and Community Planning

In preparing core paths plans local authorities must be aware of the new duties being placed on them with respect to community planning under the Local Government (Scotland) Act 2003.

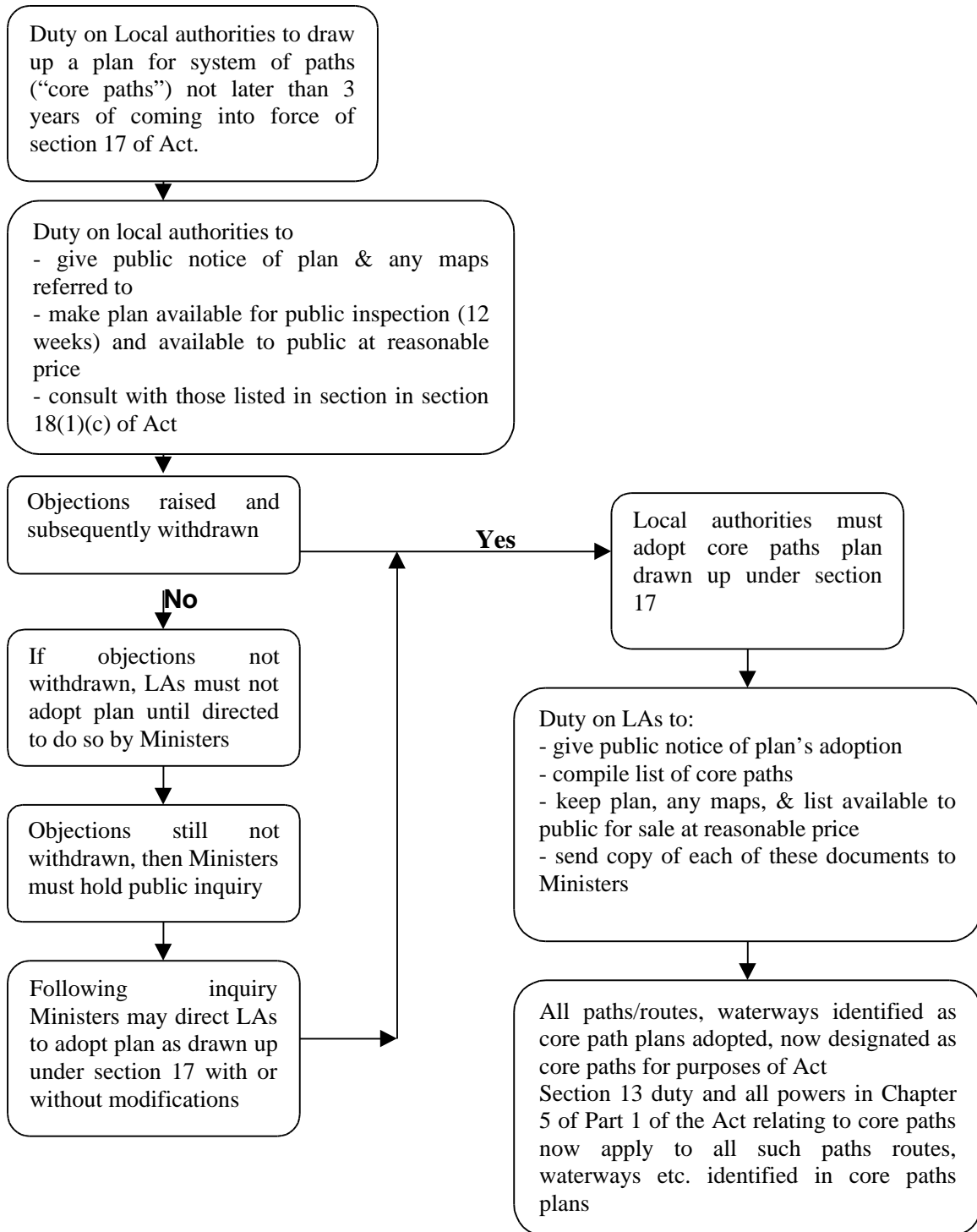
Community planning is the process through which greater collective engagement of the public sector with communities can be secured. The purpose is to more successfully assess the needs of communities and to develop policies and deliver services which best meet these needs. It is essentially about providing better links between national, regional, local and neighbourhood priorities, more effective joint working and flexible solutions driven by the needs and priorities of local communities.

Community Planning process is one in which the public services provided in a planning authority area must be planned and provided after consultation with community bodies and other public bodies responsible for providing those services, and with the on-going co-operation among those bodies. Section 15 of the Local Government (Scotland) Act 2003 requires planning authorities to initiate maintain and facilitate such a process in their area and they have responsibility to determine the means of consultation and co-operation.

In the Guidance and Advice Notes to Community Planning it is acknowledged that Community Planning Partnerships are working to find the best way to integrate other planning systems and partnership structures into the overall Community Planning framework. Although this situation has improved as familiarity with the aims of Community Planning has increased this does remain a challenge for both the Scottish Executive and public bodies. The statutory underpinning for Community Planning gives it the recognition as the overarching partnership framework at the local level.

Core paths plans should be developed within this framework in partnership and after engagement with communities and consultation with other key stakeholders.

Annex 1 - Summary of Core paths planning process



11. Section 18 Core paths plan: further procedure

18(1) *The local authority shall—*

- (a) give public notice of the plan drawn up by them under section 17 above and any maps it refers to;*
- (b) make the plan and any such maps available thereafter for public inspection for a period of not less than 12 weeks; and*
- (c) consult—*
 - (i) the local access forum for their area;*
 - (ii) persons representative of those who live, work, carry on business or engage (or would be likely to engage) in recreational activities on the land on which it is proposed that there be core paths;*
 - (iii) Scottish Natural Heritage; and*
 - (iv) such other persons as the local authority think fit,**in each case inviting objections and representations to be made to them within such period as they specify.*

The formal consultations on the draft core paths plan will follow the detailed procedures set out in Section 18. At the formal consultation stage the draft core paths plan will consist of the map(s) and supporting text, and a draft list. Consideration should be given to the draft core paths plan being made widely available – e.g. issued through council offices, libraries and other venues, published in standard and in large print versions, lodged on the internet, and produced in languages other than English.

Application of Core path plans – Section 18(8)

Once the core paths plan has been adopted, as specified in section 18 of the Act then local authorities have a duty under that same section of the Act to :-

- (a) Give public notice of its adoption; The standard format for a public notice under s.18 is attached. See Annex 1 to this section.*
- (b) Compile a list of core paths;*
- (c) Keep the plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price; (this relates only to maps illustrating the system of core paths) and*
- (d) Send a copy of each of those documents to Ministers.*

It is expected that most of the paths to be identified in a core paths plan will be existing paths or tracks, but others will simply be indicative routes between two points. As soon as the core paths plan is adopted by a local authority, those paths, tracks and routes will immediately become “core paths”.

However, section 17(2)(c) of the Act identifies paths that may be included as core paths in the core paths plans as “paths which are or may be delineated by a path agreement under section 21 or a path order under section 22”. It is not envisaged that all proposed new footpaths will require an agreement or order unless surfacing or other construction is considered necessary, for example to facilitate wheelchair users. New cycle paths or bridleways are likely to require more construction work and an agreement or order is likely to be the appropriate approach.

If the core paths plan proposes new paths, once it is adopted, those routes or paths will be core paths for the purposes of the Act, even if the path agreement or order is not currently in place. Although there will not be a formal path, the route will be a route over which access rights are exercisable. The public will be able to use these core paths and the duty under section 13 of the Act, (which will apply to paths or routes whether or not they are core paths) and all the powers under the Act will, therefore, apply to such proposed paths even if, when the plan is adopted, it consists of an informal route across land, rather than a formal path.

It is acknowledged that a lot of the paths designated as core paths may not be immediately fit for use for the category or categories of users intended.

For example: -

- some paths will already exist and will be in a fit condition for use;
- some paths will require only minor works to bring them into suitable condition;
- some path proposals will be scheduled for implementation in the short term;
- other core paths will be implemented in the medium term (2-3 years), because: they may be of lower priority;
- negotiations and other implementation details may still require to be agreed;
- funding may not be readily available;
- physical problems may need to be resolved;
- all routes should be fit for purpose, but this does not mean all routes will be available for all, or constructed and maintained to the same standard. However, it should mean that all the core paths will be signposted, with all boundary crossings in a safe and usable condition and the path surface serviceable for the anticipated users.

Local authorities, however, will need to consider these issues when formulating their plan. The plan should be considered as a whole, on the basis of whether or not it satisfies the clear duty placed on local authorities in section 17(1) as to whether or not it reflects the needs and requirements for access throughout the local authorities’ areas. The duty placed on local authorities under section 18 to consult on the proposed core paths plan before they adopt it, is an important step in this process. It will provide all those who have an interest with an opportunity to comment on the proposed system of core paths and determine the extent to which it will meet local access requirements and expectations of all the different category of recreational users and how far local authorities have gone in carrying out their duty.

The consultation process further allows for members of the public to raise objections to the core paths plan. If an objection is raised and subsequently withdrawn then local authorities must adopt their core paths plan as required by section 18. However, if an objection is raised and not withdrawn then local authorities must not adopt their core paths plan until directed to do so by ministers.

Where a member of the public or more than one member of the public continues to refuse to withdraw their objection(s) then Minister will not direct local a local authority to adopt their core paths plan without first holding a local inquiry. An important point for local authorities to note is that this local inquiry will, in particular inquire into whether the core paths plan in question, if adopted, fulfils the purpose mentioned in section 17(1) of the Act

If an effective consultation process is undertaken at this stage, it should reduce the likelihood of objections being raised and further, there should not be a need at a later date for local authorities to add new paths to the core path plan with regular frequency.

Components of the Core Paths Plan -

The Core Paths Plan, once adopted, will normally comprise of three elements –

- a) Map or maps of the core paths system
 - b) List of designated core paths
 - c) Supporting text
-
- a) The maps will clearly show designated core paths. The published maps should also illustrate the context of links to other paths, minor roads, public transport, recreational sites, etc.
 - b) The Core Paths List will be a definitive listing of all paths which have Core Path status, kept up to date with any alterations to the network.
 - c) The supporting text may explain the criteria and process behind the selection of Core Paths, and some of the broader context. This is likely to include the relationship to the Outdoor Access Strategy, the functions of the local authority and local access forum, and the relationship to more general access rights. Also for instance the connections to Local Plans and to other policies, such as for example, Paths to Health, Safer Routes to School etc, may be explained, along with proposals for managing and promoting the network.

Mapping format

It is recommended that the maps for core paths plans are produced in a nationally standardised format, to create consistency of approach between local authorities. This will facilitate the sharing of boundary data between adjoining local authorities, and the transfer of data to Ordnance Survey for inclusion in popular map products, and for instance the monitoring of progress nationally. It will particularly help the public in the use of core paths, sourcing information from a consistent information base.

Maps for the core paths plan should be produced using a Geographic Information System (GIS), to allow easier data capture, management and transfer of information between different organisations. The existing Scottish Paths Record on GIS should be used as the basis from which the potential core paths maps are derived, thus reducing the amount of new digitising required, and automatically generating national consistency. There is a need in some areas for further development of the SPR resource to achieve full adoption and coverage. All data capture would be carried out at an appropriate scale, suitable for future management needs using the OS Landline or Master map products as a base.

Symbols - The core paths map will clearly show the core paths, through a standardised national symbol, and will form an individual layer in the GIS mapping. The symbol for showing the core paths is a continuous purple line. This colour is chosen to be consistent with the colour for core paths to be used in Ordnance Survey mapping.

Core path



The first edition of the core paths plan might have to show as core paths, only those paths which are capable of designation and use with immediate effect. There may be other routes proposed in order to achieve the suitably 'sufficient' coverage for the system within approximately two-three years, (as described in earlier paragraph on implementation of plan). If the first edition of the core paths plan needs to show these routes proposed for future development, they may be shown as a dashed purple line.

Core paths proposed for future improvement



Referencing - Each core path (and component sub-sections of the path) shown on the core path map should have a unique reference, so that they can be easily referred to in the accompanying plan list and text. Part of the reference numbering should include a national sequence as a prefix, coded to local authority areas, so that national referencing is possible. These national prefix references may be hidden when dealing only in the local context, to aid simplicity. (e.g. a full national reference like PK/324/4 could be simplified to 324/4 within a localised Perth and Kinross context). It may be that in drafting, a local referencing system is used during the drafting and consultation periods, since there may be many changes and selections being made. Once the core paths plan is ready to be formally adopted, the referencing can then adjusted to a more finalised sequence and to national compatibility

Mapping Layers - One of the benefits of mapping on the GIS system is that varying levels of supporting and background information can be included to suit different functions, because different data sets are saved in separate layers. For instance, for internal administrative purposes the GIS might be set to show or print only the core paths layer, while maps printed for public or field use could use more layers to show fuller background information. The separate mapping layers may carry information showing the OS base mapping, other paths and promoted links which connect with core paths, public transport facilities, key recreational sites, etc. This can assist in making sense of the core paths system and how it links to other facilities.

Map Scales - The scale of the mapping similarly can be adjusted on the GIS to suit different purposes. Printed versions of the core paths plan map(s) might generally be on a 1:50,000 base, reduced further if required, with the core paths shown using the same symbols above. There might be inserts for more complex areas at a detailed scale of up to 1:10,000 or as appropriate, in which case an overview map might be included as a key to the areas of detailed map cover.

In addition to the printed version it is recommended that the map(s) should be publicly available on the internet/intranet local authority sites. This should include an overview map to allow people to navigate to their area of interest and then the ability to zoom to a more detailed 1:10,000 base showing the core paths. The electronic format allows for easy maintenance and updating.

[Note - Comments are sought on the merits of having a technical annex on mapping, to provide clear illustration and specifications of the standard mapping required.]

[Name of Council]
**NOTICE OF ADOPTION OF CORE PATHS PLANS ADOPTED UNDER SECTION
18 OF THE LAND REFORM (SCOTLAND) ACT 2003**

Notice is hereby given that XXXXXXXXXXXXXXXX Council's core paths plan was adopted on XXXXXXXXXXXXXXXX. In adopting the plan XXXXXX Council have carried out the statutory requirements of section 17 & 18 of the Land Reform (Scotland) Act 2003.

It is a statutory requirement under that Act that all local authorities in Scotland must draw up a plan for a system of paths (core paths) sufficient for the purposes of giving the public reasonable access throughout their area. This must be done within 3 years of the coming into force of Part 1 of that Act

The core paths plan provides the public with: -

- a) A Map or maps of the core paths system
 - b) List of designated core paths
 - c) Supporting text
-
- a) The maps will clearly show designated core paths and illustrates the context of links to other paths, minor roads, public transport, recreational sites, etc.
 - b) The List of Core Paths is a definitive listing of all paths which have Core Path status, kept up to date with any alterations to the network.
 - c) The supporting text may explain the criteria and process behind the selection of Core Paths, and some of the broader context including the relationship to the Outdoor Access Strategy, the functions of the local authority and the relationship to more general access rights. It also provides connections to Local Plans and to other policies, along with proposals for managing and promoting the network.

XXXXXXX Council maintains copies of the plan, any maps it refers to and the list of core paths referred to in it for public inspection. They can be viewed at the Council offices between the hours of XXXXXXXXXXX. They are also available to the public to buy and cost £XXXXXXX

The contact name and address for further information relating to the Plan is:

12. Section 19 Power to maintain core paths etc.

- S.19 *The local authority may do anything which they consider appropriate for the purposes of—*
- (a) maintaining a core path;*
 - (b) keeping a core path free from obstruction or encroachment;*
 - (c) providing the public with directions to, or with an indication of the extent of, a core path.*

Management responsibilities - Under s19 local authorities are provided with the powers to do anything which they consider appropriate on core paths for maintenance works. This may include keeping the paths free from obstruction or encroachment, and providing directions and information for the core path users. To enable local authorities to undertake this sort of work, section 26 of the Act provides them with the necessary power of entry. For the network of core paths to remain welcoming and functional and to protect the investment put in to them, it is important that the network is properly managed and maintained. Local authorities therefore should make provision to use these powers for the effective management of the core path network.

Where a core path is a path created by agreement under the Land Reform (Scotland) Act 2003, the Countryside (Scotland) Act 1967 or other legislation, the owner of the land may have agreed to undertake, or contribute, to the maintenance of the path. In other circumstances the owner will have no direct management responsibility for the public access component of the path. A farm road which is also a core path may still have to be maintained for private vehicular use.

Priority use of s15 measures - It is expected that local authorities will manage a significant proportion of core paths, and may use these powers to assist private landowners where they have some responsibility for the management of core paths on their land. Under s15 of the Act, local authorities have wide powers to take steps in support of access rights, and it is expected that, in the application of these powers, core paths will be afforded a degree of priority. In particular, under s15 (4), ‘the local authority may install and maintain, in any land in respect of which access rights are exercisable, gates, stiles, moorings, launching sites or other means of facilitating the exercise of these rights’, with the consent of the owner. This provides broad scope to install suitable infrastructure and signing, which the local authority would subsequently maintain. Management arrangements may also be set up through path agreements.

It is also expected that other public bodies with land management interests will actively manage core paths, including Scottish Natural Heritage, Forestry Commission, Scottish Water, Crown Estates Commission, MoD, Enterprise Network, Land-managing non-governmental organisations (e.g. National Trust for Scotland, Royal Society for the Protection of Birds, Scottish Wildlife Trust, Woodland Trust, John Muir Trust. etc.) should also be encouraged actively to manage any core paths on their land.

Management systems

It is recommended that a management system should be set up to include:

- An electronic version of the core paths list. This should show
 - the line of each core path
 - location of any infrastructure e.g. signposting
 - links to any inspections and maintenance issues
 - an inspection schedule for all routes and associated structures
 - appropriate maintenance standards and schedules for the different types of core paths
 - a monitoring system to ensure that both the regular and sporadic maintenance needs of the network are undertaken.

Managing the network will require adequate resources and it is important that local authorities make sufficient provision for this. It will require a cross-departmental approach, involving not only access officers and rangers but also legal, administrative and technical support functions, planning and development departments, roads or transport departments, and linking to educational and promotional activity. There should also be involvement from other partner bodies and agencies, particularly through the local access forum. The core path network should have explicit links to the Community Planning process, aspects of the Joint Health Improvement Plan, and to the national Walking Strategy and Cycling Strategy of the Scottish Executive.

Promoting core paths

Core paths are a means to an end and not an end in themselves. Core paths will only be successful if people are using them. Promotional strategies must be developed to communicate the benefits of core paths within the broader access rights. Clear signposting and waymarking will be required as well as information on the core paths through appropriate media such as leaflets, mapboards and website.

Everyone should:

- Be aware of the benefits of paths
- Know where they are
- Be encouraged to use them

Partnerships should be developed to maximise the use of core paths. Different strategies will attract different users. For example, encouraging inactive people to be more active may require a different approach and partners (e.g. Health Board, community health partnerships).

The intention of the Act is to result in core paths delivering health, social, economic and environmental benefits for Scotland. Well planned and implemented promotion will be required to achieve this.

13. Section 20 Review and amendment of core paths plan

S.20(1) Review and amendment of core paths plan

(1) The local authority shall—

(a) at such times as they consider appropriate; and

(b) on Ministers requiring them to do so,

review the plan adopted under section 18 above (or that plan as amended under this section).

It is expected that when drawing up the core path plan, local authorities will need to consider what the access requirement will be and to take a “holistic” view of those requirements to ensure that they are met within the plan and reduce over frequent additions.

However, it is also recognised that circumstances will change over time, and so local authorities should ensure that their core path plan retains its area wide relevancy. If it doesn't then local authorities may wish to reconsider retention of some routes or the addition of others, either by agreement or order under sections 20 and 21 of the Act.

Scottish Ministers may also direct a local authority to review their core paths plan. This may be required where a local authority has been deemed not to have met its obligations under sections 17 and 18 of the Act with regards to access.

There is no timescale on the requirement to review the core paths plans, but it is expected that at the earliest opportunity core paths plans will be incorporated into the local plans so that local and core paths plans can be reviewed simultaneously. There is guidance on the relationship between the core paths plans and other local authority plans in the guidance on section 17 relating to the core paths plan.

Proposed changes/amendments to core path plans

Section 20(2) of the Act allows local authorities to alter the line of a core path or remove a core path from the core paths plan. It will not be necessary in these circumstances to require local authorities to consult on its core paths plan every time a path is diverted or removed from the plan. It will also not be necessary to consult on the Plan every time a path is stopped or diverted in circumstances specified in section 20(4) of the Act.

However, diversions/removals and closures should be noted by the local authority as amendments to the plan. Any such amendments to the core paths plan made under section 20(2) and/or section 20 (4) will require them to apply the provisions of section 18(8) to those amendments as they would a core paths plan adopted under that same section.

That is: -

- (a) give public notice of its adoption;*
- (b) compile a list of core paths;*
- (c) keep the plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price; and*
- (d) send a copy of each of those documents to Ministers.*

Consultation on Amended Plan – Point to note

While local authorities need not carry out a consultation on their core path plan every time a plan is closed or diverted, as set out in the previous paragraphs, any proposed extensions to the system of core routes, (e.g. a new core path created through sections 21 and/or 22 of the Act) will require them to apply the provisions of sections 17(3) and (4) and the whole of section 18 of the Act.

14. Section 21 Delineation by agreement of paths in land in respect of which access rights exercisable

- 21(1) *The local authority may enter an agreement (a “path agreement”) with a person having the necessary power for the delineation and maintenance or, as the case may be, for the delineation, creation and maintenance of a path within land in respect of which access rights are exercisable.*
- (2) *A path agreement shall be on such terms and conditions as to payment or otherwise as may be specified in it.*

These path agreements will only apply to land already within access rights, so there will be no need to use path agreements to secure basic access (in the way that Access Agreements have previously). Therefore, s21 path agreements may be used by local authorities for the following purposes:

- to agree a particular line for the core path with the land manager - this may involve some deviation from an existing path-line to achieve operational benefits for all parties if possible (but would not remove access rights from the previous path)
- to agree management and maintenance issues - this might for instance include up-grading works to bring a path up to a suitable standard
- to agree the creation of a new path as a core path, involving development and construction works, signposting, etc.

The terms and conditions as to payments or otherwise will be specified within the path agreement. It should be stressed that any payments are not in respect of charging for access.

It is not expected that all core paths will need to be subject to path agreements and local authorities may also acquire an interest in a path solely by lease or acquisition.

15. Section 22 Compulsory powers to delineate paths in land in respect of which access rights exercisable

22(1) Where, in the circumstances set out in subsection (2) below, it appears to the local authority that, having regard to the rights and interests of the owner of land in respect of which access rights are exercisable and persons likely to exercise these rights, it is expedient to delineate a path within that land, the authority may, by order (a "path order"), do so.

(2) These circumstances are that it appears to the local authority to be impracticable to delineate the path by means of a path agreement.

Section 22 path orders may be used by local authorities, again on land within access rights, for delineating any path in instances where agreeing the line of the path has been impracticable. It is expected that any path requiring this form of action is highly likely to merit core path status.

On land outwith access rights, paths and rights of way may still be secured or managed by agreement and/or order under the provisions of sections 30 & 31 respectively of the Countryside (Scotland) Act 1967 Act, and any other land acquisition powers that local authorities currently have. (This is despite Sections 30 - 38 of the 1967 Act having been repealed for other purposes).

The procedures for the making of an order under section 22 are set out in Schedule 1 to the Act. The Act requires that a path order shall be in such form as is prescribed but shall contain a map showing the delineation of the path.

16. Section 23 Ploughing etc.

23(1) Where land is, in accordance with good husbandry, being ploughed or having its surface otherwise disturbed and it is convenient to plough, or otherwise disturb the surface of, a core path or a right of way which forms part of the land, nothing in this Part of this Act prevents that path or, as the case may be, right of way from being ploughed or from having its surface otherwise disturbed.

(2) The owner of land being a path or, as the case may be, right of way which has been ploughed or which has had its surface otherwise disturbed in accordance with subsection (1) above shall, however, within the period of 14 days beginning on the day on which the path or, as the case may be, right of way is ploughed or has its surface otherwise disturbed or such longer period as the local authority may allow, reinstate the path or, as the case may be, right of way.

Reinstatement of core path or right of way

Following disturbance of the surface of the core path or a right of way the owner of the land must reinstate it:

- within 14 days beginning on the day it was first disturbed **or**
- if appropriate a longer period which has been agreed by the local authority.

Examples of operations that might disturb a path surface include ploughing, digging irrigation channels and other excavations.

Contacting the owner of the land

Contact should be made with the owner of the land before taking legal action. A letter should be written to advise of their responsibilities under Part 1 of the Land Reform (Scotland) Act 2003 and the need for the public to be able to exercise their access rights on that land (Annex A can be used for this purpose). If you discuss the matter with the owner of the land ensure that they are aware of land managers' responsibilities and make them aware of the guidance in the Scottish Outdoor Access Code.

Core paths or rights of way not reinstated

If the core path or right of way is not reinstated within the 14 day period or the period agreed by the local authority the owner will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Local authorities reinstating the core path or right of way

Sect 23 (4)

- (4) *If the owner fails to comply with subsection (2) above, the local authority may, after giving the owner 14 days' notice of their intention to do so—*
- (a) take all necessary steps to reinstate the path or, as the case may be, right of way; and*
 - (b) recover from the owner their reasonable expenses in doing so.*

If the owner of the land does not reinstate the core path or right of way within 14 days, the local authority may wish to:

- (a) reinstate the core path or right of way **and**
- (b) recover reasonable expenses from the landowner.

Prior to restoring the path, the local authority should give the owner 14 days notice of their intention to undertake this work. It will be at the discretion of each local authority the amount they can reasonably reclaim from the landowner. Local authorities should follow the procedures agreed by their Finance Department to recover any expenses from the landowner.

Annex A

IMPORTANT NOTICE

Name

Address

(Name the local area)
Ploughing etc.
Land Reform (Scotland) Act 2003 Section 23

I am writing to request to a meeting to discuss a possible contravention of section 23 of the Land Reform (Scotland) Act 2003 on your land. Part 1 of the Act provides for rights of responsible access over land and inland water for recreation and passage and other purposes.

Section 23 of the Land Reform Act allows an owner to plough, or to carry out other land management practices, on land incorporating a core path or a right of way. However, where core paths or rights of way are disturbed this way, subsection (2) places a duty on the owner to reinstate the path or right of way within 14 days beginning on the day the path was first disturbed or within such longer period as the local authority may allow.

It has come to our attention that you may have failed in you obligation to reinstate a path within the required period and therefore, may be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 23 of the Act states that if an owner fails to reinstate a path within the period set, the local authority may, after giving the owner 14 days notice of their intention, take all steps necessary to reinstate the path or right of way and recover their reasonable expenses from the owner.

I would be grateful, therefore, if you would write to me at the above address or contact me on tel: xxxxxxxxx to arrange a date to discuss the matter.

Should you have any further queries, please do not hesitate to get in touch as soon as possible.

Yours faithfully

17. Section 24 Rangers (or other persons appointed by local authorities to act as rangers)

S.24

- (1) *The local authority may appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable.*
- (2) *The purposes for which such rangers may be so appointed are—*
- (a) to advise and assist the owner of the land and other members of the public as to any matter relating to the exercise of access rights in respect of the land; and*
 - (b) to perform such other duties in relation to the exercise of those rights in respect of that land as the local authority determine.*
- (3) *A person appointed under section 24 to act as a ranger may, for the purpose of exercising any function conferred by or under subsection (2) above, enter any land in respect of which access rights are exercisable.*

It should be stressed, that the role defined in section 24 of the Act relates specifically to that prescribed by the Land Reform (Scotland) Act 2003. An important point to emphasise is that most local authority ranger services will continue to provide the full breadth of their current range of services set out under existing legislation. Local authority rangers already play an active role in relation to access to the countryside, for example under the Countryside (Scotland) Act 1967, advising and assisting the public as to any matter relating to the use of land or waterway; to secure compliance with any such byelaws made by a local authority under that Act; and to perform other such duties in relation to the land or waterway as the local authority may determine. We fully expect that rangers should and will continue to carry on their existing functions under existing legislation which go wider than just those specified in section 25 relating to access rights.

The Land Reform (Scotland) Act 2003 makes no reference to their other functions, because the Act deals only with access rights and management.

They will be expected to help deliver byelaws and management rules on the ground where this is necessary. In the main, though, persons appointed to act as rangers are there to advise and assist, and to carry out other duties determined by the local authority.

Although paragraph (b) of section 24 of the Act allows local authorities to appoint rangers to perform duties in relation to the exercise of access rights additional to those in paragraph (a), it is recognised that in many cases local authorities will choose to use other officials to act in this matter.

18. Section 25 Local Access Forums

25(1) Each local authority shall establish for its area a body, to be known as the “local access forum”, to carry out the functions set out in subsection (2).

Section 25 of the Act places a duty on local authorities to establish at least one local access forum for their area. This requirement will also apply to National Park authorities for land that falls within the boundary of National Parks in Scotland.

The emphasis in the Act is on the local management of access. This is consistent with the advice Ministers received from Scottish Natural Heritage and the Access Forum. Local access forums will play an important role in this respect in advising local authorities in the discharge of their duties and powers under the Act and ensure the successful implementation of the legislation at a local level.

A number of local authorities may already have established local access forums in their area to assist them in carrying out their existing duties and functions relating to access under current legislation. The establishment of Local Access Forums under the Act seeks to build on existing practices and experience and the excellent work already done by local authorities and other organisations such as the Paths for All Partnership, in the development of local access forums, rather than to replace what already might be in place.

Role of local access forums

Section 25 (2) (a) and (b) of the Act set out what the role and remit of local access forums established under the Act in relation to access rights will be. That is: -

(a) to advise the local authority and any other person or body consulting the forum on matters having to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths under sections 17 and 18 above;

(b) to offer and, where the offer is accepted, to give assistance to the parties to any dispute about—

- the exercise of access rights;*
- the existence and delineation of rights of way;*
- the drawing up and adoption of the plan referred to in paragraph (a) above; or*
- the use of core paths,*

towards the resolution of the dispute.

The Act also provides that local access forums must be consulted on any proposed orders made under section 11 (powers to exempt particular land from access rights) and any byelaw in relation to land over which access rights are exercisable, proposed under section 12 of the Act.

Whilst it is not an established role under the Act, one of the most important functions the forums will provide is that they will bring together different interest groups with a variety of

experience and knowledge in different fields relevant to access rights and those with an interest in or affected by access rights. This bringing together of knowledge will be vital in enabling the local authorities to effectively carry out their statutory role.

One of the major forums' functions will be in the area of dispute resolution at a strategic level and, therefore, another major function as a consequence of this will be in consensus building. Issues where local access forums might be required to offer assistance and/or advice to local authorities might be, for example: -

- Offering advice in the drawing up of the core paths plan under section 17 of the Act;
- Where conflict might arise in circumstances where different categories of recreational users are using the same area of land and these activities might conflict with each other;
- To offer advice on the making of byelaws under section 12 of the Act, where it has become apparent that access rights might have for whatever reason to be managed and objections have been raised to the proposed byelaws;
- To offer advice on the making of orders under section 11 of the Act seeking to exempt particular areas of land from access rights, whether the order is for less than 5 days or more than 5 days;
- To offer advice where objections have been raised or there is dispute as to how far the system of core paths meets the requirements in section 17 that they are sufficient for the purpose of giving the public reasonable access throughout their area.

This guidance cannot inform local authorities of what should be done in every case across the whole country. There must be flexibility to allow adoption of innovative means and methods to resolve problems. Local authorities will wish to establish their own guidelines and constitutions for their local access forums and may wish to refer to the "Paths for All Partnership" SNH (2002) Local Access Forums: A Guide to Good Practice The Paths for All Partnership. That guidance should be read alongside this guidance, when establishing forums under the act.

Membership of local access forums

25(3) A local access forum consists of such persons as are appointed to it by the local authority.

(4) The matters to which the local authority have regard when making appointments to the local access forum shall include—

(a) ensuring reasonable representation in the forum of—

(i) bodies representative of persons with an interest in any of the matters mentioned in subsection 2(b)(i) to (iv) above;

(ii) persons having such an interest;

(iii) bodies representative of the owners of land in respect of which access rights are exercisable or in which there is a core path; and

(iv) owners of such land, and

(b) ensuring a reasonable balance among those mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above.

As stated before, the emphasis in the Act is on the local management of access. Membership of local access forums must, therefore, reflect the local access requirements and needs in each area. When considering appointments to their forums local authorities must ensure that there is adequate local representation from their areas so that the local community feel that they are being adequately represented on the forum(s). This will be crucial in ensuring that the local authorities can effectively carry out their role under the Act. In most cases this will mean that a number of differing concerns and interests will have to be addressed. Local authorities will, therefore, have to take a balanced view of the access requirements in their area and then appoint a balance, or as close to that as is achievable of those persons and/or those persons who best represent those persons with an interest affected by access rights and those wishing to exercise their access rights.

Whilst the following list of examples is not prescriptive, in considering appointments to the forums local authorities may wish to consider issues such as: -

- The needs of those with disabilities;
- Natural & cultural heritage;
- Recreational users, (e.g., walkers, cyclists, horse riders, mountaineers canoeists etc.);
- Land managers/owners;
- Community Councils;
- Community Groups.

In trying to balance the different interests on the local access forums local authorities will have to take a view on what the expected size of their forum should be. It is acknowledged that it may not be possible in all cases to achieve the exact required balance on local access forums, but in the first instance local authorities must aim for a membership that best meets the requirements possible. This will be a decision each local authority will have to make its own judgement on bearing in mind all the interests in their respective areas that they have to have represented but also the size of each forum will have to be of a size which allows effective management and operation.

In ensuring affective community involvement in the local access forums, local authorities, should consider other mechanisms that may guide them on this such as the new community planning process established by the Local Government (Scotland) Act 2003. Guidance on this is contained in the section of guidance relating to core paths.

Local authorities may pay to members of the local access forum such expenses and allowances as the local authorities determine. However, it should be stressed that the local access forums will not be committees of the local authorities but rather advisory groups established as a requirement of the Act. The forums could, where it is felt necessary or appropriate, contain members or officials from the local authority itself.

It is anticipated that members of the local access forums would most likely be expected to receive reimbursement of expenses such as, for example, travel and subsistence for attendance at meetings of the forum, and that elected members, where applicable, would receive councillor's allowances in accordance with existing allowances schemes, so far as so entitled as present in respect of analogous duties.

Section 30 Existing byelaws providing for public access to land

S.30 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.*

Section 30 places a duty on all public agencies to review their byelaws in force at the time to ensure that they are consistent with the provisions of Part 1 of the Act. This does not mean that all byelaws will have to be re-made if they are necessary and can be justified in terms of the need to manage access rights established by the Act. The purpose of this section is mainly to ensure that byelaws that are in place do not unnecessarily restrict or prohibit access rights across large areas of land.

Where it is necessary to manage access rights in individual circumstances over small areas of land then this may still be permissible.

Although it is not a statutory requirement under section 30 of the Act local authorities should also consider reviewing any management rules, or any other management regimes they have in place at the time byelaws are required to be reviewed. This would ensure that all management regimes in place that in some way affected access rights established by the Act, were consistent.

Things to consider when reviewing byelaws: -

- Identify those byelaws made under existing legislation that relate to public access in anyway?
- Is the land covered by such existing byelaws within or outwith access rights established by the Part 1 of the Act?
- If within access rights, do the provisions of these byelaws conflict with the statutory public rights of access established by the Act?
- If they do conflict with access rights, are they still necessary for their original purpose and do the byelaws cover an unnecessarily large area of land for their purposes?
- Are they justifiable for reasons of, for example, safety?
- In all case byelaws should be reviewed and if it is felt that they are no longer justified and conflict unnecessarily with the Act then they should be modified and then be submitted to ministers for confirmation.

20. Glossary of terms

The Act – References to "the Act" used throughout this document should be read as meaning Part 1 of the Land Reform (Scotland) Act 2003.

SPR – This is a GIS system mapping all paths, prepared by SNH in liaison with local authorities. It is now supplied to all local authorities in Scotland and is operational. It provides an accurate baseline of information on the length, characteristics and location of paths in Scotland. It will serve as an important tool for planning and monitoring the delivery of improved path provision in Scotland & underpin the expected work on core paths and core path networks.

Note - Throughout this guidance there are quotes from the relevant sections of the Act. It should be emphasised that these are only selected quotes from each section. The guidance document should be read alongside the Act to enable the reader to read through each section in its entirety as it appears in the Act.

National Park authorities

References to local authorities throughout this guidance document should be taken also to mean National Park authorities for the purposes of land that falls within the area of a National Park in Scotland. What this means is that on implementation of Part 1 of the Act, the two National Park authorities in Scotland will take over all the functions in respect of access rights established by the Act. These are set out in section 10(7) (a), Chapter 4, Chapter 5, sections 28 & 30. In other words the National Park authorities will be the access authorities for their respective areas.