Land Reform (Scotland) Act 2003 (Modification) Order 2013

Consultation Document:

Modification Order and accompanying statutory Guidance for Local Authorities and National Park Authorities
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1. Introduction: Temporary closure of core paths

The Scottish Government is undertaking a consultation on a draft order to amend the Land Reform (Scotland) Act 2003 (LRSA), to provide for the temporary exemption of core paths from access rights (for ease and convenience referred to as ‘closure’). The circumstances in which the draft order applies are:

1. in the event of an outbreak of animal disease
2. where exemptions from access rights are sought under section 11 orders

The draft order (Annex A) is accompanied by draft guidance (Annex B)

2. Legislative Background

In 2005 Part 1 of the LRSA came into force, establishing rights of responsible access to land and inland water for recreation, passage and other purposes, with certain exclusions for reasons of safety, privacy and security.

Section 8 of the Act provides for Scottish Ministers to modify, by order, the provisions of sections 6 and 7 of the Act.

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 and/or inland water from access rights.

A copy of the Act can be obtained from The Stationery Office at TSO Scotland, 26 Rutland Square, Edinburgh EH1 2BW tel: 0131 659 7020 or e-mail: enquiries@tsoscotland.com

or

can be viewed on the website of the Queen's Printer for Scotland: http://www.qgps.gov.uk/scotlegislation/acts_scotparliament.htm

3. Core Paths

Each access authority (Local Authority or National Park Authority) is required to draw up a core path plan providing a basic framework of routes sufficient for the purpose of giving the public reasonable access throughout their area. This basic core path framework should link into, and support, wider networks of other paths.

The core paths network as a whole should as far as possible provide for the needs of all types of user (e.g. walkers, cyclists, horse riders, canoeists, people with disabilities, and local communities accessing local services and amenities etc.).

Not every core path can be suitable for everyone, it is a matter for individuals to make an assessment of the suitability of a particular path for their intended use.
4. **Temporary closure of core paths in areas closed because of animal disease.**

Powers under the Animal Health Act 1981 allow the Scottish Government to prohibit or restrict access to areas of land surrounding premises where a notifiable animal disease, such as foot-and-mouth disease (see, for example, Article 35(1) of the Foot and Mouth Disease (Scotland) Order 2006), has been found. The area where land can be closed is known as a Protection Zone.

The proposed amendment to section 7(1) gives the Scottish Government powers to close any core paths in the Protection Zone whenever land is also closed.

5. **Temporary closure of core paths because of an event (i.e. under section 11 of LRSA)**

At present, core paths cannot be temporarily closed by section 11 orders. The reasons are set out in a paper (http://www.snh.gov.uk/docs/B792651.pdf) discussed at the National Access Forum in February 2011.

The LRSA provides that access authorities can temporarily exempt a particular area of land and/or inland water from access rights by way of a section 11 order. However, this does not include core paths.

Temporary closure of core paths may occasionally be necessary, for events such as the Commonwealth Games 2014 or car rallies, to ensure the public’s safety, or outdoor concerts, to charge for admission. In these circumstances organisers wish to have complete management control of the site so that they can discharge their duty of care.

This matter has been discussed at the National Access Forum and Scottish Ministers are of the view that access authorities should be able to temporarily close a core path by a section 11 order, when there are legitimate reasons to do so.

The Scottish Government has also drawn up revised statutory Guidance for Local Authorities and National Park Authorities on the proposed new power to temporarily close core paths by a section 11 order (see section 2 of Annex B).
Annex A: The Land Reform (Scotland) Act 2003 (Modification) Order 2013


DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

LAND REFORM

The Land Reform (Scotland) Act 2003 (Modification) Order 2013

Made - - - - 2013

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 8(1) of the Land Reform (Scotland) Act 2003(1) and all other powers enabling them to do so.

In accordance with section 8(3) of that Act, they have consulted such persons (and associations representing such persons) whom they consider to have a particular interest in the effect of the Order and such other persons as they think fit.

In accordance with section 98(5) of that Act(2), a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Land Reform (Scotland) Act 2003 (Modification) Order 2013 and comes into force on the day after the day on which it is made.

Modification of the Land Reform (Scotland) Act 2003

2. In section 7(1) of the Land Reform (Scotland) Act 2003 (provisions supplementing and qualifying section 6) after “path” insert—

“unless it is land—

(a) to which public access is prohibited by or under any enactment in consequence of an outbreak of animal disease; or

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(1) 2003 asp 2.
(2) Section 98(5) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).
(b) in respect of which access rights are not exercisable, having been specified (whether as part of a larger area or not) in an order under section 11.”.

St Andrew’s House,
Edinburgh
2013

Authorised to sign by the Scottish Ministers
EXPLANATORY NOTE
(This note is not part of the Order)

This Order modifies section 7(1) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”).

Section 6 of the 2003 Act provides that access rights are not exercisable over the categories of land specified in that section. Section 7(1) of that Act qualifies the effect of section 6 by providing that it does not prevent or restrict the exercise of access rights over any land which is a core path.

This Order modifies section 7(1) to create two exceptions to its general effect. Where public access to land has been prohibited by or under any enactment in consequence of an outbreak of animal disease, or where land has been included in an order under section 11 of the 2003 Act (power to exempt particular land from access rights), the exercise of access rights will be prevented or restricted over that land notwithstanding the fact that the land in question is a core path.
The draft Modification Order provides for core paths to be temporarily exempt from access rights (i.e. closed) where land is already able to be exempt from access rights:

1) because of animal disease

or

2) by way of a section 11 order under the Land Reform (Scotland) Act 2003. This is usually brought in connection with events e.g. Commonwealth Games 2014, a golf tournament or car rally.

This accompanying draft guidance has been prepared under section 27 of the Land Reform (Scotland) Act 2003, which gives Scottish Ministers powers to give guidance to local authorities on the performance of their functions under Part 1 of the Act.

The draft guidance is in two sections reflecting the two different circumstances in which core paths may be temporarily closed:

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Section 1 - Temporary Closure of Core Paths due to Animal Disease

Guidance on amendment to section 7 of the Land Reform (Scotland) Act 2003 to allow the temporary exemption of access rights on core paths when land is closed because of a notifiable animal disease.

Introduction

This guidance relates to the amendment within the Land Reform (Scotland) Act 2003 (Modification) Order 2013, which allows for core paths to be temporarily exempt from access rights when land is exempt as a result of a notifiable animal disease. Hereafter, for ease and convenience, the exemption of core paths from access rights will be referred to as core path closure.

Background

By law an incident or suspected incident of a notifiable animal disease must be reported to the authorities. Legislation also sets out the powers available to Ministers to eradicate notifiable animal diseases. One such power is the closure of land to avoid the spread of disease.

Under the terms of the Foot and Mouth Disease (Scotland) Order 2006 Ministers can, in the event of a confirmed outbreak of Foot and Mouth Disease (FMD), declare a Protection Zone (PZ) that is centred on the premises where infection has been confirmed (known as the infected premises or IP) and has a minimum radius of 3 km. Access to the land in that zone can be restricted and in practice it is likely that all land within the PZ will be closed, but at present access to core paths cannot be closed. This means that one of the main weapons against spread of disease, that is restricted access to the area where the outbreak has taken place, is undermined and that may make it more difficult to limit the damage caused by an outbreak.

The effect of the modification is to ensure that when a parcel of land is closed as a consequence of a notifiable animal disease, core paths within that area will also be closed.

Currently, legislation does not allow Scottish Ministers to impose restrictions on access to land outwith the infected premises for any notifiable animal disease apart from FMD. However, the modification is cast in more general terms in case another animal disease poses sufficient threat to justify land closure. As a safeguard however, secondary legislation, and therefore Parliamentary scrutiny, would be required to give Scottish Ministers the power to close land in respect of any animal disease other than Foot and Mouth.

One of the principle aims of the Scottish Government’s response to the outbreak of animal disease is the eradication of that disease as quickly as possible to allow normal business to resume. Consequently, it is expected that any suspension of rights of access will be as spatially and temporally limited as is consistent with the requirement to stop the further spread of disease.
Disease Response

In the event of an outbreak of a notifiable animal disease Scottish Ministers may declare up to three zones, a Protection Zone (PZ), which surrounds the infected premises and where the movement of susceptible animals, vehicles and animal by-products is restricted to minimise the risk of further disease spread, a surrounding zone, known as a Surveillance Zone (SZ) where controls are less stringent and a further Restricted Zone, where controls are relatively light. The infected premises themselves will be put under strict statutory restrictions from the outset and access to and from those premises will be permitted only to essential visitors and vehicles and even then only if strict biosecurity measures are implemented.

In the case of FMD, Scottish Ministers have the power to close all land within the PZ, with the Modification extending closure to core paths as well; (this power is currently not available for any other notifiable animal disease, but, subject to Parliamentary approval, the power may be extended to other notifiable animal diseases if it is appropriate to do so). This is because people (or their vehicles or accompanying animals) may spread the disease further if they have direct or close contact with animals infected with FMD. If Ministers do elect to close land round an IP, the aim is to keep restrictions in place for as limited a time as is consistent with disease control, and restrictions will normally only remain in place until a more complete epidemiological picture of the origin of the disease and where it may have spread to can be obtained and appropriate remedial action taken. The restrictions on land closure will therefore be re-evaluated as soon as possible, perhaps as early as day eight of the outbreak.

Local Authority Responsibilities in the Protection Zone

Local authorities may have a number of enforcement duties during an outbreak, including, where appropriate, restricting access to the IP and, in an outbreak of FMD, land within a PZ. Consequently, local authorities have a role in disease response. Although the strategic response to a disease outbreak is led by the Scottish Government, operations are managed by a Local Disease Control Centre (LDCC), which is set up by the Animal Health and Veterinary Laboratories Agency (AHVLA). Local authorities and other operational partners, such as the police, Scottish Environment Protection Agency and so on will be represented at the LDCC, which will, in turn, be in regular contact with the Scottish Government. The LDCC will have access to relevant information, such as the location of the IP and the names and address of surrounding holdings, together with detailed maps showing which holdings will be within or outwith any zones declared by Scottish Ministers. That information will be shared with local authorities and other partners as far as is permitted by data protection legislation and is necessary to control the animal disease outbreak.

If Ministers elect to close land (and, by extension, core paths) the practicalities will be discussed within the LDCC. Although responsibility for enforcing land closure rests with the local authority, those discussions will identify particular problems as well as the information and support from other agencies that the local authority needs to implement the closure.
The LDCC will also be able to relay to the Scottish Government any difficulties that may require a more strategic response (for example, national guidance for recreational users of the land). It is expected that the discussions within the LDCC will lead to a plan for implementing land closures that reflects both the local and national situation.

It is expected that local authorities will use the sign developed by the Scottish Government (see below). The sign can be adapted locally by adding the relevant Access Authority logo.

**Access rights outwith the Protection Zone**

The Modification does not affect the current position, which is that Ministers cannot place restrictions on access to land within a SZ or RZ as a consequence of animal disease and there are no plans to extend those limited powers.

**Details of closures in the event of an outbreak**

Access Authority websites will contain details of any official closures in each local authority area. The Scottish Government website will include details of all land closures within the PZ.
FOOT-AND-MOUTH DISEASE: PROTECTION ZONE

 THIS LAND (INCLUDING CORE PATHS) IS CLOSED

In exercise of powers conferred by the Animal Health Act 1981, and Article 35 of the Foot and Mouth Disease (Scotland) Order 2006 superseding Part 1 of the Land Reform (Scotland) Act 2003
Introduction: Temporary closure of land and core paths by section 11 orders

This guidance on section 11 powers has been revised to provide guidance on the Land Reform (Scotland) Act 2003 (Modification) Order 2013. The amendment to the Land Reform (Scotland) Act 2003 contained in this Modification Order means core paths can be temporarily exempt from access rights by way of a section 11 order.

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

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 and/or inland water from access rights.

It is anticipated that the main use of section 11 powers will be to exempt land from access rights for short periods of time in connection with admission to events.

It should be emphasised that, given the duty of local authorities under the Act to uphold access rights, the power to exempt land from 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, and only when other management arrangements as set out in the Scottish Outdoor Access Code (the Code) and related guidance have been considered.

Where authorities are in doubt they may seek advice from their local access forum and/or the Scottish Government, although any legal advice should be sought from a local authority’s own legal advisors.

There may be a need to exempt the land from access rights for the duration of an event, and possibly periods immediately before and after.

It is expected that, in general, the reasons for exemptions under section 11 will be limited to:-

- Allowing admission to a particular event whether by ticket (charged or uncharged) or invitation;
- In the interests of safety and security, these situations could involve competition participants and spectators;

Examples of these above situations, where a section 11 order might be considered, could include activities such as outdoor concerts, village fetes, highland games, Commonwealth Games 2014, golf tournaments and car rallies.
Ensuring the protection of privacy, where the provisions of section 6 of the Act are not deemed sufficient in individual circumstances and the local authority considers the exclusion necessary e.g. to ensure privacy during a private wedding – this is likely to be considered appropriate in very few circumstances.

Circumstances where exemption should not usually be considered include:

- Reasons of land management or construction. The Act provides sufficient exclusions (for example section 5 clarifies that the Act does not affect or change the law concerning the duty of care occupiers have to those on their land) and further guidance on the responsible exercise of access rights and responsibilities is provided in the Code.

Both land managers and access takers have a duty of care to others (see paragraphs 3.8 to 3.10 of the Code for further information), and this can, at times, necessitate land to be closed (this includes core paths).

In addition to guidance provided by the Code, Forestry Commission Scotland are producing guidance on ‘Managing Access and Forest Operations’ and the Health and Safety Executive have produced the publication ‘Protecting the public: Your next move’ (HSG51) [http://www.hse.gov.uk/pubns/priced/hsg151.pdf](http://www.hse.gov.uk/pubns/priced/hsg151.pdf)

- Large country houses or estates seeking an extensive exemption for most or all of their estate for privacy;
- An area of land that is already subject to some management measure prohibiting or restricting access, e.g. where an existing byelaw is in place that deals with the issue;
- Where a charge for admission is proposed and the charge is for access only and not for an event.

**Exemption of core paths from access rights (core path closures)**

The intention of core paths is that they are a system of routes sufficient for the purpose of giving the public reasonable access. Access rights must be exercised responsibly on core paths.

The Modification Order provides that core paths can be exempt from access rights by way of a section 11 order. This can either be as part of a wider areal exemption under a section 11 order, or not. Hereafter, for ease and convenience, the exemption of core paths from access rights will be referred to as core path closure.

Under the Modification Order core paths are automatically closed when located within a wider areal closure under section 11. If these core paths are to remain open, the order must specifically state this. If the status (open or closed) of core paths is not specified within the order, this has the effect that they are closed.

The Modification Order does not change any of the circumstances outlined above in relation to the use of section 11 orders. The access authority should ensure that information is recorded on the circumstances of the closure, and evidence that the closure is for the minimum duration and area necessary.
**Alternative routes**

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

When a core path is to be temporarily closed by a section 11 order, alternative arrangements to the core path should if possible, be organised by the land manager working with the access authority e.g. a well signed substitute route. As far as possible, alternative arrangements should provide for all the same types of access that the core path is used for (e.g. if the core path is suitable for cycling and horse-riding, the alternative route should also be suitable for cycling and horse-riding).

**Local authority process**

Local authorities should treat cases on an individual basis. They are encouraged to use the power to exempt land from access rights under section 11 sparingly and applied in respect of the minimum area of land, and for the minimum period needed, and only when other management arrangements as set out in the Scottish Outdoor Access Code (the Code) and related guidance have been considered.

In many cases the land manager or promoter will have produced a general risk assessment for the upcoming temporary situation/event. This will primarily be produced for the benefit of staff and contractors but if relevant will also consider impacts on local public access rights and risk to the public associated with those impacts. Where possible, this risk assessment will be provided to the local authority.

Local authorities are best placed to issue their own guidance on practical issues such as timing. There is no time limit set for how long in advance an application should be submitted to their local authority for exemptions under section 11. For larger events where dates are set well beforehand, and for longer-term exemptions, then there should be scope for making an application well in advance. For smaller events and short-term exemptions, an application nearer to the date of the requested exemption may be acceptable.

**Longer-term exemptions (six days or more)**

**Consultation requirements**

Where a proposed order would exclude land from access rights for 6 days or longer, the formal consultation requirements set down in section 11(2) shown below must be adhered to. Clearly, when there is a requirement to consult on a draft order, then applications will have to be submitted in time to allow for this.

**(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
Section 2 – Temporary Closure of Land and Core Paths by Section 11 Order

(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.

Any order having effect for 6 days or longer requires to be confirmed by the Scottish Ministers.

Ministerial consideration

To consider any order which would have effect for six days or more, the Scottish Ministers will require the following information:

- Clear identification of the area of land affected;
- The date and times of operation of the order;
- Details of the consultation undertaken and copies provided of all objections and representations received;
- The purpose and effect of the order with details of the requirement for the order e.g. where a charge is to be levied for admission, it is likely that there would be problems administering an admission charge without the order;
- The demand for access in the area affected by the proposed order and details of the alternative access arrangements that will be provided. If suitable alternative arrangements for core paths are not provided, details of the reasons that they cannot be put in place.

In particular when considering an application for any longer-term exemption which would involve closure of a core path, Ministers will wish to be satisfied that suitable alternative arrangements for access will be in place, or that no alternative arrangements are practicable.

Once an order is confirmed the local authority will be informed by letter from the Scottish Government.

Information about closures

Before any section 11 order takes effect, the closure should be notified to the public, using for example - signage on site, signs on access roads and paths into a site, marshalling, the local authority website, local press, or through community councils.

In the case of core paths closures, early notice is essential. Any signage on site should be removed promptly at the end of the closure period.

A series of model notices are provided as annexes to this section of the guidance. These can be adapted to suit for either an order with duration of less than 6 days or of 6 days or more.
Notice is hereby given under section 11(2)(b) of the Land Reform (Scotland) Act 2003 (“the Act”) that [insert name of Local Authority] proposes to make [insert name of proposed order] (“the Order”) under section 11(1) of the Act.

The effect of the Order will be to exempt [insert description of land/core path here] from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

[N.B. if core paths that are located within a wider areal exemption under section 11 are to remain accessible to the public, the order must specifically state this]

The purpose(s) for which the Order is being proposed is/are [insert details of purpose(s) for which Order is being proposed]

It is proposed that the Order will take effect from [insert date] and will expire on [insert date].

Objections or representations in respect of the Order may be made to the Local Authority at the address given below, for its consideration, no later than [_____] days after publication of this notice. These should be made in writing [and in the case of objections, the grounds on which they are made should be stated].

[insert contact details of local authority including email address if appropriate]
[pro-forma notice given under section 11(9) of a section 11 exemption order where made without requiring confirmation by Ministers]

[Name of Local Authority]

NOTICE TO EXEMPT LAND FROM ACCESS RIGHTS

Notice is hereby given under section 11(9) of the Land Reform (Scotland) Act 2003 (“the Act”) that on [inset date of making order], [insert name of Local Authority] made [insert name of order] (“the Order”) under section 11(1) of the Act.

The effect of the Order is to exempt [insert description of land/core path] from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

The purpose(s) for which the Order is made is/are [insert details of purpose(s) for which Order has been made.]

The Order will take effect from [insert date – either the date on which it was made or a specified date] and will expire on [insert date if applicable], unless revoked earlier.
[pro-forma notice given under section 11(9) of a section 11 exemption order where notice requires confirmation by Ministers]

[Name of Local Authority]

NOTICE OF ORDER TO EXEMPT LAND FROM ACCESS RIGHTS

Notice is hereby given under section 11(9) of the Land Reform (Scotland) Act 2003 (“the Act”) that on [inset date of Ministerial confirmation], the Scottish Ministers acting under section 11(7) of the Act confirmed the [insert name of order] (“the Order”) [with modifications], proposed by [insert name of Local Authority] under section 11(1) of the Act.

The effect of the Order is to exempt [insert description of land/core path] from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

The purpose(s) for which the Order is made is/are [insert details of purpose(s) for which Order is being proposed]

The Order will take effect from [insert date] and will expire on [insert date if applicable], unless revoked earlier.
Annex C: Consultation Arrangements

Responding to this consultation paper

We are inviting written responses to this consultation by Monday 16 September 2013.

Please send your response with the completed Respondent Information Form (see “Handling your Response” below) to:

publicaccess@scotland.gsi.gov.uk

or

Malcolm Duce
Landscape and Involvement with the Natural Environment branch
Scottish Government,
1D North,
Victoria Quay,
Edinburgh
EH6 6QQ

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

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at http://www.scotland.gov.uk/consultations. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (http://www.scotland.gov.uk/consultations/seconsult.aspx) This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form enclosed as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.
All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), by 11 October 2013. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4560. Responses can be copied and sent to you, but a charge may be made for this service.

**What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the proposed amendment. We aim to issue a report on this consultation process by 11 November 2013.

**Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the address above.
THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

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

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4560).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (http://www.scotland.gov.uk/consultations)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:
- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.
Annex D: Respondent Information Form

Land Reform (Scotland) Act 2003 (Modification) Order 2013: Consultation on temporary closures of core paths.

RESPONDENT INFORMATION FORM
Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation
Organisation Name

Title  Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate
Surname
Forename

2. Postal Address

Postcode  Phone  Email

3. Permissions - I am responding as...

Individual  /  Group/Organisation  Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses 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 and address
Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government 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 Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes  No
Annex E: Consultation Questions

Question 1.
Do you have comments on section 2(a) of the draft Land Reform (Scotland) Act 2003 (Modification) Order 2013? This provides that core paths can be temporarily closed due to an outbreak of animal disease. (see Annex A)

Comments

Question 2.
Do you have comments on section 1 (pages 8-11) of the draft guidance regarding the temporary closure of core paths due to animal disease? (see Annex B)

Comments

Question 3.
Do you have comments on section 2(b) of the draft Land Reform (Scotland) Act 2003 (Modification) Order 2013? This provides that core paths can be temporarily closed by way of a section 11 order. (see Annex A)

Comments

Question 4.
Do you have comments on section 2 (pages 12-18) of the draft guidance regarding the temporary closure of core paths by way of a section 11 order? (see Annex B)

Comments
Annex F: Equality Statement

The Scottish Government is committed to considering equality in policy. If you consider there to be any potential equality issues in relation to the Land Reform (Scotland) Act 2003 (Modification) Order 2013 please make known your views by responding to the consultation.

Annex G: Business and Regulatory Impact Assessment

The Scottish Government is committed to consulting with all parties potentially affected by proposals for new regulation, or where any regulation is being changed significantly. All policy changes, whether European or domestic, which may have an impact upon business or the third sector should be accompanied by a Business and Regulatory Impact Assessment (BRIA).

The BRIA helps policy makers to use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. Through consultation and engagement with business, the costs and benefits of the proposed legislation can be analysed. It also ensures that any impact on business, particularly small enterprises, is fully considered before regulations are made.

Partial BRIAs should accompany the consultation document for a new piece of legislation. These partial BRIAs are designed to inform and assess the impact on and encourage comment from those who may be affected by the proposals.

A partial BRIA in relation to exempting core paths from access rights under a section 11 order is provided below, and we would welcome your comments and feedback on it during the consultation period.

A final BRIA will be produced, building on the partial BRIA in light of the consultation and further information and analysis, and published once the Bill is introduced to Parliament.

A BRIA is not required in relation to exempting access rights from core paths in the event of a notifiable animal disease.
Partial Business and Regulatory Impact Assessment

Title of Proposal

The Land Reform (Scotland) Act 2003 (Modification) Order 2013

Purpose and intended effect

- **Background**
  Part 1 of the Land Reform (Scotland) Act 2003 (LRSA) came into force on 9th February 2005, establishing statutory access rights for everyone to most land and inland water. People only have these rights if they exercise them responsibly. The Act also places obligations on landowners to manage land and inland water in ways that take proper account of the right of responsible access.

  The rights and responsibilities of land managers, as well as those exercising access rights are set out in the Scottish Outdoor Access Code, which has been approved by Parliament and is available at [www.outdooraccess-scotland.com/](http://www.outdooraccess-scotland.com/)

  The LRSA places emphasis on the local management of access and gives the lead management role to Scotland’s local authorities and two national park authorities (known collectively as ‘access authorities’). Under the LRSA it is a statutory duty of each access authority to draw up a core paths plan. The core path networks must be sufficient for giving the public reasonable access throughout access authority areas.

  Section 11 of the LRSA provides that access authorities, whether on application from third parties or at their own initiative, may temporarily exempt land from access rights by order. Short term section 11 orders (with a duration of less than 6 days) are handled by the access authority while longer term section 11 orders (duration of 6 days or more) require confirmation by Ministers.

  However, at present there is no mechanism to enable temporary closure of core paths by section 11 orders.

- **Objective**
  The objective of the Land Reform (Scotland) Act 2003 (Modification) Order 2013 is to provide for temporary closures of core paths by section 11 orders.

- **Rationale for Government intervention**
  Section 6 of the LRSA provides that access rights are not exercisable over specific land and section 7 supplements and qualifies section 6. Section 6(1)(j) of the Act details that access rights are not exercisable over land which has been specified in an order under section 11. However, Section 7(1) qualifies this, stating that Section 6 does not prevent or restrict the exercise of access rights over any land which is a core path. As a result, core paths cannot be closed temporarily by section 11 orders.
Temporary closure of core paths may occasionally be necessary, for example for large high-profile events such as the Commonwealth Games 2014 or car rallies, to ensure the public’s safety, or outdoor concerts, to charge for admission. In these circumstances organisers wish to have complete management control of the site so that they can discharge their duty of care.

For example, the Forestry Commission Scotland have a condition attached to the use of the forest estate for motor sport that requires a section 11 land closure for the management of public safety. They do not want to take any risk that members of the public will seek to exercise their rights along a core path through an event area, and therefore have not been considering hosting motorsport events in areas which includes a core path.

For these reasons, Scottish Ministers are bringing an amendment to the Land Reform (Scotland) Act 2003, to allow temporary closures of core paths. This contributes to facilitating National Indicator 41: Increase people’s use of Scotland’s outdoors.

Consultation

- **Public Consultation**
  A previous version of the Modification Order was consulted upon between October 2011 and January 2012. This can be viewed on the Scottish Government's website: [http://www.scotland.gov.uk/Publications/2011/10/07151556/0](http://www.scotland.gov.uk/Publications/2011/10/07151556/0).

  37 responses were received to the public consultation, they can be viewed at: [http://www.scotland.gov.uk/Publications/2012/02/9657](http://www.scotland.gov.uk/Publications/2012/02/9657).

  Respondents were generally supportive of the purpose of the order with only two respondents being opposed to the order. Detailed comment was provided on: drafting of the order; circumstances for section 11 orders; closure of core paths only; section 11 procedure; process of Ministerial confirmation; alternative informal approaches; statutory Guidance; public information; and equality matters.

  A report was produced on the main issues arising from written responses to the Consultation. A copy of the report is available from: [http://www.scotland.gov.uk/Publications/2012/09/6958](http://www.scotland.gov.uk/Publications/2012/09/6958).

  In light of the comments received during the consultation the Scottish Government advised that it would consult on a revised draft Modification Order accompanied by draft guidance.

- **Within Government**
  The proposals contained in the public consultation document were consulted within government before consultation, including all relevant areas of Rural Directorate.
In addition, the following government departments were consulted:

- SGLD advised on draft SSI and statutory guidance
- Equality Unit advised on EQIA requirements
- Better Regulation commented on the draft BRIA
- Commonwealth Games team set out some of their requirements for 2014
- Animal Health and Welfare Division were consulted in relation to the provision in the Modification Order to close core paths as a consequence of an outbreak of animal disease.

**Access Authorities**
Access authorities have a duty under the LRSA to uphold access rights, this duty applies to all land over which access rights are exercisable and not just core paths.

Statutory guidance produced for access authorities, encourages them to only exercise their power to exempt land from access rights under section 11 sparingly and applied in respect of the minimum area of land, and for the minimum period necessary, and only when other management arrangements as set out in the Scottish Outdoor Access Code and related guidance have been considered.

The guidance also requests that access authorities treat requests for section 11 closures on an individual basis. The access authority is best placed to weigh up the advantages and disadvantages of temporary exempting land from access rights.

Since February 2005 there have been on average 47 section 11 short term land closures per year (closures lasting less than 6 days) and on average 1 section 11 longer term land closure (6 days or longer) per year. For longer-term closures the local authority is required to undertake a period of public consultations, the requirements are set down in the LRSA.

All the 34 access authorities in Scotland were directly contacted to notify them of the public consultation that ran from October 2011 – January 2012.

16 responses to the initial consultation paper were received from access authorities.

**National Access Forum**
The National Access Forum (NAF) advises on national issues linked to Scottish access rights. It is comprised of representatives of recreation, land management and other interests.

The Forum bodies are non-party political, have a national membership-based structure through clubs and/or individual members, and are both recognised and authoritative. The Forum also includes public bodies which have significant national roles in access and can represent the wider public interest. The Forum aims to be as open and participatory as possible and welcomes contributions from all bodies with an interest in national access issues.
The draft Modification Order was discussed many times at the 3-times yearly National Access Forum meetings.

A list of the NAF members is provided below:

**Current members of the National Access Forum**

Full members are indicated in **bold**; the remaining bodies are corresponding members.

<table>
<thead>
<tr>
<th>Recreation bodies within access rights</th>
<th>Public bodies</th>
<th>Other relevant interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Horse Society Scotland</td>
<td>British Waterways Scotland</td>
<td>Association of Scottish Fishermen</td>
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<tr>
<td>British Cycling</td>
<td>Convention of Scottish Local Authorities</td>
<td>Community Councils</td>
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<tr>
<td>Cyclists Touring Club Scotland</td>
<td>EventScotland</td>
<td>Cycling Scotland</td>
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<tr>
<td>International Mountain Bicycling</td>
<td>Forestry Commission Scotland</td>
<td>Fieldfare Trust</td>
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<tr>
<td>Association-UK</td>
<td>Health &amp; Safety Executive</td>
<td>Fields in Trust</td>
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<tr>
<td>Mountaineering Council of Scotland</td>
<td>Historic Scotland</td>
<td>Greenspace Scotland</td>
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<tr>
<td>National Caving Association</td>
<td>Ministry of Defence</td>
<td>Kennel Club/Scottish Kennel Club</td>
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<tr>
<td>Ramblers’ Association Scotland</td>
<td>National Park Authorities</td>
<td>Mountain Bathers Association</td>
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<tr>
<td>Rough Stuff Fellowship</td>
<td>NHS Health Scotland</td>
<td>Salmon and Trout Association</td>
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<tr>
<td>Royal Yachting Association (Scotland)</td>
<td>Scottish Enterprise</td>
<td>Scottish Anglers’ National Association</td>
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<tr>
<td>Scottish Amateur Rowing Association</td>
<td>Scottish Natural Heritage</td>
<td>Scottish Canine Consultative Council</td>
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<tr>
<td>Scottish Canoe Association</td>
<td>Scottish Water</td>
<td>Scottish Disability Equality Forum</td>
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<tr>
<td>Scottish Canoe Association</td>
<td>Sportscotland</td>
<td>Scottish Federation for Coarse Angling</td>
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<tr>
<td>Scottish Canoe Association</td>
<td>Transport Scotland</td>
<td>Scottish Rights of Way &amp; Access Society</td>
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<td>Scottish Carriage Driving</td>
<td>VisitScotland</td>
<td>Sunstrans Scotland</td>
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<td>Association</td>
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<td>Walking on Wheels Trust</td>
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<tr>
<td>Scottish Cycling Union</td>
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<td>Professional bodies</td>
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<tr>
<td>Scottish Equestrian Association</td>
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<td>Association of Chief Police Officers (Scotland)</td>
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<tr>
<td>Scottish Hang Gliding &amp; Paragliding Federation</td>
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<td>Association of Heads of Outdoor Centres</td>
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<td>Scottish Hill Runners</td>
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<td>Law Society of Scotland</td>
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<td>Scottish Orienteering Association</td>
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<td>Royal Town Planning Institute</td>
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<td>Scottish Sports Association</td>
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<td>Royal Institution of Chartered Surveyors</td>
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<td>Sports Association</td>
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<td>Scottish Forestry Society</td>
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<td>Nivsport Scotland</td>
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<td>Scottish Countryside Access Network</td>
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<td>Sub Aqua Association (Scotland)</td>
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<td>Scottish Countryside Rangers Association</td>
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<td>Trail Cyclists Association</td>
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<td>Scottish Gamekeepers Association</td>
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<tr>
<td>Land management bodies</td>
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<td>Scottish Raptor Monitoring Group</td>
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<tr>
<td>Association of Deer Management Groups</td>
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<td>Additional corresponding members</td>
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<tr>
<td>Association of Salmon Fishery Boards</td>
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<td>Paths for All Partnership (link to Access for All (Scotland) Forum)</td>
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<td>British Association for Shooting &amp; Conservation</td>
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<tr>
<td>Confederation of Forest Industries</td>
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<td>Historic Houses Association of Scotland</td>
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<td>NFU Scotland</td>
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<td>Scottish Association for Country Sports</td>
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<td>Scottish Crofting Foundation</td>
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<td>Scottish Golf Union</td>
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<td>Scottish Land &amp; Estates</td>
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<td>Scottish Land &amp; Estates</td>
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**Business**

The amendment to the LRSA to allow the temporary closure of core paths is a small technical amendment. A business seeking a section 11 order to exempt land from access rights during an event will have the added certainty of knowing any core path on that land is also exempt.

We estimate the number of firms or organisations affected by the amendment to the Act is likely to be small.
The total number of core paths and total distance of core paths in local authority areas varies. There is no way of predicting how many section 11 closures there will be in the coming years that include core paths; where these closures will be; and how many/what businesses will be impacted. We know that there will be requests for section 11 exemptions for two major events in 2014 - the Commonwealth Games and the Ryder Cup – and both of these will involve core paths. The Scottish Government Commonwealth Games team have been consulted about the LRSA Modification Order and Glasgow City Council and Perth and Kinross Council have been consulted through the NAF and the initial public consultation in October 2011 – January 2012.

Many tourism and land management businesses, and bodies that represent them, are full or corresponding members of the National Access Forum (eg Scottish Land and Estates, Wild Scotland and many others listed above); they were involved in the original consultation and will be consulted again.

Options

- **Option 1 – Do nothing**
  It would be problematic for event organisers who seek a section 11 order to exempt land for access rights while the event is underway and who want any core paths on that land to be exempt also e.g. during the Ryder Cup and Commonwealth Games

- **Option 2 – Amend the Land Reform (Scotland) Act 2003**
  The Land Reform (Scotland) Act 2003 (Modification) Order 2013 would allow core paths to be closed temporarily by a section 11 order.

  The matter has been discussed at the National Access Forum and the Scottish Ministers are of the view that access authorities should be able to temporarily close a core path within a section 11 order, when there are legitimate reasons to do so.

- **Sectors and Groups Affected**
  The following are likely to be affected by the Land Reform (Scotland) Act 2003 (Modification) Order 2013:
  - the 34 access authorities in Scotland
  - landowners
  - land managers
  - outdoor event organisers
  - members of the public

- **Costs**
  
  **Option 1**
  There would be no additional costs generated by the ‘do nothing’ option. However, at present motorsport businesses feel that local economies are being
affected because the inability to temporarily close core paths is restricting rally routes that can be considered.

Option 2
Direct costs generated by the amendment to the legislation would be minor. It is presently the case that the access authority may charge a fee for processing a section 11 order. This will remain to be the case if section 11 orders also apply to core paths.

The amount charged is at the discretion of the local authority, however we would not anticipate a significant increase in the cost (if any), for a section 11 order to include a core path.

• Benefits

Option 1
Core paths are protected from closure under section 11 orders; management of access on core paths is achieved by compliance with the Scottish Outdoor Access Code (SOAC), which has been approved by Ministers and the Scottish Parliament. The SOAC provides guidance on access rights and responsibilities, however it is not an authoritative statement of the law.

Option 2
An amendment to the legislation will allow businesses/organisations to consider a greater diversity of locations/routes to host events such as car rallies and outdoor concerts. Organisers of such events will be able to have complete management control of a site, including sites that contain a core path.

Scottish Firms Impact Test

The initial public consultation that ran from October 2011 – January 2012 provided an early opportunity to understand the impact that the proposed modification order might have on Scottish businesses.

37 responses were received to the consultation, respondents were generally supportive of the purpose of the order with only two respondents being opposed to the order.

The consultation responses are available to view at: http://www.scotland.gov.uk/Publications/2012/02/9657.

A copy of the summary report of the consultation is available from: http://www.scotland.gov.uk/Publications/2012/09/6958.

The responses include 3 from motorsport businesses/clubs and 16 from access authorities. Land managers/owners were consulted via the public consultation and also through Scottish Land and Estates, who represent the interest of a wide variety of land-based businesses, including many that have core paths upon their ground.
Three responses were received from motorsport businesses and clubs during the original consultation, all three responses expressed strong support for the order. They stated that the inability to close core paths temporarily has reduced the number of usable rally routes, which has been affecting local economies and hindering rally training. Core path closures for rallying would be required for public safety and rarely be required for more than one day at a time.

“Being unable to temporarily close Core Paths has reduced the amount of routes we can look at, or in some cases stopped us from being able to use some areas. Rallying brings in additional economic impact to the areas it visits through the participating competitors, officials, marshals and spectators.”

As previously mentioned, business representatives on the National Access Forum have also had the opportunity to comment as they were involved in the original consultation and will be consulted again.

- **Competition Assessment**

  Outdoor events such as car rallies and concerts already take place in Scotland, the modification order increases the number of potential locations for such events. Event organisers may be able to host events where previously they could not. With the modification order in place they can have complete management control of a site.

  Will the proposal directly limit the number or range of suppliers? **No**
  Will the proposal indirectly limit the number or range of suppliers? **No**
  Will the proposal limit the ability of suppliers to compete? **No**
  Will the proposal reduce suppliers' incentives to compete vigorously? **No**

- **Test run of business forms**

  No new forms will be brought in as a result of these proposals.

**Legal Aid Impact Test**

- The Civil Law Division have confirmed that there will be no significant impact to the legal aid fund.

**Enforcement, sanctions and monitoring**

- Access authorities are responsible for upholding access rights under the Land Reform (Scotland) Act 2003.

  They are also responsible for processing short term (less than 6 days) section 11 orders and gathering the relevant information for Ministerial consideration for longer term closures lasting 6 days or more. Access authorities should treat cases on an individual basis.
Access authorities are encouraged to exempt land from access rights, under section 11 of the Act, sparingly and applied in respect of the minimum area of land, and for the minimum period necessary, and only when other management arrangements as set out in the SOAC and related guidance have been considered.

- The Scottish Government has established a monitoring regime for access authority duties, powers and expenditure on access under the Land Reform (Scotland) Act 2003. This monitoring gathers data on the use of section 11 orders by each access authority. Exemptions for 6 days or more come to Scottish Ministers for confirmation. Under the existing concordat drawn up between the Scottish Government and the Convention of Scottish Local Authorities (COSLA) the monitoring regimes does not include data on section 11s on core paths specifically. However this data gathered by the Scottish Government would highlight any significant changes in the number of section 11 orders, type of section 11 orders (short term or long term) after the Land Reform (Scotland) Act 2003 (Modification) Order 2013 is implemented.

**Implementation and delivery plan**

Core paths closures (as with other section 11 land closures) will be implemented by the relevant access authorities, with confirmation by Scottish Ministers for exemptions for 6 days or more.

- **Post-implementation review**

  The annual Scottish Government monitoring conducted by the Natural Resources Division collects data on usage of access exemption orders.

  Scottish Government will review the Modification Order within 10 years of it coming into force to ensure it is still fit for purpose.

**Summary and recommendation**

- Scottish Government officials recommend Option 2 to amend the LRSA by the Land Reform (Scotland) Act 2003 (Modification) Order 2013. This will provide for the temporary closure of core paths.

- It is anticipated that the main use of section 11 powers will continue to be to exempt land from access rights for short periods of time in connection with admission to events.

- Implementation of this Modification Order will ensure that organisers of high profile events such as the Commonwealth Games 2014 or car rallies will, where appropriate, have complete management control of the site.
<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum: - economic, environmental, social</th>
<th>Total cost per annum: - economic, environmental, social - policy and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Access takers have certainty of use of core paths</td>
<td>Being unable to temporarily close core paths has limited the locations where outdoor events can be staged. These events can benefit local economies.</td>
</tr>
<tr>
<td>2</td>
<td>Event organisers will have complete management control of a site.</td>
<td>It is at the access authorities’ discretion how much they charge for section 11 orders. If fees were to be amended to include core paths it is not anticipated the increase would be significant. In addition, the time taken to process S11 orders is unlikely to increase significantly.</td>
</tr>
</tbody>
</table>

Declaration and publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: [Signature]

Date: 13 June 2013

PAUL WHEELHOUSE, MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE

Any queries about this BRIA should be addressed to:

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publicaccess@scotland.gsi.gov.uk