



## **Part 1 Land Reform (Scotland) Act 2003**

**Guidance for Local Authorities and  
National Park Authorities**

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## Contents

Introduction

Brief summary of Local authority powers and duties under Part 1 Land Reform (Scotland) Act 2003

Brief summary of exclusions from access rights set out in sections 6 and 7 of the Act

Section 10 - The Scottish Outdoor Access Code

Section 11 - Power to exempt particular land from access rights

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

Section 13 - Duty of local authorities to uphold access rights

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

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

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

Section 17 - Core paths plan

Section 18 - Core paths plan: further procedures

Section 19 - Power to maintain core paths etc.

Section 20 - Review and amendment of core paths plan

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

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

Section 23 - Ploughing etc.

Section 24 - Rangers

Section 25 - Local access forums

Section 30 - Existing byelaws providing for public access to land

Index



## Introduction

The Land Reform (Scotland) Act 2003 (“the Act”) received Royal Assent on 25th February 2003. Part 1 of the Act establishes statutory rights of responsible access on and over most land, including inland water. It is expected that access rights will be exercisable from early in 2005 when the relevant parts of Part 1 of the Act are brought into force.

Part 1 of the Act sets out the statutory duties, responsibilities and powers of local authorities and national park authorities in relation to the provision and promotion of the right of access. This guidance is issued by the Scottish Ministers in accordance with the powers conferred by section 27 of the Act and has been prepared in consultation in particular with COSLA and Scottish Natural Heritage. The recommendations, advice and information contained in this guidance, to which local authorities are required to have regard by virtue of section 27(3) of the Act, are intended to assist local authorities with the performance of their functions under Part 1 of the Act and should be read alongside the provisions of the Act. Authorities should familiarise themselves with the terms of the statutory provisions which in all cases of doubt are to be regarded as providing the definitive description of the duties placed on authorities and their responsibilities and powers.

Part 1 of the Act places emphasis 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 be the main bodies responsible for the implementation of the new access arrangements under the Act. However, within National Parks the National Park Authorities will have the duties and powers exercised elsewhere by local authorities.

The Act 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.

Guidance on the responsible exercise of access rights and the responsible management of land with respect to access rights is set out in the Scottish Outdoor Access Code (“the Code”) which was approved by the Scottish Parliament on 1<sup>st</sup> July 2004. The Code also contains information relevant to the discharge of powers under the Act and local authorities may find it helpful, therefore, to refer to the Code when interpreting this guidance. The Code can be viewed on SNH’s website ([www.snh.org.uk](http://www.snh.org.uk)).

The Scottish Ministers will keep this guidance under review and will issue any further guidance as necessary in light of experience gained. Any constructive feedback on the guidance is welcomed.

All references to “The Act” throughout this document should be taken to mean the Land Reform (Scotland) Act 2003.<sup>1</sup>

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<sup>1</sup> Throughout this guidance there are quotes from the relevant sections of the Act. It should be emphasised that these are limited to the relevant part of the section in question and do not, therefore, always set out the relevant section in full.

## **Summary of Powers and duties of local authorities under Part 1 of the Act**

### **National Park authorities**

On implementation of Part 1 of the Act, the two National Park authorities in Scotland (Loch Lomond and The Trossachs and The Cairngorms) will be responsible within their areas for all of the local authority functions in respect of access rights established by Part 1 of the Act. The term “local authority” is defined in section 32 of the Act as including National Park authorities. Accordingly, references to “local authorities” throughout this guidance document include National Park authorities for the purposes of land which falls within the area of a National Park in Scotland (unless otherwise indicated).

### **Duties**

#### **Section 10: The Scottish Outdoor Access Code**

There is a duty imposed on local authorities (and SNH), by section 10(7) (a) of the Act, to publicise the Code once it has come into operation. The operation date of the Code will be fixed by the Scottish Ministers under section 10(6) of the Act.

#### **Section 13: Duty to uphold access rights**

Section 13(1) of the Act places a duty on local authorities to uphold access rights which entails asserting, protecting, keeping open and free from obstruction any route, waterway or other means by which access may reasonably be exercised. This duty applies to all land over which access rights are exercisable and not just core paths. It is, however, subject to the limitation contained in section 13(2) which provides that local authorities are not required to do anything in pursuance of the duty to uphold access rights which would be inconsistent with the carrying out of any of the authority’s other functions under any other legislation or otherwise. In carrying out this duty, local authorities also have powers to institute and defend legal proceedings and a general power to take such measures as they think appropriate.

#### **Section 17: Core paths plan**

Local authorities have a duty, within 3 years of the date on which section 17 of the Act comes into force, to draw up a plan for a system of core paths sufficient to provide reasonable public access throughout their areas. The types of paths which may be included in the plans are set out in section 17(2). Attention is also drawn to the requirements that local authorities must consider in drawing up the plan which are set out in section 17(3).

#### **Section 18: Core path plan: further procedure**

Under section 18(1) of the Act, local authorities have a duty to publicise their core path 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 forum (or forums) for their area, persons representative of those living, working or carrying out recreational activities on the

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<sup>2</sup> Throughout this guidance there are quotes from the relevant sections of the Act. It should be emphasised that these are limited to the relevant part of the section in question and do not, therefore, always set out the relevant section in full.

land proposed to be affected by the plan, Scottish Natural Heritage and any other persons or bodies it deems appropriate. When the plan is adopted section 18(8) requires the local authority to publicly notify its adoption, compile a list of core paths, make the plan available for public inspection and sale, and send a copy to the Scottish Ministers. If there any objections to the plan which are not withdrawn, it cannot be adopted until the Scottish Ministers direct (section 18(3)).

### **Section 20: Review and amendment of core paths plan**

Under section 20 of the Act, local authorities have a duty to review the core path plan for their area, either when they consider appropriate or by virtue of a Ministerial direction. Following that review they can, under section 18(2), amend the plan by removing or diverting a core path provided they are satisfied that it is expedient to do so. Section 18(4) provides that the core path plan must be amended if any core path is stopped up or diverted by order under section 208 of the Town and Country Planning (Scotland) Act 1997. If a core path is added to the core path plan the procedures under section 18, including consultation requirements, must be followed (section 20(7)).

### **Section 25: Local access forums**

Section 25 of the Act places a duty on each local authority to establish at least one local access forum consisting of persons, and bodies representing the interests of such persons, with an interest in public access on and over land including the exercise of access rights, rights of way, core paths plans and the use of core paths, and owners, or bodies representative of owners, of land in respect of which access rights are exercisable. In accordance with section 25(4) (b) local authorities must ensure a reasonable balance among such bodies and persons appointed to the local access forum.

The functions of a forum, set out in section 25(2), are to provide advice where requested to do so by the local authority, and to provide assistance in any dispute resolution in relation to the exercise of access rights, the existence and delineation of rights of way and the drawing up and adoption of core paths plans.

Sections 25(5) to (7) enable a local authority to appoint one or more of its own members to a forum, to establish more than one forum for its area and also to pay expenses and allowances to the members of the local access forum.

### **Section 30: Existing byelaws providing for public access to land**

Section 30 of the Act requires all byelaws relating to public access to land in respect of which access rights are exercisable which have been made by local authorities under any legislation to be reviewed by the local authority within 2 years of the coming into force of section 30 and, if necessary, modified to ensure consistency with the provisions of the Act.

## **Powers**

### **Section 11: Power to exempt particular land from access rights**

Section 11 of the Act provides a mechanism for local authorities, whether on application from third parties or at their own initiative, to exempt a particular area of land from access rights for a particular purpose, for either a short period of time, for example four days or longer if required. The powers in section 11 are intended to address a number of situations which range from small events such as local village fetes to larger more organised events such as the golf Ryder Cup. Local authorities must consult the public and the owner of the affected land on the proposed order (section 11(2)) and any order which excludes land for six days or more will require Ministerial confirmation (section 11(3)). Section 11(9) provides that all orders must be notified to the public. Under section 11(12), an order has effect for a maximum of two years unless re-enacted, in which case section 11(13) applies.

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

Section 12 of the Act provides powers for local authorities to make byelaws for any of those purposes set out in section 12(1) and (2) provided it does not interfere with a public right of way or navigation or the role of statutory undertakers (section 12(3)). Byelaws made under this procedure will be subject to the consultation procedures set out in section 12(6) to (8) of the Act. Sections 202 to 204 of the Local Government (Scotland) Act 1973, which set out further procedures relating to byelaws, apply to all byelaws made under this Act (subject to the qualification set out in section 12(5)).

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

Section 14 of the Act provides a power for local authorities to ensure that landowners or those managing land do not deliberately undertake any activity for the purpose or main purpose of preventing or deterring the exercise of access rights. If an owner of land does anything for that purpose then local authorities have powers under section 14(2) to require the owner, by written notice, to take remedial action. If the owner fails to comply, section 14(3) empowers the local authority to remove signs or notices or take other remedial action and to recover the reasonable costs of doing so. An owner on whom a notice has been served by a local authority may appeal against it by summary application to the sheriff under section 14(4).

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

Local authorities have powers under section 15 of the Act 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 that land where there is a danger. They can also, by written notice under section 15(2), require a landowner to remove anything which they consider might be likely to cause injury to anyone exercising access rights. They can also, with the consent of the land owner, install and maintain gates, stiles, moorings, launching sites and any other means of facilitating the exercise of access rights, and seats, lavatories and other means for the comfort and convenience of the public, with the consent of the landowner by virtue of the power given to them by section 15(4). They can also, with the consent of the landowner, provide life guards and boats and



equipment for inland waters in respect of which access rights are exercisable (section 15(5)). In exercising their powers under section 15 local authorities must have regard to existing facilities and the needs of persons with disabilities (section 15(6)). Local authorities are drawn to the provisions of section 26 which confirm the position relating to power of entry for local authority staff to undertake work set out in amongst other sections of the Act section 15.

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

Section 16 of the Act provides local authorities with powers to acquire land other than that in respect of which access rights do not extend by virtue of section 6(1) (a) (ii), (d), (e) or (f) and land excluded by way of an order made under section 11(1) to enable or facilitate the exercise of access rights. The acquisition of land by local authorities can be either by agreement or, compulsorily with the consent of the Scottish Ministers. The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to compulsory purchases made under this section.

### **Section 19: Powers to maintain core paths etc.**

Local authorities have powers under section 19 of the Act to do anything which they consider appropriate to maintain a core path, keep it free from obstruction or encroachment and provide the public with directions to a core path. This will allow them, for example to put up signs directing the public to core paths or informing them of a route of a core path. This section should be read alongside section 26 which provides a power of entry to land within access rights.

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

Section 21 of the Act provides that 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 21(2)).

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

A local authority, where they consider it impracticable to delineate a path by agreement under section 21 of the Act, may make an order (a “path order”) delineating it under section 22 of the Act. 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.

By virtue of section 14(3), 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 also have the power to revoke any path order under section 14(5).

The Occupiers' Liability (Scotland) Act 1960 makes provision as to the duty of care which an occupier or person in control of land must show to persons on the land. Section 22(4) of the Act 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.

Section 22(6) provides that a path order must be in a form prescribed in regulations made by the Scottish 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 to the Act.

### **Section 23: Ploughing etc.**

Section 23(1) of the 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 in this way, there is a duty, set out in section 23(2), 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.

Section 23(3) provides that 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 23(4)).

### **Section 24: Rangers**

Local authorities have the power, conferred by section 24 of the Act, to appoint any persons authorised by them to act as rangers in relation to any land in respect of which access rights are exercisable. Rangers' functions are to provide advice and assistance on matters relating to access rights and to perform such other duties in relation to those rights as the local authority may specify.

### **Section 26: Powers of entry**

Under section 26(1) of the Act, persons authorised by a local authority 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 of the Act. Such a person may, however, enter land under this power only at a reasonable time and after giving reasonable notice to the owner of the land (section 26(2)). However, Section 26(3) disappplies this requirements for reasonableness of entry and notice for a purpose connected with the exercise or proposed exercise of local authority's powers under section 15(1)(a) and (4) and 19 where that land is or forms part of a core path or where there is an emergency.

Persons authorised to enter land may, by virtue of section 26(4), 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**

Section 28(1) 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.

Section 28(2) 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. The Scottish Executive is in the process of arranging for Rules of Court to be drafted, as required by section 28(8) of the Act, for these proceedings.

## Sections 6 and 7: Land over which access rights not exercisable

This section provides a brief summary of the land over which access rights are not exercisable under section 6 of the Act, as supplemented by section 7. There is further interpretation of some of the exclusions set out in section 6 in sections 2.11 and 3.13-3.17 of the Code ([www.snh.org.uk](http://www.snh.org.uk)).

Section 6(1)(a) excludes from access rights land on which there is any building or other structure or works, plant, fixed machinery, caravans, tents or other places used to give a person privacy or shelter.

Section 6(1) (b) (i) and (ii) excludes land surrounding and associated with non-domestic buildings and land which encloses structures, works, plant or fixed machinery. This exclusion would apply for example, where a fence was erected round a telecommunications mast for reasons of security. In that case, the land within that fence would be excluded from access rights. Section 6(1) (b) (i) of the Act uses the term “curtilage” to describe the type of land surrounding and associated with non-domestic buildings. The extent of curtilage in any given situation will depend on the particular features of the property in question. In most cases, the extent of curtilage should be obvious. In the event of any dispute as to the extent of land in respect of which access rights are or are not exercisable, recourse could be had to judicial determination under section 28 of the Act.

In relation to school buildings, section 6(1) (b) (iii) excludes land contiguous to and used for the purposes of a school. School playing fields apart from a school are not covered by this exclusion but may be governed by the exclusion in section 6(1) (e). “School” is defined in section 7(4) as including schools which fall within the meaning of “school” as set out in section 135(1) of the Education (Scotland) Act 1980 and any other institution which provides education for children under school age within the meaning of section 135(1). Section 135(1) defines “school” as: *“an institution for the provision of primary or secondary education being a public school, a grant-aided school, a self-governing school or an independent school, and includes a nursery school and a special school”*. Children below school age generally means children under five years old subject to the qualifications referred to in section 31 of the Education (Scotland) Act 1980.

Section 6(1)(b)(iv) excludes land which is adjacent to a house, caravan, tent or other similar domestic place as is sufficient to give persons living there reasonable measures of privacy and undisturbed enjoyment. This is intended to respect a person’s fundamental human right to privacy and peaceful enjoyment of that person’s property without state control in the use of that property under Article 8 and Article 1 of Protocol 1 to the European Convention on Human Rights. Whilst the extent to which land is sufficient to achieve the purposes of section 6(1)(b)(vi) will be a matter to determine according to the specifics of each particular case, section 7(5) of the Act sets out factors to assist in such a determination. It provides that the location and other characteristics of the place to which the land relates are, amongst other matters, relevant to determining how much land is sufficient in this context.

Section 6(1) (c) excludes private gardens, to which two or more persons have rights in common. This will cover areas like those gardens located in several parts of the New Town of Edinburgh, which are jointly owned and held by residents for their private use.

Section 6(1) (d) provides that the regulation of public access by or under any other enactment is not diminished or replaced by access rights. There are, for example, other enactments which prohibit, exclude or restrict public access to military establishments and railways, such as section 14 of the Military Lands Act 1892 (as amended and expanded by the Military Lands Act 1900). Access rights under the Act will be subject to those legislative restrictions. Section 7(6) clarifies that this exclusion does not prevent access rights being exercised in a manner which would not contravene any other enactment prohibiting, excluding or restricting access rights.

Section 6(1) (e) excludes land which has been developed or set out as either a sports or playing field or for a particular recreational purpose. Section 7(7)(a) qualifies this exclusion in relation to sports and playing fields by providing that it applies only when the fields are being used. It further qualifies the exclusion in relation to other land developed or set out for a recreational purpose by providing that the exclusion does not apply in relation to access rights which would not interfere with the use to which the land is being put.

Section 7(7)(b) and (c) provide that the section 6(1)(e) exclusion applies in relation to certain vulnerable surfaces including golf greens, bowling greens and other similar grass surfaces and certain types of artificial surfaces at all times, and not only when in use. Section 7(8) provides that certain developments undertaken for the purposes of fisheries management do not bring the land within section 6(1) (e).

The intention behind section 6(1) (e) is that the exercise of access rights should not interrupt or impede sporting activities. There is no reason why for example the public should not be allowed to walk on areas in parks marked out as football, hockey or rugby pitches. However, it would not be responsible to exercise access rights when a game is actually in progress. The same principle applies to any land developed or set out for a particular recreational purpose, such as archery, mountain bike events or slaloms. People engaging in these activities should be free to enjoy them without interference. In addition, there could be issues of public safety.

The further qualification in section 7(7)(a) allows the exercise of access rights even where the land is in use, however, only if this can be done in a way which does not interfere with the recreational use to which the land is being put. For example, there is no reason why someone should not exercise the right to cross a golf course when golf is being played if this is done in a responsible manner which does not interfere with golfers' shots, or compromise the safety of the person exercising the access rights.

Section 6(1)(f) provides that land in respect of which a charge was levied for public admission for at least 90 days each year prior to 31 January 2001 and for which a charge continues to be levied for the same period after that date, is excluded from access rights. This exclusion is included to allow those who have received an income from charging for entry to land to continue to do so. However, it applies only where a charge was made in the past and not where a charge is introduced. Anyone who wishes to commence charging for admission to their land will require to persuade a local authority to exclude their land from the right of access by order under section 11 of the Act. Section 7(9) clarifies that the rights of access of those who were previously exempt from the admission charge, are not affected. This could apply to young children or pensioners.

Section 6(1) (g) and (h) excludes land on which building, civil engineering, demolition works or other works, such as works by a statutory undertaker for the purposes of the undertaking

are underway. Land used for the working of minerals by surface workings such as quarrying is also excluded.

Section 6(1) (i) excludes land on which crops have been sown or are growing. “Crop” is defined, for the purposes of the Act in section 7(10). Land excluded under this section includes land on which grass is growing, but only where that grass is being grown for hay and silage and whilst that same grass is at such a late stage in its growth that the exercise of access rights may cause damage to it. However access rights may be exercised over any other grassland. Crops do not include either headrigs, endrigs or other margins of fields in which crops are growing. However, access rights in these circumstances must still be exercised responsibly and with due care.

Section 7(1) provides that access rights are exercisable on core paths over land otherwise excluded from access rights.

Section 7(2) and (3) limits the extent of the exclusion in section 6 in respect of land on which a development is being carried out which requires planning permission under the Town and Country Planning (Scotland) Act 1997. Accordingly, the exclusion only applies while the development is being carried out and only to the extent that the development is in conformity with any planning permission.

## 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 Code will be key to successful implementation of the new statutory right of access. Although the Act separates these duties, appropriate publicity is an essential and integral part of the education process that will promote understanding. 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 should work closely with SNH in the preparation, implementation and evaluation of their own local programmes to publicise the Code.

### Means of delivery

At the **national** level, as part of its promotion and education programme, SNH will **publicise** the Code in a variety of ways including:

- Design and distribution of the Code and Summary Code;
- Branding the Code to create a popular visual identity;
- A formal media launch;
- A comprehensive programme of media coverage.

At the **national level**, as part of its promotion and education programme, SNH will **promote understanding** of the Code through a variety of ways including:

- Developing and promoting an access website ([www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com));
- Delivering training to access and countryside professionals;
- Preparing and distributing guidance on developing Codes of Good Practice;
- Developing and distributing comprehensive signage guidance.

At the **local** level, SNH will maximise opportunities to publicise and promote understanding of the Code through integration, as appropriate, into publications, leaflets, displays, meetings, presentations, events, and media opportunities. This will be important in cascading information to the local level.

To complement and further the work of SNH, local authorities should help to cascade publicity and messages developed nationally as well as developing and implementing their own local programmes to help publicise the Code.

In progressing their duty to publicise the Code, as a minimum, local authorities should:

- make the Code, any summary code and related guidance on codes of good practice 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, planning, legal, property, public relations, etc ) are briefed and trained in its content and can answer any questions and queries.

There are many ways in which local authorities can locally promote a wide understanding of the new code. The use of traditional, as well as a range of inventive and innovative approaches, can be used to provoke and capture the attention of the different audiences. It is important that the messages conveyed relate to people's everyday experiences so that the relevance can be seen, and that messages are revealed in a memorable way to have greatest impact. Methods for promoting understanding might include:

- Personal contact; e.g. liaison with visitors and land managers, presentations, talks and site visits;
- Educational approaches; e.g. signage, interpretation, leaflets, posters, displays, training and good practice guidance information, through guided walks and talks, by linking to schools curriculum and first hand experience of the outdoors and through community education;
- Media and communications; e.g. websites, newsletters, discussion groups, forums, local newspapers and radio;
- Reviewing and updating existing information to ensure compatibility with the Code.

**Under section 10(8) of the Act:**

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

To help implement this duty, SNH will have a key role in monitoring and evaluating publicity on the Code. To assist with this, it will be beneficial if local authorities keep SNH informed and up to date of publicity activities under the section 10 duty.

SNH will involve the National Access Forum in reviewing the Code.



## **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 and/or inland water from access rights.

It is likely that the main use of these powers will be to exclude land from access rights for short periods of time in connection with admission charging for an event. However, it is recognised that there may be occasions where longer term exclusions will be required (examples are provided below). Issues relating to safety or security are other reasons why local authorities may consider it appropriate to exempt areas of land from access rights are in the interests of safety or security.

**In general the reasons for exemptions under section 11 should be limited to: -**

- Allowing a charge to be levied for admission to a particular event;
- In the interests of safety and security; and
- 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.

**Circumstances where exemption should not usually be considered include: -**

- Reasons of land management (the Act provides sufficient exclusions and further guidance on the responsible exercise of access rights over agricultural land is provided in the Code);
- Large country houses or estates seeking an extensive exclusion for their whole estate well outwith any reasonable expectation of what is needed 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.

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

There is no time limit set for when someone is required in advance to apply to their local authority for exemptions under section 11. For larger events where an admission charge is to be imposed and where dates are set well beforehand, such as for example a professional golf tournament then there should be scope for making an application well in advance. Clearly, when there is a requirement to consult on a draft Order then applications have to be made in

time to allow for this. For smaller events such as local village fetes where the duration of the order is such that consultation is not required, an application nearer to the date of the requested exemption may be acceptable. Local authorities are best placed to issue their own guidance on practical issues such as timing.

### **Short term exclusions**

The Act establishes rights of access over all land except that specifically excluded by section 6. Where an event is to be held on land over which access rights can be exercised, there may be a need to exclude the land from access rights for the duration of the event, and possibly periods immediately before and after. The exclusion might be to avoid interference in the event, for example a wedding, or to allow an entry fee to be levied, for example a village fete or highland games.

Where an entry fee is to be levied it is not envisaged that an order will be required for all such events. 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 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 for an event lasting several days or to a permanent visitor attraction. 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. There may also be circumstances where private landowners wish to establish a new business venture such as, for example, a country park or arboretum.

Another example might be an archaeological site of particular cultural heritage value 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 generally, but also to the economy of the area. Local authorities are best placed to decide whether there is a good case for excluding land from access rights in such circumstances.

During discussion of the Bill in Parliament reference was made to the need to guarantee privacy to the clients of certain hotels and similar establishments Section 6(1)(b)(i) of the Act specifically provides that access rights are not exercisable on land that forms the curtilage of a non-domestic building. . It was argued that 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.

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 exist or can be provided to facilitate access over or around land affected by such an order.

### **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 less than 6 days although it is expected that in all cases where an order is proposed that local authorities seek advice from their local access forums, established under section 25 of the Act, since they will play an important role in advising the local authority on the appropriateness of any proposed order.

However, 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: -

*(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 the Scottish Ministers.

### **Ministerial consideration of orders with duration of more than 6 days**

In considering whether to confirm any order the Scottish Ministers will wish to be satisfied that: -

- Where a charge is to be levied for admission that the charge is necessary to the viability of the visitor attraction and the loss of public access can be justified in

terms of other benefits to the local community. Further information on this is provided in the Code;

- Adequate consideration has been given to the demand for access in the area affected by the proposed order;
- Consideration has been given to the provision of alternative routes;
- The local authority has provided the Scottish Ministers with copies of all objections or representations received on the proposed orders and that the authority can justify proceeding with the proposed order in light of any objection or representation;
- The local authority has undertaken the consultation requirements set out in section 11 of the Act on the proposed order prior to submitting it for confirmation;
- The purpose and effect of the order is clearly defined and is proportionate to the issue it seeks to address.

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

It is also important to note that where a local authority revokes, amends or re-enacts an order and where the revoked, amended or re-enacted order has duration of 6 days or more, then the local authority must follow the procedures set out in section 11(2) to (9).

A series of model orders 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.

*[pro-forma notice given under section 11(2)(b) of the intended purpose and effect of a proposed section 11 exemption order]*

***[Name of Local Authority]***

## **NOTICE OF PROPOSED ORDER TO EXEMPT LAND FROM ACCESS RIGHTS**

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]*** 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 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 confirmation]*

***[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 ***[insert 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]*** 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]*

***[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 ***[insert 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]*** 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.

## **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 in respect of all land and inland water over which access rights are exercisable including core paths identified as such in local authority core paths plans drawn up under section 17 of the Act. This means that byelaws can extend to private land provided that the land is land over which access rights are exercisable. It sets out the purposes for which byelaws can be made, the procedure to be followed and obliges the local authority 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 in respect of land owned and managed by other public agencies which have their own byelaw making powers. If there were a problem identified on such land then it would be up to the appropriate agency to make byelaws 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 provide for what is 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 or the ownership of land, over which access rights are exercisable.

Secondly, byelaws may exclude land from access rights. It is expected that any such exclusion would be part of wider management arrangements for an area.

Thirdly, byelaws under section 12 may provide for those purposes specified in section 12(1)(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. Further to this when considering byelaws for any of the purposes specified in section 12(1)(c) further specific purposes for which they can be made are set out in section 12(2).

The byelaw-making powers in section 12 of the Act may be exercised generally in relation to land (and inland water) or in respect of a specific area of the land over which access rights are exercisable. In general byelaws should be limited to those specific areas where a need has arisen, 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).

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. 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.

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 excluding an area from access rights. In all cases, local authorities should exercise their judgement carefully and consider the best mechanism for managing that particular problem in that area. Local authorities should consider whether byelaws are the most suitable management tool or whether other measures might be more appropriate. When it is proposed to make byelaws they should be appropriate and proportionate to the impact. It is important here to emphasise the difference between the powers under section 11 and those here in section 12. Section 11 allows local authorities to exclude particular areas of land from access rights. The byelaw-making powers are more applicable to the management or restriction of certain activities for specific purposes set out in this section rather than excluding the land itself from access rights. Where land is to be excluded by byelaws, this should be part of a wider management scheme.

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

- After other measures of management or advice have been shown not to be effective;  
or
- Where persistent examples of irresponsible behaviour or irresponsible management action arise and staff operating on the ground need the support of the byelaw provision;
- Where there is 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 and to protect those persons exercising their rights from any nuisance or danger;
- Where there is conflict between different categories of recreational users using the same area of land or water, e.g. jet-ski users and canoeists, (byelaws could be used to “zone areas” for particular use). Although motorised activities are excluded from access rights, byelaws can be made to manage these under section 12(2) so as to protect and further the interests and safety of persons who are exercising, or who might wish to exercise, access rights;
- Consideration might be given to using byelaws to manage access over land which is being regularly or permanently used by children, for example youth centres or scout camps, so as to safeguard the interests of the children;
- Consideration may be given to the need for protection of an area of land of high natural and/or cultural heritage, where there is a persistent use of that land, and a problem is identified with regards to the dropping of litter or rubbish and/or the lighting of fires.

This guidance cannot be prescriptive nor cover all circumstances. Local authorities must use their discretion to determine when there is a management issue that needs addressed and what is the best mechanism for dealing with it.

### **Point to Consider– Management Rules**

There may be some circumstances, although it is not expected that there should be many, in which local authorities should consider the appropriateness of introducing management rules under the provisions contained in section 112 of the Civic Government (Scotland) Act 1982, before considering proposing byelaws. These allow local authorities, without the need for confirmation by the Scottish Ministers, to regulate the use of, and conduct of persons while in or on, land and premises which are 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 their local access forums and the Scottish Executive as they consider necessary.

### **Consultation requirements for byelaws under section 12(6), (7) and (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.*

### **Byelaw-making procedure**

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) and (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. When considering byelaws, local authorities may find it helpful to consult with other authorities who may be facing similar management issues. This could also encourage a more consistent approach across the country.

Byelaws made under section 12 of the Act, whether in respect of land or inland water, are subject to the process set out in sections 202 to 204 of the Local Government (Scotland) Act 1973, subject to the modifications specified in section 12(5) of the Act. 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 for byelaws 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.

### **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 would not be appropriate to simply override them. However, byelaws can manage those rights without overriding them. 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 means that on a stretch of water where there is a right of navigation, byelaws may be appropriate to zone activities for reasons of safety.

The table below sets out a summary of the different byelaw making powers currently available to local authorities and also the powers available to make management rules.

<b>Governing legislation</b>	<b>Section</b>	<b>Category of land</b>	<b>Byelaw making authority</b>
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 waters 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

## **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 assists 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 facilitating the exercise of access rights on the ground. The Act places an emphasis on the local management of access and imposes a specific duty on local authorities to uphold access rights. It is recognised that local authorities require sufficient powers to be able to manage access within their areas, and to fulfil this duty. The Act provides them with new powers and duties. As the new access arrangements are to ensure improved responsible access for all, local authorities are reminded of their obligations under the Disabilities Discrimination Act 1995 and ensure, where it is appropriate to do so, that facilities are in place to allow those with a disability to enjoy safe access to the outdoors.

Local authorities will have the main role in upholding access over all land, not just paths. The duty placed on local authorities to assert, protect, keep open and free from encroachment any route, waterway or other means by which access may be reasonably exercised is an important one, and central to the success of the new arrangements. The emphasis of the legislation on the local management of access means that dialogue and consensus building is vital. Local authorities will rely heavily on advice from their access officers on the ground and from their local access forum(s) which should provide advice based on discussions between all those affected by the new access rights. If this dialogue and consultation is done effectively it should reduce the need to go down the route of having to defend legal proceedings, as allowed for under section 13(3) of the Act.

Local authorities will have their own procedures 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 the delay of 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 responsibly land over which access rights can be exercised. It is essential that in order for the public to exercise their access rights that land is open and free from obstructions. It is important that local authorities understand the relationship between the duties imposed by section 13 and the powers to assist them fulfil this duty provided in sections 14 and 15 of the Act.

Section 14 of the Act provides that owners should do nothing for the purpose of preventing or deterring the exercise of access rights. Where an owner acts in such a manner, section 14(2) provides powers to local authorities by written notice to require the owner to remedy the situation. If the owner fails to comply with the notice, section 14(3) allows the local authority itself to enter the land to undertake the remedial action and to recover the costs from the owner. Section 15 permits authorities to take similar remedial action to remove anything they feel has been erected in such a way that it is likely to cause injury to anyone exercising access rights.

The duty placed on local authorities by section 13 of the Act is clear. Sections 14 and 15 provide powers to assist local authorities to fulfil their duty.

If a local authority fails to act to secure access under sections 14 and/or 15 then this may be a breach of their duty under section 13. Anyone who considers a local authority had acted in accordance with this duty could seek a judicial review of the decision not to act.

### **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 duty imposed by section 13(1) does not override 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. However, where appropriate, local authorities should consider attaching a suitable planning condition to enable them to ensure reasonable continuing public access. A model planning condition is attached as an annex to this section of the guidance that local authorities may adapt for their own use.

The duty imposed by section 13(1) continues to apply in respect of land where the local authority is not the authority with primary responsibility for the discharge of functions under part 1 of the Act. For example, the duty would apply to a local authority considering a planning application in respect of land within a national park where the park authority would be responsible for functions such as core path planning. It is not anticipated that a national park authority would be required by section 13(1) to call in any planning application that might affect the exercise of access rights such as in the case of the Cairngorms National Park authority which does not have the full responsibilities for development control under planning legislation. It would be appropriate for these issues to be addressed in the development Control Protocol between the park authority and the neighbouring local authorities.

### **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 in order to fulfil their duty 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, in consultation, if necessary, with their own legal advisors.

**Suggested Planning Condition –**

*Prior to the commencement of works ...(if attached to a full planning permission )*

*or*

*As part of the detailed application... ( if attached to an outline consent)*

*....a detailed plan of public access across the site (existing, during construction and upon completion) will be provided for the approval of the council as planning authority. This will show:*

- a) all existing paths, tracks and rights of way, and any areas currently outwith or excluded from statutory access rights\*;**
- b) any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or curtilage, in relation to proposed buildings or structures;**
- c) all paths and tracks proposed for construction, for use by walkers, riders, cyclists, all-abilities users, etc.**
- d) any diversions of paths - temporary or permanent - proposed for the purposes of the development.**

\* under Part One of the Land Reform (Scotland) Act 2003.



## **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.*

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

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 of access rights. Section 14(1) provides examples of these types of activity. It has to be emphasised that local authorities will have to apply this power with great care on an individual case by case basis. This is because it must be recognised that there are a number of necessary legitimate land management practices carried out that are essential for that purpose and may not necessarily have been undertaken for the purpose or main purpose of preventing or deterring access.

### **Local authorities may wish to consider the following in making a judgement : -**

If a land manager is not able to provide any reasonable land management or business reason for the impediment/obstruction then the local authority would normally exercise its discretion to remove the offending item.

If local authorities are in doubt then it might be beneficial at an early stage to seek advice from their local access forum(s).

The following are examples of types of action which if deliberately used to prevent or deter the public from exercising their access rights, would justify local authorities intervening using the powers available in section 14:

- 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 of a type which could be considered to have a dangerous propensity 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;
- locking gates.

### **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 areas like fields where livestock are kept. Hedges may also have been legitimately planted in the interests of, for example enhancing biodiversity. 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 will need to be ascertained whether or not this has been done to prevent or deter access and whether or not adequate provision has been allowed for access through the area, such as a break in the hedge.

### **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 request that the landowner take down the sign. If the landowner were to fail to do this then the authority should follow the steps set out in section 14 to ensure that the sign is removed. There may, however, be a legitimate reason for the sign e.g. to warn of danger. However, in determining whether or not a sign is legitimate local authorities may find it helpful to refer to section 4 of the Code. Scottish Natural Heritage are also intending to develop supplementary practical advice on assessing the need for signs, their locations and suitable wording to assist safe and effective land management operations.

### **Access where there are animals present**

Any animals, including dogs, which are left to roam freely in an area where the public regularly exercise access rights might be seen by the public as a deterrent to the exercise of access rights. The Health and Safety Executive's advice note Agricultural Information sheet No 17 (this is available from HSE Books), provides useful information on the potential hazards which can occur to workers and members of the public when cattle are kept in fields where the public exercise access rights. Farmers do, of course, have to keep their animals somewhere, and local authorities will, therefore, have to ascertain the reason they have been left in a particular area. However, it is expected that in situations where a farmer keeps any potentially dangerous animal in a field crossed by a core path or a right of way that the local authority may regard such action as a deliberate obstruction to responsible access (see para. 4.9 and section 5 and section 6 of the Code for further guidance).

### *Section 14(2) and (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.*

### **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 preventing or deterring the exercise of access rights and the said individual is unwilling to remedy the situation, a written notice (see model written notice at end of this section) may be served on the responsible party. The local authority may wish to consider sending this letter by recorded delivery. The notice ought to be served not fewer than 14 days before the date on which it is due to take effect.

The written notice should 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 rights of access over the land. The notice should also clearly state the date by which the remedial action must be undertaken. The period for carrying out the action should be a reasonable period calculated by reference to the particular circumstances of the contravention.

### **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 (S.I 1999/929).

### **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.

## **Model Written Notice under section 14(2)**

### **LAND REFORM (SCOTLAND) ACT 2003**

# **WRITTEN NOTICE**

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

**1. THIS IS A FORMAL NOTICE** issued to you [insert name of owner of the land] by the [name Council/National Park authority] in exercise of the powers conferred by section 14(2) of the Land Reform (Scotland) Act 2003 (“the Act”), because it appears to them that you have contravened the terms of section 14(1) of the Act on the land referred to in Article 2, of which you are the owner.

## **2. THE LAND AFFECTED**

The land on which it appears a breach of section 14(1) of the Act has taken place is [insert full description of land], shown edged red on the attached plan signed as relative hereto.

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

[State details of 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 contravention of section 14(1) of the Act has occurred within the last xx months.]

## **5. WHAT YOU ARE REQUIRED TO DO**

1. State the action the owner is required to take i.e. remove sign from a core path.
2. Timescale for 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 are entitled to appeal against this notice by summary application made to the sheriff under section 14(4) of the Act. The rules which apply to an appeal made by you are contained in the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (S.I. 1999/929). In accordance with rule 2.6 of those rules any appeal must be received, or posted to be received by the sheriff clerk **WITHIN 21 DAYS OF THE DATE ON WHICH THIS NOTICE TAKES EFFECT**, namely [insert date on which notice takes effect].

## 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 set out in Article 5.1, for which you may be held responsible, are taken within the period[s] specified in Article 5.2.

Failure to comply with a written notice which has taken effect can result in [specify action] by the Council/National Park authority which is empowered to recover reasonable costs from you for such action by virtue of section 14(3) of the Act.

Dated: [date of issue]

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

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

[attach plan on which should be written "this is the plan referred to in Article 2 of the foregoing Written Notice, dated [insert date of notice]. The map should also be signed.]

## **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.*

In order to ensure public safety, 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. If anything which in the opinion of the local authority has been constructed or adapted in such a way that it is likely to injure those exercising access rights then consideration should be given, if appropriate 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. It also provides for authorities to indicate, enclose, or to give directions to land in respect of which access rights are exercisable on which there is a danger. Examples of this could be making them aware at the starting point of a walk or the use of signs. However, this power does not in any way relieve landowners/managers of their existing obligations under, for example health and safety regulations, in respect of their duty of care to people on their land. These obligations under Health and Safety legislation, (i.e. the Health and Safety at Work Act 1974 and other relevant legislation will be unaffected by the new access legislation.

The outdoors is, however, not risk free and can never be made so. The public need to be aware themselves that they are responsible for their own actions when exercising their access rights and that “taking responsibility for your own actions” is one of the key principles of the Code.

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

However in exercising this power local authorities must be aware that land managers may, in their carrying out of legitimate land management practices have to use material or erect such things as barbed wire fences, which may prove hazardous to the public when they are exercising access rights. In that respect it is, therefore, important that local authorities will have to initially ascertain the reason why for example a fence has been so erected or adapted that it might cause injury. In all cases it might not be appropriate to have it removed. There a number of things which might constitute a hazard and they could include for example:

- 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 that the public while exercising access rights may be injured on their land; and it has been considered that the hazard is not justified for example for any legitimate land management practice, or to protect the public from some form of danger; and the hazard has then subsequently not been removed or repaired despite requests from the local authority, then local authorities may serve a written notice. Action as per section 14 should be used. A model written notice is provided at the end of this section that 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 access rights local authorities have powers to install and maintain on any land and inland waters over which access rights are exercisable means which will provide comfort and convenience to members of the public exercising access rights. However local authorities should note the guidance on consulting the landowner below.

Types of facilities which may be installed or maintained include:

#### **Land**

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

## **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 ranges of ability within the local community and potential visitors to the area.

## **Consent of and 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.*

Section 15(7) requires that prior to installing any equipment on land over which access rights are exercisable, local authorities must consult with the owner of the land and obtain consent to undertake the work. Section 15 must be read alongside section 26 of the Act which provides a general power to any person authorised to do so by the local authority to enter land for a purpose related to the exercise or proposed exercise of any of the authority's functions specified in Part 1 of the Act, provided entry is at a reasonable time, and reasonable notice has been given to the owner of the land. Section 26(3) disapplies these requirements when entry is required for a purpose connected with the exercise or proposed exercise of local authority's powers under section 15(1)(a) or (4), or section 19 where the land is, or forms part of, a core path or in the case of an emergency. However, the consent of the landowners is still required before any work can be undertaken the provisions in section 26 only removes the requirement to enter land at a reasonable time and the giving of notice of when the aforementioned work will be undertaken.

It is not expected that there will be many circumstances where a landowner's consent is not given. However, if this were to be the case then local authorities should refer the matter to their local access forum that may be able to provide assistance and mediate in the dispute.

Local authorities may wish to refer to the new website set up by SNH ([outdooraccess-scotland.com](http://outdooraccess-scotland.com)<sup>3</sup>) which provides references to guidance and other publications providing advice on access issues for visitors to the countryside.

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<sup>3</sup> [outdooraccess-scotland.com](http://outdooraccess-scotland.com) – new access website established by SNH providing links to guidance on rights and responsibilities of access rights established by the Act



## **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 to acquire land in order to enable or facilitate full enjoyment of access rights established by Part 1 of the Act. A point for local authorities to be aware of is that there are time limitations on the extent to which the reference in section 16(1)(a) of the Act to acquisition by “feu” will be relevant as all remaining aspects of the feudal system was abolished in Scotland on 28 November 2004 by virtue of the Abolition of Feudal Tenure Etc. (Scotland) Act 2000.

This right to acquire land does not extend to land that falls within the category of land excluded from access rights under section 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. For example, they should weigh the interests of the public, both local and visitors to the area; the interests of landowners/occupiers; and conservation and natural heritage interests.

Acquisition of land by a local authority to enable or facilitate access is expected to be very much a last resort and it is not anticipated that this power will be exercised other than in unusual circumstances.

Where a local authority proposes to acquire land by way of a Compulsory Purchase Order then they must first obtain the consent of the Scottish Ministers. 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 Act.

## **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. A system of core paths throughout Scotland is an essential element in the new arrangements for access established by the Act. Accordingly local authorities should give priority to their development in pursuance of their duty under section 17(1) of the Act.

### **Definition of core paths –**

Core paths are paths or routes, including waterways, to facilitate the exercise of access rights under the 2003 Act. Only those paths identified in the core paths plan will form the system of core paths.

The core paths system should provide the basic framework of routes sufficient for the purpose of giving the public reasonable access throughout their area. This basic framework of routes will link into, and support, wider networks of other paths.

Most people prefer to use paths, and a well-marked, clearly defined system of core paths, identified in a published core paths plan with maps of the system, is intended to encourage more people to enjoy the outdoors. The suitable provision of core paths is also intended to assist in the management of access, particularly over agricultural land.

The core paths network as a whole should provide for all forms of recreational access, (e.g. walking, cycling, horse riding, canoeing, etc.). All core paths should be signposted at key access points, with boundary crossings in a safe and usable condition, and the path surface serviceable for the anticipated users, as explained further under 17(2) below.

### **Components of the core paths plan -**

The core paths plan, once adopted, will normally comprise three elements –

- Map or maps of the core paths system
- List of designated core paths
- Supporting text

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.

The core paths list will be a definitive listing of all paths which have core path status, and may include data on path lengths.

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 local

authority's 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 Paths to Health, Safer Routes to School etc, may be explained, along with proposals for managing and promoting the network.

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

The planning of a core path system which is “sufficient” for this purpose under the Act should be based on local consultations. The local authority in drawing up the plan should particularly involve the local access forum as a major consultee. Core paths should aim to meet the needs of the whole community, including visitors, and the system 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.

Outdoor Access Strategies will have a part to play in planning for a sufficient system, and local authorities and partners are encouraged to prepare and update outdoor access strategies which provide a broad context for planning the core paths networks. SNH/PFAP have recently published updated 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 with respect to audits of supply and demand, access action plans, and the promotion of facilities.

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 authority area boundaries.

The “sufficiency” of the proposed core path system may be assessed by the extent to which it demonstrates reasonable responsiveness to these consultations, objectives and strategies, in relation to and at the scale of the authority's area.

### **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) - The system ‘may include’ rights of way, but there is no presumption that all current rights of way must become core paths, and they should be assessed on their present-day condition and 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. It may be that where a right of way is “claimed” but not fully recognised or asserted as such, its designation as a core path would be the simpler way to establish and recognise the path’s status.

17(2)(b) - This 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 in preparing the core paths plan, 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.

Again, there is no requirement that all major existing paths should become core paths. As with all paths, routes such as designated Long Distance Routes or National Cycle Network routes should be assessed through a consultation process to allow area-based assessment of their appropriateness for inclusion in that authority’s 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 fully interconnect either nationally or at local authority level, as long as provision is made “throughout” the area. However, there is an expectation that core paths will provide meaningful loops and networks and - where it might be appropriate and/or feasible - will link to neighbouring communities, and connect to other places of interest where demand is high. They should also integrate with neighbouring authorities’ core paths systems as far as practicable, so that ‘next door’ authorities may be able to link up in identifying and promoting longer path opportunities.

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

17(2)(d) This section enables a fresh appraisal of informal existing routes, and particularly of where new access links and paths will be beneficial. ‘Other routes, waterways or other means by which persons may cross land’ provides the basis for addressing requirements and opportunities, 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 from the outset. Any new path would need to be available for its intended use as a core path at the time of core path plan adoption, or reasonably soon after (perhaps within 1-2 years). If that is uncertain or unlikely (e.g. if significant construction work, like a new bridge, would be involved), it may be advisable to develop the path as part of the wider access network meanwhile, and consider its inclusion as a core path in a subsequent review (under section 20, see below).

## **Characteristics of core paths:**

**Signposting** – Local authorities should ensure that all core paths will have signposting at key access points, in order to encourage the use of the paths and create confidence in their use. The signposts should clearly show the word ‘Path’, and where appropriate also indicate the destination and distance (e.g. Path Clatto Country Park 1 mile >). Waymarking may also be provided as appropriate at places where the route of a core path may not otherwise be obvious.

**Boundary Crossings** - In most circumstances on the core paths, access points and boundary crossings should be simple openings, to provide unimpeded access (with car barrier bollards if necessary). Stock-proof barriers should comprise gate arrangements that wherever possible are usable with wheelchairs and pushchairs, and should normally include provision for horseriders. Stiles should not generally be used across core paths.

**Path Surfaces** - It is notable that the Act particularly cites one form of core path in section 23, namely core paths across ploughed land, and these will usually be simple trodden-earth pathways. Consequently, it is clear that core paths networks are not to be restricted only to constructed or surfaced paths, but are intended to include the full range of path types. The network is therefore likely to encompass a full range of path surfaces, including -

- natural grass and beaten earth paths through fields, woods, along riverbanks, etc;
- surfaced paths and tracks, towpaths, etc;
- farm and forestry tracks;
- waterways with launching points; and
- quiet minor roads and pavements for certain stretches if and when required.

There are no particular requirements over fencing arrangements for core paths. Stock fencing on both sides of core paths over lengthy sections should be avoided.

The 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.

**Multi-use of core paths** – The core path network should as far as possible provide for the needs of all types of user. Multi-use of paths would be subject to responsible use in terms of the Code guidance. A path may have natural limitations arising from the inherent characteristics of the terrain, and such natural limitations should not preclude its designation as a core path. However, if a path has non-natural constraints preventing multi-use (for example a steep flight of steps, stiles or other constrictive constructed barriers), then that path should generally not be a core path. It may still be indicated as part of the wider network of other paths and promoted links which connect with core paths, and if in due course the constructed barriers can be removed, then it could be considered as a core path in a future review.

## **Section 17(3) - Other factors in drawing up the core paths plan:**

### **Factors which should be considered in drawing up the plan include:**

- The needs of users, including existing and also future needs (these may have emerged through an outdoor access strategy, or may require a fresh review);
- That the core paths network should encompass functional networks for the range of users (walkers, horse-riders, etc), including all-abilities access;
- That core paths will be suitably managed, signposted and promoted - this does not mean that each component path will be the same, but that each will be suitable for planned users and levels of use;
- That core paths should assist the interests of sound land management, (including diversification and local enterprise), without compromising accessibility. Through facilitating and encouraging access along suitable and agreed routes, the core paths should aim to achieve mutual benefits for users and land managers;
- That the core paths network will act as the core to the broader spectrum of paths, access provision and activity in the area. The core path network will not be the totality of provision (e.g. for all-abilities access), and it should be planned to be effective in support of wider path networks and access opportunities.

### **Timetable for the core paths plan**

Local authorities will have three years from the date of legislation coming into effect to draw up the core paths plan. During that time period there should be an ‘informal consultation’ process of local and stakeholder consultations, to provide the basis for proposing the draft core paths plan. After being drawn up within that three-year period, the draft core paths plan will then be subject to a period of ‘formal consultation’, the requirements for which are set out in section 18 of the Act (see below).

### **Public involvement in the core paths plan preparation process**

This timescale, of up to three years for plan preparation, is designed to allow for a broadly based assessment and for substantive informal consultations. At the start of this period, authorities should identify action for consulting widely on the needs of local people and visitors for core paths. This should:

- take into account any recent progress by authorities in consulting on access, for instance carried out in preparing outdoor access strategies and local path networks - there will be no need to replicate recent consultations;
- identify settlements and/or particular geographical areas for further consultations (as informed by outdoor access strategies);
- 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, and designed appropriately to involve, a broad cross-section of society, in keeping with duties on councils to encourage and promote equal opportunities in community planning. The form and content of consultations should aim at including:

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

The pre-draft informal consultations should be as widely inclusive as possible. In recent years many local authorities have been consulting on outdoor access strategies, organising local area workshops, using participatory appraisal techniques, etc. It is recommended that this continues, and that authorities also consider opportunities afforded through community planning forums, regeneration partnerships, and community council networks. Neighbouring authorities may 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. Taking adequate time to achieve full agreement at this informal consultation stage may avoid subsequent formal objections, and the need for an inquiry.

**Other relevant strategies:** As well as the outdoor access strategy referred to above, these may include others such as the relevant Development Plans, tourism strategy, community plan, physical activity strategy, local transport plan, and health improvement plan. Account should also be taken of relevant agency strategies, including programmes from public bodies such as the Forestry Commission, British Waterways, VisitScotland, etc. In relation to Forestry Commission land the Forestry Commission Scotland and Local Authority Continued Public Access (CPA) scheme ensured that public access to parts of the national forest could be preserved after the land was sold to a private owner. However, this scheme is no longer required, as Part 1 of the Act guarantees responsible public access to land regardless of ownership. In recognition of this the Forestry Commission Scotland has terminated the CPA scheme. This means an agreement will not be required for any new land sold, while access to land already in private ownership will now be guaranteed under the Act.'

**Developers:** Local authorities may 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. However, planning authorities should be reminded of the provisions of SE Planning Circular 12/1996. This circular can be viewed on the internet ([www.scotland.gov.uk/about/Planning/Circular\\_12\\_1996.aspx](http://www.scotland.gov.uk/about/Planning/Circular_12_1996.aspx)), in respect of planning permission. They should not treat an applicant's need for planning permission as an opportunity to obtain a benefit, financial or environmental, which is unrelated in nature, scale or kind to the development proposed; planning authorities should only require planning agreements to be entered into if, in land use planning terms, it would be wrong to grant planning permission without them.

**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 consideration in shaping the network. Authorities should make provision to carry out the core paths planning and adoption process, and to help as appropriate in the support of any initial accommodation works on candidate core paths to achieve the above characteristics. Authorities' longer-term resourcing will

support their management and maintenance commitments as facility managers themselves, and under any path agreements, together with the promotion of the core paths system, and keeping it under review. These resource considerations will inform choices in developing a 'sufficient' system of core paths, and may mean that not all candidate paths will necessarily succeed in becoming adopted.

### **Use of s16 land acquisition**

Section 16 of the Act provides acquisition powers for access authorities and, while they are expected to remain a power of last resort (see above); they may have a limited role in establishing the core paths system. It should be noted that under section 16, land may be acquired by agreement not only through purchase, but also or alternatively by leasing the land, or by negotiating a land exchange. More detailed guidance relating to sections 16 is provided in the appropriate section of this guidance.

### **Relationship between core path plans and local plans**

The interface between core paths 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. Core path plans and access rights 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. It will be open to a planning authority to reject them as before. 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 duties 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 assess more successfully 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.

The community planning process is one in which the public services provided in a local 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 local 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. The provisions of this Act do not apply to national park authorities.

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.

### **The Conservation (Natural Habitats, & c.) Regulations 1994 (S.I. 1994/2716)**

Local authorities are reminded that Schedule 2 to the Act amended regulation 3(2) of the 1994 Regulations so as to provide that the Scottish Ministers and Scottish Natural Heritage, in exercising their functions under this Act, must do so in a way that complies with the requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Furthermore a new regulation 69A was inserted into the 1994 Regulations, the effect of which ensures that whenever a local authority is preparing a core path plan or is delineating a path under the relevant provisions of this Act in relation to land on which there is situated a European site, protected under Community law, the authority will require to undertake a prior nature conservation impact assessment where the path or plan is likely to have a significant effect on the site in accordance with the relevant provisions of the 1994 Regulations.

### **Strategic Environmental Assessment**

Local authorities should be aware of the duty on public bodies in Scotland to carry out a Strategic Environmental Assessment of any new plans such as for example core path plans. This is a requirement under the EU Directive 2001/42 - the Strategic Environmental Assessment (SEA) Directive which was implemented by way of the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258) which came into force on 20 July 2004.

This Directive applies to plans and programmes in certain sectors (e.g. forestry, energy, town and country planning) and others which are determined to have significant environmental effects. They must be produced by a public body, be 'required by legislative, regulatory or administrative provisions' and either set a framework for development consent of projects of the type listed in the Environmental Impact Assessment Directive or affect sites designated under the Habitats Directive. It does not apply to policies and legislation or to financial and budget plans and programmes.

Following further public consultation, the Environmental Assessment (Scotland) Bill is scheduled for introduction to the Scottish Parliament at the end of January 2005. The Bill is intended to replace the regulations and seeks to extend the scope of environmental assessment to ensure that no public plan or programme with significant environmental effects will miss being assessed.

## **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, with the core paths list also in draft. 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.

### **Section 18 (2) – (7) Objections to the core paths plan**

*(2) If no objections are made or any made are withdrawn, the local authority shall adopt the plan.*

*(3) If an objection is made and not withdrawn, the local authority shall not adopt the plan unless Ministers direct them to do so.*

*(4) Where an objection remains unwithdrawn, Ministers shall not make such a direction without first causing a local inquiry to be held into whether the plan will, if adopted, fulfil the purpose mentioned in section 17(1) above.*

*(5) Ministers may, in any other case, cause such an inquiry to be held.*

*(6) Subsections (2) to (13) of section 265 (local inquiries) of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under subsection (4) or (5) above as they apply to one held under that section.*

*(7) Following the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the local authority to adopt the plan either as drawn up under section 17 above or with such modification as Ministers specify in the direction*

The formal consultation process allows for members of the public to raise objections to the Draft core paths plan. If an objection is raised and subsequently withdrawn then local authorities must adopt their core paths plan as required by subsection 18(2). The preparatory process should have identified and resolved problems as far as possible, but authorities are encouraged to enter into dialogue to ensure that, as far as appropriate, suitable resolutions can be found to any points of formal objection, allowing them to be withdrawn.

However, if an objection is raised and not withdrawn, then local authorities must not adopt their core paths plan unless directed to do so by the Scottish Ministers. Where objection is made and not withdrawn, then the Scottish Ministers will not direct a local authority to adopt its core paths plan without first holding a local inquiry. An important point to note is that this local inquiry will investigate specifically whether the core paths plan will, if adopted, fulfil the purpose mentioned in section 17(1) of the Act that is of giving the public reasonable access throughout the area. It will not address the matter of individual paths.

The inquiry will be run on the basis of section 265(2) to (13) of the Town and Country Planning (Scotland) Act 1997 which specifies, amongst other things, the appointment by the Minister of a reporter, notifications to involved parties and in newspapers, possible use of written statements, and Ministerial orders requiring payment of expenses by any party.

#### **Adoption 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 section 18(8) to :-

*(a) Give public notice of its adoption;* (the standard format for a public notice under section 18 is attached).

*(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.*

As soon as the core paths plan is adopted by a local authority, those paths and routes will immediately become “core paths”. Core path plans should be provided in a format that allows for electronic transmission to the Scottish Ministers.

#### **Timing of core path adoption in relation to suitable path condition –**

Paths and routes will immediately become “core paths” upon adoption of the core paths plan by a local authority. The “sufficiency” of the core paths system can only properly be explained, consulted upon and assessed if the full proposed core path system is presented in its entirety for the formal consultation under section 18.

While most proposed core paths are likely to exist already and be in a fit condition for the purpose, it is acknowledged that not all of the proposed core paths may be fit immediately for the full level of use intended, for example: -

- some core paths may require works to create or improve them to suitable specification;
- negotiations or agreement over implementation details may still required;

- some path proposals will be scheduled for implementation in work programmes;
- funding may need to be phased;
- physical problems may need to be resolved.

Authorities will need to consider these issues when formulating their draft core path plan. The plan should be considered as a whole, on the basis of whether it satisfies the duty placed on local authorities in section 17(1) for a system sufficient for the purpose of giving the public reasonable access throughout their area. It can be expected that an initial accommodation period will follow after the plan adoption, during which the promotional information on the core paths system will need to explain and inform the public about any phased implementational issues. This information will need to help manage public expectations. There may be a period for instance before all the signposting is fully in place and this will need to be clarified.

This phasing issue is anticipated within the Act, for instance in section 17(2)(c), where it identifies that the core paths plan may include “paths which are **or may be** delineated by a path agreement under section 21 or a path order under section 22”.

Although the full intended path specification may not be in place immediately, most core paths will be on land over which access rights are exercisable, and the public will be able to use their access rights on these core path routes. The duties 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 Chapter 5 of the Act will, therefore, apply to such core paths even if, at the time when the plan is adopted, the path temporarily consists of a more informal route than is planned.

## **Section 18(8) - Mapping**

### **Mapping format**

The maps for core paths plans should be reasonably standardised in their main features and formats, to create national consistency of approach between local authorities. This will particularly help the public in the understanding and use of core paths, sourcing information from a consistent information base. It will facilitate the sharing of boundary data between adjoining local authorities, and the monitoring of progress nationally. It will also facilitate the transfer of data to commercial map producers (Ordnance Survey, Harvey Maps, etc.), for inclusion in popular map products.

Maps for the core paths plans 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.

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

**Core path** 

**Referencing** - Each core path (and any 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 the drafting process, 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 be 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, which is one of the main advantages of using GIS. Data capture should generally be at the 1:10,000 scale. Electronic versions of the core paths 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 also allows for easy maintenance and updating.

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 consistent symbol as above. There might be inserts for more complex areas at a detailed scale of up to 1:10,000 as appropriate, in which case an overview map might be included as a key to the areas of detailed map cover.

## **Model Public Notices for Section 17 core paths plan**

*[Pro forma notice of core paths plan given under section 18(1)(a) of the Land Reform (Scotland) Act 2003]*

*[Name of Council]*

### **NOTICE OF A CORE PATHS PLAN**

Notice is hereby given under section 18(1)(a) of the Land Reform (Scotland) Act 2003 (“the Act”) that *[insert name of local authority]* (“the Local Authority”) has drawn up [a core paths plan/ *or insert name of plan*] (“the Plan”) under section 17(1) of the Act.

The Plan has been drawn up to provide the public with a system of paths to give reasonable access throughout the area of the Local Authority [and for this purpose refers to *[insert details]* maps].

A copy of the Plan [and the map(s) to which it refers] has/have been deposited at the offices of the Local Authority *[insert office address details]* and may be inspected there free of charge [during business hours/at all reasonable hours/between the times of ( ) and ( )].

[Objections or representations in relation to the Plan may be made to the Local Authority at that address, 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]. *[to be inserted only where public consultation is intended under section 18(1)(c)(iv)]*

*[Pro Forma notice of adoption of core paths plan to be used where Plan is adopted in accordance with section 18(2) of the Land Reform (Scotland) Act 2003]*

***[Name of Local Authority]***

### **NOTICE OF ADOPTION OF A CORE PATHS PLAN**

Notice is hereby given under section 18(8)(a) of the Land Reform (Scotland) Act 2003 (“the Act”), that on ***[insert date]***, ***[insert name of local authority]*** (“the Local Authority”) adopted the core paths plan ***[or insert name of plan]***, drawn up under section 17(1) of the Act in respect of the Local Authority area (“the Plan”), in accordance with section 18(2) of the Act.

The Plan provides the public with a system of paths which is sufficient for the purposes of giving reasonable access throughout the area of the Local Authority. A list of core paths relating to the Plan has been compiled by the Local Authority in accordance with section 18(8)(b) of the Act.

A copy of the Plan, any maps to which it refers and the list of core paths has been deposited at the offices of the Local Authority ***[insert office address details]*** and may be inspected there free of charge [during business hours/at all reasonable hours/between the times of ( ) and ( )]. Copies of these documents can also be purchased from the Local Authority either at the above address or by application sent to the address given below.

***[insert contact details of appropriate Council official]***



*[Pro Forma notice of adoption of core paths plan to be used where Plan is adopted in accordance with section 18(3) of the Land Reform (Scotland) Act 2003]*

***[Name of Local Authority]***

### **NOTICE OF ADOPTION OF A CORE PATHS PLAN**

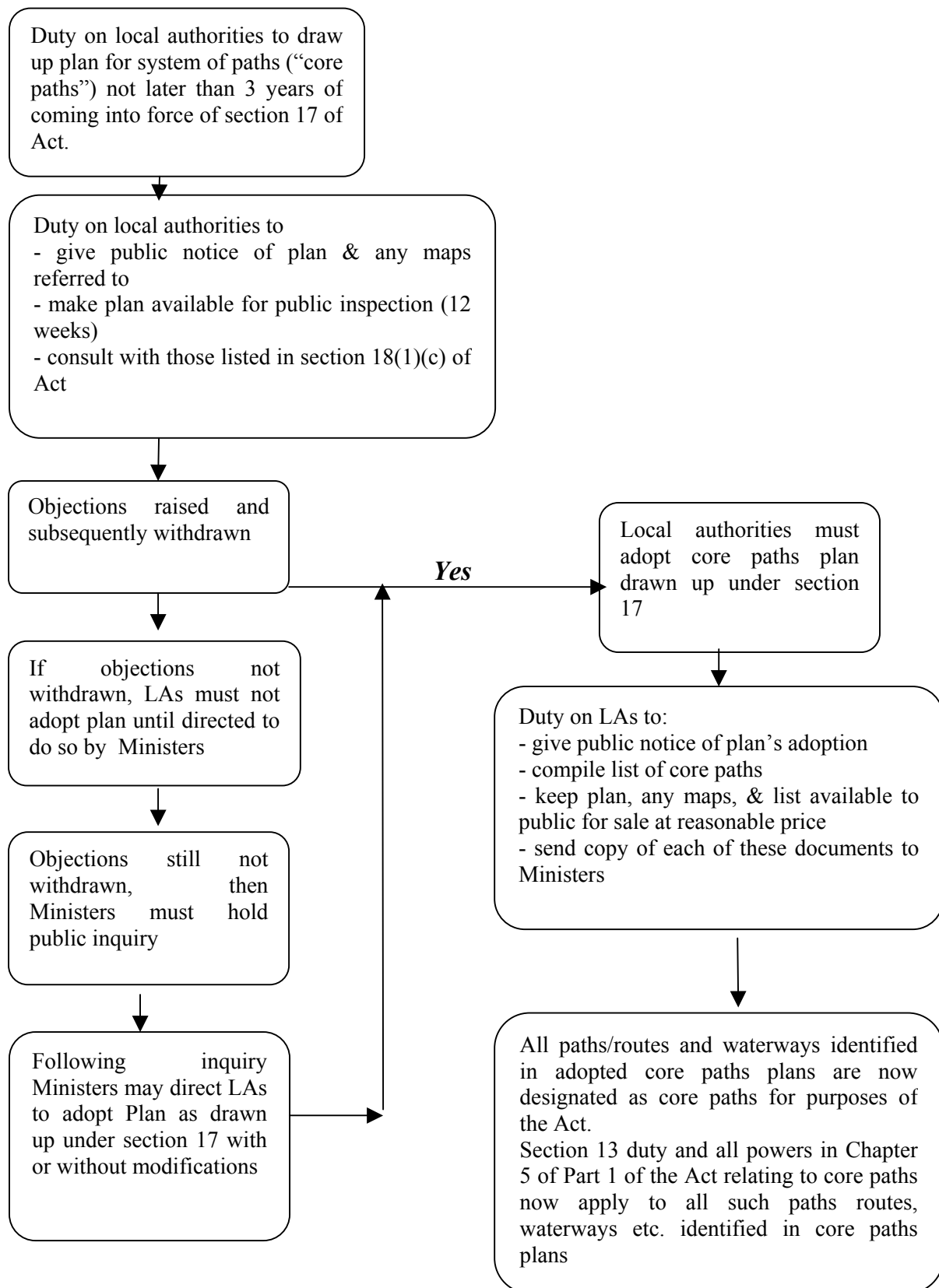
Notice is hereby given under section 18(8)(a) of the Land Reform (Scotland) Act 2003 (“the Act”), that on ***[insert date], [insert name of local authority]*** (“the Local Authority”) adopted the core paths plan ***[or insert name of plan]***, drawn up under section 17(1) of the Act in respect of the Local Authority area (“the Plan”), in accordance with the direction, dated ***[insert date of direction]***, given to the Local Authority by Scottish Ministers under section 18(3) of the Act.

The Plan provides the public with a system of paths which is sufficient for the purposes of giving reasonable access throughout the area of the Local Authority. A list of core paths relating to the Plan has been compiled by the Local Authority in accordance with section 18(8)(b) of the Act.

A copy of the Plan, any maps to which it refers and the list of core paths has been deposited at the offices of the Local Authority ***[insert office address details]*** and may be inspected there free of charge [during business hours/at all reasonable hours/between the times of ( ) and ( )]. Copies of these documents can also be purchased from the Local Authority either at the above address or by application sent to the address given below.

***[insert contact details of appropriate Council official]***

## Annex 1 - Summary of core paths planning process



## **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.*

**Maintenance responsibilities** - Under s19 local authorities are provided with the powers to do anything which they consider appropriate to maintain core paths (although there is no statutory duty or obligation for them to do so). This may include keeping the paths free from obstruction or encroachment, and providing directions and information for the core path users. It might also include other operations, like litter clearance or maintaining the signposting or waymarking. In exercising these powers on core paths, persons authorised by the local authority may enter the land at any time and without notice being required, and may take onto the land any machinery, equipment, or materials required for the purpose (see section 26 below).

It should be noted for clarification that, in respect of section 19(c) of the Act, works by the authority to install signposts and mark core paths will not require to have the consent of landowners, even though of course consultations may be undertaken in the interests of agreement wherever possible.

For the network of core paths to remain welcoming and functional and to protect the investment put into 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 overall management of the core path network. It is expected that local authorities will manage core paths in their own ownership, and may also at their discretion use the section 19 powers to assist other landowners over the management of core paths on their land.

Where a core path is a path created by a path agreement under the Act, or a public path creation agreement under the Countryside (Scotland) Act 1967, the owner of the land may have agreed to undertake, or contribute, to the maintenance of the path. In other circumstances the landowner may have no direct maintenance obligation for the path.

**Priority use of s15 measures** - Under section 15 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 section 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’. As noted above (re section 15), in exercising these powers authorities will have regard to the adequacy of existing facilities, and to the needs of people with disabilities. This provides broad scope for the authority to install suitable infrastructure and signing, using sources of grant support as appropriate, to facilitate and encourage use of core paths.

It is expected that in developing core paths, as with other aspects of access rights, local authorities will work closely with land managers at the local level involving the local access forum as appropriate. The core paths system has a particular role in relation to the interests of land managers, and the public when using paths will come into regular contact with land managers. Public bodies with land management interests (including Scottish Natural Heritage, Forestry Commission, Scottish Water, Crown Estates Commission, MoD, Enterprise Network, etc) may have a particular role in continuing to manage paths on their land which are part of the system of core paths.

**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 each route and associated structures,
- appropriate maintenance standards and schedules for the type of path,
- 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 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 partnership involvement from other 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 for instance 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 should be developed to communicate the role of the core paths system and the benefits of core paths, within the overall access context. Clear signposting and waymarking will be required as well as information on the core paths through appropriate media such as leaflets, mapboards and websites.

People need to:

- 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 different partners (e.g. Health Board, community health partnerships), compared to attracting more tourist visits to an area.

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

## **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. This should ensure that there should not be a frequent need for local authorities to add new paths to the core path plan.

However, it is also recognised that circumstances will change over time, and the plan should not be seen as a finite document, but be capable of developing to reflect requirements. Authorities should, when they consider it appropriate, review their core paths plans to ensure that at any given time they continue to meet the current requirements for core paths in their areas, either through removals or diversions or through additional core paths.

Further to this the Scottish Ministers may direct a local authority to review their core paths plan. This may be required where a local authority for whatever reason has failed in its obligations under sections 17 and 18 of the Act with regards to the core paths plan.

Although there is no timescale on the requirement to review the core paths plans, it is expected that at the earliest opportunity core paths plans will be incorporated into local plans. Local and core paths plans can then 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 removal or diversion of a core path - sections 20(2) – (5)**

Section 20(2) of the Act allows authorities to divert the line of a core path or remove a core path from the core paths plan. Section 20(4) enables a diversion or removal to allow a development to be carried out. Diversions and removals do not need the full notification and consultation process set down in section 18, but they should be noted by the local authority as amendments to the plan. The proposed diversion or removals from the core paths plan will require authorities to apply the procedures of subsection 18(8) (notification, listing, etc) to those amendments as they would to a core paths plan adopted under that same section.

### **Proposed inclusion of a path as a core path - subsections 20 (6) – (7)**

Any proposed additions to the system of core paths, (e.g. a new path delineated under sections 21 or 22 of the Act to be included as a core path) will require local authorities to apply the considerations in sections 17(3) and (4), and to follow the notification, consultation, consideration and adoption procedures as set out in section 18 of the Act.

## **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 in respect of land within access rights, so there will be no need to use path agreements to secure access (in the way that Access Agreements have previously). Therefore, section 21 path agreements are likely to be used by local authorities for the following purposes:

- to agree a particular line for a core path with the land manager - this may involve some deviation from an existing path-line to achieve operational benefits for all parties ( 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 should not be to secure access.

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

A suggested form of model path agreement is provided as an annex to this section, although local authorities should take their own legal advice with regard to entering into an agreement if required.

**MODEL PATH AGREEMENT - Words in square brackets are optional:**

**1.1 PATH AGREEMENT**

between

..... Council / Park Authority,  
address..... ( hereinafter referred to as ‘the Local Authority’),

and

.....,  
address.....  
( hereinafter referred to as ‘the Owner’ ), being the [owner/tenant/crofter] of the property situated in [name of area] and known as [name of property].

1. This Agreement is a Path Agreement under Section 21 of the Land Reform (Scotland) Act 2003, ( ‘the Act’ ) for the [delineation / creation / improvement] and maintenance of a path within land in respect of which access rights are exercisable. Nothing in this Agreement shall diminish or displace the rights, responsibilities, duties or powers under the Act or under the Code, made under section 10 of the Act and approved by the Scottish Parliament on 1 July 2004, of either party, nor of any third party nor of the public.

**2. Delineation -**

The path is as shown delineated in red on the plan attached and signed as relative to this agreement (Annex One).

**3. Creation / Improvement of the Path -**

The Local Authority shall [create / improve] the path through the installation of [surfaced pathway / boardwalk / bridge / gate / fence / signposts / waymarkers / information board / launching point / moorings / seat / other ] (as specified in Annex Two), all at its own expense.

**4. Management and Maintenance of the Path -**

The Local Authority, or its approved agent (as set out in paragraph 15) shall manage and maintain these specified pathworks for the duration of the Agreement (as detailed in Annex Three). Access for such management and maintenance work shall be taken under the terms and conditions of Section 26 of the Act, and under such agreed additional terms as may be set out in Annex Three.

**5. Promotion –**

The Local Authority shall be allowed to promote and encourage public use of the route. The Local Authority will encourage, by reasonable means, users of the route to behave responsibly in keeping with the Code.

**6. Public Right of Way –**

Nothing in this Agreement shall create or extinguish any public right of way.



## **7. Reimbursement for Quantifiable Losses –**

Where the Owner suffers actual and quantifiable losses resulting from this path agreement, the Local Authority will make one or more payments to reimburse the Owner. Actual losses include loss of productive land and reductions in income from leases.

## **8. Management of the Property -**

The Owner shall be free to manage the property provided that public access is not impeded or deterred and that the public is not put at danger or prevented from using any facilities along it.

The Owner shall be able, with the prior agreement of the Local Authority (which shall not be unreasonably withheld), to divert access from the route for a limited period to enable necessary land management works, in keeping with the Code. The Owner shall make good, to the satisfaction of the local authority any damage to the route caused by land management operations or by the Owner's fault or negligence.

## **9. Liability -**

The Local Authority shall be responsible for meeting all actions, claims, costs and expenses which may be made against the Owner by reason of the construction, improvement, management including maintenance, or use of the path.

The Owner, or his agents or any interested party listed in paragraph 10, shall remain liable for any damage, injury or death which may be caused directly or indirectly through their respective fault or negligence.

## **10. Other Interested Parties –**

The Owner agrees to notify and obtain the relevant compliance from those parties as listed below who have an interest in the land over which the path passes to the terms of this agreement :

Land Owner (where 'the Owner' in this Agreement is an occupier - crofter, tenant etc)

Farm Tenant

Sporting Tenant

Secured Creditors

Others (specify)

## **11. Duration of Agreement –**

This Agreement shall commence on [date] and shall continue until [date] (normally a period of between 15 and 25 years), unless terminated for any of the reasons in paragraph 13 below.

## **12. Review –**

The Local Authority must review with the Owner at least every two years the operation of the Agreement, when the terms of the Agreement, with the exception of paragraph 13 below, may be adjusted by mutual consent, **which must not be unreasonably withheld**. The Agreement shall also be reviewed when the Local Authority is preparing its core paths plan under section 17 of the Act, in order that the potential for the path to which this agreement relates to be listed as a core path may be considered at that time and the Agreement adjusted accordingly.

**13. Termination –**

The Agreement may not be terminated before the date stated in the paragraph 11 above except, given a written notice of at least [six months] by one party to the other, for the following reasons:

- a) by agreement between the parties for clear and justifiable reasons, and only if an alternative route is not practical; or
- b) failure by either party to comply with the terms of the Agreement, following Notice to Remedy issued by the other party.

**14. Professional Costs –**

The Local Authority shall meet all usual reasonable professional expenses, fees and outlays incurred by the Owner as shall be agreed relating directly to the negotiation and conclusion of this Agreement.

**15. Transfer of Ownership or Responsibilities –**

If at any time after this Agreement has been signed the Owner proposes to dispose of, assign or otherwise grant any interest in the land, the Owner must disclose the fact that this Agreement exists and require the person(s) acquiring such interest to be bound by the terms of the Agreement.

The Local Authority, with the Owner’s consent (which will not be unreasonably withheld), may transfer its responsibilities for creating, maintaining, improving or managing the path to another agent.

**16. Arbitration –**

In the event of an unresolved dispute over the interpretation of this Agreement, and Arbiter shall be appointed on the application of either party to the Chairman the Royal Institution of Chartered Surveyors in Scotland. The apportionment of the costs of arbitration shall be decided by the Arbiter. The Arbiter’s decision shall be final and binding on both parties.

Signed .....

Signed .....

**Annex One -** Map of the Path (signed by both parties).

**Annex Two -** Inventory and details of installations and structures subject to this Agreement

**Annex Three -** Schedule of inspection, management and maintenance programme to be undertaken by the Local Authority, or its approved agent (including works for which prior notice to the Owner will not be required).

## **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 in respect of 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. This provision is also expected to be only required when all other avenues have been explored and exhausted.

On land outwith access rights, paths and rights of way may still be secured or managed by agreement or order under the provisions of sections 30 and 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. The Scottish Executive is currently preparing regulations governing the form that path orders made under the Act shall take. The regulations will not form part of this guidance.

There is no provision in the Act for compensation for those affected by a path order made under section 22 of the Act.

## **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;
- Other land management practices such as digging for irrigation purposes;
- Drainage;
- Moving heavy machinery.

The term “re-instatement” is a commonly used term and this provision has been in use for some time under the provisions of the Countryside (Scotland) Act 1967. It is expected that the requirement to re-instate ensures that the surface of the path is put back to the condition it was in prior to its disturbance enabling the safe exercise of access rights.

## **Where the core path or right of way is not reinstated following initial informal request**

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**

### Section 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 of being formally requested to do so by the local authority under section 23(4), the local authority may:

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

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.

## **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 of rangers defined in section 24 of the Act relates specifically to access rights established by the Act. It is recognised that most local authority ranger services will in addition, continue to provide the full breadth of their current range of services. 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; securing compliance with any byelaws made by a local authority under that Act; and performing other duties in relation to the land or waterway as the local authority may determine.

Although section 24(2)(b) allows local authorities to appoint rangers to perform duties in relation to the exercise of access rights additional to those in section 24(2)(a), it is recognised that in many cases local authorities will use other officials to act in these matters.

## **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) below.*

Section 25 of the Act requires each local authority to establish at least one local access forum for its area.

The emphasis in the Act is on the local management of access. Local access forums will play an important role in this respect in advising local authorities on the discharge of their duties and powers under the Act.

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. 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 organizations, 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 the role and remit of local access forums established under the Act in relation to access rights. 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 to be made under section 11 (powers to exempt particular land from access rights) where the duration of the order is for more than 6 days, and any byelaw in relation to land over which access rights are exercisable, proposed under section 12 of 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 advising and assisting local authorities in implementing the new access arrangements in their areas.

Issues where local access forums might be asked to offer assistance and/or advice to local authorities might be, for example: -

- 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;
- Advice on the need for byelaws under section 12 of the Act, where it has become apparent that access rights might have for whatever reason to be managed;
- Advice on the appropriateness of proposed orders under section 11 of the Act seeking to exempt particular areas of land from access rights;
- 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 the area of the local authority.

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 SNH/ Paths for All Partnership's guidance for organisations establishing local access forums: "Local Access Forums" A Guide to Good Practice (published in 2002). That guidance should be read alongside this guidance.

### **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 local access requirements in each area. When considering appointments to their forums local authorities must ensure that there is adequate local representation so that the local community is involved in the local provision and management of access. This will be crucial in ensuring that the local authorities can effectively carry out their role under the Act. Local authorities should seek to take a balanced view of the requirements in their area and appoint persons who can best represent all relevant interests.



Whilst the following list is not prescriptive, in considering appointments to the forums local authorities may wish to consider the need to represent such interests as: -

- Those with disabilities;
- Natural and cultural heritage;
- Recreational users, (e.g., walkers, cyclists, horse riders, mountaineers, canoeists etc.);
- Land managers/owners;
- Community Councils;
- Other Community Groups.

In trying to balance the different interests on the local access forums local authorities will have to take a view on the appropriate size of the forum. It is acknowledged that it may not be possible for all interests to be represented without the forum being too large to be effective.

In ensuring affective community involvement in decisions relating to access, local authorities should consider other mechanisms 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. As stated before in the guidance the provisions of this Act do not apply to national park authorities.

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 expected that in most cases the local authority will provide the secretariat.

## **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 current byelaws to ensure that they are consistent with the provisions of Part 1 of the Act, and to modify any which appear to be inconsistent. This does not mean that all byelaws will have to be re-made if they 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 the exercise of access rights.

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 in place that restrict access to land.

It may also be appropriate to review existing access agreements, as these may have been overtaken by the provisions of the Act.

### **Things to consider when reviewing byelaws: -**

- Identify those byelaws made under existing legislation that relate to public access?
- 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, can they be justified in terms of the need for management of access over the land in question?
- All byelaws should be reviewed and if the measures they impose cannot be justified, they should be repealed or amended.

## Index with page reference

<b>Subject</b>	<b>Page Reference</b>
The Code	<u>Pages 3-4, 10, 13-14, 15, 18, 32, 36, 43, &amp; 62-63</u>
Acquisition of Land	<u>Pages 7, 39, 46, 61 &amp; 65</u>
Animals (general)/Bulls	<u>Pages 31-32</u>
Byelaws	<u>Pages 5-6, 15, 22-27, 68-70 &amp; 72</u>
Delineation of paths	<u>Pages 5, 7-8, 61-62, 65 &amp; 69</u>
Core paths/Core path plans	<u>Pages 3-5, 7, 8, 12, 22, 29, 40-61, 63, 69 &amp; 70</u>
Curtilage	<u>Pages 10, 16 &amp; 30</u>
Disabled Access	<u>Page 28</u>
Diversions of paths etc.	<u>Pages 30 &amp; 60</u>
Duties of Local Authorities & NPAs	<u>Pages 4, 5, 7-8, 13-14, 23, 28-29, 32, 40, 48, 50-51, 56, 57 &amp; 72</u>
Events	<u>Pages 6, 11, 13 &amp; 15-16</u>
Exemptions/Exclusions from access rights	<u>Pages 10-12, 15-17, 19-21, 23, 25 &amp; 30</u>
Forestry	<u>Pages 43, 45, 48 &amp; 58</u>
Funding/Resources	<u>Pages 45, 51 &amp; 58</u>
Gates and Stiles	<u>Pages 6, 32, 37, 43 &amp; 57</u>
Golf/Golf Courses	<u>Page 6, 11 &amp; 15-16</u>
Judicial Determination	<u>Pages 9, 10 &amp; 29</u>
Local access forums	<u>Pages 4-5, 15, 17, 25, 28, 31, 38, 41, 44, 49, 58, 69, 70 &amp; 71</u>
Maintenance of Access Infrastructure inc. Paths	<u>Pages 7, 36-37, 46, 57-58, 61-64</u>
National Access Forum	<u>Page 14</u>
Obstructions	<u>Pages 4, 6-7, 23, 28-29, 31-32, 33 &amp; 57</u>
Ploughing	<u>Pages 8 &amp; 66-67</u>
Privacy	<u>Pages 10, 15 – 17 &amp; 30</u>
Protection of natural and cultural heritage	<u>Pages 16, 23-24, 39, 47 &amp; 71</u>
Rangers	<u>Pages 8, 14, 58 &amp; 68</u>
Responsibilities and obligations of landowners	<u>Pages 6, 16, 31-32, 36-39, 57 &amp; 67</u>
Responsibilities and obligations of public	<u>Pages 36 &amp; 44</u>
Rights of Way	<u>Pages 6, 8-9, 26, 32, 42, 62, &amp; 66-67</u>
Safety, Guidance and Assistance	<u>Pages 5-6, 8, 11, 13-16, 22-24, 26, 32, 36, 38, 43, 47, 69 &amp; 70</u>
Signs	<u>Pages 6, 13, 14, 31-33, 34, 36, 37, 40, 43-44, 51, 57-58, 61 &amp; 62</u>
Access to inland water	<u>Pages 3-4, 7, 15, 22-28, 37, 40-43, 68, &amp; 56</u>



Small changes in the way we perform everyday tasks can have huge impacts on Scotland's environment.

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This butterfly represents the beauty and fragility of Scotland's environment. The motif will be utilised extensively by the Scottish Executive and its partners in their efforts to persuade people they can do a little to change a lot.

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