

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

Guidance for Local Authorities and National Park Authorities

STATUTORY GUIDANCE:

THE LAND REFORM (SCOTLAND) ACT 2003 (MODIFICATION) ORDER 2013 GUIDANCE FOR LOCAL AUTHORITIES AND NATIONAL PARK AUTHORITIES

The Modification Order provides for core paths to be temporarily exempt from access rights where land is already able to be exempt from access rights:

1) because of a notifiable animal disease

or

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

The accompanying guidance has been prepared under section 27 of the Land Reform (Scotland) Act 2003, which gives Scottish Ministers powers to give guidance to local authorities on the performance of their functions under Part 1 of the Act. The guidance is in two parts reflecting the two different circumstances addressed by the Modification Order:

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1) a notifiable animal disease	2 - 5
2) a section 11 order	6 – 14

For ease and convenience:

- the exemption of core paths/land from access rights is sometimes referred to as closure.
- references to “local authorities” includes National Park Authorities for the purpose of land which falls within the area of a National Park in Scotland.

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

Introduction

This guidance relates to the amendment within the Land Reform (Scotland) Act 2003 (Modification) Order 2013, which allows for core paths to be temporarily exempt from access rights when public access to land is prohibited or restricted as a result of a notifiable animal disease.

Background

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

For example, under the terms of the Foot and Mouth Disease (Scotland) Order 2006, Ministers can, in the event of a confirmed outbreak of disease, declare a Protection Zone (PZ) that is centred on the premises where infection has been confirmed (known as the infected premises or IP) and has a minimum radius of 3 km. Access to the land in that zone can be restricted and in practice it is likely that access to all land within the PZ will be prohibited or restricted. Prior to the Modification Order, section 7(1) of the Land Reform (Scotland) Act 2003 provided that core paths within the PZ would not otherwise be affected by such prohibitions or restrictions. This meant that one of the main weapons against spread of disease, that is prohibited or restricted access to the area where the outbreak has taken place, could have been undermined and that might have made it more difficult to limit the damage caused by an outbreak.

The effect of the modification is to put beyond doubt that when access to a parcel of land is prohibited or restricted as a consequence of a notifiable animal disease, that will also apply to any core paths within that land.

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

Disease Response

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

For example, in the case of the notifiable animal disease foot and mouth disease (FMD), Scottish Ministers have the power to prohibit or restrict access to all land within the PZ, with the Modification Order clarifying that this includes core paths situated within the PZ as well. Such restrictions are necessary to ensure effective control of the disease given the risk of further spread of the disease if people (or their vehicles or accompanying animals) have direct or close contact with animals infected with those diseases. If Ministers do elect to close land round an IP, it will be on the basis of a veterinary risk assessment with the aim of keeping restrictions in place for as limited a time as is consistent with disease control, and restrictions will normally only remain in place until a more complete epidemiological picture of the origin of the disease and where it may have spread to can be obtained and appropriate remedial action taken. The restrictions on land closure will therefore be re-evaluated as soon as possible, perhaps as early as day eight of the outbreak.

Local Authority Responsibilities in the Protection Zone

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

If Ministers elect to close land in the PZ (and, by extension, core paths) the practicalities will be discussed within the LDCC. Although responsibility for enforcing land closure rests with the local authority, those discussions will identify particular problems as well as the information and support from other agencies that the local authority needs to implement the closure.

The LDCC will also be able to relay to the Scottish Government any difficulties that may require a more strategic response (for example, advice for recreational users of the land). It is expected that the discussions within the LDCC will lead to a plan for implementing land closures that reflects both the local and national situation.

The Scottish Government has prepared a template of a sign (see page 5) that can be used to mark the limit of a control zone, e.g. a FMD Protection Zone. Access Authorities have discretion to adapt the wording of the template to suit their circumstances. Access Authorities may wish to consider additional signage that will show members of the public the extent of the control zone.

Access rights outwith the Protection Zone

The Modification Order does not affect the current position, which is that Ministers cannot place restrictions on access to land within a SZ as a consequence of animal disease and there are no plans to change this.

Details of closures in the event of an outbreak

Access Authority websites will contain details of any PZ closures in their area. The Scottish Government website will include details of all PZ closures.

**FOOT-AND-MOUTH DISEASE:
PROTECTION ZONE**

**THIS LAND
(INCLUDING CORE
PATHS) IS CLOSED**

In exercise of the powers conferred by the Animal Health Act 1981 and article 35 of the Foot and Mouth Disease (Scotland) Order 2006, as read with section 7(1) of the Land Reform (Scotland) Act 2003.

<Insert LA Logo>

<Scottish Government Logo>

Guidance on amendment to section 7 of the Land Reform (Scotland) Act 2003 to allow the temporary closure of land (including core paths) by section 11 orders.

Introduction

This is an extract from 'Part 1 Land Reform (Scotland) Act 2003 – Guidance for Local Authorities and National Park Authorities', originally published in 2005. This has been revised to include guidance on the Land Reform (Scotland) Act 2003 (Modification) Order 2013. The modification means core paths can be temporarily exempt from access rights by way of a section 11 order.

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

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

Section 11 of the Act enables local authorities, whether on applications from third parties or on their own initiative, by order, to exempt a particular area of land and/or inland water from access rights. It is anticipated that the main use of section 11 powers will be to exempt land from access rights for short periods of time in connection with admission to events.

The Modification Order does not change the circumstances, outlined below, in relation to the use of section 11 orders.

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

- Allowing admission to a particular event whether by ticket (charged or uncharged) or invitation;
- The interests of safety and security (e.g. situations involving competition participants and spectators).

Examples of where a section 11 order might be considered include outdoor concerts, village fetes, firework displays, highland games, agricultural shows, Commonwealth Games 2014, golf tournaments and car rallies;

- Ensuring the protection of privacy, where the provisions of section 6 of the Act are not deemed sufficient in individual circumstances and the local authority considers the exclusion necessary (e.g. to ensure privacy during a private wedding).

There may be a need to exempt the land from access rights not just for the duration of an event, but possibly for periods immediately before and after it too.

Circumstances where exemptions under section 11 should not usually be considered include: -

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

For the avoidance of doubt, both land managers and access takers have a duty of care to others (see paragraphs 3.8 to 3.10 of the Code for further information), and this can, at times, necessitate land to be closed. This applies in both rural and urban situations, and to core paths.

In addition to guidance provided by the Code, Forestry Commission Scotland have produced guidance on [‘Managing Access and Forest Operations’](#) (FCPN104).

Section 6(1)(g) of the Act exempts construction sites from access rights, although this is subject to section 7(1) in relation to core paths.

It should be noted that access to land (including core paths), that might otherwise be lawful under the 2003 Act, may be restricted under matters for which the UK government is responsible. In relation to construction sites, for example, restrictions might be applied for the purpose of regulating health and safety at work. See the UK guidance produced by the Health and Safety Executive [‘Protecting the public: Your next move’](#) (HSG151) in this respect;

- Large country houses or estates seeking an extensive exemption for most or all of their estate for privacy;
- An area of land that is already subject to some management measure prohibiting or restricting access, e.g. where an existing byelaw is in place that deals with the issue.

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

Power to exempt core paths from access rights

The intention of core paths is that they are a system of routes sufficient for the purpose of giving the public reasonable access (see section 17, ‘Guidance for Local Authorities and National Park Authorities’). Access rights must be exercised responsibly on core paths. The Modification Order provides that core paths can be temporarily exempt from access rights by way of a section 11 order. This can, but need not, be part of a wider areal exemption.

Under the Modification Order core paths are automatically closed when located within a wider areal closure under section 11. If these core paths are to remain open, the order must specifically state this. If the order is silent as to the status of core paths, this has the effect that they are closed.

Alternative routes

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

Local authority process – short term and long term exemptions

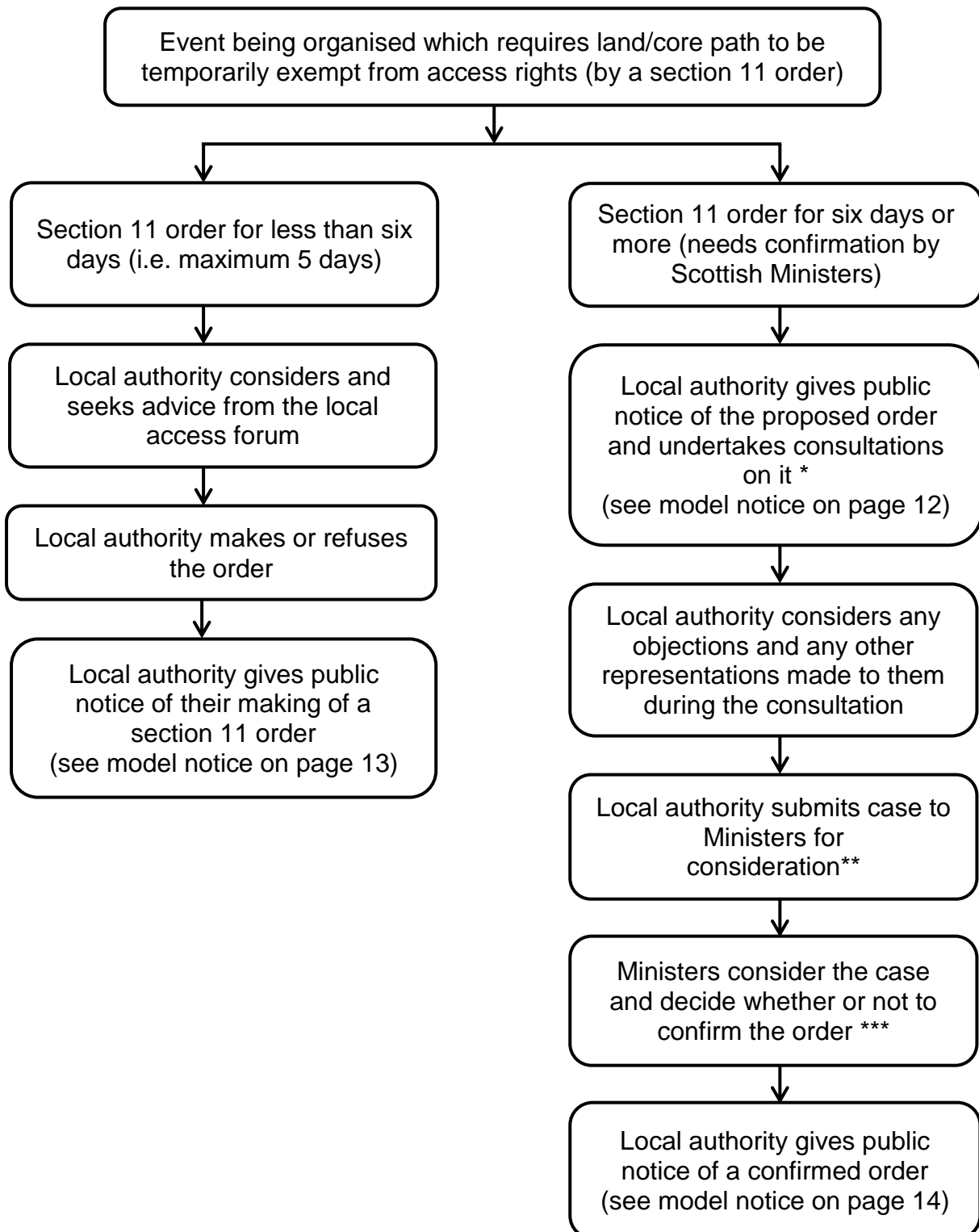
Local authorities should treat cases on an individual basis. They are encouraged to use the power to exempt land from access rights under section 11 sparingly and apply it in respect of the minimum area of land, and for the minimum period needed, and only when other management arrangements as set out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

The local authority may wish to discuss with the land manager or event promoter the availability of a risk assessment for the event. This will primarily have been produced for the benefit of staff and contractors but if relevant will also consider impacts on local public access rights and risk to the public associated with those impacts.

Local authorities are best placed to issue their own guidance on practical issues such as timing. There is no time limit set for how long in advance an application should be submitted to the local authority for exemptions under section 11. For longer-term exemptions (six days or more) it is advisable to make an application well in advance of the event; this is to accommodate a period of public consultation and Ministerial consideration of the case. For short-term exemptions (less than 6 days), an application nearer to the date of the requested exemption may be acceptable.

See flowchart on page 9 for an overview of the process for making short term and long term section 11 orders.

Flowchart: a guide to making short term & long term section 11 orders



* see pg. 10 'Consultation requirements'

** pg. 10 'Ministerial consideration'

*** pg. 11, reference to section 11(5) of the Act.

Short-term exemptions (less than six days)

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 local authorities will seek advice from their local access forums. Local access forums are established under section 25 of the Act and they will play an important role in advising the local authority on the appropriateness of any proposed order.

Local authorities are advised to ensure details are recorded on the circumstances of the closure, e.g. evidence that it is for the minimum duration and area necessary.

Longer-term exemptions (six days or more)

Consultation requirements

Where a proposed order would exclude land from access rights for 6 days or longer, the formal consultation requirements set down in section 11(2) shown below must be adhered to. Applications must be submitted in time to allow for this consultation.

- (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.*

Ministerial consideration

Any order having effect for 6 days or longer requires to be confirmed by the Scottish Ministers. In considering such an order, Scottish Ministers will take into account statutory information required under the Act and also useful background information:

- Clear identification of the area of land affected;
- The date and times of operation of the order;
- Details of the consultation undertaken and copies provided of all objections and representations received;
- The purpose and effect of the order with details of why it is needed e.g. where a charge is to be levied for admission, it is likely that there would be problems administering an admission charge without the order;
- The demand for access in the area affected by the proposed order and details of the alternative access arrangements that will be provided. In particular, please provide information on alternative arrangements if a longer-term exemption would involve closure of a core path, or explain why alternative arrangements are not practicable.

In considering any order which would have effect for six days or more, Section 11(5) of the Act states that:

(5) *Ministers –*

- (a) shall not confirm such an order without considering any objections or representations sent to them under subsection (4) above; and*
- (b) may cause an inquiry to be held for the purposes of enabling them to decide whether to confirm the order.*

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

Information about closures

The closure must be notified to the public under section 11(9), using for example - signage on site, signs on access roads and paths into a site, marshalling, the local authority website, local press, or through community councils. In the case of core paths closures, early notice is advisable. Any signage on site should be removed promptly at the end of the closure period.

A series of model notices are provided as annexes to this section of the guidance.

Draft section 11 Order for six days or more: model notice seeking objections or representations

[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/core path here]*** from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

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

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

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

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

[insert date, contact details of local authority including email address if appropriate]

Section 11 Order for under six days: model notice.

[Name of Local Authority]

NOTICE TO EXEMPT LAND FROM ACCESS RIGHTS

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

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

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

The purpose(s) for which the Order is 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]***, unless revoked earlier.

Section 11 Order for six days or more: model notice.

[Name of Local Authority]

NOTICE OF ORDER TO EXEMPT LAND FROM ACCESS RIGHTS

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

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

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

The purpose(s) for which the Order is 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]***, unless revoked earlier.



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