

LAND REFORM (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1 Access Rights

Section 5: Access rights, reciprocal obligations and other rules and rights

16. This section sets out the relationship between the access rights created by this Act and existing rights as well as making provision for the effect of access rights on occupiers' liability, subject to section 22(4). As a general rule, access rights will not diminish or displace existing rights.
17. Subsection (1) provides that the exercise of access rights does not of itself amount to trespass.
18. Subsection (2) provides that the operation of Part 1 of the Act will not affect the duty of care owed by an occupier to any person present on the land except where the land is a path delineated in a path order made under section 22 (section 22(4) makes provision which states that regard may be had to the duties imposed on a local authority making a path order to create and maintain a path by virtue of section 22(3), in order to determine whether a local authority has control of a path for the purposes of the [Occupiers' Liability \(Scotland\) Act 1960 \(c.30\)](#) . The duty of care imposed by that Act will apply in relation to persons exercising access rights but the extent of that duty is not affected (other than as mentioned above).
19. Subsections (3) and (4) provide that access rights do not diminish or displace existing rights of access to land or public rights in relation to the foreshore.
20. Subsection (5) provides that the exercise of access rights created by this Act over particular land will not by itself be used to claim a public right of way or servitude or a public right of navigation.
21. Subsection (6) provides that land over which access rights are exercisable is not, by virtue of that fact, a road for the purposes of the [Roads \(Scotland\) Act 1984 \(c.54\)](#).
22. Subsection (7) ensures that any person who, being on foot on any land over which access rights are exercisable—
 - obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or
 - wilfully obstructs the lawful passage of any other person,is guilty of an offence under section 53 of the [Civic Government \(Scotland\) Act 1982 \(c.45\)](#).