

# LAND REFORM (SCOTLAND) ACT 2016

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 9 – Access Rights

##### Core paths

##### *Section 83 – Core paths plans*

407. Subsection (1) provides that the Land Reform (Scotland) Act 2003 is to be amended. Some minor amendments are made to section 18 by subsection (2). In subsection (3) a number of textual amendments are made to section 20 of the Land Reform (Scotland) Act 2003, which provides for the review and amendment of the core paths plan. Inserted section 20(1) provides that two alternative circumstances (which are not required simultaneously) may activate a review. The local authority may review their plan when they consider it appropriate to do so. Alternatively, they must review their plan where Ministers require them to do so.
408. Subsection (4) of the Act inserts new sections 20A to 20D into the Land Reform (Scotland) Act 2003.
409. Inserted section 20A sets out the procedure to be followed when amending a core paths plan following a review. Subsection (1) sets out notification and consultation requirements. Subsection (2) provides that where there are no objections (or where any objection made is withdrawn), the local authority must adopt the amended plan. However, where there are unwithdrawn objections the local authority must not adopt the amended plan unless Ministers direct them to do so (subsection (3)). Subsection (4) provides that, where the local authority modifies the amended plan following the notification and consultation carried out under subsection (1) (which could be done for example to resolve an objection or to respond to a change in circumstances), it must notify and consult such persons as they consider appropriate on that modification. Where an objection remains unwithdrawn, Ministers cannot make a direction without a local inquiry first being held into whether the amended plan will, if adopted, fulfil the purpose in section 17(1), namely whether the system of paths set out in the plan will be sufficient for the purpose of giving the public reasonable access throughout the local authority's area (subsection (5)). In accordance with subsection (8), 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 amended plan. Subsection (9) sets out the procedure to be followed by the local authority following adoption of the amended plan, and subsections (10) and (11) make provision for circumstances where Ministers decline to make a direction under subsection (8).
410. Inserted section 20B provides for the service of a written notice on the owners and occupiers of land which is to be included in a core paths plan for the first time following a review. Such a notice is to be served at the same time the local authority complies with section 20A(1). The notice is to explain the potential effect of the amended plan on the land in question, set out where the original core paths plan and the amended plan

*These notes relate to the Land Reform (Scotland) Act 2016  
(asp 18) which received Royal Assent on 22 April 2016*

may be inspected, and specify the period for objections and representations to be made. Subsection (3) provides for the form of notification to be given under section 20B where it has not been possible to identify the owner or occupier of the land.

411. Inserted section 20C provides that a single amendment may be made in between full core paths plan reviews where the local authority consider this would be appropriate. The local authority must carry out such consultation on and notification of the proposal as it thinks fit, inviting objections and representations within a specified period.
412. Inserted section 20D sets out the considerations that the local authority must take into account when adding, removing or diverting a core path under section 20C, and applies much of the procedure used in a full core paths plan review (e.g. service of notice under section 20B, referral to a local inquiry where there are unwithdrawn objections) to a single amendment under that section.

## **Court applications**

### ***Section 84 – Access rights: service of court applications***

413. **Section 84** amends section 28 of the Land Reform (Scotland) Act 2003 (judicial determination of existence and extent of access rights and rights of way) to expand upon current notification requirements when an application to the sheriff court is made. In making an application for a declaration under section 28(1)(b)(i) as to whether a person who has exercised, or purported to exercise access rights, has exercised those rights responsibly for the purposes of section 2 of that Act, inserted subsection (7A) provides that the person seeking the declaration must serve the application on the person whose exercise of access rights (or purported exercise of access rights) is in question. This is additional to the existing requirements in section 28(4) to serve the application on the local authority and in section 28(7) to serve the application on the owner of the land (if the person seeking the declaration is not the land owner).