

POLICY NOTE

THE LAND REFORM (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 4, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2016

SSI 2016/372 (C. 35)

1. The above instrument was made by Scottish Ministers in exercise of the powers conferred by section 130(2) and (4) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”) and is not subject to any parliamentary procedure.

Policy Objectives

2. Part 1 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) establishes statutory public access rights to land and inland water for recreational and other purposes. Drawing on experience since the introduction of the 2003 Act, the 2016 Act makes minor amendments and procedural clarifications to it.

3. Core paths, which help people to exercise their statutory access rights with confidence, are now in place across Scotland. Periodically, local authorities will undertake reviews of their core paths plan to ensure it is sufficient for the purpose of giving the public reasonable access throughout the authority’s area. Part 9 of the 2016 Act primarily makes amendments to the process for reviewing and amending core paths plans. Section 83 of the 2016 Act:

- clarifies circumstances in which a local authority should review a core paths plan by confirming that two alternative circumstances (which are not required simultaneously) may activate a review;
- distinguishes between review procedures and procedures needed for a minor, ad hoc core path amendment. It simplifies the process for path amendments, so that the same process applies to path removal, diversion and addition of a new path. Further, single amendments may be made in between core paths plan reviews;
- sets out a requirement for limited consultation on proposed modifications to core paths following objections;
- provides for the service of a notice upon the owners and occupiers of any land which is to be included in a core paths plan for the first time.

4. Section 84 of the 2016 Act expands the current service requirements, where an application to the sheriff court is made seeking a declaration as to whether a person has exercised access rights responsibly or not. The 2003 Act already provides that the application is to be served on the local authority and the landowner. The 2016 Act provides that the person seeking the declaration must also serve the application on the person whose exercise of access rights (or purported exercise of access rights) is in question.

5. The policy aim in making these Regulations is to bring Part 9 (section 83 and 84) of the 2016 Act into force on 31 December 2016 and set out a transitional regime to govern when provisions contained in the 2016 Act come into force and predecessor provisions cease to apply.

Specific provisions

6. Regulation 3 provides for transitional provisions in cases where a local authority has begun to review and amend its core paths plan (under section 20(1) of the 2003 Act and prior to the coming into force of Part 9 of the 2016 Act) and where that review and amendment is not yet complete.

7. Regulation 3(1) sets out that all relevant reviews (those which have begun prior to the commencement date but have not yet been completed) will be subject to the new provisions.

8. Regulation 3(2) allows anything done by way of the old law before the commencement date to count as satisfying the equivalent requirements under the new procedures.

9. Regulation 3(3) recognises that the old provisions did not require both the original and amended core path plans to be made available and so does not require the original to be made available for a further consultation period to satisfy the new law.

10. Regulation 3(4) recognises that, where a public consultation has already begun, it will not be possible to serve any new notice on any owners or occupiers of land at the same time but that the notice still requires to be served.

11. Regulation 3(5) sets out that where a core paths plan has been adopted, or the Scottish Ministers have issued a direction in respect of a review, prior to the coming into force date the requirement to serve notice on any owners or occupiers of land does not apply.

12. Regulation 4 provides that where an application (under section 28 of the 2003 Act) to the sheriff court has already been made seeking a declaration as to whether a person has exercised access rights responsibly or not, the changes made by the 2016 Act do not apply.

Consultation

13. No formal consultation was carried out in relation to these Regulations. However, formal consultation took place before the Land Reform (Scotland) Bill was introduced and the policy intentions have been fully scrutinised, debated and approved by Parliament.

14. The provisions in Part 9 of the Act stem from examination by the Land Reform Review Group and responses to the *Consultation on the Future of Land Reform in Scotland*. Full details of the formal consultation are available on the Scottish Government website at: <http://www.gov.scot/Topics/Environment/land-reform/consultation>

Impact Assessments and Financial Effects

15. A copy of the Equality Impact Assessment for the Land Reform (Scotland) Bill can be found on the Scottish Government website at:

<http://www.gov.scot/Topics/Environment/land-reform/LandReformBill/EQIA>

16. A copy of the Business and Regulatory Impact Assessment for the Land Reform (Scotland) Bill can be found on the Scottish Government website at:

<http://www.gov.scot/Topics/Environment/land-reform/LandReformBill/BRIA>

17. A Financial Memorandum was published for the Land Reform (Scotland) Bill and can be found at:

[http://www.parliament.scot/S4_Bills/Land%20Reform%20\(Scotland\)%20Bill/b76s4-introden.pdf](http://www.parliament.scot/S4_Bills/Land%20Reform%20(Scotland)%20Bill/b76s4-introden.pdf)

Directorate for Environment and Forestry

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