



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 1

#### ACCESS RIGHTS

#### CHAPTER 4

##### REGULATION AND PROTECTION OF ACCESS RIGHTS

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

- (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.
- (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.
- (3) An order under this section which would have effect for such a period requires confirmation by Ministers.
- (4) It is the duty of the local authority to send to Ministers—
  - (a) copies of any objections made in response to the invitation under subsection (2) above; and
  - (b) any other representations made to them, in relation to an order requiring such confirmation.
- (5) Ministers—

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- (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.
- (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 (5)(b) above as they apply to one held under that section.
- (7) Ministers may—
- (a) confirm the order, with or without modifications; or
  - (b) refuse to confirm it.
- (8) An order under this section takes effect—
- (a) where the order does not require to be confirmed by Ministers, from the date on which it is made or such other date as may be specified in it for the purpose; or
  - (b) where the order requires to be so confirmed, from such date as is specified in it for the purpose or such other date as Ministers may direct when confirming it.
- (9) The local authority shall give public notice of their making an order under this section as soon as practicable after it is made or, where the order requires to be confirmed by Ministers, the authority receive notice of such confirmation.
- (10) The power of a local authority to make an order under this section includes power to revoke, amend or re-enact any such order.
- (11) Where a revoked, amended or re-enacted order would—
- (a) but for the revocation or amendment; or, as the case may be
  - (b) by virtue of the amendment or re-enactment,
- have effect for a period of six or more days beginning on or after the date on which it is revoked, amended or re-enacted, subsections (2) to (9) above apply in relation to the revocation, amendment or, as the case may be, re-enactment.
- (12) An order under this section has effect, subject to subsection (13) below—
- (a) for the period of two years beginning on the day on which the order takes effect;
  - (b) where the order specifies that it is to cease to have effect for such shorter period as may be specified in the order, for that shorter period; or
  - (c) where the order is revoked with effect from a day which falls before the end of that period or, as the case may be, that shorter period, until that day.
- (13) If, at any time before an order under this section ceases to have effect, the local authority which made the order re-enacts it, the order continues to have effect—
- (a) for the period of two years beginning on the day on which the order would otherwise have ceased to have effect under subsection (12)(a) or (b) above (or, as the case may be, under this paragraph or paragraph (b) below);
  - (b) where the order (as amended or re-enacted) specifies that it is to cease to have effect for such shorter period as may be specified in the order, for that shorter period; or
  - (c) where the order is revoked with effect from a day which falls before the end of that period or, as the case may be, that shorter period, until that day.

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

- (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.
- (3) Byelaws made under this section shall not interfere with the exercise of—
  - (a) any public right of way or navigation; or
  - (b) the functions of a statutory undertaker.
- (4) Sections 202 to 204 (byelaws) of the Local Government (Scotland) Act 1973 (c. 65) apply to byelaws made under this section as they apply to byelaws made under that Act, but with the following modifications and further provisions.
- (5) The references to one month in subsections (4), (5) and (7) of section 202 shall be read as references to such period of not less than 12 weeks as the local authority determine.
- (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;

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- (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.