



Land Reform (Scotland) Act 2003

2003 asp 2

PART 1

ACCESS RIGHTS

CHAPTER 1

NATURE AND EXTENT OF ACCESS RIGHTS

1 Access rights

- (1) Everyone has the statutory rights established by this Part of this Act.
- (2) Those rights (in this Part of this Act called “access rights”) are—
 - (a) the right to be, for any of the purposes set out in subsection (3) below, on land; and
 - (b) the right to cross land.
- (3) The right set out in subsection (2)(a) above may be exercised only—
 - (a) for recreational purposes;
 - (b) for the purposes of carrying on a relevant educational activity; or
 - (c) for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit.
- (4) The reference—
 - (a) in subsection (2)(a) above to being on land for any of the purposes set out in subsection (3) above is a reference to—
 - (i) going into, passing over and remaining on it for any of those purposes and then leaving it; or
 - (ii) any combination of those;
 - (b) in subsection (2)(b) above to crossing land is a reference to going into it, passing over it and leaving it all for the purpose of getting from one place outside the land to another such place.

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- (5) A “relevant educational activity” is, for the purposes of subsection (3) above, an activity which is carried on by a person for the purposes of—
- (a) furthering the person’s understanding of natural or cultural heritage; or
 - (b) enabling or assisting other persons to further their understanding of natural or cultural heritage.
- (6) Access rights are exercisable above and below (as well as on) the surface of the land.
- (7) The land in respect of which access rights are exercisable is all land except that specified in or under section 6 below.

2 Access rights to be exercised responsibly

- (1) A person has access rights only if they are exercised responsibly.
- (2) In determining whether access rights are exercised responsibly a person is to be presumed to be exercising access rights responsibly if they are exercised so as not to cause unreasonable interference with any of the rights (whether access rights, rights associated with the ownership of land or any others) of any other person, but—
- (a) a person purporting to exercise access rights who, at the same time—
 - (i) engages in any of the conduct within section 9 below or within any byelaw made under section 12(1)(a)(i) below; or
 - (ii) does anything which undoes anything done by Scottish Natural Heritage under section 29 below,
 is to be taken as not exercising those rights responsibly; and
 - (b) regard is to be had to whether the person exercising or purporting to exercise access rights is, at the same time—
 - (i) disregarding the guidance on responsible conduct set out in the Access Code and incumbent on persons exercising access rights; or
 - (ii) disregarding any request included or which might reasonably be implied in anything done by Scottish Natural Heritage under section 29 below.
- (3) In this section the references to the responsible exercise of access rights are references to the exercise of these rights in a way which is lawful and reasonable and takes proper account of the interests of others and of the features of the land in respect of which the rights are exercised.

3 Reciprocal obligations of owners

- (1) It is the duty of every owner of land in respect of which access rights are exercisable—
- (a) to use and manage the land; and
 - (b) otherwise to conduct the ownership of it,
- in a way which, as respects those rights, is responsible.
- (2) In determining whether the way in which land is used, managed or the ownership of it is conducted is responsible an owner is to be presumed to be using, managing and conducting the ownership of land in a way which is responsible if it does not cause unreasonable interference with the access rights of any person exercising or seeking to exercise them, but—

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- (a) an owner who contravenes section 14(1) or (3) or 23(2) of this Act or any byelaw made under section 12(1)(a)(ii) below is to be taken as not using, managing or conducting the ownership of the land in a responsible way;
 - (b) regard is to be had to whether any act or omission occurring in the use, management or conduct of the ownership of the land disregards the guidance on responsible conduct set out in the Access Code and incumbent on the owners of land.
- (3) In this section the references to the use, management and conduct of the ownership of land in a way which is responsible are references to the use, management and conduct of the ownership of it in a way which is lawful and reasonable and takes proper account of the interests of persons exercising or seeking to exercise access rights.

4 Modification of sections 9, 14 and 23

- (1) Ministers may by order modify, for the purposes of section 2 and 3 above, any of the provisions of sections 9, 14 and 23 below.
- (2) They may do so generally (that is to say in terms similar to those in sections 2 and 3 above as enacted) or by making provision which relates to particular areas, locations or classes of land or to particular access rights or particular activities which may take place in the exercise of access rights or to particular ways of using, managing or conducting the ownership of land or any combination of those.
- (3) Before doing so, they shall consult such persons whom they consider to have a particular interest in the effect of the proposed modification (or associations representing such persons) and such other persons as they think fit.

5 Access rights, reciprocal obligations and other rules and rights

- (1) The exercise of access rights does not of itself constitute trespass.
- (2) The extent of the duty of care owed by an occupier of land to another person present on the land is not, subject to section 22(4) below, affected by this Part of this Act or by its operation.
- (3) The existence or exercise of access rights does not diminish or displace any other rights (whether public or private) of entry, way, passage or access.
- (4) The existence or exercise of access rights does not diminish or displace any public rights under the guardianship of the Crown in relation to the foreshore.
- (5) The exercise of access rights does not of itself amount to the exercise or possession of any right for the purpose of any enactment or rule of law relating to the circumstances in which a right of way or servitude or right of public navigation may be constituted.
- (6) Access rights do not constitute a public right of passage for the purposes of the definition of “road” in section 151(1) (interpretation) of the Roads (Scotland) Act 1984 (c. 54).
- (7) A person exercising access rights is to be regarded as being in a public place for the purposes of section 53 (obstruction by pedestrians) of the Civic Government (Scotland) Act 1982 (c. 45).

CHAPTER 2

NATURE AND EXTENT OF ACCESS RIGHTS: FURTHER PROVISIONS

6 Land over which access rights not exercisable

- (1) The land in respect of which access rights are not exercisable is land—
- (a) to the extent that there is on it—
 - (i) a building or other structure or works, plant or fixed machinery;
 - (ii) a caravan, tent or other place affording a person privacy or shelter;
 - (b) which—
 - (i) forms the curtilage of a building which is not a house or of a group of buildings none of which is a house;
 - (ii) forms a compound or other enclosure containing any such structure, works, plant or fixed machinery as is referred to in paragraph (a)(i) above;
 - (iii) consists of land contiguous to and used for the purposes of a school; or
 - (iv) comprises, in relation to a house or any of the places mentioned in paragraph (a)(ii) above, sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure that their enjoyment of that house or place is not unreasonably disturbed;
 - (c) to which, not being land within paragraph (b)(iv) above, two or more persons have rights in common and which is used by those persons as a private garden;
 - (d) to which public access is, by or under any enactment other than this Act, prohibited, excluded or restricted;
 - (e) which has been developed or set out—
 - (i) as a sports or playing field; or
 - (ii) for a particular recreational purpose;
 - (f) to which—
 - (i) for not fewer than 90 days in the year ending on 31st January 2001, members of the public were admitted only on payment; and
 - (ii) after that date, and for not fewer than 90 days in each year beginning on 1st February 2001, members of the public are, or are to be, so admitted;
 - (g) on which—
 - (i) building, civil engineering or demolition works; or
 - (ii) works being carried out by a statutory undertaker for the purposes of the undertaking,
 are being carried out;
 - (h) which is used for the working of minerals by surface workings (including quarrying);
 - (i) in which crops have been sown or are growing;
 - (j) which has been specified in an order under section 11 or in byelaws under section 12 below as land in respect of which access rights are not exercisable.
- (2) For the purposes of subsection (1)(a)(i) above, a bridge, tunnel, causeway, launching site, groyne, weir, boulder weir, embankment of a canalised waterway, fence, wall or anything designed to facilitate passage is not to be regarded as a structure.

7 Provisions supplementing and qualifying section 6

- (1) Section 6 above does not prevent or restrict the exercise of access rights over any land which is a core path.
- (2) Land which bears to be within section 6 above by virtue of a development or change of use for which planning permission was or is required under the Town and Country Planning (Scotland) Act 1997 (c. 8) shall, if—
 - (a) such planning permission has not been granted; or
 - (b) such permission was granted subject to a condition which has not been complied with,be regarded, for the purposes of that section, as if that development or change of use had not occurred.
- (3) Where planning permission for such a development or change of use of land has been granted, the land shall, for the purposes of section 6 above, be regarded, while that development or change of use is taking place in accordance with the permission, as having been developed or having had its use changed accordingly.
- (4) In section 6(1)(b)(iii) above, “school” means not only a school within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44) but also any other institution which provides education for children below school age within the meaning of that provision.
- (5) There are included among the factors which go to determine what extent of land is sufficient for the purposes mentioned in section 6(1)(b)(iv) above, the location and other characteristics of the house or other place.
- (6) For the purposes of section 6(1)(d) above, access rights do not extend to the land to which public access is prohibited, excluded or restricted only to the extent of the prohibition, exclusion or restriction.
- (7) Section 6(1)(e) above prevents the exercise of access rights over land to which it applies only if—
 - (a) the land is being used for the purpose for which it has been developed or set out and, in the case of land which is not a sports or playing field, the exercise of those rights would interfere with the recreational use to which the land is being put;
 - (b) the land is a golf green, bowling green, cricket square, lawn tennis court or other similar area on which grass is grown and prepared for a particular recreational purpose; or
 - (c) in the case of land which is a sports or playing field, the surface of the land is comprised of synthetic grass, acrylic, resin or rubber granule.
- (8) For the purposes of section 6(1)(e) above, land which has been developed or set out for a particular recreational purpose does not include land on which groynes have been constructed, deepening of pools has been undertaken, fishing platforms have been erected, or where other works for the purposes of fishing have taken place.
- (9) Section 6(1)(f) above does not prevent or restrict the exercise of access rights over land to which it applies by any person who forms part of a class of persons who are not, on the days taken into account for the purposes of determining whether that provision applies in relation to the land, required to pay to gain admittance to the land.
- (10) For the purposes of section 6(1)(i) above land on which crops are growing—

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- (a) includes land on which grass is being grown for hay and silage which is at such a late stage of growth that it is likely to be damaged by the exercise of access rights in respect of the land in which it is growing, but otherwise does not include grassland;
 - (b) does not include headrigs, endrigs or other margins of fields in which crops are growing,
- and “crops” means plants which are cultivated for agricultural, forestry or commercial purposes.

8 Adjustment of land excluded from access rights

- (1) Ministers may by order modify any of the provisions of section 6 and 7 above.
- (2) They may do so generally (that is to say, in terms similar to those in sections 6 and 7 above as enacted) or by making provision which relates to particular areas, locations or classes of land.
- (3) Before doing so, they shall consult such persons whom they consider to have a particular interest in the effect of the proposed modification (or associations representing such persons) and such other persons as they think fit.

9 Conduct excluded from access rights

The conduct which is within this section is—

- (a) being on or crossing land in breach of an interdict or other order of a court;
- (b) being on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court;
- (c) hunting, shooting or fishing;
- (d) being on or crossing land while responsible for a dog or other animal which is not under proper control;
- (e) being on or crossing land for the purpose of taking away, for commercial purposes or for profit, anything in or on the land;
- (f) being on or crossing land in or with a motorised vehicle or vessel (other than a vehicle or vessel which has been constructed or adapted for use by a person who has a disability and which is being used by such a person);
- (g) being, for any of the purposes set out in section 1(3) above, on land which is a golf course.

CHAPTER 3

THE SCOTTISH OUTDOOR ACCESS CODE

10 The Scottish Outdoor Access Code

- (1) It is the duty of Scottish Natural Heritage to draw up and issue a code, to be known as the Scottish Outdoor Access Code, setting out, in relation to access rights, guidance as to the circumstances in which—
 - (a) those exercising these rights are to be regarded as doing so in a way which is or is not responsible;

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- (b) persons are to be regarded as carrying on activities, otherwise than in the course of exercising access rights, in a way which is likely to affect the exercise of these rights by other persons;
 - (c) owners of land in respect of which these rights are exercisable are to be regarded as using and managing, or otherwise conducting the ownership of it, in a way which is or is not responsible;
 - (d) owners of land in respect of which these rights are not exercisable are to be regarded as using and managing, or otherwise conducting the ownership of it, in a way which is likely to affect the exercise of these rights on land which is contiguous to that land.
- (2) Scottish Natural Heritage shall consult local authorities and such other persons or bodies as they think appropriate about the proposed Access Code and then submit it (with or without modifications) to Ministers together with copies of any objections or representations made in response to that consultation.
- (3) On receiving a proposed Access Code, Ministers may—
- (a) approve it, with or without modifications; or
 - (b) reject it.
- (4) Where Ministers reject a proposed Access Code under subsection (3)(b) above they may either instruct Scottish Natural Heritage to submit a new Code or they may substitute a Code of their own devising.
- (5) Where Ministers approve an Access Code with or without modification under subsection (3)(a) above or devise a Code themselves under subsection (4) above, they shall lay the proposed Code before the Scottish Parliament and Scottish Natural Heritage shall not issue the Code unless it has been approved by resolution of the Parliament.
- (6) The Access Code comes into operation on such date as Ministers fix.
- (7) It is the duty of—
- (a) Scottish Natural Heritage and local authorities to publicise the Access Code;
 - (b) Scottish Natural Heritage to promote understanding of it.
- (8) Scottish Natural Heritage shall keep the Access Code under review and may modify it from time to time.
- (9) In reviewing the Access Code, Scottish Natural Heritage shall consult such persons or bodies as they think appropriate about the operation of the Code.
- (10) Subsections (2) to (6) above apply to modifications of the Access Code as they apply to the Code.

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

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- 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—
 - (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;
 - (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.

CHAPTER 5

LOCAL AUTHORITY FUNCTIONS: ACCESS AND OTHER RIGHTS

13 Duty of local authority to uphold access rights

- (1) It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.
- (2) A local authority is not required to do anything in pursuance of the duty imposed by subsection (1) above which would be inconsistent with the carrying on of any of the authority's other functions.
- (3) The local authority may, for the purposes set out in subsection (1) above, institute and defend legal proceedings and generally take such steps as they think expedient.

14 Prohibition signs, obstructions, dangerous impediments etc.

- (1) The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—
 - (a) put up any sign or notice;
 - (b) put up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation;
 - (c) position or leave at large any animal;
 - (d) carry out any agricultural or other operation on the land; or
 - (e) take, or fail to take, any other action.
- (2) Where the local authority consider that anything has been done in contravention of subsection (1) above they may, by written notice served on the owner of the land, require that such remedial action as is specified in the notice be taken by the owner of the land within such reasonable time as is so specified.
- (3) If the owner fails to comply with such a notice, the local authority may—
 - (a) remove the sign or notice; or, as the case may be,
 - (b) take the remedial action specified in the notice served under subsection (2) above,and, in either case, may recover from the owner such reasonable costs as they have incurred by acting under this subsection.
- (4) An owner on whom a notice has been so served may, by summary application made to the sheriff, appeal against it.
- (5) Rules of Court shall provide—
 - (a) for public notice of the making of summary applications for the purposes of this section;
 - (b) for enabling persons interested in the exercise of access rights over the land to which a summary application relates, and persons or bodies representative of such persons, to be parties to the proceedings;
 - (c) for limiting the number of persons and bodies who may be such parties.

15 Measures for safety, protection, guidance and assistance

- (1) The local authority may take such steps (which may include the putting up and maintenance of notices and fences) as appear to them appropriate—
 - (a) to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable;
 - (b) to indicate or enclose, or to give directions to, any such land.
- (2) Where the local authority consider that a fence, wall or other erection is so constructed or adapted (whether by the use of barbed wire or other sharp material or by being electrified or otherwise) as to be likely to injure a person exercising access rights, they may by written notice served on the owner of the land on which it is placed, require the owner to take, within such reasonable time as is specified in the notice, such reasonable action as is so specified, being action calculated to remove the risk of injury.
- (3) Subsections (3)(b), (4) and (5) of section 14 above apply in respect of a notice served under subsection (2) above as they apply to a notice served under those subsections.

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- (4) The local authority may install and maintain, in any land in respect of which access rights are exercisable, gates, stiles, moorings, launching sites or other means of facilitating the exercise of these rights, and seats, lavatories and other means of contributing to the comfort and convenience of persons exercising them.
- (5) The local authority may, in relation to inland waters in respect of which access rights are exercisable, provide staff for life saving and any boats or equipment which are appropriate for life saving.
- (6) In exercising their powers under this section, the local authority shall—
 - (a) have regard to the extent to which there are existing facilities in their area for the purposes of assisting persons to exercise access rights; and
 - (b) have regard to the needs of persons with disabilities.
- (7) The local authority may carry out the operations authorised by subsections (4) and (5) above within the land over which the access rights are exercisable only with the consent of the owner.

16 Acquisition by local authority of land to enable or facilitate exercise of access rights

- (1) Where it appears to the local authority to be necessary or expedient for the purpose of enabling or facilitating the exercise of access rights in respect of any land to which this section applies that the land be acquired by them, the authority may—
 - (a) acquire it by agreement (whether by purchase, feu, lease or excambion); or
 - (b) with the consent of Ministers, acquire it compulsorily.
- (2) The land to which this section applies is land other than—
 - (a) land in respect of which access rights do not extend by virtue of section 6(1)(a)(ii), (d), (e) or (f) above;
 - (b) land which has been exempted by order made by the local authority under section 11(1) of this Act.
- (3) A local authority shall hold and manage any land acquired by them under this section so as best to facilitate the exercise of access rights.
- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall apply in relation to a compulsory purchase under this section as if this section had been in force immediately before that Act.

17 Core paths plan

- (1) It is the duty of the local authority, not later than 3 years after the coming into force of this section, to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their area.
- (2) Such a system of paths may include—
 - (a) rights of way by foot, horseback, pedal cycle or any combination of those, being rights which are or may be established by or under any enactment or rule of law;
 - (b) paths, footways, footpaths, cycle tracks or other means of access (however described but not falling within paragraph (a) above) which are or may be provided by or under any enactment other than this Act;

- (c) paths which are or may be delineated by a path agreement under section 21 or a path order under section 22 below;
 - (d) other routes, waterways or other means by which persons may cross land.
- (3) In drawing up the plan, the local authority shall have regard to—
- (a) the likelihood that persons exercising rights of way and access rights will do so by using core paths;
 - (b) the desirability of encouraging such persons to use core paths; and
 - (c) the need to balance the exercise of those rights and the interests of the owner of the land in respect of which those rights are exercisable.
- (4) The plan may consist of or include maps showing core paths and, where it does not, shall refer to such maps.

18 Core paths plan: further procedure

- (1) The local authority shall—
- (a) give public notice of the plan drawn up by them under section 17 above and any maps it refers to;
 - (b) make the plan and any such maps available thereafter for public inspection for a period of not less than 12 weeks; and
 - (c) consult—
 - (i) the local access forum for their area;
 - (ii) persons representative of those who live, work, carry on business or engage (or would be likely to engage) in recreational activities on the land on which it is proposed that there be core paths;
 - (iii) Scottish Natural Heritage; and
 - (iv) such other persons as the local authority think fit,in each case inviting objections and representations to be made to them within such period as they specify.
- (2) If no objections are made or any made are withdrawn, the local authority shall adopt the plan.
- (3) If an objection is made and not withdrawn, the local authority shall not adopt the plan unless Ministers direct them to do so.
- (4) Where an objection remains unwithdrawn, Ministers shall not make such a direction without first causing a local inquiry to be held into whether the plan will, if adopted, fulfil the purpose mentioned in section 17(1) above.
- (5) Ministers may, in any other case, cause such an inquiry to be held.
- (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 (4) or (5) above as they apply to one held under that section.
- (7) 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 plan either as drawn up under section 17 above or with such modification as Ministers specify in the direction.
- (8) On adopting the plan, the local authority shall—

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- (a) give public notice of its adoption;
 - (b) compile a list of core paths;
 - (c) keep the plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price; and
 - (d) send a copy of each of those documents to Ministers.
- (9) Where Ministers decline to make a direction under subsection (3) or (7) above, the local authority shall draw up a revised plan and shall do so in accordance with such procedure and within such time limits as Ministers specify.
- (10) Such specification shall include provision under which Ministers may (but need not) direct the local authority to confirm the revised plan.

19 Power to maintain core paths etc.

The local authority may do anything which they consider appropriate for the purposes of—

- (a) maintaining a core path;
- (b) keeping a core path free from obstruction or encroachment;
- (c) providing the public with directions to, or with an indication of the extent of, a core path.

20 Review and amendment of core paths plan

- (1) The local authority shall—
- (a) at such times as they consider appropriate; and
 - (b) on Ministers requiring them to do so,
- review the plan adopted under section 18 above (or that plan as amended under this section).
- (2) Where, following a review of a plan under subsection (1) above, the local authority consider that—
- (a) a core path should be removed from the plan; or
 - (b) the line of a core path, or part of that line, should be diverted,
- the authority may amend the plan by removing the core path from the plan or, as the case may be, by diverting the line of the core path on the plan.
- (3) The local authority may not amend the plan under subsection (2) above unless they are satisfied that it is expedient so to do having regard to—
- (a) the extent to which it appears to them that persons would, but for the amendment, be likely to exercise access rights using the core path; and
 - (b) the effect which the amendment of the plan would have as respects land served by the core path.
- (4) Where the local authority stop up, or divert, a core path by order under section 208 of the Town and Country Planning (Scotland) Act 1997 (c. 8) they shall amend their plan accordingly.
- (5) Subsection (8) of section 18 above applies in relation to the amendment of a plan under subsection (2) or (4) above as it applies in relation to the adoption of a plan under that section.

- (6) Where, following a review of a plan under subsection (1) above, the local authority consider that the plan should be amended so as to include a further path, waterway or other means of crossing land such as is mentioned in section 17(2) above, the authority shall draw up an amended plan.
- (7) Sections 17(3) and (4) and 18 above apply in relation to a plan drawn up under subsection (6) above as they apply to a plan drawn up under section 17(1) above.

21 Delineation by agreement of paths in land in respect of which access rights exercisable

- (1) The local authority may enter an agreement (a “path agreement”) with a person having the necessary power for the delineation and maintenance or, as the case may be, for the delineation, creation and maintenance of a path within land in respect of which access rights are exercisable.
- (2) A path agreement shall be on such terms and conditions as to payment or otherwise as may be specified in it.

22 Compulsory powers to delineate paths in land in respect of which access rights exercisable

- (1) Where, in the circumstances set out in subsection (2) below, it appears to the local authority that, having regard to the rights and interests of the owner of land in respect of which access rights are exercisable and persons likely to exercise these rights, it is expedient to delineate a path within that land, the authority may, by order (a “path order”), do so.
- (2) These circumstances are that it appears to the local authority to be impracticable to delineate the path by means of a path agreement.
- (3) Where the local authority make a path order—
 - (a) delineating an existing path, they have the duty of maintaining it;
 - (b) delineating a new path, they have the duty of creating and maintaining it.
- (4) Regard may be had, in determining whether a local authority has control of a path for the purposes of the Occupiers' Liability (Scotland) Act 1960 (c. 30), to the duties imposed by subsection (3) above.
- (5) A path order may be revoked by the local authority.
- (6) A path order shall be in such form as is prescribed but shall contain a map showing the delineation of the path.
- (7) Where access rights—
 - (a) have, by virtue of any provision of this Part of this Act, not been exercisable over any land consisting of a public path created under sections 30 to 36 of the Countryside (Scotland) Act 1967 (c. 86); but
 - (b) become exercisable over that land,the public path creation agreement or the public path creation order or public path diversion order by which the public path was created shall, for the purposes of the exercise of access rights, be treated as a path agreement or, as the case may be, a path order.

- (8) Schedule 1 to this Act has effect for the purposes of providing further as to path orders.
- (9) In section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c. 33) in paragraph (g) of the definition of “overriding interest” (which paragraph provides that public rights of way etc. are overriding interests) there is inserted at the end “or in respect of the exercise of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2) by way of a path delineated in a path order made under section 22 of that Act”.

23 Ploughing etc.

- (1) Where land is, in accordance with good husbandry, being ploughed or having its surface otherwise disturbed and it is convenient to plough, or otherwise disturb the surface of, a core path or a right of way which forms part of the land, nothing in this Part of this Act prevents that path or, as the case may be, right of way from being ploughed or from having its surface otherwise disturbed.
- (2) The owner of land being a path or, as the case may be, right of way which has been ploughed or which has had its surface otherwise disturbed in accordance with subsection (1) above shall, however, within the period of 14 days beginning on the day on which the path or, as the case may be, right of way is ploughed or has its surface otherwise disturbed or such longer period as the local authority may allow, reinstate the path or, as the case may be, right of way.
- (3) An owner who fails to comply with subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If the owner fails to comply with subsection (2) above, the local authority may, after giving the owner 14 days' notice of their intention to do so—
- (a) take all necessary steps to reinstate the path or, as the case may be, right of way; and
 - (b) recover from the owner their reasonable expenses in doing so.
- (5) Nothing in this section prejudices any limitation or condition having effect otherwise.

24 Rangers

- (1) The local authority may appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable.
- (2) The purposes for which such rangers may be so appointed are—
- (a) to advise and assist the owner of the land and other members of the public as to any matter relating to the exercise of access rights in respect of the land; and
 - (b) to perform such other duties in relation to the exercise of those rights in respect of that land as the local authority determine.
- (3) A person appointed under this section as a ranger may, for the purpose of exercising any function conferred by or under subsection (2) above, enter any land in respect of which access rights are exercisable.

25 Local access forums

- (1) Each local authority shall establish for its area a body, to be known as the “local access forum”, to carry out the functions set out in subsection (2) below.
- (2) Those functions are—
 - (a) to advise the local authority and any other person or body consulting the forum on matters having to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths under sections 17 and 18 above;
 - (b) to offer and, where the offer is accepted, to give assistance to the parties to any dispute about—
 - (i) the exercise of access rights;
 - (ii) the existence and delineation of rights of way;
 - (iii) the drawing up and adoption of the plan referred to in paragraph (a) above; or
 - (iv) the use of core paths,towards the resolution of the dispute.
- (3) A local access forum consists of such persons as are appointed to it by the local authority.
- (4) The matters to which the local authority have regard when making appointments to the local access forum shall include—
 - (a) ensuring reasonable representation in the forum of—
 - (i) bodies representative of persons with an interest in any of the matters mentioned in subsection (2)(b)(i) to (iv) above;
 - (ii) persons having such an interest;
 - (iii) bodies representative of the owners of land in respect of which access rights are exercisable or in which there is a core path; and
 - (iv) owners of such land, and
 - (b) ensuring a reasonable balance among those mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above.
- (5) The local authority may appoint one or more of its own members to a local access forum.
- (6) More than one local access forum may be established for the area of a local authority.
- (7) The local authority may pay to members of the local access forum such expenses and allowances as the local authority determine.
- (8) Ministers may give guidance to local authorities to assist them in the performance of their functions under this section.

26 Power of entry

- (1) Any person authorised by the local authority to do so may enter any land for a purpose connected with the exercise or proposed exercise of any of the authority’s functions under this Part of this Act.
- (2) A person so authorised may, subject to subsection (3) below, enter land only—
 - (a) at a reasonable time; and

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- (b) on giving reasonable notice to the owner of the land.
- (3) Subsection (2) above does not apply—
 - (a) in case of emergency; or
 - (b) in relation to the exercise by a local authority of any of their powers under sections 15(1)(a) and (4) and 19 above in relation to land which is a core path.
- (4) A person may, on entering any land by virtue of subsection (1) above, take onto the land any machinery, other equipment or materials required for the purpose for which the power of entry is being exercised.

27 **Guidance**

- (1) Ministers may give guidance to local authorities on the performance of any of their functions under this Part of this Act.
- (2) Such guidance may be given generally or to a particular local authority.
- (3) A local authority to which such guidance is given shall have regard to it.
- (4) Before giving such guidance, Ministers shall—
 - (a) consult each (or the) local authority to whom they propose to give it; and
 - (b) lay a draft of the proposed guidance before the Scottish Parliament;
 and the guidance shall not be given until after a period of 40 days beginning with the day on which the draft was so laid.
- (5) If, within that period, the Parliament resolves that the guidance proposed should not be given, Ministers shall not give it.
- (6) In calculating any period of 40 days for the purposes of subsection (4) or (5) above, no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

CHAPTER 6

GENERAL AND MISCELLANEOUS PROVISIONS

28 **Judicial determination of existence and extent of access rights and rights of way**

- (1) It is competent, on summary application made to the sheriff, for the sheriff—
 - (a) to declare that the land specified in the application is or, as the case may be, is not land in respect of which access rights are exercisable;
 - (b) to declare—
 - (i) whether a person who has exercised or purported to exercise access rights has exercised those rights responsibly for the purposes of section 2 above;
 - (ii) whether the owner of land in respect of which access rights are exercisable is using, managing or conducting the ownership of the land in a way which is, for the purposes of section 3 above, responsible.

- (2) It is competent, on summary application made to the sheriff, for the sheriff to declare whether a path, bridleway or other means of crossing land specified in the application is, or is not, a right of way by foot, horseback, pedal cycle or any combination of those.
- (3) The proceedings for a declaration under subsection (1) or (2) above are those for an action of declarator initiated by summary application to the sheriff.
- (4) A summary application for a declaration shall be served on the local authority.
- (5) The local authority are entitled to be a party to proceedings for a declaration.
- (6) Where the person seeking a declaration is the owner of the land, it is not necessary to serve the application on any person but the local authority.
- (7) In any other case, the person seeking the declaration shall serve the application on the owner of the land.
- (8) Rules of court shall provide—
 - (a) for the circumstances in which (including any time periods within which) a summary application may be made for the purposes of this section;
 - (b) for public notice of the making of summary applications for the purposes of this section;
 - (c) for enabling persons interested in the exercise of access rights over specific land or, as the case may be, in the existence of a right of way over specific land and persons or bodies representative of such persons to be parties to the proceedings;
 - (d) for limiting the number of persons and bodies who may be such parties.
- (9) This section is without prejudice to any remedy otherwise available in respect of rights conferred and duties imposed by or under this Part of this Act.

29 Powers to protect natural and cultural heritage etc.

- (1) Scottish Natural Heritage may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable.
- (2) The Scottish Ministers may put up and maintain notices for the purposes of protecting the cultural heritage of land in respect of which access rights are exercisable.
- (3) Any notice put up under subsection (1) or (2) above may warn persons of any adverse effect that their presence on the land or any activities they might conduct there might have on the natural or, as the case may be, cultural heritage sought to be protected.

30 Existing byelaws providing for public access to land

It is the duty of every person, body or authority having power under any enactment to make byelaws which may provide for or relate to public access to land in respect of which access rights are exercisable and which is owned or managed by that person, body or authority—

- (a) within 2 years of the coming into force of this section, to review those of its byelaws which so provide or relate and are in force at the time of the review; and
- (b) to modify any of those byelaws which are inconsistent with the provisions of this Act (including any made under it) as they apply to that land so as to make them consistent.

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31 **Application of sections 14 and 15 to rights of way**

Sections 14 and 15 above apply in relation to rights of way by foot, horseback, pedal cycle or any combination of those as they apply in relation to access rights.

32 **Interpretation of Part 1**

In this Part of this Act—

“Access Code” means the Scottish Outdoor Access Code issued by Scottish Natural Heritage under section 10 above;

“canals” means inland waterways within the meaning of section 92 (interpretation) of the Transport Act 1962 (c. 46);

“core path” means a path, waterway or any other means of crossing land such as is mentioned in section 17(2) above which is set out in a plan adopted under section 18 above or, as the case may be, such a plan as amended under section 20 above;

“cultural heritage” includes structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes;

“inland waters” means any inland, non-tidal loch, river (to the extent that it is non-tidal), lake or reservoir, whether natural or artificial and whether navigable or not, and includes the bed and the shores or banks thereof;

“land” includes—

- (a) bridges and other structures built on or over land;
- (b) inland waters;
- (c) canals; and
- (d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

“local authority” in relation to specific land in respect of which access rights are or would, but for a provision of or order made under this Act, be exercisable means—

- (a) where the land is, on the day on which this section comes into force, within an area designated as a National Park under the National Parks (Scotland) Act 2000 (asp 10), the National Park authority for that National Park; and
- (b) in any other case, the council (being a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)) whose area includes that land;

“natural heritage” includes the flora and fauna of land, its geological and physiological features and its natural beauty and amenity;

“owner”, in relation to land, means—

- (a) the owner of the land; and
- (b) where the owner is not in natural possession of the land, the person who is entitled to such natural possession;

“statutory undertaker” means—

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power;
- (b) the operator of a telecommunications code system;

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- (c) an airport operator (within the meaning of the Airports Act 1986 (c. 31)) operating an airport to which Part V of that Act applies;
- (d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c. 44);
- (e) Scottish Water;
- (f) a holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29);
- (g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act 2000 (c. 38) (to the extent that the person holding the licence is carrying out activities authorised by it);
- (h) the Scottish Environment Protection Agency; or
- (i) a universal postal service provider within the meaning of the Postal Services Act 2000 (c. 26);

and “undertaking” means the undertaking of such a statutory undertaker; and “telecommunications code system” and “operator”, in relation to such a system, have the same meanings in this Part of this Act as they have in the Telecommunications Act 1984 (c. 12).