



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 1

#### ACCESS RIGHTS

#### 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 [<sup>F1</sup>unless subsection (7A) applies].

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*Changes to legislation: There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003, Section 28. (See end of Document for details)*

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- (7) In any other case, the person seeking the declaration shall serve the application on the owner of the land.
- [<sup>F2</sup>(7A) Where a declaration is being sought under subsection (1)(b)(i), the person seeking the declaration must also serve the application on the person whose exercise or purported exercise of access rights is in question.]
- (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.

#### **Textual Amendments**

- F1** Words in s. 28(6) inserted (31.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 84(2), 130(1)** (with s. 128); [S.S.I. 2016/372](#), reg. 2 (with reg. 4)
- F2** S. 28(7A) inserted (31.12.2016) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), **ss. 84(3), 130(1)** (with s. 128); [S.S.I. 2016/372](#), reg. 2 (with reg. 4)

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