

Business and Regulatory Impact Assessment

Title of Proposal

The Land Reform (Scotland) Act 2003 (Modification) Order 2013

Purpose and intended effect

- **Background**

Part 1 of the Land Reform (Scotland) Act 2003 (LRSA) came into force on 9th February 2005, establishing statutory access rights for everyone to most land and inland water. People only have these rights if they exercise them responsibly. The Act also places obligations on landowners to manage land and inland water in ways that take proper account of the right of responsible access.

The rights and responsibilities of land managers, as well as those exercising access rights are set out in the Scottish Outdoor Access Code, which has been approved by Parliament and is available at www.outdooraccess-scotland.com/

The LRSA places emphasis on the local management of access and gives the lead management role to Scotland's local authorities and two national park authorities (known collectively as 'access authorities'). Under the LRSA it is a statutory duty of each access authority to draw up a core paths plan. The core path networks must be sufficient for giving the public reasonable access throughout access authority areas.

Section 11 of the LRSA provides that access authorities, whether on application from third parties or at their own initiative, may temporarily exempt land from access rights by order. Short term section 11 orders (with a duration of less than 6 days) are handled by the access authority while longer term section 11 orders (duration of 6 days or more) require confirmation by Ministers.

At present there is no mechanism to enable temporary closure of core paths by section 11 orders. However it is recognised that on a limited number of infrequent occasions there may be legitimate reasons why an access authority might seek to close a core path temporarily or to restrict / manage access.

- **Objective**

The objective of the Land Reform (Scotland) Act 2003 (Modification) Order 2013 is to provide for temporary closures of core paths by section 11 orders.

- **Rationale for Government intervention**

Section 6 of the LRSA provides that access rights are not exercisable over specific land and section 7 supplements and qualifies section 6. Section 6(1)(j) of the Act details that access rights are not exercisable over land which has been specified in an order under section 11. However, Section 7(1) qualifies this, stating that Section 6 does not prevent or restrict the exercise of access rights over any land which is a core path. As a result, core paths cannot be closed temporarily by section 11 orders.

Temporary closure of core paths may occasionally be necessary, for example for large high-profile events such as the Commonwealth Games 2014 or car rallies, to ensure the public's safety, or outdoor concerts, to charge for admission. In these circumstances organisers wish to have complete management control of the site.

For example, the Forestry Commission Scotland have a condition attached to the use of the forest estate for motor sport that requires a section 11 land closure for the management of public safety. They do not want to take any risk that members of the public will seek to exercise their rights along a core path through an event area, and therefore have not been considering hosting motorsport events in areas which includes a core path.

For these reasons, Scottish Ministers are bringing an amendment to the Land Reform (Scotland) Act 2003, to allow temporary closures of core paths. This contributes to facilitating National Indicator: Increase people's use of Scotland's outdoors.

Consultation

- **Public Consultation**

A draft Modification Order was consulted upon between 24 June 2013 and 16 September 2013.

20 responses were received to the public consultation, they can be viewed at: <http://www.scotland.gov.uk/Publications/2013/10/6896>

All respondents were supportive of the purpose of the order. Detailed comment was provided on: terminology; further suggestions of what might be included; status of core paths; reasons for section 11 closures; alternative routes; frequency of closures; and other comments.

A report on the main issues arising from the Consultation will be made available on the Scottish Government website.

In light of the support and comments received during the Consultation the Scottish Government decided to proceed with laying the Modification Order in the Scottish Parliament accompanied by draft statutory guidance to which minor alterations were made.

- **BRIA Consultation**

A partial version of this BRIA document was consulted upon also. No comments were submitted concerning the partial BRIA.

The part of the Modification Order relating to animal disease such as foot and mouth disease was exempted from BRIA by the Cabinet Secretary for Rural Affairs and the Environment because circumstances relating to animal health are unpredictable and would vary depending on the location of where disease has been confirmed and the extent of spread.

- **Within Government**

During the development of the Modification Order and statutory guidance, the proposals have been consulted upon within Scottish Government before the public consultations, including:

- SGLD advised on draft SSI and statutory guidance
- Equality Unit advised on EQIA requirements
- Better Regulation commented on the BRIA
- Commonwealth Games team set out some of their requirements for 2014
- Animal Health and Welfare Division were consulted in relation to the provision in the Modification Order to close core paths as a consequence of an outbreak of animal disease.

- **Access Authorities**

Access authorities have a duty under the LRSA to uphold access rights, this duty applies to all land over which access rights are exercisable and not just core paths.

Statutory guidance produced for access authorities, encourages them to only exercise their power to exempt land from access rights under section 11 sparingly and applied in respect of the minimum area of land, and for the minimum period necessary, and only when other management arrangements as set out in the Scottish Outdoor Access Code and related guidance have been considered.

The guidance also requests that access authorities treat requests for section 11 closures on an individual basis. The access authority is best placed to weigh up the advantages and disadvantages of temporary exempting land from access rights.

Since February 2005 there have been on average 47 section 11 short term land closures per year (closures lasting less than 6 days) and on average 1 section 11 longer term land closure (6 days or longer) per year. For longer-term closures the local authority is required to undertake a period of public consultation, the requirements are set down in the LRSA.

All the 34 access authorities in Scotland were directly contacted to notify them of the public consultation. 7 responses were received from access authorities.

- **National Access Forum**

The National Access Forum (NAF) advises on national issues linked to Scottish access rights. It is comprised of representatives of recreation, land management and other interests.

The Forum bodies are non-party political, have a national membership-based structure through clubs and/or individual members, and are both recognised and authoritative. The Forum also includes public bodies which have significant national roles in access and can represent the wider public interest. The Forum aims to be as open and participatory as possible and welcomes contributions from all bodies with an interest in national access issues.

The Modification Order (need / demand / drafting / associated guidance) was discussed many times at the 3-times yearly National Access Forum meetings.

A list of the NAF members is provided below:

Current members of the National Access Forum

Full members are indicated in **bold**; the remaining bodies are corresponding members.

Recreation bodies within access rights	Public bodies	Other relevant interests
British Horse Society Scotland British Cycling Cyclists Touring Club Scotland International Mountain Bicycling Association-UK Mountaineering Council of Scotland National Caving Association Ramblers' Association Scotland Rough Stuff Fellowship Royal Yachting Association (Scotland) Scottish Amateur Rowing Association Scottish Canoe Association Scottish Carriage Driving Association Scottish Cycling Union Scottish Equestrian Association Scottish Hang Gliding & Paragliding Federation Scottish Hill Runners Scottish Orienteering Association Scottish Sports Association Snowsport Scotland Sub Aqua Association (Scotland) Trail Cyclists Association	British Waterways Scotland Convention of Scottish Local Authorities EventScotland Forestry Commission Scotland Health & Safety Executive Historic Scotland Ministry of Defence National Park Authorities NHS Health Scotland Scottish Enterprise Scottish Natural Heritage Scottish Water sportsScotland Transport Scotland VisitScotland Other bodies Education bodies Boys Brigade Field Studies Council Girls Brigade Guide Association Scotland Outward Bound Scotland Royal Highland Educational Trust Scottish Advisory Panel for Outdoor Education Scout Association Scotland Duke of Edinburgh Award Scheme Commercial/tourism bodies Association of Mountain Guides Association of Mountaineering Instructors British Holiday and Home Parks Association Scottish Chambers of Commerce Scottish Youth Hostels Association Trekking & Riding Association of Scotland Wild Scotland Conservation bodies Game and Wildlife Conservation Trust John Muir Trust National Trust for Scotland RSPB Scotland Scottish Environment Link Scottish Wildlife Trust Woodland Trust	Association of Scottish Community Councils Cycling Scotland Fieldfare Trust Fields in Trust Greenspace Scotland Kennel Club/Scottish Kennel Club Mountain Bothies Association Salmon and Trout Association Scottish Anglers' National Association Scottish Autocycle Union Scottish Canine Consultative Council Scottish Disability Equality Forum Scottish Federation for Coarse Angling Scottish Rights of Way & Access Society Sustrans Scotland Walking on Wheels Trust Professional bodies Association of Chief Police Officers (Scotland) Association of Heads of Outdoor Centres Law Society of Scotland Royal Town Planning Institute Royal Institution of Chartered Surveyors Royal Scottish Forestry Society Scottish Countryside Access Network Scottish Countryside Rangers Association Scottish Gamekeepers Association Scottish Raptor Monitoring Group Additional corresponding members Paths for All Partnership (link to Access for All (Scotland) Forum)

- **Business**

The amendment to the LRSA to allow the temporary closure of core paths is a small technical amendment. A business seeking a section 11 order to exempt land from access rights during an event will have the added certainty of knowing any core path on that land is also exempt.

We estimate the number of firms or organisations affected by the amendment to the Act is likely to be small.

The total number of core paths and total distance of core paths within the boundaries of each of Scotland's local authorities varies. There is no way of predicting - how many section 11 closures there will be in the coming years that include core paths; where these closures will be; and how many/what businesses will be impacted. We know that there will be requests for section 11 exemptions for two major events in 2014 - the Commonwealth Games and the Ryder Cup – and both of these will involve core paths. The Scottish Government Commonwealth Games team have been consulted about the LRSA Modification Order and Glasgow City Council and Perth and Kinross Council have been consulted through the NAF and public consultation.

Many tourism and land management businesses, and bodies that represent them, are full or corresponding members of the National Access Forum (eg Scottish Land and Estates, Wild Scotland and many others listed above) and were involved in the consultation.

Options

- **Option 1 – Do nothing**

Core paths would remain unable to be closed temporarily by section 11 orders.

It would be problematic for event organisers who seek a section 11 order to exempt land from access rights while the event is underway and who want any core paths on that land to be exempt also e.g. during the Ryder Cup and Commonwealth Games

- **Option 2 – Amend the Land Reform (Scotland) Act 2003**

The Land Reform (Scotland) Act 2003 (Modification) Order 2013 would allow core paths to be closed temporarily by a section 11 order.

The matter has been discussed at the National Access Forum and the Scottish Ministers are of the view that access authorities should be able to temporarily close a core path within a section 11 order, when there are legitimate reasons to do so.

- **Sectors and Groups Affected**

The following are likely to be affected by the Land Reform (Scotland) Act 2003 (Modification) Order 2013:

- the 34 access authorities in Scotland
- landowners
- land managers
- outdoor event organisers
- members of the public

- **Costs**

Option 1

There would be no additional costs generated by the 'do nothing' option. However, we are aware that those involved with events such as car rallies feel

that local economies are being affected because the inability to temporarily close core paths is restricting rally routes that can be considered.

Option 2

Direct costs generated by the amendment to the legislation would be minor. It is presently the case that the access authority may charge a fee for processing a section 11 order. This will remain to be the case if section 11 orders also apply to core paths.

The amount charged is at the discretion of the local authority, however we would not anticipate a significant increase in the cost (if any), for a section 11 order to include a core path.

- **Benefits**

Option 1

Core paths are protected from closure under section 11 orders; management of access on core paths is achieved by compliance with the Scottish Outdoor Access Code (SOAC), which has been approved by Ministers and the Scottish Parliament. The SOAC provides guidance on access rights and responsibilities, however it is not an authoritative statement of the law.

Option 2

An amendment to the legislation will allow businesses/organisations to consider a greater diversity of locations/routes to host events such as car rallies and outdoor concerts. Organisers of such events will be able to have complete management control of a site, including sites that contain a core path.

Scottish Firms Impact Test

No businesses replied to the consultation. However we did receive a response from Scottish Land & Estates (SLE) which represents the interests of a wide variety of land-based businesses. SLE are happy to support the Modification Order in relation to section 11 and the accompanying explanatory note. They say section 11 is a useful and helpful mechanism to enable a balance to be achieved between access rights and other activity in the outdoors.

- **Competition Assessment**

Outdoor events such as car rallies and concerts already take place in Scotland, the modification order increases the number of potential locations for such events. Event organisers may be able to host events where previously they could not. With the Modification Order in place they can have complete management control of a site.

Will the proposal directly limit the number or range of suppliers? **No**

Will the proposal indirectly limit the number or range of suppliers? **No**

Will the proposal limit the ability of suppliers to compete? **No**

Will the proposal reduce suppliers' incentives to compete vigorously? **No**

- **Test run of business forms**

No new forms will be brought in as a result of these proposals.

Legal Aid Impact Test

- The Civil Law Division have confirmed that there will be no significant impact to the legal aid fund.

Enforcement, sanctions and monitoring

- Access authorities are responsible for upholding access rights under the Land Reform (Scotland) Act 2003.

They are also responsible for processing short term (less than 6 days) section 11 orders and gathering the relevant information for Ministerial consideration for longer term closures lasting 6 days or more. Access authorities should treat cases on an individual basis.

Access authorities are encouraged to exempt land from access rights, under section 11 of the Act, sparingly and applied in respect of the minimum area of land, and for the minimum period necessary, and only when other management arrangements as set out in the SOAC and related guidance have been considered.

- Where a member of the public takes access on a closed path, they would not be exercising access rights responsibly and so they could be asked to leave. If an individual does this persistently over a period of time, an interdict could be sought against that person. This is set out in the SOAC.
- The Scottish Government has established a monitoring regime for access authority duties, powers and expenditure on access under the Land Reform (Scotland) Act 2003. This monitoring gathers data on the use of section 11 orders by each access authority. Exemptions for 6 days or more come to Scottish Ministers for confirmation. We hope to supplement current data gathering with information on how many section 11 closures include core paths, and where alternative routes are provided.

Implementation and delivery plan

This statutory instrument will be made after it has been laid before, and approved by a resolution of, the Scottish Parliament.

Core paths closures (as with other section 11 land closures) will be implemented by the relevant access authorities, with confirmation by Scottish Ministers for exemptions for 6 days or more.

- **Post-implementation review**

The annual Scottish Government monitoring conducted by the Natural Resources Division collects data on usage of access exemption orders.

Scottish Government will review the Modification Order within 10 years of it coming into force to ensure it is still fit for purpose.

Summary and recommendation

- Scottish Government officials recommend Option 2 to amend the LRSA by the Land Reform (Scotland) Act 2003 (Modification) Order 2013. This will provide for the temporary closure of core paths.
- It is anticipated that the main use of section 11 powers will continue to be to exempt land from access rights for short periods of time in connection with admission to events.
- Implementation of this Modification Order will ensure that organisers of high profile events such as the Commonwealth Games 2014 or car rallies will, where appropriate, have complete management control of the site.

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Access takers have certainty of use of core paths	Being unable to temporarily close core paths has limited the locations where outdoor events can be staged. These events can benefit local economies.
2	Event organisers will have complete management control of a site.	It is at the access authorities' discretion how much they charge for section 11 orders. If fees were to be amended to include core paths it is not anticipated the increase would be significant. In addition, the time taken to process S11

	orders is unlikely to increase significantly.
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Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

PAUL WHEELHOUSE, MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE

Any queries about this BRIA should be addressed to:

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