

POLICY NOTE

DRAFT : THE LAND REFORM (SCOTLAND) ACT 2003 (MODIFICATION) ORDER 2013

The above instrument is to be made by the Scottish Ministers in exercise of the powers conferred by section 8(1) of the Land Reform (Scotland) Act 2003 (LRSA). The instrument is subject to the affirmative procedure (section 98(5) of the LRSA).

Policy Objectives

Under the LRSA local authorities and national park authorities (“access authorities”) are required to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their respective areas.

This instrument amends section 7(1) of the LRSA to provide for the exercise of access rights over core paths to be temporarily prevented or restricted (i.e. closed) where land is already able to be exempted from access rights:

- because of a notifiable animal disease; or
- by way of a section 11 Order under the LRSA

As currently drafted section 7(1) of the LRSA does not allow for such closures.

Animal disease part of instrument

The Animal Health Act 1981 has provision for the introduction of secondary legislation allowing Scottish Ministers to prohibit or restrict access to areas of land surrounding premises where a notifiable animal disease (that is an animal disease that can have serious economic or human health consequences) has been found. Access is temporarily restricted or prohibited to prevent further spread of the disease.

For example, in relation to foot and mouth disease (FMD), the Foot-and-Mouth-Disease (Scotland) Order 2006 allows for the declaration of a Protection Zone with a radius of at least 3km round the premises where FMD has been confirmed.

However, the modification is cast in general terms, to cater for the possibility of similar types of restriction as necessary to control animal diseases. Consequently, the proposed amendment to section 7(1) enables the application of statutory powers by the Scottish Ministers to prohibit or restrict access to land to deal with an animal disease outbreak, to extend to core paths.

Section 11 part of instrument

The LRSA provides that access authorities can temporarily exempt a particular area of land from access rights by way of an Order under section 11. Such temporary closures are occasionally necessary, for events such as the Commonwealth Games 2014 or car rallies, to ensure safety and security, or outdoor concerts, to charge for admission. The proposed amendment to section 7(1) will allow section 11 Orders to extend to core paths too.

Public consultation

The Scottish Government undertook a statutory consultation to comply with section 8(3) of the LRSA on a draft Modification Order between June and September 2013. The consultation document also included draft revised statutory guidance to accompany the Modification Order under section 27 of the LRSA.

A full list of those who responded and who agreed to the release of this information is attached to the consultation report which is published on the Scottish Government website.

Impact assessments

An equality impact assessment has been completed on this instrument and is attached. There are no significant equality impact issues.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed in relation to the section 11 part of the Modification Order and is attached. The impact of this policy on business is small. A partial BRIA was publically consulted upon with the Modification Order and guidance. No businesses replied to the consultation and no comments on the partial BRIA were received.

Scottish Land & Estates (SLE) which represents the interests of a wide variety of land based businesses did reply to the consultation, but did not refer to the BRIA. SLE are supportive of the proposals and say a section 11 Order is a useful and helpful mechanism to enable a balance to be achieved between access rights and other activities in the outdoors.

The Cabinet Secretary for Rural Affairs and the Environment has confirmed that no BRIA is necessary in relation to the animal disease part of the instrument. The financial effects are unpredictable and would vary depending on the location and nature of an outbreak of a notifiable animal disease.

Scottish Government
Directorate for Environment and Forestry

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