

Land Reform (Scotland) Act 2003: Consultation on Draft Order to Permit Temporary Closures of Core Paths

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CONTENTS

1. Consultation Letter

5. Draft Order

8. Respondent Information Form

11 October 2011

Dear Sir/Madam,

**LAND REFORM (SCOTLAND) ACT 2003: CONSULTATION ON DRAFT ORDER
TO PERMIT TEMPORARY CLOSURES OF CORE PATHS**

I am writing to advise you that the Scottish Government is undertaking a consultation on a technical amendment to the Land Reform (Scotland) Act 2003, in order to provide for the option of temporary closure of core paths in the context of wider areal exemptions from access rights (section 11 Orders). This will be in the form of a draft Order which would amend section 7(1) of the Land Reform (Scotland) Act 2003. A copy of the draft Order is set out as an Annex to this letter for your information.

Background

On 9 February 2005 Part 1 of the Land Reform (Scotland) Act 2003 came into force, establishing rights of responsible access to land and inland water for recreation, passage and other purposes, with certain exclusions for reasons of safety, privacy and security. Section 8 of the Act provides for Scottish Ministers to modify, by order, the provisions of sections 6 and 7 of the Act.

Powers for access authorities to close core paths

Section 6 of the Act 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. Exercise of this access authority power (after the proper procedures have been carried out) may **occasionally** be necessary on core paths, for example for large high-profile events such as 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 so that they can discharge their duty of care.

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 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. In addition a managed closure in an orderly basis with proper advance notification can also assist those seeking to plan access to an area which is closed for a specific time bound period.

This matter has been discussed at the National Access Forum in 2010 and 2011, and the Scottish Ministers are of the view that access authorities should be able to **temporarily close a core path within a wider section 11 Order**, when there are legitimate reasons to do so. The explanatory note to the draft Order explains that the new provision allows access to be prevented or restricted over land which is a core path in the context of a section 11 Order. The note also explains that core paths closures for 6 days or more would require suitable alternative arrangements to be put in place where deemed appropriate. Your views on this matter are invited, prior to placing this draft Order before Parliament for its consideration.

A copy of the Act can be obtained from The Stationery Office at TSO Scotland, 26 Rutland Square, Edinburgh EH1 2BW tel: 0131 659 7020 or e-mail: enquiries@tsoscotland.com or can be viewed on the website of the Queen's Printer for Scotland : http://www.oqps.gov.uk/scotlegislation/acts_scotparliament.htm .

Responding to this consultation paper

We are inviting written responses to this consultation by 11 January 2012. **Please send your response with the completed Respondent Information Form (see “Handling your Response” below) to:**

publicaccess@scotland.gsi.gov.uk

Or

Malcolm Duce, Landscape and Involvement with the Natural Environment branch, Scottish Government, 1D North, Victoria Quay, Edinburgh EH6 6QQ

If you have any queries please contact me on 0131 244 4439.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (<http://www.scotland.gov.uk/consultations/seconsult.aspx>) This system allows stakeholder individuals and organisations to register and receive a weekly email

containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), by 8 February 2012. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the proposed amendment. We aim to issue a report on this consultation process by 12 March 2012.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the address above.

Yours faithfully,

MALCOLM DUCE

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

2011 No.

LAND REFORM

**The Land Reform (Scotland) Act 2003 (Modification) Order
2011**

Made - - - - 2011

Coming into force - - 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by section 8 to the Land Reform (Scotland) Act 2003^(a), having consulted such persons (and associations representing such persons) whom they consider to have a particular interest in the effect of the Order.

In accordance with section 98(5) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Land Reform (Scotland) Act 2003 Amendment Order 2011 and comes into force on the day after the day on which it is made.

Modification of the Land Reform (Scotland) Act 2003

2.—(1) The Land Reform (Scotland) Act 2003 is modified in accordance with this Article.

(2) Delete section 7(1) and insert—

“ (1) Section 6 above does not prevent or restrict the exercise of access rights over any land which is a core path, except in relation to—

(a) a core path which has been specified in an order under section 11 as land in respect of which access rights are not exercisable for a period of less than six days; or

(b) a core path which has been specified in an order under section 11 as land in respect of which access rights are not exercisable for a period of six or more days if, before the order is confirmed, Ministers have confirmed that they are satisfied—

i) that suitable alternative arrangements for access will be in place; or

ii) that no alternative arrangements are necessary.

(a) 2003 asp 2

St Andrew's House,
Edinburgh
2011

S STEVENSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the Land Reform (Scotland) Act 2003 (“the 2003 Act”) by inserting new provision in section 7(1).

The new provision allows access to be prevented or restricted over land which is a core path in the context of a section 11 Order which prevents or restricts access rights in a wider area. The new section 7(1) provides that access rights are not exercisable on any core path(s) which is specified in a section 11 Order. If there is no reference to the core path(s) within the area of the section 11 Order, access rights will continue to apply along the core path(s).

If the section 11 Order prevents or restricts access rights for a period of six days or more, the amendment provides that the Scottish Minister must be satisfied that alternative arrangements are in place in respect of access, if necessary.

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RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / **Group/Organisation**
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No



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