



## Briefing for the Public Petitions Committee

**Petition Number:** [1422](#)

**Main Petitioner:** Wendy Barr

**Subject:** Inequality of Land Reform (Scotland) Act 2003

Calls on the Parliament to urge the Scottish Government to consider the need to change the Land Reform (Scotland) Act 2003 to ensure equality for all.

### Background

Part One of the Land Reform (Scotland) Act 2003 establishes statutory public rights of access to land and inland water for recreational and other purposes. The emphasis of Part One of the Act is on the management of access at a local level and as such it provides local authorities and National Park authorities (known collectively as access authorities) with powers to manage access in their area. Duties placed on access authorities under the Act include:

- To uphold the exercise of access rights over any route, waterway or other means by which access rights may be exercised
- To plan for a system of [core paths](#)
- To establish one or more [local access forums](#) for their area
- To publish the [Scottish Outdoor Access Code](#) (SOAC) drawn up by Scottish Natural Heritage, setting out guidance on the rights and responsibilities of access takers and owners of land.

Every access authority is required to draw up a plan for a system of core paths<sup>1</sup> sufficient for the purpose of giving the public reasonable access throughout their area. Several access authorities have now adopted their plans and others are working towards adoption. In drawing up their core paths plans each access authority was required to consult on the plan with:

- The local access forum
- Persons representative of those living and working on the land that may be affected by the plan
- Scottish Natural Heritage (SNH)
- Anyone else whom they considered appropriate

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<sup>1</sup> In most instances, these Core Paths Plans are informed by and have evolved from Countryside Access Strategies.

If no formal objections to the Plans are made, or an objection is withdrawn subsequently, then the access authority may adopt the plan. Where a valid objection is made and not withdrawn the core paths plan will go to Local Inquiry and will not be adopted unless directed to do so by Scottish Ministers.

Regardless of whether a path, route, or piece of land is included in a Core Path Plan, there is a presumed right of responsible access, subject to certain restrictions e.g. houses and gardens, or land in which crops are growing or have been sown. Guidance for Local Authorities and National Park Authorities on Part One of the Act can be found [here](#).

The petitioner raises three main points, as follows:

### **1. Inequality between the rights of landowners compared to those exercising the right to access land**

Those accessing land have the right to do so only if they behave responsibly (Section 2). Section 3 imposes 'reciprocal obligations' on owners of land, requiring owners to act responsibly in using and managing the land or otherwise conducting their ownership of it.

Section 28 of the Act provides that a person may apply to the sheriff court for a determination of whether those taking access are doing so responsibly whether owners of land are acting responsibly in respect of access rights.

### **2. Owners rights over who uses their property and how**

There are no access rights for land adjacent to a house, a tent, a caravan or other similar domestic place as is sufficient to give people living there reasonable measures of privacy and undisturbed enjoyment (Section 6) and the location and characteristics of the place should be taken into account (Section 7(5)). However in the aforementioned Guidance it states that the area of land sufficient to achieve this objective will be matter to determine according to the specifics of each particular case (p 10).

The Guidance (p 10) states that this exclusion under section 6 exists to protect landowners' rights under article 8 of the European Convention of Human Rights (ECHR) (right to respect for private and family life and home) and under Article 1 of Protocol 1 of the ECHR (right to peaceful enjoyment of possessions).

### **3. Access rights being granted through a property might decrease its value and landowners are not given compensation**

Section 21 of the Act provides that local authorities may enter into an agreement with landowners on delineation of a path with access rights. The Guidance (p 7) states that the agreement may, amongst other things, include payments to the owner. Section 22 of the Act provides that, where a local authority considers it impractical to reach agreement with the owner, it may make a 'path order' delineating the path. The Guidance (p 65) confirms that no compensation is payable in this situation.

Article 1 of Protocol 1 of the ECHR (right to peaceful enjoyment of possessions) is relevant in the context of section 22. In the Policy Memorandum to the original Bill as introduced, the former Scottish Executive stated that it considered the provisions in the Bill relating to access to be ECHR compliant (para 39).

## **Scottish Government Action**

[Good practice guidance and advice for land managers](#) was originally published in 2005. Included within this is [guidance for dealing with irresponsible behaviour](#).

In June 2008, the Scottish Government published [Monitoring and Evaluating the Effects of Land Reform on Rural Scotland](#). This states:

There is currently little detailed knowledge of the impacts of the SOAC, [...]. Published, peer-reviewed, evidence-based research is lacking, and stakeholders are generally uncertain as to the actual, attributable impacts of access reform. However, research has shown that recreational access has increased slightly; awareness of the 2003 Act and of the SOAC has grown; and positive behaviour changes have also been reported which may be attributed to the SOAC.

A [monitoring regime](#) is also in place to assess the progress and expenditure of access authorities in upholding and facilitating access rights. As at 31 March 2011 there were:

- 21,177 km of signposted or waymarked paths
- 20 access authorities had adopted their core paths plans which cover 8320 km of paths.
- Of these, 4929 km were signposted or waymarked and 3770 km were maintained by the access authority.

## **Scottish Parliament Action**

In September 2010 the former Rural Affairs and Environment Committee [published](#) externally commissioned research into the implementation of the Act. In relation to Core Path planning, the [Executive Summary](#) states:

There has been slippage in some Access Authorities progress in drawing up their Core Paths Plans as required in Part One of the Act. Access Authorities have made limited use of their enforcement powers under the Act and there is currently very little case law relating to statutory access rights.

Furthermore:

There is a perception that the legislation has gradually improved relations between access-takers and land managers. Core paths planning is considered to have raised the profile of access issues within

Local Authorities and encouraged community engagement and constructive dialogue between stakeholders. However, there are concerns that core paths planning will be a “missed opportunity” if Access Authorities have insufficient funding to maintain and manage core paths networks.

Relevant Parliamentary Questions include:

**Question S3W-34832: Jamie Hepburn, Central Scotland, Scottish National Party, Date Lodged: 24/06/2010** To ask the Scottish Executive who is responsible for public liability on an identified core path.

**Answered by Roseanna Cunningham (23/07/2010):** Public liability obligations are not affected by designation of land as a core path under the provisions of the Land Reform (Scotland) Act 2003.

The nature of the liability obligations applicable on land to which the public have a right of access will depend on the particular circumstances. The Occupiers' Liability (Scotland) Act 1960 and the Health and Safety at Work Act 1974 provide that land managers owe a duty of care to other people on their property. Members of the public also owe a duty of care to others, particularly if they are taking part in potentially hazardous activities. Persons taking access to land would generally be held to have accepted any obvious risk or risks inherent in the activities they are undertaking.

**Question S3W-34831: Jamie Hepburn, Central Scotland, Scottish National Party, Date Lodged: 24/06/2010** To ask the Scottish Executive whether a local or national park authority, in drawing up a core path plan, has the power to identify core paths on a route that is not a pre-existing right of way.

**Answered by Roseanna Cunningham (13/07/2010):** Yes.

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**23 March 2012**

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