

## **Application of Sections 11 and 12 to core paths**

### **Purpose**

1. The attached paper from the Scottish Government highlights a technical issue and proposed solution relating to the application of Sections 11 and 12 of the Land Reform (Scotland) Act 2003 to core paths.

### **Action**

2. **Members are asked to comment on the issue and possible solution as set out in para 8 of the attached paper .**

### **Background**

3. The attached paper notes a technical issue that may affect the application of Section 11 (temporary exemptions) and Section 12 (byelaws) to core paths. A solution is proposed to allow these provisions to apply to core paths in the same way as on other land within access rights.
4. This paper has been prepared by the Scottish Government.

**Mark Wrightham**  
**Secretary**

## **Core paths: possible order for temporary closures and restrictions**

### **Purpose**

1. This note has been prepared by the Scottish Government. It explains a technical issue that has been identified in relation to core paths and sets out a possible solution.

### **Action**

**2. Members are asked to comment on the issue and possible solution as set out in para 8 below .**

### **Background**

3. It is recognised that on occasions there may be legitimate reasons why an access authority might seek to close a core path temporarily, or to restrict access; examples are provided in paras 4 and 5 below .

4. However, the Land Reform (Scotland) Act 2003 (the Act) does not allow for core paths to be closed temporarily or restrictions to be introduced by way of byelaws. It is thought that this was not what was intended and has arisen simply because two sections of the Act, when read together, have a “double negative” effect. These two are subsection 6(1)(j): *The land in respect of which access rights are not exercisable is land which has been specified in an order under section 11 or in byelaws under section 12 below as land in respect of which access rights are not exercisable*; and section 7(1): *Section 6 above does not prevent or restrict the exercise of access rights over any land which is a core path.*

### **Situations in which temporary closure of / restrictions on core paths might be sought**

5. There are situations in which temporary closure of core paths may be sought in the future. For example, when there are car rallies on Forestry Commission land the organisers might seek closure of core paths for reasons of safety and security. In a situation like this an access authority might be asked to make a section 11 order to exempt the land from access rights for up to 5 days (Orders seeking exemptions for 6 days or more require confirmation by the Scottish Ministers). However as things stand any core paths involved could not be closed.

6. Similarly, an access authority might wish to place a restriction on access rights, for example that dogs should be kept on leads where the core path goes through a nature reserve. To do this they could use the byelaw making powers in section 12 of the Act. However as things stand the restriction would not apply to any core paths involved.

### **Possible solution**

7. There is a possible solution in the form of a technical amendment to the Act. Section 8 gives Scottish Ministers powers to modify sections 6 and 7 by making an order in Parliament; consultation on a draft order is required first. The Scottish Government is therefore considering the possibility of consulting formally on a draft order to delete section 6(1)(j); removing this would mean that section 11 orders and section 12 byelaws could be applied to core paths.

**8. Members are invited to discuss the issue and possible solution ie for the Scottish Government to consult formally on an order to delete section 6(1)(j) of the Act. There is no intention to amend any other part of sections 6 or 7 of the Act.**