Abstract: The Scottish Executive has published draft guidance for Local Authorities and National Park Authorities on Part I of the Land Reform (Scotland) Act 2003. This report recommends this Council’s response to the document.

1 RECOMMENDATION

It is recommended that the Committee:-

1. notes the content of the draft guidance on Part I of the Land Reform (Scotland) Act 2003, including duties and powers of Local Authorities summarised in Appendix 1 to this report;

2. agrees this report as the basis for the Council’s response to the Scottish Executive, including concern regarding funding the core path network, together with detailed comment on duties and powers as set out in Appendix 2.

2 INTRODUCTION

2.1 The Land Reform (Scotland) Act 2003 received Royal Assent on 25 February 2003. Part I of this Act establishes statutory rights of responsible access to land including inland water. These rights will be brought into effect once the Scottish Outdoor Access Code has been approved by the Scottish Parliament. It is expected that the rights will come into effect in autumn 2004.

2.2 The Act contains significant provisions regarding Angus Council’s duties and powers relating to access. The implications of these were reported to Committee on 12 June 2003 (report No. 656/03 refers).

2.3 The Scottish Executive has now published draft guidance for Local Authorities and National Park Authorities regarding these duties and powers. A reference copy of the draft guidance is available for viewing in the Members’ Lounge or from the Scottish Executive website at www.scotland.gov.uk/library5/rural/Iralanpa-02.asp

2.4 The draft guidance summarises the powers and duties given to Local Authorities under the Act. This summary is attached as Appendix 1. The guidance goes on to give more detailed guidance on the use of certain of these powers and duties.

2.5 Responses on the draft guidance are required by 7 May 2004.
3 A RESPONSE TO THE DRAFT GUIDANCE

3.1 The draft guidance is generally considered to be helpful in summarising the powers and duties contained in the act and in providing clarification on the purpose and application of these powers and duties. There is however a need for further clarification in some areas, and to ensure that the emphasis of the guidance is always consistent with the intentions of the Act.

A key element of the guidance which would benefit from further development is the sections on core paths:-

- Clear guidance is required on decision making processes in balancing the aspirations of the public with available resources. It will not be possible to make realistic resource based decisions unless adequate additional resources are made available to Local Authorities at an early stage in the core path planning process.

- There is a need to address the dual role of the core paths plan, being both designatory (identifying existing routes) and developmental (identifying paths to be developed over a period of years). A realistic implementation period for the plan will be significantly beyond the medium term of 2-3 years referred to.

- A clear summary of the different powers available for implementation of core paths would be beneficial, outlining when Section 19 powers (to maintain core paths) are appropriate, where Section 15(4) (Measures for Safety, Protection, Guidance and Assistance) should be used, and where Path Agreements or Path Orders are necessary.

3.2 More detailed comment on the detail of the guidance is recommended, as outlined in Appendix 2.

4 FINANCIAL IMPLICATIONS

4.1 The implementation of these powers and duties will have significant staff and resource implications. The development and management of a core path network will have particular financial implementations. Although maintenance of the core path network is not a duty under the Act there is a clear expectation that Local Authorities will manage a significant proportion of core paths.

4.2 The Committee is advised that the Scottish Executive has included additional funding, termed “Access to the Countryside” as part of the local government finance settlement to assist Council’s to meet their obligations under the Act and these resources have been added to the Planning & Transport revenue budget in the relevant years. This funding was first provided in financial year 2001/02 in anticipation of the Land Reform Act coming into force much earlier than has actually been the case. The funding available for Access to the Countryside over the period 2001/02 to 2005/06 is shown below.
### Table

<table>
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<th>Financial Year</th>
<th>Increase in Angus Council Allocation £000</th>
<th>Cumulative Allocation £000</th>
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<td>147</td>
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<tr>
<td>2005/06</td>
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</table>

4.3 It is understood that, at a national level, this additional funding is considered largely sufficient for the purpose of supporting staff to prepare for and begin to implement the Act. It is not yet clear whether additional resources will be made available to develop and manage the core path network and this is of major concern.

5 **HUMAN RIGHTS IMPLICATIONS**

5.1 There are no human rights implications.

6 **CONSULTATION**

6.1 The Chief Executive and the Directors of Law & Administration, Finance, Leisure Services, Property Services and Roads have been consulted in the preparation of this report.

7 **CONCLUSION**

7.1 Publication of draft guidance on duties and powers of Local Authorities is a further major step toward bringing into effect Part 1 of the Land Reform (Scotland) Act 2003, towards the end of 2004, once the Scottish Outdoor Access Code has been approved by the Scottish Parliament.

7.2 The draft guidance contains a substantial body of material, much of which is helpful, but also wherein the devil may lie in the detail. A key element of the draft guidance which would benefit from further clarification concerns sections on duties and powers relating to core paths.

**NOTE**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/PC/KW
19 April 2004

Alex Anderson
Director of Planning and Transport
APPENDIX 1

Part 1 Land Reform (Scotland) Act 2003

Draft Guidance for Local Authorities and National Park Authorities

2. Powers and duties of local authorities/national park authorities under Part 1 of Act

Duties

Section 10: The Scottish Outdoor Access Code
It is a duty of local authorities to publicise the Access Code once it has come into operation on a date fixed by Ministers.

Section 13: Duty to uphold access rights
Local authorities have a duty to uphold access rights. They have a duty to assert, protect, keep open and free from obstruction any route, waterway or other means where access can be reasonably exercised. Local authorities also have powers to institute and defend legal proceedings.

Section 17: Core paths plan
Local authorities have a duty, not later than 3 years after implementation of this section, to draw up a plan for a system of core paths sufficient to provide reasonable public access throughout their areas.

Section 18: Core paths plan: further procedure
Local authorities have a duty to publicise their plan and any maps, and to make them available for public inspection for at least 12 weeks. In addition, the local authority must consult the local access forums, persons representative of those living and working on the land affected by the plan, Scottish Natural Heritage and anyone else it deems appropriate. When the plan is adopted the local authority must publicly notify its adoption, compile a list of core paths, make the plan available for public inspection and send a copy to Ministers. If there are any objections to the plan, it cannot be adopted until confirmed by Ministers.

Section 20: Review and amendment of core paths plan
Local authorities have duty to review the core path plan and following that review can remove or divert a core path. The core path plan must be amended if any core path is stopped up or diverted under section 208 of the Town and Country Planning (Scotland) Act 1997 or the Countryside (Scotland) Act 1967. If a core path is added to the core path plan the procedures of consultation under section 18 must be followed.

Section 25: Local access forums
This section places a duty on each local authority to establish a local access forum consisting of a reasonable balance of persons and bodies representing the interests of persons with an interest in public access on and over land and owners of land over which access rights are exercisable.

The functions of a forum are to provide advisory and dispute resolution services in relation to the exercise of access rights, the existence of rights of way and the drawing up and adoption of core paths plans.
A local authority may appoint one or more of its own members to a forum, and also may establish more than one forum for its area. They may pay expenses and allowances to the members of the local access forum.

**Section 30: Existing byelaws providing for public access to land**
All byelaws relating to public access to land must be reviewed by the person that made them within 2 years of the coming into force of this section and, if necessary, modified to ensure consistency with the provisions of this Act.

**Powers**

**Section 11: Power to exempt particular land from access rights**
The powers in section 11 are intended to address a number of situations which range from the local village fete to the events such as the Ryder Cup. Local authorities may by making an order exclude land for a period of less than six days. Any order which excludes land for six days or more will require Ministerial confirmation. Any confirmed order must be reviewed after two years.

**Section 12: Byelaws in relation to land over which access rights are exercisable**
Section 12 provides powers for local authorities to make byelaws for the preservation of public order and safety, prevention of damage, and prevention of nuisance or danger. Any byelaw made under this power must not interfere with a public right of way or navigation or the role of statutory undertakers. Byelaws made under this procedure will be subject to the consultation procedures set out in section 12 of the Act.

**Section 14: Prohibition signs, obstructions, dangerous impediments etc.**
If an owner of land does anything for the purpose or main purpose of deterring the public from exercising their right of access, local authorities have powers to require, by written notice, the owner to take remedial action. If the owner fails to comply, the local authority can remove signs or notices or take other remedial action. An owner on whom a notice has been served by a local authority may appeal against it by summary application to the sheriff.

**Section 15: Measures for safety, protection, guidance and assistance**
Local authorities have powers to take steps to warn and protect the public against any danger on any land in respect of which access rights are exercisable, and to indicate or enclose recommended routes or to give directions to this land. They can install and maintain gates, stiles, moorings, launching sites, seats, lavatories and any other means of facilitating the exercise of access rights, and for the comfort and convenience of the public. They can also provide life guards and boats and equipment.

**Section 16: Acquisition by local authority of land to enable or facilitate exercise of access rights**
This section provides local authorities with powers to acquire land either by agreement or, with the consent of Ministers, compulsorily, to enable or facilitate the exercise of access rights.

**Section 19: Powers to maintain core paths etc.**
Local authorities have powers to maintain a core path, keep it free from obstruction and provide the public with directions.
Section 21: Delineation by agreement of paths in land in respect of which access rights exercisable
Local authorities may enter into an agreement for the delineation and maintenance (and, if necessary, creation) of a path over land in respect of which access rights are exercisable. Such an agreement will be on the terms and conditions agreed between the local authority and the person with whom they enter into the agreement. Those terms and conditions may, amongst other things, provide for the making of payments.

Section 22: Compulsory powers to delineate paths in land in respect of which access rights exercisable
A local authority, where they consider it impracticable to delineate a path by agreement under section 21, may make an order (a "path order") delineating it. The local authority may make a path order only if they consider, having regard to the rights and interests of the owner of the land over which the proposed path passes and persons likely to exercise access rights on or over the land, it appropriate to do so.

Where a path order is made, local authorities will have a duty to maintain the path delineated in the order and, if necessary, to create it. They may also revoke any path order.

The Occupiers’ Liability (Scotland) Act 1960 (c.30) makes provision as to the duty of care which an occupier or person in control of land must show to persons on the land. Subsection (4) provides that regard may be had to a local authority’s duties to create or maintain a core path in determining whether they are in control of the path and therefore owe the duties set out in the Act of 1960.

A path order must be in the form prescribed in regulations made by Ministers, but requires in any case that it contain a map showing the delineation of the path. The procedures for making an order are detailed in Schedule 1 of the Act.

Section 23: Ploughing etc.
Section 23 allows an owner to plough, or to carry out other land management practices, on land incorporating a core path or a right of way. However, where core paths or rights of way are disturbed this way, there is a duty on the owner to reinstate the path or right of way within 14 days beginning on the day the path was first disturbed or within such longer period as the local authority may allow.

An owner who fails to reinstate the path within the required period is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

If an owner fails to reinstate a path within the period set, the local authority may, after giving the owner 14 days notice of their intention, take all steps necessary to reinstate the path or right of way and recover their reasonable expenses from the owner.

Section 24: Rangers
Local authorities have the power to appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable. Ranger’s functions are to provide advice and assistance on matters relating to access rights to perform such other duties in relation to those rights as the local authority appointing them may specify.

Section 26: Powers of entry
Persons authorised by local authorities may enter any land for a purpose connected with the exercise or proposed exercise of any of the authorising authority’s functions under Part 1. Such a person may, however, enter land under this power only at a reasonable
time and on after giving reasonable notice to the owner of the land, unless entry is 
needed in case of emergency or for the purpose of warning the public of, or protecting 
the public from, danger; taking measures to facilitate the exercise of access rights; or 
fulfilling certain duties relating to core paths.

Persons authorised to enter land may take onto land any machinery, other equipment or 
materials required for the purpose for which they are entering the land.

**Section 28: Judicial determination of existence and extent of access rights and 
rights of way**

This section allows persons to apply to the sheriff for a determination of whether access 
rights are exercisable over particular land, of whether persons exercising those rights are 
doing so responsibly or of whether the owner of land in respect of which access rights 
are exercisable is using, managing or conducting ownership in a responsible way.

It further allows persons to apply to the sheriff for determination of whether any path or 
bridleway or other means of crossing land is or is not a right of way by foot, horseback, 
cycle or any combination of these.

In either case, the proceedings are those for an action of declarator initiated by 
summary application to the sheriff. The local authority must receive notice of an 
application and are entitled to be a party to the proceedings.
3. **Section 10 – The Scottish Outdoor Access Code**
   - It is accepted that Local Authority staff should be briefed on the code. The guidance should however make it clear that SNH will have main responsibility for answering detailed queries concerning the details of the code.
   - While it is accepted that Local Authorities should keep records of publicity operations and provide these to SNH where required, it should be the responsibility of SNH to evaluate the effectiveness of this publicity.

4. **Section 11 – Power to Exempt Particular Areas of Land from Access Rights**
   - There is a need for more detailed guidance on procedures to re-enact an Order. It is not clear whether the full consultation procedure will have to be repeated every time an Order is re-enacted.

5. **Section 12 – Byelaws in Relation to Land Over Which Access Rights are Exercisable**
   - It would be helpful if the paragraph dealing with management rules were explicit in stating whether these can be applied to core paths.

7. **Section 14 – Prohibition Signs, Obstructions, Dangerous Impediments**
   - The list of examples of actions which may prevent or deter the public from exercising their access rights should perhaps include ‘allowing an existing hedge to unreasonably encroach upon a path or track’.
   - In the guidance on contacting the owner of the land it should be stressed that minor problems may be most effectively dealt with through informal contact with the landowner in the first instance. A formal notice will not always be necessary and may, where landowners have not deliberately obstructed access rights, create unnecessary antagonism and conflict.
   - It is not clear whether the sample letter in Appendix A is an example of good practice, for guidance only, or whether this is a standard format which should be adopted by all Local Authorities.

8. **Section 15 – Measures for Safety, Protection, Guidance and Assistance**
   - In the background paragraph it should be clear that Local Authorities are not responsible for making the public aware of hazards on all land which is subject to access rights. It may be appropriate to apply these powers in some well used or actively managed locations, but Local Authorities cannot identify all hazardous land throughout their area.
• The list of hazardous land management practices includes stiles in poor repair; dangerous bridges or boardwalks with loose boards; and steps which are broken. These are examples of neglect and lack of maintenance rather than of structures being “constructed or adapted as to be likely to injure a person exercising access rights”. It is questionable whether it would be reasonable to expect a landowner to repair such structures under this Act where the hazard was due to lack of maintenance as opposed to deliberate modifications.

9. Section 16 – Acquisition by Local Authority of Land to Enable or Facilitate Exercise of Access Rights

• It is stated that acquisition of land should be “very much a last resort” powers, not exercised “other than in unusual circumstances”. While compulsory purchase should be considered a last resort it should be recognised that acquisition by agreement is a valid mechanism which may be the preferred option when developing some core paths.

10. Section 17 – Core Paths Plan

• It is stated that “Local Authorities should only consider the provision of core paths for particular categories of users, where there is demand for that use in their area”. In reality this is not practicable. It will not be possible to demonstrate a lack of demand, and once a path is created there will inevitably be some demand from all categories of users. Unless there are overriding physical or safety constraints restricting use of a path to certain categories of users may be contrary to Sections 3 and 14 of the Act.

• The list of types of path refers to minor public roads and to pavements. These terms are inconsistent with the Roads (Scotland) Act 1984.

• Adopted roads and footways will form important links between core paths in a network. It is however questionable whether there would be any advantage to giving them core path status as they already have adequate legislative status under the Roads (Scotland) Act. Designating a route under both the Roads (Scotland) Act and the Land Reform (Scotland) Act is likely to lead to confusion.

• The reference to links to neighbouring Authorities core paths should make it clear that Local Authorities should consult with neighbouring Authorities.

• It is agreed that it would be advantageous to incorporate the core paths plan into the Local Plan, and for both plans to be reviewed simultaneously. There is however perhaps a need for more detailed guidance on the preferred mechanisms for achieving this, particularly the expectation that all issues and representations will effectively be dealt with as part of the preparation of the core path plan rather than in the Local Plan.
11. Section 18 – Core Paths Plan: Further Procedure

- The guidance on use of Path Agreements and Path Orders refers to footpaths, cycleways and bridleways. Use of these definitions is not particularly helpful as all paths will in reality be accessible to all users unless there are overriding physical or safety constraints.

- The list below ‘for example’ states that “other core paths will be implemented in the medium term (2-3 years)”. This implies that all core paths within the plan will be implemented within this timescale. In practice if a comprehensive network sufficient for the needs of the public is to be developed, and Path Agreements are required, it will not be possible to implement all core paths within this timescale.

- Consideration should be given to the desirability of showing future core paths on Ordnance Survey Maps, as the timescale for developing some of these may be considerably longer than the two to three years referred to.

- The use of Local Authority codes in the national referencing system may lead to difficulties in the longer term should there be future changes in Local Authority boundaries or names.

- It is not considered necessary to provide a technical annex on mapping as the output requirements will vary considerably from area to area depending on the local geography. What is more important is to ensure that inputs are consistent, using Scottish Path Record (SPR) as a base, and using standardised attribute fields. Local Authorities require updated guidance on the use of SPR and will require access to the SPR information for neighbouring areas if cross border paths are to be effectively planned.

12. Section 19 – Power to Maintain Core Paths etc.

- The guidance needs to be more explicit in stating which types of activities can be carried out using the powers to maintain core paths under Section 19 powers (to maintain core paths), and which activities will require landowner agreement prior to using Section 15 measures (for safety, protection, guidance and assistance). At the moment it is not clear whether installation of basic structures such as stiles, gates and signposts can be undertaken using Section 19 powers or whether it will be necessary to obtain landowner consent for these operations.

- Local voluntary groups should also be recognised as bodies who may actively manage core paths. Local Authorities will not have the resources to manage extensive networks of paths around all communities, but where local networks are developed and managed by community groups it should be possible to give paths the additional statutory protection offered by core path status.

- The wording of the section dealing with management systems implies that Local Authorities are expected to fund the management of the network from existing resources. Substantial additional financial resources will be required if the network is to be effectively managed.
• The section dealing with promotion of core paths says “Promotional strategies must be developed...” and “Partnerships should be developed...”. These are not duties under the Act and the guidance should be worded accordingly.

Section 26 – Powers of Entry

There is perhaps a need for detailed guidance regarding entry to land whilst performing Local Authority functions. Whilst it is clear that notice should be given under Section 26 before entering land to carry out any physical works, the situation is less clear when entering land to survey potential routes for instance. In many instances the landowner will not yet have been identified when routes are being assessed. Do access rights extend to Local Authority staff when carrying out these duties, or can the provisions of Section 24(3) apply to Local Authority staff who are not formally designated as rangers?

Typographical Errors

• Section 17(2) Resources – Final Paragraph – “brought into fill intended use” should read “brought into full intended use”.

• Section 21 Final paragraph – “solem” should read “solum”.