

**UPHOLDING ACCESS RIGHTS ENFORCEMENT ACTION AND LAND
EXEMPTION APPLICATIONS UNDER THE LAND REFORM (SCOTLAND)
ACT 2003 (PART 1)**

1. SUMMARY

- 1.1** The Land Reform (Scotland) Act 2003 (Part 1) came into force in February 2005 and gives the public a statutory right of access across most land and inland water across Scotland.
- 1.2** The Act places a wide range of statutory duties and powers on local authorities, including the power to exempt land from access rights and a duty and associated powers to uphold access rights (see Background Paper available in Member's Lounge).
- 1.3** These statutory duties and powers have implications for the Council's Scheme of Administration and Delegations and allow for charges to be levied for land exemption applications and reasonable cost recovery to be undertaken when upholding access rights.

2. RECOMMENDATIONS

- 2.1** That Members approve the proposed charges for exemption applications and agree to the recovery of necessary costs in relation to the Council's duty to uphold access rights.
- 2.2** That Members agree that the Scheme of Administration and Delegations be revised as detailed in this report at paragraphs 3.5 and 3.8 to include specific reference to the powers and duties provided by the Land Reform (Scotland) Act 2003 (Part 1) relating to land exemptions and upholding access rights.

3. BACKGROUND

- 3.1** In view of the pending alterations to the Council's Governance Documentation and the accompanying report on the Council Constitution submitted by Corporate Services, this report proposes additional alterations to the Scheme of Administration and Delegations in relation to the Land Reform (Scotland) Act 2003 (Part 1).

Power to exempt land from access rights

Proposed charges

3.2 The following charges for the processing of exemption applications are proposed. It is recommended that 1-5 day exemption applications are free of charge as they are likely to be relatively straightforward, of a similar nature and require minimal Officer time. Public notice will also be provided on site rather than in the local newspaper and therefore no costs will be incurred.

3.3 It is recommended for six-day to two-year exemption applications that a flat fee of £100 is charged for Officer time. However this fee will be subject to monitoring and revision in order to ensure that the full costs of processing applications is obtained. Applications will have to be examined on an individual basis and will require a lengthy, detailed evaluation process comprehensive enough to satisfy Ministers that sufficient consideration has been given to the application. A statutory public consultation process, inviting representations and objections, is also required for each application.

3.4 In addition to the £100 flat fee for Officer time, a £96.30 charge for public notice of a proposed Order and a £117.07 charge for public notice of a confirmed Order are also recommended (the latter fee will only be charged if an Order is granted by Ministers). This charge has been calculated from the average, actual cost of displaying the required public notices in newspapers across Argyll and Bute. Development Control has already set precedents for such charges with regard to planning fee applications.

3.5 **Scheme of Administration and Delegations**
It is also recommended that the delegated powers as laid out in the Scheme of Administration and Delegations for deciding planning applications is applied to land exemption applications. The delegated powers relating to planning application decisions are tried and tested and reflect the level of objections received, the complexity of the application and consistency with the Development Plan. The local authority does not have the power to decide an Order however it is required to provide a recommendation to Ministers. The delegated powers would therefore only relate to the approval or refusal of the recommendation put forward by Council Officers to Ministers. It is therefore proposed that decisions relating to:

- All applications for 1-5 day exemptions would be delegated to the Director of Development Services.

In the case of six-day to two-year exemption applications (initial applications or the revocation, amendment or re-enactment of existing Orders):

- All recommendations for refusal would be delegated to the relevant Area Committee or the Special Committee where an application straddles the boundary of two Area Committees.
- Recommendations for approval and where;
 - No objections are received would be delegated to the Director of Development Services.
 - There are objections from non-statutory consultees or individual small groups of objectors would be delegated to the Director of Development Services in consultation with the Chairman, Vice Chairman and the Local Member of the relevant Area Committee/s.
 - There are objections from statutory consultees and/or a significant number of objections would be delegated to the relevant Area Committee or the Special Committee where an application straddles the boundary of two Area Committees.

Duty to uphold access rights

3.6

Recovery of costs

The Act allows for local authorities to recover reasonable costs incurred by acting to uphold access rights. It is therefore recommended that any landowner that does not comply with a statutory written notice served by the local authority be charged for the cost of carrying out the remedial works. This will include charging for officer time, travel and subsistence costs and the costs of carrying out the actual on the ground remedial works. Travel and subsistence costs and the costs of carrying out the on the ground remedial works will be charged as incurred. Officer time will be charged at a rate of £22.12 per hour for time spent on the enforcement action whilst in the office, travelling and out on site. The hourly rate was calculated in conjunction with the Finance Manager for Development Services.

3.7

This charging is necessary in order for the Council to recoup costs incurred in meeting its statutory duty to uphold access rights and to discourage landowners from acting outside of the legislation. Development Control and Building Standards have already set precedents for such charges with regard to unauthorized works.

3.8

Scheme of Administration and Delegations

It is also recommended that the delegated powers as laid out in the Scheme of Administration and Delegations under Area Committees and General and Specific Delegations to Officers be

applied to enforcement action in connection with upholding access rights, with the exception of decisions to undertake enforcement action which would be delegated to the Director of Development Services without the need for referral to Area Committee. This delegated power is proposed due to the relatively minor anticipated nature of many of the problems expected, the timescales involved and the need to act quickly in relation to the nature of some cases e.g. health and safety, the dialogue and consensus building that will take place prior to enforcement action being taken (which it is hoped will negate the need for enforcement action), the conflict resolution role which will exist within the statutory Local Access Forum and the right of appeal to the Sheriff that the landowner has on receipt of a written notice.

It is therefore proposed that:

- The carrying out of remedial works, which could involve major unplanned expenditure on land under the ownership or control of the local authority, would be delegated to the Public Service and Licensing Committee after consultation with the relevant Area Committee.

The following would be delegated to the Director of Development Services:

- The signing and issuing of a statutory written notice.
- The decision to undertake enforcement action.
- The authorization of Officers to enter onto land to carry out remedial works.
- The authorization of reports for submission to the Procurator Fiscal.
- Dealing with enforcement complaints where no breach of the legislation is found.

4. CONCLUSION

- 4.1** In order for the local authority to effectively deliver its duties and powers relating to land exemptions and upholding access rights, charges will need to be levied and the recovery of costs undertaken.
- 4.2** The Scheme of Administration and Delegations will also need to be revised as detailed in this report at paragraphs 3.5 and 3.8 to include specific reference to the powers and duties provided by the Land Reform (Scotland) Act 2003.

5. IMPLICATIONS

Policy: The application of the powers and duties provided by the Land Reform (Scotland) Act 2003 has implications for the Council's Scheme of Administration and Delegations.

Financial: Charges and cost recovery as detailed above

Personnel: Significant Officer time

Equal Opportunity: N/A

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LIST OF BACKGROUND PAPERS:

1. Paper on exemption applications and upholding access rights (available in Member's Lounge)
2. Land Reform (Scotland) Act 2003 (Part 1)
3. Land Reform (Scotland) Act 2003 (Part 1) – Guidance for Local Authorities