

## **Report Appendix**

**Report Subject/Ref No:LK/HB/NACF/06/02**

**Department: Development and Promotion**

**Appendix Title 2 - Policy on Section 11 Exemption Orders**

Appendix 2

### **Policy on Section 11 Exemption Orders under the Land Reform (Scotland) Act 2003**

#### **Introduction**

Section 11 of the Land Reform (Scotland) Act 2003 provides a mechanism for local authorities, whether on application from third parties or at their own initiative, to exempt a particular area of land from access rights for a particular purpose and for a short period of time. The powers in section 11 are intended to address a number of situations, which range from small to events such as local village fetes, Agricultural shows and larger more organised events such as the golf Ryder Cup.

Local Authorities must consult the owner of the affected land on the proposed Order and any Order which excludes land for six days or more will require public consultation and Ministerial confirmation. All Orders granted must be notified to the public and an Order has effect for a maximum of two years unless re-enacted.

#### **Justification for Orders**

Where an event is to be held on land over which access rights can be exercised, there may be a need to exclude the land from access rights for the duration of the event, and possibly periods immediately before and after.

Where an entry fee is to be levied it is not envisaged that an Order will be required for all such events. It is envisaged that orders should only be considered necessary where:

- There is considered likely to be a problem in imposing a charge for entry from those attending that an order should be considered necessary.
- There is a requirement to enforce the exclusion of land from access rights.

Please note that it is the decision of the individual organisation as to whether or not they apply for an Exemption Order however they should be aware that they will be unable to enforce a charge for access to an event without such an Order.

In general the reasons for exemptions under section 11 should be limited to:

- Allowing a charge to be levied for admission to a particular event
- In the interests of safety and security

- Ensuring the protection of privacy, where the provisions of section 6 of the Act are not deemed sufficient in individual circumstances and the local authority considers the exclusion necessary

Circumstances where exemption would not usually be considered include:

- Reasons of land management as the Act provides sufficient exclusions and further guidance on the responsible exercise of access rights over agricultural land is provided in the Code
- Large country houses or estates seeking an extensive exclusion for their whole estate well outwith any reasonable expectation of what is needed for privacy
- An area of land that is already subject to some management measure prohibiting or restricting access, e.g. where an existing bye-law is in place that deals with the issue
- Where a charge for admission is proposed and the charge is for access only and not for an event

## **Proposed protocol for applications**

All applications must be lodged with North Ayrshire Council and will be processed by Development and Promotion. All applicants will be required to complete the form provided in Appendix A and the application process will be subject to an administration fee. This will cover the administration of the application and the cost of the Public Notice(s) required under the terms of the Act. Application forms will be available from the Access Officers or on-line via Navigate.

It should be noted that in the case of applications for 6 days or more two public notices are required, one on application and one on granting of the Order. All Public Notices will be issued in accordance with the three pro forma provided in the guidance to Local Authorities as highlighted in Appendices B to D.

There are two types of applications to be considered:

1. Applications for 5 or less days
2. Applications for 6 or more days

### **1. Applications for 5 or less days**

The Assistant Executive (Development & Promotion) will process applications under delegated authority where they meet the criteria identified below.

That the application submitted demonstrates that the Exemption Order:

- Is for the purpose of allowing a charge to be levied for an event
- Is required as there are no other reasonable alternatives available
- Is for the minimum period possible

- Is for a community event

The application also must demonstrate that proposals have been fully investigated and provisions have been made for:

- The reinstatement of any footpaths or access rights affected by the closure
- The diversion of access users
- The signage of closure

Where applications do not meet these requirements they will be subject to consultation through the Core Group of the Forum and approval or refusal via a subsequent Committee Report.

## **2. Applications for 6 or more days**

Longer exclusions could relate to entry charges for an event lasting several days or to a permanent visitor attraction. There may be a need to have a mechanism to introduce entry charges where there has been no charge in the past.

This might be needed so as not to undermine the ability of organisations such as the National Trust for Scotland to agree to take on new properties if there is no facility to charge visitors in Order to offset the costs of upkeep of the property. There may also be circumstances where private landowners wish to establish a new business venture such as, for example, a Country Park or arboretum. Another example might be an archaeological site of particular cultural heritage value, which could possibly become an important local visitor attraction.

The Guidance advises that the Local Authority is best placed to decide whether there is a good case for excluding land from access rights in such circumstances. It also advises that Local Authorities should treat these cases on an individual basis and should weigh up issues such as:

- The threat of responsible access to the viability of the enterprise
- The importance of the enterprise to the local economy
- The loss to the public of excluding the land from the access rights

The guidance also highlights that is likely that only in a very few circumstances is an Order likely to be considered appropriate. It also advises that, given the duty of local authorities under the Act to uphold access rights, the power to exempt land for access rights under this section of the Act should be used sparingly and applied in respect of the minimum area of land and for the minimum period necessary. When considering making an Order local authorities should have regard to whether or not alternative routes exist or can be provided to facilitate access over or around land affected by such an Order.

The Council will follow the guidance provided by the Scottish Executive and investigate any applications for longer-term exclusions fully and give

consideration to all of the points raised above. Development and Promotion will process these applications and furnish the Ministers with the necessary information as highlighted in Appendix E. Once an Order is confirmed the Scottish Executive will inform the Local Authority by letter and the Council is then required to place a Public Notice advising the that Order has been granted. It is proposed that Development and Promotion would place this Notice in the appropriate local paper(s).

### **Advising the Public**

To ensure public awareness of the new requirement it is proposed that:

- A leaflet highlighting the application process will be produced and issued to local organisations, Community Councils, Village Improvement Committees and local libraries.
- A press release will be issued to all local newspapers.
- The information and application form will be posted on Navigate.

APPENDIX A – DRAFT APPLICATION FORM

APPLICATION FOR SHORT TERM ACCESS RIGHTS EXEMPTION  
ORDERS UNDER SECTION 11 OF THE LAND REFORM (SCOTLAND)  
ACT

Name of Organisation

Contact name

Contact address

Daytime telephone number

Name of event

Date

Period of closure

Please provide justification that the exemption is for the minimum  
period required

Location of event

Grid reference.

Location of Grid Reference e.g. centre of site/entrance

Please attach a map of the site – this should give some idea the  
location of the site (preferably Ordnance Survey where possible)

Reason for closure

**Please highlight the justification that no alternative provision could be made**

**Is there local or public support for the event**     **Yes**     **No**

**If yes, please highlight below**

**Please detail the proposals for diversion of access users**

**Please detail the proposals for signage of closure**

**Please detail the proposals for the re-instatement of any footpaths or access rights affected by the closure**

Declaration

**I confirm that the details provided above are correct**

**Signed.....**

**Dated.....**

## **APPENDIX B – NOTICE OF PROPOSED ORDER PRO-FORMA**

*[pro-forma notice given under section 11(2)(b) of the intended purpose and effect of a proposed section 11 exemption order]*

***[Name of Local Authority]***

### **NOTICE OF PROPOSED ORDER TO EXEMPT LAND FROM ACCESS RIGHTS**

Notice is hereby given under section 11(2)(b) of the Land Reform (Scotland) Act 2003 (“the Act”) that ***[insert name of Local Authority]*** proposes to make ***[insert name of proposed order]*** (“the Order”) under section 11(1) of the Act.

The effect of the Order will be to exempt ***[insert description of land]*** from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

The purpose(s) for which the Order is being proposed is/are ***[insert details of purpose(s) for which Order is being proposed]***

It is proposed that the Order will take effect from ***[insert date]*** and will expire on ***[insert date]***.

Objections or representations in respect of the Order may be made to the Local Authority at the address given below, for its consideration, no later than [ ] days after publication of this notice. These should be made in writing [and in the case of objections, the grounds on which they are made should be stated].

***[insert contact details of local authority including email address if appropriate]***

## **APPENDIX C – NOTICE OF ORDER (5 DAYS OR LESS) PRO FORMA**

*[pro-forma notice given under section 11(9) of a section 11 exemption order where made without confirmation]*

***[Name of Local Authority]***

## **NOTICE TO EXEMPT LAND FROM ACCESS RIGHTS**

Notice is hereby given under section 11(9) of the Land Reform (Scotland) Act 2003 (“the Act”) that on ***[inset date of making order], [inset name of Local Authority]*** made ***[inset name of order]*** (“the Order”) under section 11(1) of the Act.

The effect of the Order is to exempt ***[inset description of land]*** from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

The purpose(s) for which the Order is made is/are ***[inset details of purpose (s) for which Order has been made.]***

The Order will take effect from ***[inset date – either the date on which it was made or a specified date]*** and will expire on ***[inset date if applicable]***, unless revoked earlier.

## **APPENDIX D – NOTICE OF ORDER (6 DAYS PLUS) PRO FORMA**

*[pro-forma notice given under section 11(9) of a section 11 exemption order where notice requires confirmation]*

***[Name of Local Authority]***

## **NOTICE OF ORDER TO EXEMPT LAND FROM ACCESS RIGHTS**

Notice is hereby given under section 11(9) of the Land Reform (Scotland) Act 2003 (“the Act”) that on ***[inset date of Ministerial confirmation]***, the Scottish Ministers acting under section 11(7) of the Act confirmed the ***[inset name of order]*** (“the Order”) [with modifications], proposed by ***[inset name of Local Authority]*** under section 11(1) of the Act.

The effect of the Order is to exempt ***[inset description of land]*** from the access rights which would otherwise be exercisable in respect of that land by virtue of Part 1 of the Act.

The purpose(s) for which the Order is made is/are ***[inset details of purpose (s) for which Order is being proposed]***

The Order will take effect from ***[inset date]*** and will expire on ***[inset date if applicable]***, unless revoked earlier.

## **APPENDIX E – MINISTERIAL CONSIDERATION OF ORDERS**

In considering whether to confirm any Order the Scottish Ministers will wish to be satisfied that:

Where a charge is to be levied for admission that the charge is necessary to the viability of the visitor attraction and the loss of public access can be justified in terms of other benefits to the local community

Adequate consideration has been given to the demand for access in the area affected by the proposed Order

Consideration has been given to the provision of alternative routes

The local authority has provided the Scottish Ministers with copies of all objections or representations received on the proposed Orders and that the authority can justify proceeding with the proposed Order in light of any objection or representation

The local authority has undertaken the consultation requirements set out in section 11 of the Act on the proposed Order prior to submitting it for confirmation

The purpose and effect of the Order is clearly defined and is proportionate to the issue it seeks to address.

## **Committee Reports and Agendas**