Moving and Closing Paths

About Access Rights · https://scotways.com/ken/house-right-of-way-divertion/



You’re out enjoying a wander down your favourite path when you come across a sign saying diversion. Is it legitimate? Can a path actually be closed or diverted? Yes, it can, but there are processes to follow.

Before exploring how a path might be closed or moved, it’s important to note that doing so does not necessarily mean that people will be excluded from that area. If access rights are exercisable over the land which the path crosses, then the public might still be able to use the route legally by non-motorised means, even if the actual path has been moved or closed.

Why might paths need to be closed or diverted?

A path may need to be changed to allow some type of development or work to be carried out, to improve the use of, or properly manage, the land, or to move the path to a better location. The reason for the change governs the processes that need to be used. The change may be permanent or temporary.

> **Temporary diversions and closures**
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> A short-term change to a path that may last hours, days, weeks or months in some cases. In the case of mining, it may last years!
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> **Permanent diversions and closures**
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> A permanent change to a path. For example, where a building is to be erected across the line of an existing path.

Formal or informal

There are formal processes to follow for permanent and many longer-term temporary closures/diversions, but it may be that an informal process could be used for short-term, temporary closures/diversions, such as asking people to stop walking along a path whilst a tree is cut down or maintenance work is being undertaken.

Your starting point is always to discuss any proposed change to a path with the local authority access team for your area.

Informal Processes

Where an informal process is appropriate, a good pragmatic process for the temporary closure or diversion of paths – albeit one without the same legal standing as a formal process – involves:

- the publication of a notice in the local press or Council website, setting out those paths that will be closed/diverted for a temporary period, the estimated duration of, and rationale for, the closure/diversion, as well as confirming that the path/s will be re-opened along their original alignment on completion of associated works. The notice should also describe any recommended alternative route;
- the posting of (1) site notices in similar terms at either end of the affected sections of the path/s and (2) signs directing users along any recommended alternative route;

- notifying the relevant community council/s, local ward councillors and any other relevant body (including the Local Access Forum and, if appropriate, ScotWays), in advance, of the closures and their effect.

Such a process ensures the public, particularly the local community and those who normally use the path/s or might be affected by their closure or diversion, is aware of the situation in advance.

For closures/diversions of short-term duration required to address urgent land management issues that have arisen unexpectedly, such as fallen trees or escaped livestock, it may be sufficient for land managers to post site warning notices and sign alternative routes.

Formal processes

Formal processes should be followed whenever possible for longer-term closures/diversions, as they allow for consultation, public comment and, in some instances, independent scrutiny.

There are a range of laws that include provisions for the diversion and closure of paths, and which piece of legislation is used depends upon the reasons why the paths are to be closed or moved.

However, not every reason for wanting a path closed or moved is supported by law. For example, when people suffer from anti-social behaviour they can want a path closed or moved. It is seen as the quick and obvious solution, but no law in Scotland recognises antisocial behaviour as a reason to close or divert a path. Instead, the existing laws and powers for combating anti-social behaviour should be used.

Legislation allowing paths to be diverted or closed

The following acts all include provisions to move or close paths. Which one should be used in any particular case will depend upon the reason for the moving or closure of the path and moving or closing the path may not change the access rights that apply to the land it crosses.

Countryside (Scotland) Act 1967.
Roads (Scotland) Act 1984.
Town and Country Planning (Scotland) Act 1997, as amended.
Land Reform (Scotland) Act 2003.
Road Traffic Regulation Act 1984.
The Compulsory Purchase of Land (Scotland) Regulations 2003.

Other pieces of legislation may control how a path is used and thus may effectively close a path to some or all types of users, such as provisions relating to defence considerations.

Each of these pieces of legislation may have associated schedules or regulations that set out the exact procedure that needs to be followed such as The Road Traffic (Temporary Restrictions) Procedure Regulations 1992 and The Road Traffic (Temporary Restrictions) Procedure Amendment (Scotland) Regulations 2005. Read more about Temporary Restrictions on the Cycling UK website.

Who applies the legislation will depend on why the path in question is to be closed or diverted. In most cases, it will be a department of the local authority, but in some cases, it may be Transport Scotland or the Secretary of State. Land managers cannot themselves apply the legislation.

Path closures/diversions proposed under these different pieces of legislation are known as ‘orders’. They will be made (promoted) by the responsible authority and they may be approved by the same authority or may need to be referred to Scottish Ministers.

I need to close the path for safety reasons

An assessment may be made of a path under other legislation such as the Health and Safety at Work Act 1974 and its subsidiary legislation. The outcome of that may be that a path is recommended for closure. However, there are no provisions within any health and safety legislation to close a path, so once the need to close it has been established, one of the above pieces of legislation would need to be applied to actually make the closure.

Can paths be moved to allow a development to happen?

Yes, but not until the relevant planning application has been approved and a diversion order has been made and confirmed under the Town and Country Planning (Scotland) Act 1997. Ken can tell you more.

Is a diversion or closure acceptable?

Possibly. Each case needs to be looked at on its own merits. What may be acceptable in one case may not be acceptable in another. The key consideration is to try to ensure that outdoor access provision is no worse off after the diversion or closure than it was before. In the case of proposed developments requiring the benefit of planning permission, this will be a material consideration in the determination of the relevant planning application.

Things to consider include how the proposed change will affect the overall path network. Does the path itself have any special characteristics such as its historical, cultural or transport associations or special landscape value that should be considered? Is it an informal/unsurfaced, but important, shortcut through to a bus stop or an established recreational route offering a longer but more scenic alternative to a more direct, low-level route?
The criteria ScotWays uses to determine whether a proposed diversion is considered acceptable include:

- the diversion should be of at least an equivalent standard,
- it should not be significantly longer,
- it should be no less convenient,
- it should be accessible to at least the same categories of access users as use it at present,
- it should be available for use before the present route becomes unavailable.

Don’t forget access rights.

Whilst it is possible to move a right of way, core path or even a public road, it is quite possible that access rights will still apply to the underlying piece of ground. This means that while the path may go people may still have the right to be on the land or to cross it legally by non-motorised means.

There is a path close to my house which local people say is a right of way. Can I divert the route so as to protect my privacy?

No: landowners/managers cannot themselves divert rights of way unless it is urgently necessary to do so in the very short term to address a land management issue that has arisen suddenly and unexpectedly, e.g. a fallen tree or flooding. You would need to ask the local authority - and it would need to agree - to make and confirm a diversion order before the right of way could be diverted. Privacy is not a reason given in any legislation that justifies moving or closing a path. You would need to demonstrate that there is another acceptable reasoned justification for the diversion to happen, such as to make more efficient use of the land the path crosses or provide a shorter or more convenient path across the land.