Legislation

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Here is the legislation that Ken is aware of that affects outdoor access. If you spot something that is missing let ScotWays know.

The Bookshelf - Legislation

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- Legislation 1840-1849

Defence Act 1842

Section 17 of the Defence Act 1842 allows the Secretary of State, without consultation, to divert any right of way that crosses land covered by this Act. Any path closed must be replaced under this legislation. Solely closing a route without a replacement is not an option.

- Legislation 1860-1869

Defence Act 1860

Section 40 of the Defence Act 1860 allows the Secretary of State without consultation, to stop up or divert any highway (road) covered by a notice to take land for defence purposes.

- Legislation 1890-1899

Military Lands Act 1967

Section 13 of the Military Lands Act 1892 modifies the Roads (Scotland) Act 1984 powers to stop up roads to include dealing with those roads that cross or run inconveniently or

dangerously close to military land.

- Legislation 1950-1959

Land Powers (Defence) Act 1958

Section 8 of the Land Powers (Defence) Act 1958 allows the Secretary of State to make orders to stop up or divert highways (roads and rights of way) through the use of the provisions of the Town and Country Planning (Scotland) Acts.

- Legislation 1960-1969

Countryside (Scotland) Act 1967

The Countryside (Scotland) Act 1967 created the august organisation of the Countryside Commission for Scotland, the never used access to open country regulations and power to create long-distance routes and public paths. It confirmed the duty of the local planning authorities, local councils to protect rights of way first created in 1894. It also includes powers to signpost, maintain and authorise the installation of stiles on public rights of way.

> It shall be the duty of a local planning authority to assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area, and they may for these purposes institute and defend legal proceedings and generally take such steps as they may deem expedient.
> Countryside (Scotland) Act 1967 Section 46(1)

- Legislation 1970-1979

Prescription and Limitation (Scotland) Act 1973

The Prescription and Limitation (Scotland) Act 1973 codified the common law and brought the period of time that the use of a route created a right of way down from 40 years to 20 years (section3(3)).

Ancient Monuments and Archaeological Areas Act 1979

The Ancient Monuments and Archaeological Areas Act 1979 is the primary piece of legislation which makes provision for the investigation, preservation and recording of matters of archaeological or historical interest. It is where the list of Schedules Ancient Monuments comes from. Sections 19 and 20 cover public access to areas of land covered by this legislation and for the provision of facilities for the public.

- Legislation 1980-1989

Civil Aviation Act 1982

The Civil Aviation Act 1982 is legislation that consolidates different legislation relating to civil aviation. The Scottish version of section 48 gives the Secretary of State the power to stop up and divert highways etc. in the interests of civil aviation.

Roads (Scotland) Act 1984

The Roads (Scotland) Act 1984 is an important piece of legislation for whilst it does not apply to core paths, it does apply to rights of way and through the interpretations in section 151 to all rights of way by making them fall under the definition of a road. The Act also provides powers to maintain, divert, close and remove obstructions on roads.

> ""road" means, subject to subsection (3), any way (other than a waterway) over which there is a public right of passage (by whatever means and whether subject to a toll or not) and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof;"
> Roads (Scotland) Act 1984 Section 151

There are three exceptions to the above. Public paths created under the powers of the Countryside (Scotland) Act, long-distance routes approved by the Secretary of State for Scotland and paths on land owned by a local authority and used for a variety of purposes defined by section 14 of the Local Government and Planning (Scotland) Act 1982.

The Road Vehicles (Construction and Use) Regulations 1986

Designed to ensure vehicles are properly constructed and safely used, the Road Vehicles (Construction and Use) Regulations 1986 are not an obvious choice of legislation that could affect rights of way or access to the outdoors. In fact, it is the “safe use of” aspect of the Regulations that is of interest. Section 103 makes obstructing any road unnecessarily with a vehicle an offence.

- Legislation 1990-1999

Criminal Justice and Public Order Act 1994

The Criminal Justice and Public Order Act 1994 contains provisions for “public order, collective trespass or nuisance on land” that were created to deal with new-age travellers, field sport saboteurs and environmental protest groups. There could be implications for access takers although the Scottish Office Circular of the time said: “While there may be circumstances in which it could be alleged that hill walkers, etc., are disrupting a lawful activity merely through their presence on land, the Crown Office has indicated that procurators fiscal are likely to confine themselves to taking proceedings against persons who can be said to have acted with the specific and ulterior motive and intention of obstructing or disrupting, or intimidating persons engaged in lawful activities.”

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Scotland) Act 1997 deals with all types of development, Part IX Roads, Footpaths and Rights of Way provides measures for closing or diverting rights of way and core paths to allow development to proceed. It is important to note that planning permission for the activity that needs a right of way or core path to be moved must have been granted BEFORE an order to close or divert a right of way or core path can be made.

- Legislation 2000-2009

Transport Act 2000

The Transport Act 2000 has a tangential effect on outdoor access. It gives operators of some airports and landing strips the same status as the Civil Aviation Authority in terms of air traffic control and thus allows the operation of the Civil Aviation Act 1982 on lands not operated by the Civil Aviation Authority.

The Land Reform (Scotland) Act 2003

The Land Reform (Scotland) Act 2003 is a groundbreaking piece of legislation that creates a right of access to all land and inland water in Scotland, subject to access being taken in a responsible manner as set out in the Scottish Outdoor Access Code. The Act excludes some areas of land from access rights, does not apply to the majority of motorised vehicles and excludes some types of conduct. There are rights and responsibilities for both access takers and land managers.

The Land Reform (Scotland) Act 2003 (Modification) Order 2005, SI 2005 No 65

The Land Reform (Scotland) Act 2003 (Modification) Order 2005, SI 2005 No 65 adjusted section 7 of the Land Reform (Scotland) Act 2003 to include areas of woodland for growing trees, but excludes land used for growing tree seedlings.

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Land Reform (Scotland) Act 2003) 2005, SI 2005 No 61

The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Land Reform (Scotland) Act 2003) 2005, SI 2005 No 61 made some procedural changes to Section 14, 15 and 28 processes.

The Land Reform (Scotland) Act 2003 (Path Orders) Regulations 2007, SI 2007 No 163

The Land Reform (Scotland) Act 2003 (Path Orders) Regulations 2007, SI 2007 No 163 sets out the format that a path order under Section 22 of the Land Reform (Scotland) Act should take.

- Legislation 2020-2029

Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021

The Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021 amends the Dogs (Protection of Livestock) Act 1953 in respect of offences in Scotland and since the beginning of November, dog owners face far higher penalties if their dog attacks or worries livestock. You can read a short analysis of the implications of this Act on the Brodies LLP website .