The Complexity of the Law

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No piece of legislation exists in total isolation. To get the full picture when deciding on a course of action an access officer may need to cross reference several pieces of legislation. For example.

Section 208 of the Town and Country Planning (Scotland) Act 1997 (TCPSA) can only be used for the permanent stopping up or diversion of footpaths, bridleways or core paths. For the purposes of the TCPSA, footpaths and bridleways have the meaning assigned to them by s. 47 of the Countryside (Scotland) Act 1967 (CSA):

> 1. "bridleway" means a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along that way; and
> 2. "footpath" means a way over which the public have the following, but no other, rights of way, that is to say, a right of way on foot with or without a right of way on pedal cycles.
>
> *Countryside (Scotland) Act 1967*

S.208 orders can only be made in respect of rights of way or core paths and not other access routes. This is reinforced by the Land Reform (Scotland) Act 2003 (LRA) inserting at the end of s.47 of the CSA the phrase "and references to a right of way do not include references to access rights within the meaning of section 1 of the Land Reform (Scotland) Act 2003 (asp 2)".

S.14 of the Road Traffic Regulation Act 1984 (RTRA), as implemented by the Road Traffic (Temporary Restrictions) Procedure Regulations 1992, gives discretionary powers to roads authorities in Scotland to make orders, known as Temporary Traffic Regulation Orders (TTROs), to "restrict or prohibit temporarily the use of [a] road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, to such extent and subject to such conditions or exceptions as they may consider necessary" if "works are being or are proposed to be executed on or near the road" or "because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works". For the purposes of the RTRA, in Scotland, "road" has the meaning assigned to it by the Roads (Scotland) Act 1984, viz. "any way (other than a waterway) over which there is a public right of passage (by whatever means)". As, by definition, a public right

of passage exists over public rights of way, rights of way may be closed or diverted temporarily by means of a TTRO under the RTRA. However, the LRA states that “access rights do not constitute a public right of passage for the purposes of the definition of “road” in section 151(1)…of the Roads (Scotland) Act 1984”. Consequently, TTROs may only be used to temporarily close or divert core paths if the core paths follow public roads or rights of way.

Easy, isn’t it?