

Part 2 ACCESS RIGHTS

A summary of your access rights

- 1 Everyone, whatever their age or ability, has access rights established by the Land Reform (Scotland) Act 2003. You only have access rights if you exercise them responsibly.
- 2 You can exercise these rights, provided you do so responsibly, over most land and inland water in Scotland, including mountains, moorland, woods and forests, grassland, margins of fields in which crops are growing, paths and tracks, rivers and lochs, the coast and most parks and open spaces. Access rights can be exercised at any time of the day or night.
- 3 You can exercise access rights for recreational purposes (such as pastimes, family and social activities, and more active pursuits like horse riding, cycling, wild camping and taking part in events), educational purposes (concerned with furthering a person's understanding of the natural and cultural heritage), some commercial purposes (where the activities are the same as those done by the general public) and for crossing over land or water.
- 4 Existing rights, including public rights of way and navigation, and existing rights on the foreshore, continue.
- 5 The main places where access rights do not apply are:
 - houses and gardens, and non-residential buildings and associated land;
 - land in which crops are growing;
 - land next to a school and used by the school;
 - sports or playing fields when these are in use and where the exercise of access rights would interfere with such use;

Scottish Outdoor Access Code, 2005

- land developed and in use for recreation and where the exercise of access rights would interfere with such use;
- golf courses (but you can cross a golf course provided you don't interfere with any games of golf);
- places like airfields, railways, telecommunication sites, military bases and installations, working quarries and construction sites; and
- visitor attractions or other places which charge for entry.

6 Local authorities can formally exempt land from access rights for short periods. Local authorities and some other public bodies can introduce byelaws.

7 Access rights do not extend to:

- being on or crossing land for the purpose of doing anything which is an offence, such as theft, breach of the peace, nuisance, poaching, allowing a dog to worry livestock, dropping litter, polluting water or disturbing certain wild birds, animals and plants;
- hunting, shooting or fishing;
- any form of motorised recreation or passage (except by people with a disability using a vehicle or vessel adapted for their use);
- anyone responsible for a dog which is not under proper control; or to
- anyone taking away anything from the land for a commercial purpose.

8 Statutory access rights do not extend to some places or to some activities that the public have enjoyed on a customary basis, often over a long period of time. Such access is not affected by the Land Reform (Scotland) Act 2003 and will continue.

Introduction

2.1 The Land Reform (Scotland) Act 2003 establishes access rights and these must be exercised responsibly. This part of the Code summarises where and when you can exercise these rights and for what purposes, and lists those areas where, and activities to which, access rights do not apply. Understanding the extent of access rights will help you to exercise them responsibly.

Where and when you can exercise access rights

2.2 Everyone, whatever their age or ability, can exercise access rights over most land and inland water in Scotland, at any time of day or night, providing they do so responsibly². These rights do not extend to all places or to all activities (see paragraphs 2.11 to 2.15). Provided you do so responsibly (see Parts 3 and 5 of the Code), you can exercise access rights in places such as:

- hills, mountains and moorland;
- woods and forests;
- most urban parks, country parks and other managed open spaces;
- rivers, lochs, canals and reservoirs;
- riverbanks, loch shores, beaches and the coastline;
- land in which crops have not been sown;
- on the margins of fields³ where crops are growing or have been sown;

² Sections 1 and 2, Land Reform (Scotland) Act 2003

³ Section 7(10) of the Land Reform (Scotland) Act 2003 states land on which crops are growing does not include "headrigs, endrigs or other margins of fields in which crops are growing".

Scottish Outdoor Access Code, 2005

8

- grassland, including grass being grown for hay or silage (except when it is at such a late stage of growth that it is likely to be damaged);
- fields where there are horses, cattle and other farm animals;
- on all core paths agreed by the local authority⁴;
- on all other paths and tracks where these cross land on which access rights can be exercised;
- on grass sports or playing fields, when not in use, and on land or inland water developed or set out for a recreational purpose, unless the exercise of access rights would interfere with the carrying on of that recreational use;
- golf courses, but only for crossing them and providing that you do not take access across greens or interfere with any games of golf;
- on, through or over bridges, tunnels, causeways, launching sites, groynes, weirs, boulder weirs, embankments of canals and similar waterways, fences, walls or anything designed to facilitate access (such as gates or stiles).

2.3 You can also exercise access rights above⁵ or below the land (for example, you can exercise access rights in the air and in caves). Access rights apply under water as well as on the surface.

2.4 You can exercise access rights at any time of the day or night, provided you do so responsibly. The Code provides specific guidance on responsible access at night (see paragraphs 3.19 and 3.20).

⁴ Local authorities must produce, within three years of the legislation coming into force, core path plans setting out their proposals for a system of paths – called “core paths” – sufficient for the purpose of giving the public reasonable access throughout their areas.

⁵ Subject to any regulations governing the use of air space in any particular place.

- 2.5 Access rights do not apply on some types of land and these are described in paragraph 2.11. Where some land management operations are taking place, such as crop spraying or tree felling and harvesting, you might be asked to avoid using particular routes or areas for your own safety (see paragraphs 3.24 to 3.28). In some places, local authorities and some other public bodies may have introduced byelaws or other statutory regulations which might affect how you can exercise access rights (see paragraph 2.11).

What you can do under access rights

- 2.6 You can exercise access rights for recreational purposes, some educational activities and certain commercial purposes, and for crossing over land and water.
- 2.7 “Recreational purposes” is not defined in the legislation. It is taken to include:
- **pastimes**, such as watching wildlife, sightseeing, painting, photography and enjoying historic sites;
 - **family and social activities**, such as short walks, dog walking, picnics, playing, sledging, paddling or flying a kite;
 - **active pursuits**, such as walking, cycling, horse riding and carriage driving, rock climbing, hill-walking, running, orienteering, ski touring, ski mountaineering, caving, canoeing, swimming, rowing, windsurfing, sailing, diving, air sports and wild camping; and
 - **participation in events**, such as walking or cycling festivals, hill running races, mountain marathons, mountain biking competitions, long-distance riding events, orienteering events and canoeing competitions.
- 2.8 Access rights extend to any educational activities concerned with furthering a person’s understanding of the natural or

cultural heritage⁶. For example, access rights would extend to the students, leader and any support staff on a visit to the outdoors to learn about wildlife or landscapes or geological features. People carrying out field surveys of the natural or cultural heritage, such as of birds or plants, as a recreational activity or for educational purposes, are covered by access rights (see paragraph 3.64).

2.9 Access rights extend to activities carried out commercially or for profit, provided that these activities could also be carried on other than commercially or for profit (ie by the general public for recreational purposes or for educational activities or for crossing land). For example, a mountain guide who is taking a customer out hill-walking is carrying on a commercial activity but this falls within access rights because the activity involved – hill-walking – could be done by anyone else exercising access rights. The same would apply to a canoe instructor from a commercial outdoor pursuits centre with a party of canoeists. Other examples would be a commercial writer or photographer writing about or taking photographs of the natural or cultural heritage.

2.10 Access rights can also be used to cross land and inland water. This means going into land or inland water, passing over it and then leaving it for the purpose of getting from one place to another place, and is not limited to recreational purposes or educational activities. Access rights for recreational purposes, for relevant educational activities and for relevant commercial purposes refer to going into, passing over and remaining on land or inland water for these purposes and then leaving it.

⁶ Section 1, Land Reform (Scotland) Act 2003. Natural heritage is defined as including the flora and fauna of the land, its geological and physiographical features and its natural beauty and amenity. Cultural heritage is defined as including structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes.

Where do access rights not apply?

2.11 Access rights do not apply in the following places⁷.

- Land on which there is a house, caravan, tent or other place affording a person privacy or shelter, and sufficient adjacent land to enable those living there to have reasonable measures of privacy and to ensure that their enjoyment of the house or place is not unreasonably disturbed. The extent of this land may depend on the location and characteristics of the house (see paragraphs 3.13 to 3.17).
- Gardens which are separated from houses but only accessible to the residents who have common rights in them (these are usually found in cities such as Edinburgh and Glasgow).
- Land on which there is a building or other structure or works, plant or fixed machinery, and land which forms the curtilage of a building or which forms a compound or other enclosure containing any structure, works, plant or fixed machinery. Examples of non-residential buildings and structures include: farm buildings and yards; animal and bird rearing pens; sports centres, pavilions and stands; club houses; factories; warehouses and storage areas; military bases and other installations; pipelines; chemical and other processing plants; canal locks and lifts; water treatment and sewage works; horticultural nurseries; and, fish farms and hatcheries.
- Land in which crops have been sown or are growing⁸. Crops are taken to include cereals (such as wheat and barley), vegetables (such as potatoes, turnips and cabbages), fruits

⁷ Sections 6 and 7, Land Reform (Scotland) Act 2003

⁸ However, you can exercise statutory access rights on the margins of fields, along paths and tracks, and on any unsown ground (see paragraphs 2.2 and 3.35 to 3.37).

(such as strawberries and raspberries). Grass being grown for hay or silage and which is at such a late stage of growth that it is likely to be damaged by you exercising access rights is a crop (see paragraph 3.37).

- Grass sports pitches or playing fields whilst they are in use for their intended purpose (for example, you cannot exercise your access rights on a grass football field whilst there is a football match in progress).
- Any sports pitch or playing field with an artificial surface (such as synthetic grass or rubber), whether or not in use.
- On golf greens, bowling greens, cricket squares, lawn tennis courts or other similar area on which grass is grown and prepared for a particular recreational purpose, whether or not in use.
- Land or water that has been developed or set out for a recreational purpose, whilst in use and where your exercise of access rights would interfere with the recreational use intended for that land, such as horse racing gallops⁹.
- On land contiguous to any school and used by that school (such as a playing field).
- Places where you have to pay to go in¹⁰, such as castles, historic houses and gardens, historic sites, and visitor attractions.

⁹ Section 7 (8) of the Land Reform (Scotland) Act 2003 states that this does not include land on which groynes have been constructed, deepening of pools has been undertaken, fishing platforms have been erected or where other works for the purposes of fishing have taken place. Access rights can therefore be exercised in these places.

¹⁰ Section 6 (1)(f) of the Land Reform (Scotland) Act 2003 states that these are places where the public were admitted only on payment on at least 90 days in the year to 31 January 2001 and on at least 90 days in each year thereafter.

Scottish Outdoor Access Code, 2005

- Building, civil engineering or demolition sites.
- Railway and airfield infrastructure and airports.
- Working quarries and other surface workings.
- Land or water where public access is, by or under any other legislation, prohibited, excluded or restricted. This would normally be for safety grounds or public security reasons¹¹. In some places, byelaws, management rules or other regulations may have been introduced by a local authority or other similar public body and these may affect how you can exercise access rights. All byelaws need to be consistent with the access provisions in the Land Reform (Scotland) Act 2003¹².
- Land exempted from access rights through an order made by a local authority (for exemptions lasting for six or more days, the order needs to be confirmed by Ministers and be subject to public consultation)¹³.

¹¹ For example, military bases and other installations. On other land or water managed by the Ministry of Defence there is usually a presumption in favour of recreational access wherever this is compatible with the primary military purpose. Follow any local information on access to such land. See Part 5 for further information.

¹² Local authorities and some other public bodies (see paragraph 6.7) can introduce byelaws. Section 30, Land Reform (Scotland) Act 2003 states that all byelaws must be reviewed and, if necessary, modified by the appropriate local authority or public body so that they are consistent with the provisions in the Act. This must be done within two years of the Act coming into force.

¹³ Section 11, Land Reform (Scotland) Act 2003. This power might need to be used for some sporting events, such as motorised hill trials, car rallies and water skiing competitions, and some other events, such as agricultural shows, car boot sales, music festivals, wedding receptions and events involving the sale of goods or catering.

What activities are excluded from access rights?

2.12 Access rights must be exercised in ways that are lawful and reasonable. By definition this excludes any unlawful or criminal activity from the time at which it occurs. Furthermore, being on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court is excluded from access rights. This means that a person intent on such a purpose is excluded from access rights at the time they seek to enter the land. This is also taken to include the carrying of any firearm, except where the person is crossing land or water to immediately access land or water, or return from such, where shooting rights are granted, held or held in trust or by any person authorised to exercise such rights.

14

2.13 A list of the more obvious statutory offences relating to people's behaviour is provided at Annex 1. This list includes poaching, vandalism, not clearing up after your dog has fouled in a public place, being responsible for a dog worrying livestock, dropping litter, polluting water, and disturbing wild birds, animals and plants. There are also common law offences, such as breach of the peace.

2.14 The Land Reform (Scotland) Act 2003 excludes some other conduct from access rights¹⁴, including:

- Hunting, shooting or fishing. These activities still require the permission of the relevant owner.
- Motorised activities, such as motor biking and scrambling, off-road driving, the use of any powered craft on water, microlighting, and the use of powered model craft. These activities still require the permission of the relevant owner or manager. Access rights, however, do extend to a person

¹⁴ Section 9, Land Reform (Scotland) Act 2003

with a disability who is using a motorised vehicle or vessel built or adapted for use by that person¹⁵.

- Being on or crossing land while responsible for a dog that is not under proper control (see paragraph 3.55).
- Being on or crossing land or water for the purpose of taking away, for commercial purposes or for profit, anything in or on the land or water (for example, mushrooms or berries picked for commercial use, or gravel and stones).

What about public rights of way and navigation?

2.15 Public rights of way are different from access rights and have been recognised in Scots law for centuries and are a valuable part of our cultural heritage. For a right of way to be established under the common law, it must run from one public place to another public place along a more or less defined route (it need not be an identifiable path), and it must have been used openly and peaceably by the public, otherwise than with the permission, express or implied, of the landowner, for at least 20 years. Many rights of way have been established for walkers only, but some have been established for use by horse riders and cyclists, and a small number exist for motorised vehicular use.

2.16 All public rights of way will continue to exist¹⁶ and are unaffected by the Land Reform (Scotland) Act 2003¹⁷. You can exercise access rights over public rights of way where these routes pass over the land listed in paragraph 2.2. Where a public right of way passes over land excluded from access rights, such as the land associated with a building or land on which crops are growing, you can still use the route as a right

¹⁵ Subject to the Highway Code being adhered to.

¹⁶ Information on rights of way is available from local authorities. Also see www.outdooraccess-scotland.com for links to other appropriate bodies.

¹⁷ Section 5, Land Reform (Scotland) Act 2003

of way. Although access rights do not extend to the use of motorised vehicles, you can still use a vehicular right of way where it has been established.

- 2.17** Existing public rights of navigation will continue on navigable lochs and rivers.

What about public rights on the foreshore?

- 2.18** Public rights on the foreshore¹⁸ and in tidal waters will continue to exist. These have not been fully defined but include shooting wildfowl, fishing for sea fish, gathering some uncultivated shellfish, lighting fires, swimming, playing on the sand and picnicking. Access rights also extend to these places.

What about activities and places not covered by access rights?

16

- 2.19** Provided you exercise them responsibly, access rights established by the Land Reform (Scotland) Act 2003 are wide-ranging in terms of the places and activities that they extend to. Nonetheless, access rights do not apply to some places where the public have enjoyed access perhaps over a long period of time. Examples include passing through some farmyards and across some dams. Certain activities that are not included in statutory access rights have also been practiced for a long time by the public, such as gathering natural berries or fruit for personal use or sledging on some golf courses. Such access and activities are not affected by the Land Reform (Scotland) Act 2003.

¹⁸ The foreshore is the land between the upper and lower ordinary spring tides.