

Summary of the Scottish Access Legislation

The **Land Reform (Scotland) Act 2003** received Royal Assent in February 2003 after lengthy debate in the Scottish Parliament. The Scottish Outdoor Access Code was approved by the Parliament in July 2004. The Act, and Code, came into effect on 9 February 2005.

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Section 1 - Access Rights

“Everyone has the statutory rights established by this part of the Act”

These are the rights to be on (for the purposes below) and to cross land.

Land includes all land, plus inland water and intertidal foreshore, plus above or below land.

The right may be exercised only:

- for recreational purposes;
- for the purposes of carrying on a relevant educational activity, or;
- for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit.

“Relevant educational activity” is defined as an activity which is carried out for the purpose of furthering the person’s understanding of natural or cultural heritage, or enabling or assisting any other persons to further their understanding of the natural or cultural heritage.

Section 2 - Access rights to be exercised responsibly

..if they are exercised so as not to cause unreasonable interference with any of the rights of any other person, inc access rights, rights associated with land ownership, etc.

Section 3 - Obligations of owners –

Duty to use and manage land and to conduct ownership in a way which respects access rights.

Section 4 - Modifications of Sections 2 and 3

These are provisions for Ministers to modify any provisions of sections 2 (Access rights to be established responsibly) and 3 (Reciprocal obligations of owners), and for the purposes of these sections, any of the provisions of sections 9 (conduct excluded from access rights), 14 (duty of local authority to uphold access rights) and 23 (ploughing of paths).

Section 5 - Access Rights, reciprocal obligations, etc.

This section confirms that the 'liability' situation remains unchanged, with a statement that the extent of the duty of care owed by a land occupier to anyone on that land is not affected by the Bill.

Section 6 - Land over which access rights are not exercisable

Land over which access rights are not exercisable includes:

- a building or other structures or works, plant or fixed machinery
("Structures" is later defined as not including bridge, tunnel, causeway, launching site, groyne, weir, boulder weir, embankment of canalised waterway, fence or wall or anything designed to facilitate passage).
- curtilage of buildings other than houses, works compounds, schools;
- around houses, sufficient adjacent land for a reasonable measure of privacy, and for the enjoyment of the house not to be unreasonably disturbed;
- land developed or set out as a sports or playing field, or for a particular recreational purpose;
- that excluded by virtue of past entry by payment (the 90 day rule);

Section 7 Provisions Supplementing and Qualifying Section 6

Section 6 does not prevent or restrict the exercise of access rights over any land which is a core path.

Section 6, where applicable to sports or playing fields or land developed for a particular recreational purpose, applies only if they are being used for that purpose, or at all times for prepared areas like golf greens, bowling greens, cricket squares, synthetic pitches etc.

The Section 6 "90 day rule" on admission by payment does not prevent the exercise of access rights by classes of persons who have not previously paid for access within the terms of the 90 day ruling.

(Plantations of trees even at an early stage of growth are now within access rights).

Grassland is not exempt from access rights, except for hay and silage which is at such a late stage of growth that it is likely to be damaged by exercise of access rights.

Headrigs, endrigs and other margins of fields where crops are growing are not

defined as crops, whether sown or unsown, and are therefore within access rights.

Section 8 - Adjustment of land excluded from access rights

Ministers may by order modify any of the provisions of sections 6 & 7.

Section 9 - Conduct excluded from access rights

The following conduct is outwith access rights:

- hunting, shooting, fishing;
- on land when responsible for dog or other animal not under proper control;
- taking things away from the land for commercial purposes or for profit;
- being in or with a motorised vehicle or vessel (other than one constructed or adapted for use by a person who has a disability, being used by that person);
- Being on a golf course for recreation, although a right of passage still applies.

Section 10 Scottish Outdoor Access Code

SNH has a duty to draw up and issue the Code and this requires guidance to be issued on stated circumstances in relation to access rights.

It is the duty of SNH and LAs to publicise the Code and for SNH to promote understanding of it.

Section 11 - Power to exempt particular land from access rights

This provides powers to LAs to exempt land by Order from access rights. Before making orders, LAs will have to consult landowners and local access forums, give public notice, invite objections.

If the exclusion is to last for 6 days or more Ministers must approve the Order. If for five days or less, the LAs need not involve Ministers.

A Minister-approved exemption order can last a maximum of 2 years.

Section 12 Byelaws

LAs can make byelaws over access land for various purposes, eg. preserving public order, preventing damage or nuisance, conserving natural or cultural heritage.

Section 13 Duty of local authority to uphold access rights

It is the duty of LAs to assert, protect and keep open any route, waterway or other means by which access rights can reasonably be exercised.

LAs do not have to pursue the above duty if it is inconsistent with carrying out other LA functions.

Section 14 Prohibition signs, obstructions, dangerous impediments

Landowners must not prevent or deter access users by erecting any signs or notices; putting up fences, walls, hedges; positioning at large any animal; undertaking agricultural or other operations, or any other actions.

LAs can remove any such notices or carry out other remedial action if needed.

Section 15 Measures for safety, protection etc.

LAs can warn of hazards, and can require that any fences, walls etc which may be a risk of injury (eg barbed wire, sharp material, electric) should be remedied to remove risk of injury.

LAs can install gates, stiles, seats toilets etc anywhere with landowners' agreement, and moorings and launch sites have been added to structures which can be installed and maintained by LAs.

In exercising powers under this section, LAs shall have regard to the extent to which existing facilities assist persons to exercise access rights, and have regard to the needs of persons with disabilities.

Section 16 Acquisition by Local Authorities

LAs can acquire land for access purposes either by agreement, or compulsorily if approved by Ministers.

Section 17 Core Paths Plan

LAs have a duty to draw up a core path plan within 3 years.

Core paths may include right of way; paths, footways, footpaths, cycle tracks; paths which are or may be covered s20 path agreements and s21 path orders; and other routes, waterways or other means by which persons may cross land.

The core path plan will have regard to the likely usage and desirability of paths, and a balance with landowner interests.

Section 18 – Core Path Plans: further procedures

Section 18 gives further guidance on drawing up the core path plan, giving notice, adopting it, appeals and inquiries, and Ministerial input when needed.

LAs need to compile a list of core paths but this does not require to indicate the extent of public rights.

Section 19 Power to maintain core paths

The LA may do anything which they consider appropriate for the purposes of:

- Maintaining a core path;
- Keeping a core path free from obstruction or encroachment;
- Providing the public with directions to, or with an indication of the extent, of a core path.

Section 20 Review and amendment of core path plans

Core path plans must be amended by LAs

- As such times as they consider appropriate;
- On ministers requiring them to do so.

After reviewing a core path plan, it may be amended to remove or divert core paths or add further core paths, but only after consideration for the likely use of the core path and the effect on land served by the core path.

A core path plan must be amended following core path stopping up or diversion orders under s208 of the TCPS 1997 Act.

Sections 21 Path Agreements for land subject to access rights

LAs have the power to enter into a path agreement for the delineation, creation and maintenance of the path. There is no requirement to register the agreement.

Section 22 Path Orders for land subject to access rights

LAs have the power to make path orders which delineate existing or new paths, in circumstances where path agreements are impracticable, and must maintain existing paths and create and maintain new paths delineated in this way. (Schedule 1 to the Bill gives further procedures on this).

Section 23 Ploughing etc

Where core paths and rights of way are disturbed by ploughing or other activities for reasons of good land husbandry, the owner of the land or path must reinstate the core path or right of way within 14 days. It is an offence not to reinstate and LAs may on notice undertake the reinstatement themselves and recover the cost, if the owner does not comply.

Section 24 Rangers

LAs may appoint rangers to advise and assist land owners and members of the public with access rights.

Section 25 Local Access Forums

It is a duty for each LA to establish for its area a local access forum for the following functions:

- To advise the LA and other persons or bodies consulting the forum on access rights, rights of way and core path plans;
- To offer assistance to parties in any disputes about access rights, rights of way, core path plans and the use of core paths.

More than one local access forum may be established for the area of a local authority.

Section 26 - Powers of entry

Local authorities are empowered to authorise persons to enter land, at reasonable times and after giving notice unless for an emergency or to do with a core path, and to take relevant equipment with them.

Section 27 Guidance

Ministers may give guidance to local authorities on the performance of any of their functions over access rights, having consulted and put it before Parliament. It can apply generally or to a particular LA, and the LA must have regard to it.

Section 28 Judicial determination of existence and extent of access rights and rights of way

Applications can be made to the sheriff to declare whether:-

- land is exempt or not from access rights;
- a person is exercising access rights responsibly;
- an owner is managing land responsibly;
- a path is a right of way.

It also sets out rules of procedure over the role of the LA and other parties, and for notification.

Section 29 Powers to protect natural and cultural heritage

SNH may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable.

Any notice put up may warn persons of any adverse effect that their presence on the land, or any activities they might conduct there, might have on the natural heritage sought to be protected.

A similar power for Scottish Ministers in respect of cultural heritage applies to cultural heritage.

Section 30 Existing byelaws providing for public access to land

It is the duty of all authorities having existing byelaws relating to public access land in respect of access rights to review those byelaws within 2 years, and modify them to remove any inconsistencies with the new access rights.

Section 31 Application of section 15 to rights of way

This confirms that sections 14 and 15 above apply to rights of way by foot, horseback, pedal cycle or any combination of these as well as to general access rights.

Section 32 Interpretation

This provides definitions for various terms used, eg. 'core path' means a path, waterway or other means of crossing land such as is mentioned in section 17; the term 'local authority' includes the National Park authority for a national park which is designated as such when the legislation comes into force.

Schedule 2 (at end of Bill)

This specifies all the amendments and repeals of other sections of other acts arising from this Bill, including the Countryside (Scotland) Act 1967, and the Conservation (Natural Habitats etc) Regulations 1994.

For further advice on access legislation, please contact Rob Garner at Rob.Garner@snh.gov.uk, 0131 446 2490.