



A Draft Scottish Outdoor Access Code

Public access to the outdoors: rights and responsibilities



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Access to the outdoors: a national asset to enjoy and look after

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The Scottish Outdoor Access Code

Introduction

As part of the consultation exercise on the draft Land Reform (Scotland) Bill, the Scottish Executive is inviting comments on the draft Scottish Outdoor Access Code. The draft Bill provides for a right of access to land and to inland water, subject to those exercising the right complying with the Scottish Outdoor Access Code. In order to gain a full understanding of the proposed new arrangements, the draft Bill and Code should, be read together. Although the Code is not legislation it will require the approval of the Scottish Parliament before it comes into force.

The draft Code provides detailed guidance on how the right of access will work on the ground. However, the intention is to provide a summary version for general public use. It is also likely that short codes will be prepared covering specific recreational activities such as canoeing or horse riding.

Background

In October 1997 the Government invited Scottish Natural Heritage (SNH) to review the legal arrangements for access to the countryside and to make recommendations. SNH decided to involve the Access Forum in this exercise.

In December 1998, following extensive consultation, SNH submitted its advice that there should be a right of responsible access to all land and inland water in Scotland for the purposes of informal recreation and passage. SNH recognised the need for measures to protect privacy and to safeguard legitimate land management and nature conservation interests. The then Secretary of State, in February 1999, accepted the SNH advice as a basis on which to prepare draft legislation. He asked SNH to draft a Code providing guidance on responsible behaviour by those exercising the new right and on the part of land managers. SNH again decided to involve the Access Forum in the drafting of this Code that is now known as the Scottish Outdoor Access Code.

Consultation Exercise

During this consultation exercise we are inviting comments on all aspects of the draft Code as well as on the balance between the provisions set out in the draft Bill and those in the Code.

Summary

Comments on the draft Scottish Outdoor Access Code should be sent by 18 May 2001 to

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Ministers may wish to publish the responses to this paper. Should you wish your comments to be treated in confidence, please make this clear. However, all responses may be included in non-attributable summaries of comments received and views expressed.

Further copies of the Code may be obtained by contacting the above-named person.

Preface

Scotland has a long-standing tradition of tolerance and respect towards people's need to move freely through the outdoors, and this has been recognised by the courts. This freedom of access enables people to enjoy the outdoors for a wide range of recreational activities provided no damage or disturbance is caused. The proposed legislation enshrines this tradition as a statutory right of access.

The Government recognises that most land and water is privately-owned and is a place of work, from which many people earn their living and in which the welfare of livestock and wildlife is important. The right of access, therefore, must be exercised responsibly so that it is integrated with farming, forestry, field sports, conservation and recreation. It is also vital that people's reasonable expectations of privacy are respected and that the quality of our environment is safeguarded.

Land managers will have an obligation to permit people to enjoy this right of responsible access. They can also help to facilitate access where this is compatible with their work. Public bodies have a key role to play in making the right of access work to everyone's satisfaction. Adequate resources will be essential for ensuring that the whole package of proposals is implemented.

Balancing these rights and responsibilities is a challenge for all concerned and will demand sustained effort supported by information, promotion and education. The present draft *Scottish Outdoor Access Code*, which has been prepared by the Access Forum and Scottish Natural Heritage, is intended to provide the reference point for responsible behaviour under the new legislation. It is a detailed document which indicates how the right of access is expected to operate in most situations. It is also the starting point for the much shorter codes which, at a later stage, will be needed for general public use and for specific interest groups.

The legislation establishes a right of access over land and inland water for recreation and passage. The right does not apply to certain restricted areas or to certain buildings and their curtilages, and is conditional on people exercising it responsibly. The right can be exercised by anyone at any time of day or night. The new *Scottish Outdoor Access Code* provides a comprehensive statement of what is expected, from all interests, in implementing the right of access. It is designed to build upon the observed fact that the vast majority of people wish to behave responsibly in the countryside and already do so. The Code is based on the following key principles:

Key principles

- The right extends to all land and inland water and to all recreation activities, except where there are specific qualifications in the legislation and agreed guidance on how people are expected to exercise it.
- The public, land managers and public bodies all have a key role to play in making the right of access work and their responsibilities must be clear.
- The exercise of the right of access must be integrated with operations associated with farming, forestry, field sports, conservation and recreation. People are not expected to exercise the right in all places and at all times.
- All forms of damage are to be avoided. Some disturbance is inevitable but much of this is accidental and causes little impact. If someone causes damage or significant disturbance and fails to modify their behaviour when asked to do so, they forfeit the right of access and may legitimately be asked to leave.
- In exercising the right of access people must take responsibility for their actions.
- People exercising the right of access must respect other people's reasonable expectations of privacy.
- Land managers must permit people to exercise the right but can advise people about how and where they should exercise the right of access in relation to specific management operations.
- The need for land managers to observe good management practice, to maintain the viability of their businesses and to safeguard people's safety should be respected.

1. Introduction

a. Purpose of the Code

1.1 Scotland's outdoors, which extends from the open spaces in our towns to the remote and wild areas of land and water in the Highlands, provides great opportunities for informal, open air recreation. The right of access will enable people to visit and enjoy the outdoors secure in the knowledge that they are entitled to be there, provided that they exercise the right responsibly.

1.2 On the roads, we follow the *Highway Code* which brings together and explains a variety of rights and responsibilities. The *Scottish Outdoor Access Code* seeks to do the same for public access to the outdoors by:

- summarising and interpreting the public right of access;
- describing what constitutes responsible behaviour for people exercising the right, for land managers and for public bodies; and by
- advising people where to find out more and how to get help if a problem occurs.

1.3 The Code seeks to influence what people do on the ground when exercising the right of access and what land managers can do to help make it work. Although the focus of the Code is on the public and on those who manage land and water, the Code also sets out the important role that public bodies can and must play.

b. The status of the Code

1.4 This draft Code has been prepared by Scottish Natural Heritage and the Access Forum, and has been endorsed by the Scottish Executive. Scottish Natural Heritage must publicise the Code and keep it under review.

1.5 The Code plays a key role in determining whether or not someone is exercising the right of access responsibly. The law already provides sanctions against a wide range of irresponsible or criminal activities and these will continue. The new legislation lists a number of activities which would exclude someone from exercising the right of access (see section 2 of this Code).

c. Key terms

1.6 The Code makes widespread use of the following terms:

Land is all land and inland water on which the right of access can be exercised. Inland water includes any inland, non-tidal loch or non-tidal river, lake or reservoir, whether natural or artificial and whether navigable or not, and includes the bed and the shores or banks. The term also includes canals and the foreshore. The term also includes bridges and other structures built on or over land.

Land manager includes the owner and occupier of the land, as well as those acting on their behalf. The term includes farmers, landowners, crofters, foresters, riparian owners, fishery owners and their representatives, and managers of recreational and conservation sites.

Public body is a term which includes Government Departments, local authorities, government agencies (eg. local enterprise companies, the tourist board network, the water authorities, Forestry Commission, sportscotland and Scottish Natural Heritage) and any body established by these organisations to further their aims, such as a trust or charitable company.

Outdoors is all land and inland water outwith buildings and their curtilages. The term includes mountains, moorland, farmland (enclosed and unenclosed), forests, woods, rivers, lochs and reservoirs, the seashore and open spaces in towns and cities.

2. The public right of responsible access

2.1 The legislation provides for a public right of access to and over land and inland water, exercised responsibly, for recreational purposes and for crossing over land and water. This part of the Code explains what this means and describes the main qualifications on the right.

a. Exercising the right of access: where and for what purposes

2.2 Anyone can exercise the right, provided this is done responsibly:

- over all land in Scotland, apart from the exceptions listed at paragraph 2.7-2.14;
- as an individual, either on your own or in a group, club outing or event;
- at any time of the day or night;
- for the purposes of recreation or for crossing land .

2.3 The right allows you to be on land for recreational purposes and it allows you to cross such land. The right allows you to go onto land, to pass over it and to remain on it for recreational purposes, provided that you then leave it, ie. the right does not allow you to stay on land indefinitely. You can exercise the right above or below the land, as well as on its surface. Thus, the right extends to people wishing to go caving or diving as well as undertaking non-powered air sports.

2.4 The legislation does not define what is meant by “recreational purposes” but it is taken to include any lawful activity, pursuit or pastime which depends on the natural qualities of the outdoors for its enjoyment, is practised by the individual for his or her own personal benefit and is pursued in a responsible and peaceable manner. The right of access does not extend to motorised forms of recreation (see paragraph 2.16). Furthermore, for example, although the right of access applies to canoeing down a river it does not entitle anyone to take a motor vehicle and trailer over land in order to launch a canoe. Specific advice for groups, organised activities and events is provided at paragraphs 2.18 to 2.29 and for access outwith daylight hours at paragraph 2.9 and 3.10. Examples of recreation include:

- pastimes, such as bird watching, sightseeing, painting and photography;
- family and social activities, such as short walks, picnics, playing on a beach, sledging and paddling; and
- active pursuits, such as walking, cycling, horse riding, rock climbing, hill-walking, ski touring and mountaineering, caving, canoeing, swimming, rowing, windsurfing, sailing, diving and air sports.

2.5 Crossing over land or water – passage - is taken to be a journey, for a lawful purpose, from one place to another. Passage can be exercised by means such as walking, cycling, horse riding, canoeing and ski touring. Staying overnight is often an important part of either the recreational experience or necessary if journeying over longer distances. For this reason, the right entitles you to camp overnight but you must follow some additional responsibilities when camping (see paragraph 5.2).

b. Restrictions on where you can exercise the right of access

2.6 The right of access is not unlimited or unqualified. There are restrictions on where you can exercise the right as explained below.

2.7 The exemption of buildings and their curtilages from the public right of access provides a basic safeguard for people’s privacy and safety. The extent of a curtilage will depend on the size, setting and use of the building, though in most cases it should be reasonably obvious on the ground. Examples of buildings and their curtilages include:

- dwelling houses and associated gardens
- farm buildings and yards
- factories, warehouses and storage areas
- horticultural nurseries
- schools and school play grounds
- sports centres, clubhouses and associated facilities (including tennis courts, bowling greens, synthetic sports pitches and private swimming pools)
- holiday homes, caravan parks, chalet parks
- dams and spillways
- fish hatcheries and farms

2.8 For most houses, the curtilage of a house will be reasonably obvious on the ground but for some houses, such as those in the country with amenity land around them, the extent of the curtilage may be less obvious. In these cases, you should judge where it is reasonable to go and not to go. For example, you could exercise the right through woodlands and farmland surrounding a house up to the point where the intensity of management means that the grounds have become the garden to the house, ie. the curtilage of the house. Guidance on respecting people's privacy is provided at section 3.9-3.10.

2.9 When you are exercising the right close to a building and its curtilage, especially at dusk or later, you must respect the reasonable expectations of privacy of those who live or work there - and their concerns about security and safety - and not interfere with any work activity, or act in any way which might cause concern or alarm (see paragraph 3.9 and 2.30).

2.10 As farmyards fall within the definition of curtilage, the right of access does not apply to such places. However, access through farmyards is often important and so you can continue to take access through farmyards on the existing basis. This means that you can expect to pass through a farmyard if a right of way (see paragraphs 2.29-2.30) or other established route runs through it, or if the farmer gives his express or implied consent. You should take special care to avoid machinery or livestock. If a route is signposted around the farmyard and buildings you should follow this.

2.11 The right of access cannot be exercised over land on which crops are growing. However, you can exercise the right around the margins of any field in which crops are growing, over grassland and in woods and forests (provided that the trees are not too young and easily damaged). Nor can you exercise the right over sports pitches, playing fields or other recreational areas (such as golf courses) when these are in use.

2.12 There are some places where public access is restricted by the law on the grounds of health, safety or the national or public interest. Although many of these places would fall into the definition of a building and its curtilage, they are taken to include: working mines and quarries; military areas; dams, intakes, spillways and other areas of hazard at reservoirs; construction sites; transport routes and facilities (eg. airfields, railway lines), and the safety zone around major chemical plants.

2.13 Some places are managed in such a way that they become managed attractions, with car parks, visitor centres, tearooms and educational facilities, for which an entry charge is payable. The right cannot be exercised in such places though the legislation lays down special conditions on the type of places that could be excluded.

2.14 Finally, it is important to remember that the outdoors is a working environment in which a wide range of management operations take place, such as crop spraying, tree harvesting and deer stalking. This Code explains that whilst the right of access applies over the land on which these operations are occurring, you should exercise the right in a responsible way by following the general advice in this Code and any local guidance developed from it (see section 3 of the Code).

c. Restrictions on what you can do when you exercise the right of access

2.15 The right of access does not extend to anyone who is doing anything which is an offence. A list of activities which are currently proscribed by the law is provided at Annex 1.

2.16 The right of access does not extend to any form of motorised recreation, such as motor biking and scrambling, off-road driving, water skiing, jet skiing and the use of any powered boat. These activities, however, can continue to be exercised with the consent of the land manager and any vehicular rights of way on land and rights of navigation on water will continue. The one exception is the use of motorised wheelchairs, which is permitted.

2.17 The legislation, for the avoidance of doubt, lists various types of irresponsible or criminal conduct which are excluded from the right of access. Many of these are already proscribed by the law but some are not. They are designed to ensure that the important interests of other people and of the outdoors are protected. Those listed in the legislation are:

- killing, taking or wilfully harming or disturbing any creature or taking, damaging or wilfully disturbing any place used by such a creature for living in, sleeping, breeding or refuge;
- threatening, abusing or insulting (whether by words or behaviour) the owner of the land or anyone else lawfully present there;
- lighting a fire or doing anything likely to cause damage by fire;
- taking away anything in or on the land;
- damaging the land or anything on or in it;
- wilfully interfering with any drains, ditches, fences, gates or other means of land or land-use management;
- depositing or leaving rubbish or litter;
- having charge of a dog or other animal which is not under proper control;
- bathing in non-tidal water in contravention of a notice of prohibition displayed with the approval of the local authority;
- in respect of canals, swimming, diving, sailing and wind surfing.

d. Groups, organised activities and events **2.18** The right of access for informal recreation and passage applies to everyone. In practice, many individuals will exercise the right in the company of others. This can vary from groups of friends, family or club members to educational and training groups and to taking part in some sort of event. Groups vary in number from two or more to more than a hundred. Both groups and events can provide excellent opportunities to inform and educate people about the outdoors and about responsible behaviour.

2.19 Generally, the larger the group or event, the greater is the risk of potential damage to the outdoors or significant disturbance to land management operations or other recreational uses. Group and event organisers must think carefully about the effects that their group might cause (see paragraphs 3.5 to 3.10 for further guidance). Organisers should be particularly aware that the ability of the outdoors to accommodate numbers of people without damage or disturbance arising, and the incidence of land management operations and other recreational uses varies from place to place and from time to time.

2.20 If you are in a **group of family or friends**, there are no special obligations beyond those for individuals (see section 3). As a general rule, the larger your group the more you need to think about the impacts you and your group might cause (for example, parking cars, disturbance to people's privacy, or disturbance to farm animals).

2.21 **Club and educational outings**, such as hillwalking club meets, canoeing club meets, Duke of Edinburgh Award groups and school visits, usually involve a degree of organisation, are often planned in advance, and can involve a larger number of people. Accordingly, the more organised your activity or the larger the group or event, the greater is the expectation that you consult with appropriate land managers.

2.22 This means that you are expected to consult where appropriate and when practicable, especially when:

- you wish to make intensive or non-transitory use of a particular place;
- you wish to visit a particular place at a sensitive time of the year (for example, hillwalking during the stalking season or canoeing down a popular fishing river during the fishing season);
- there are particular safety concerns (such as a group of young children visiting a farm).

You must consider carefully any advice given on how to minimise disturbance. In practice, you might need to adjust the location or timing of your intended access to avoid problems and consider breaking your group into smaller groups to minimise disturbance. Organisers should ensure that members of their group are aware of the Scottish Outdoor Access Code.

2.23 All events are organised to a greater or lesser degree, but the scale and degree of organisation can vary enormously. Some events are non-competitive, dispersed, require no facilities or services and involve only a few people in any one area (for example, charity walks organised by Boots Across Scotland). Other events are competitive, concentrated, require services and can disrupt land management operations (for example, the West Highland Challenge for charity and the Karrimor International Mountain Marathon).

2.24 Regardless of the event, all organisers must follow the guidance for club and educational outings (see paragraph 2.21-2.22) and be prepared to remedy any damage which arises (eg. any gates, stiles or fences broken or damaged during the event, any ground damage caused by the event which will not recover naturally). You must consult and obtain the consent of the appropriate land manager(s) in good time where your event:

- requires the use or provision of facilities and services to support it (for example, car parking, fencing, signposting, the provision of litter bins, shelters, marked courses, check points, toilets, a first aid post or the provision of refreshments);
- involves start and finish points (where there will be a concentration of participants) or would result in the concentration of people for other reasons (such as spectating);
- requires the suspension of land management operations, or would result in significant disruption of such operations.

2.25 In planning any major event, the organiser(s) must:

- ensure that transport arrangements are compatible with the capacity of the local road system and parking space and make arrangements to minimise any delay, annoyance or disturbance if problems are likely to arise;
- ensure that the privacy of local residents is not disturbed and take steps to minimise any such effects – liaising carefully and acting on people’s concerns can help to promote a good image for the event;

- ensure that the safety needs of participants, spectators and other persons (including other types of recreational user who might be present on or around the site) have been addressed;
- ensure that any intensive use of land or water does not occur at sites which are easily damaged and take advice on any implications which the event might have on sites of nature or cultural conservation value;
- ensure that your event does not result in the pollution of water supplies or in damage to the watercourse environment;
- provide for litter management, during and after the event, and toilets if needed;
- be willing to modify aspects of the event to reduce the likelihood of damage or disturbance being caused;

2.26 There is a large number of education and activity holiday centres throughout Scotland. The provision and operation of these centres normally requires a high degree of organisation, regardless of whether a centre operates commercially or for wider public benefit. Activities organised by such centres are usually frequent and regular, and may also require the regular use of particular types of place, such as a particular river, loch or cliff, near to the centre. This can result in impacts falling on a few land managers and so the centre must liaise regularly with these managers. Where a particular place or route is being used by a centre on a very frequent and/or intensive basis (for example, a route used on a daily or weekly basis to gain access to a climbing crag), the centre must consult the appropriate land manager(s). Special regard must also be paid to individuals and small groups who wish to exercise the right of access in these areas.

2.27 Most of us who enjoy the outdoors are not responsible for its management but we value its qualities and make use of its resources as of right. That raises a responsibility on all of us, including the organisers of groups and events. Making direct contributions, financially or in kind, to bodies concerned with the care of the resources that you enjoy can be one very helpful way of putting something back. This applies particularly if you charge people for the services that you provide (for example, outdoor activity centre, providing guided walks or rides; bike hire establishments, riding establishments). This can help to enhance the relationship between visitors, land managers and local communities, and help to demonstrate a commitment by users towards the care of the resource on which their activity is dependent.

2.28 When a land manager is contacted by the organiser of a group or event, the land manager should aim to:

- provide clear and constructive advice;
- provide consent unless the event is likely to result in significant disruption to their operations and/or the organiser has taken insufficient steps to address concerns raised;
- request financial support only if services are being provided or where the disruption to management operations is likely to result in financial costs;
- give advice or permission, as required, as quickly as possible.

Rights of way

2.29 Rights of way, whose existence has been recognised in Scots law for centuries, are part of the social and cultural heritage of Scotland. They will continue to give the public unqualified rights of passage from one public place to another. The majority of rights of way are recorded as: “vindicated” if they have been subject to a legal declarator; “asserted” if they are recorded by local authorities as meeting the conditions to be a right of way; or, “claimed” if they have no formal status but are known to have been used by the public in the past and continue to be used. There are three different user categories of rights of way: for pedestrians, horse riders and vehicles. The rights of cyclists are not clearly defined in law, but are generally considered to equate to those of horse riders, unless past use justifies otherwise.

2.30 In some cases, rights of way pass through the curtilages of dwelling houses and farms, thus giving legal and unqualified access along the route in such settings. Diversions can, however, be negotiated to respect the privacy of those living there.

3. The responsibilities of the public

3.1 You must exercise the right responsibly: you share the countryside with others who earn their living from it, who live there or who enjoy it in other ways, and with Scotland's diverse wildlife. By being responsible, your enjoyment of the outdoors can be safely integrated with operations associated with farming, forestry, field sports, conservation or other forms of recreation. This will help to ensure that land managers continue to make their living, that people's safety is not compromised, and that people's privacy is respected. It will also ensure that the right remains a national asset of which Scotland can be proud.

3.2 The Code defines responsible behaviour as "*...acting with awareness, care and responsibility, and following the Scottish Outdoor Access Code and the law, in order to avoid damage and significant disturbance to the interests of other people and to the outdoors..*". Being responsible means thinking about the needs of others and the outdoors, and then acting with care. It is about making informed decisions about what it is reasonable to do in particular situations. Damage and disturbance are defined below:

damage is where actual injury or loss is caused. Examples of damage could include worrying of livestock, knocking down a drystone dyke, polluting water, breaking a fence or the trampling of crops.

disturbance is where an interruption or inconvenience is caused. Examples of disturbance could include the blocking of a gate, walking through a game of golf, interrupting a stalk, preventing an angler from casting safely, or preventing animals or birds from feeding, roosting or breeding in their preferred sites.

3.3 By following the Code, you should be able to avoid causing damage or disturbance. To this end, the Code sets out a number of specific responsibilities. Taken together, these define how you can exercise the right of access responsibly. They apply regardless of your activity and the type of place you are in – you should follow them at all times. They are summarised below and explained thereafter.

- think ahead about how to minimise your impact and be willing to modify your behaviour;
- respect people's privacy and peace;
- take personal responsibility for your own actions;
- respect the needs of other people enjoying the outdoors;
- help land managers to work safely and effectively;
- keep your dog under proper control;
- safeguard your environment;
- put something back into the outdoors; and
- follow the Scottish Outdoor Access Code and any local guidance.

Think ahead about reducing the risk of impact and be willing to modify your behaviour

3.5 Much of the damage or disturbance caused by people enjoying the outdoors is unintentional or accidental. This is often because your impacts can vary greatly depending on:

- **the size of your group** – the level of impact may reflect the number of people in your group;
- **the type of countryside you are visiting** – some places, like riverbanks, high mountain tops, sand dunes and marshes, can be more easily damaged than other places;
- **the type of activities you are undertaking** – cycling, for example, can have different impacts from horse riding or canoeing;
- **your interaction with other users** – the outdoors accommodates many types of recreation and the needs of those pursuing them are as legitimate as yours;
- **the time of year** – land management activities vary throughout the year and some, like lambing, deer stalking and fishing, have specific seasons;
- **the frequency of use** – you may not be the first or last person to pass through; the cumulative effect of individual visits can create problems for other people.

3.6 You can think ahead by learning more about the countryside and your rights and responsibilities, and by actively seeking out information and advice on where best to go at particular times of the year. The Hillphones service, for example, provides up-to-date information on where deer stalking is taking place on a particular day for some of the popular hills.

3.7 Having sought out information and thought about possible impacts, you should then consider whether you need to change the nature and timing of your visit in order to minimise impacts. For example, if you are canoeing during the fishing season or hillwalking during the deer stalking season, you will need to act with greater care to avoid unreasonably disturbing these activities. If you are responsible for a large group, you might need to break up into smaller groups. If you intend to make regular or intensive use of a particular place, you should speak to the appropriate land managers and see if this would cause them any particular problems.

3.8 During your visit, you might need to modify your route or activity if:

- local information suggests the need to do so during specific land management operations or periods;
- someone with good reason suggests that continuing along a path or with a particular recreational activity might result in damage or disturbance;
- a land or water management operation is already underway.

3.9 The extent to which you might need to modify your route or activity will depend on the circumstances at the time. For example, if a land management operation, such as crop spraying or tree harvesting, is taking place along your intended route you should, as appropriate, either keep closely to paths or follow any local diversions and safety signs.

Respect people's privacy and peace

3.10 People are entitled to a reasonable measure of privacy and peace in their own home and garden. Thus, the right of access does not extend to the curtilage of a house (see section 2.7 -2.8). If someone's garden is quite small or if a house is easy to view, it is very important to give people the reassurance that they are not being overlooked or observed in an obtrusive way. Generally, you should keep as far away from houses as is reasonable and practicable but if you are exercising the right of access close to a house you must:

- show extra care and restraint, by not lingering or doing anything that might cause alarm, at dusk or at night;
- pass by in a direct but unobtrusive way;
- consult the owner, and take heed of any advice given, if you wish to undertake a recreational activity which might cause concern or alarm, especially at dusk or later;
- always act openly but with discretion.

3.11 Courtesy and consideration to all are good manners and are fundamental to fostering good relations between those enjoying the outdoors and those who live and work there, and also between those taking part in informal recreation. You should also show courtesy and consideration by keeping noise to a minimum, going carefully along country roads and parking your car so as to avoid inconvenience to others.

Take personal responsibility for your own actions

3.12 The right of access does not increase the duty of care owed by land managers for peoples' safety, but it could result in an increase in the number of accidents by encouraging more people to engage in informal recreational activities and widening the range of places that they visit in doing so. You should exercise the right of access at your own risk and take responsibility for your own actions. You should also remember that informal, open-air recreation activities do carry a degree of risk and that the outdoors cannot and should not be made risk-free.

Respect the needs of other people enjoying the outdoors

3.13 The right of access will allow more shared use of paths and give some recreational activities new opportunities to use land or water. Some activities are not covered by the right, such as motorised recreation, but usually have the permission of the land manager. Where this is the case, these activities are just as valid as those exercised under the right of access. Thus, you should recognise, respect and act on the concerns and requirements of those participating in all the recreational activities which take place in the outdoors.

Help land managers to work safely and effectively

3.14 The outdoors provides a livelihood for many people. Damage and disturbance can cost land managers both time and money. The legislation lists a number of things that you must do in order to protect the interests of land managers, including:

- not exercising the right over land on which crops or young trees are growing;
- not lighting a fire or doing anything that is likely to cause damage by fire;
- wilfully interfering with any drains, ditches, fences, gates or other means of land or land-use management.

3.15 In exercising your right of access, you can also help land managers to work safely and effectively by:

- not disturbing or interfering with livestock
- reporting any problems that you see (such as livestock on a road or in a dangerous location)
- leaving machinery alone
- leaving all gates as you find them
- using gates and other access points where these have been provided
- parking away from entrances to fields and buildings
- not blocking narrow roads and farm tracks

3.16 For specific management operations, such as crop spraying or tree harvesting, land managers can advise you to avoid:

- using a particular route or area for the duration of the relevant operation (such as for the spraying of crops with acid or other harmful chemicals); or
- doing particular activities – it might be safe for someone to walk through or around a field but not to picnic or pick things up (such as when slurry has been applied to a field).

3.17 You must follow this advice if it seems reasonable and practicable. You should expect to be provided with such advice in areas where public access is quite common or where the operation is particularly hazardous. In more remote areas or for less hazardous operations you should not necessarily expect to receive such advice but you should be alert to such operations taking place and take necessary precautions.

Keep your dog under proper control

3.18 Dogs not under proper control can cause serious problems, including the worrying of livestock, disturbance to wildlife and alarm to other members of the public. Furthermore, dog dirt is unhealthy and unhygienic as well as unpleasant. Thus, you must have your dog under proper control. To do this, you must keep your dog:

- out of fields where there are cows and calves present
- out of fields where vegetables for human consumption are growing
- on a short lead, if there is no alternative route available, in fields where sheep, lambs and other livestock are present

- off sports pitches
- on a short lead in areas where ground nesting birds are breeding (normally between April and June);
- under close control at all other times and on a lead at busy places;

3.19 You must also ensure that dog dirt is disposed of safely, particularly when you are in places that are well frequented by the public (such as parks and play areas), on paths, near to sports pitches and on golf courses, and near water supplies.

Safeguard your environment

3.20 Scotland's natural heritage is valued by many people and provides the resource or backdrop for all of the activities covered by the right of access. The natural heritage can be sensitive to certain impacts and so you must take special care to avoid damaging it. You must:

- leave the outdoors as you find it
- watch but not disturb wildlife, especially during the breeding season
- not damage plants and trees.

3.21 Some places, such as riverbanks and lochshores, marshes and bogs, high mountain tops and plateaux, dunes and steep slopes, can be more sensitive to damage than other places. Wildlife can be particularly vulnerable to disturbance during the breeding season and during the winter. In such places and at such times, you should act with greater care. Many sensitive wildlife sites are already well-managed, with information and interpretation provided to help minimise the risk of damage or disturbance; you should always follow any advice that is given.

3.22 The outdoors can be very sensitive to all forms of pollution. Broken glass, tins and plastic bags are dangerous to people and animals and are unsightly. Clean water supplies are essential for both people and wildlife. You must:

- take all your litter home with you
- keep all water clean (remember that some people get their drinking water direct from streams or springs)
- only urinate or defecate where there is no risk to human health and follow good practice in burying waste.

3.23 Scotland's cultural heritage also contributes greatly to our enjoyment of the outdoors, but some historic buildings, archaeological features or ancient monuments are easily damaged. Some sites already provide information and interpretation provided to help minimise the risk of damage or disturbance; you should always follow any advice that is given. Other sites are less obvious but may still require great care. In exercising your right of access, you must not:

- climb on buildings or other structures;
- dig or disturb the ground surface;
- interfere with an archaeological dig in any way;
- remove anything from the site;
- disturb or rebuild any wall, structure or other features.

Put something back into the outdoors

3.24 Wherever possible, you should support the local economy of the area you visited by purchasing goods and services locally. You can also make a positive contribution by learning more about the outdoors, by supporting or joining organisations which seek to conserve and enhance Scotland's heritage, and by getting involved in local projects that aim to plant trees or to mend fences and walls or to repair path erosion. Commercial groups which enjoy the right of passage, indeed other businesses which benefit from their customer's enjoyment of open-air recreation, should find ways of making a contribution to the care of the resource on which their business depends.

Follow the Scottish Outdoor Access Code and any local guidance

3.25 We all want to avoid causing damage or significant disturbance to the interests of others or to the outdoors, so it is very important that you follow the *Scottish Outdoor Access Code*. If you do not follow the Code and, after being asked to modify your behaviour, fail to do so and damage or significant disturbance occurs, then you forfeit your right because you are not exercising it responsibly. In this situation, the land manager would be entitled to ask you to leave.

3.26 Over time, a wide range of more detailed codes will be developed for specific activities and settings, and local guidance will be made available by land managers, public bodies and recreational groups under the provisions of the legislation and the *Scottish Outdoor Access Code*. You must follow these in order to exercise the right of access responsibly.

4. The responsibilities of land managers

4.1 This part of the *Scottish Outdoor Access Code* sets out the responsibilities of land managers.

4.2 As a land manager, you can play a key role in helping to make the right of access work while at the same time not compromising good management practice, the viability of your business or the safety of other people. The main requirement on you is that you must not obstruct, interfere with or intimidate people from exercising the right responsibly. However, if someone is behaving irresponsibly and causing damage or significant disturbance you can ask them to modify their behaviour and, if they fail to do so, ask them to leave.

4.3 In practice, a positive approach to welcoming and managing access is the best way of promoting goodwill and securing the right response from the public. This will help to encourage people to behave responsibly and problems between recreation and management operations will be avoided. You can do this by:

- influencing, in a sensitive way, how people exercise the right of access;
- being more aware of the effect of your work on people who are exercising the right of access responsibly;
- modifying a management operation which would affect people exercising the right of access if it is reasonable and practicable to do so;
- working in partnership with public bodies; and
- following the *Scottish Outdoor Access Code* and any local guidance.

Influence, in a sensitive way, how people exercise the right of access

4.4 A key worry for many land managers is the possibility of people exercising the right of access in ways that interfere with land management operations, thus raising concerns over liability and health and safety. These operations could include: crop spraying; timber harvesting; construction

work; waterflow management; the movement of animals; golf course spraying; pest control; ploughing; crop harvesting; and, muirburn (the burning of heather moors for grouse management).

4.5 To safeguard land management interests, the legislation and the Code allows land managers to influence and manage how people should exercise the right of access. This Code makes it clear that people should not interfere with such operations and in most cases there will be no need for any action on your part. But where it is important for people not to proceed, whilst an operation is underway, then you can advise people not to exercise their right of access by putting up signs and/or providing temporary diversions. You could advise people to avoid:

- a particular route or area for the duration of the relevant operation (such as for the spraying of crops with acid or other harmful chemicals); or
- doing particular activities – it might be safe for someone to walk through or around a field but not to picnic or pick things up (such as when a field has had lime applied to it).

4.6 This does not mean that for every such operation, regardless of the place, you must inform the public or provide alternative routes. Generally, the higher the levels of access likely to be experienced or the more hazardous the operation, the more that information should be provided to the public and the greater the need to provide alternative routes. In remoter or less frequented areas, these requirements become less. It is important that this guidance is provided sensitively by:

- informing the public about why the operation is taking place and why some degree of restraint is needed;
- informing the public at the main access points into the area where the operation is taking place of any arrangements;
- using standard signs or text for leaflets (to be provided) and then removing signs once the operation has been completed;
- keeping the type, geographical extent and duration of any restraint to the minimum required;
- keeping the boundaries of any restraint to identifiable features on the ground (such as a dyke, fence or stream) rather than an ownership boundary;
- advising on or providing an alternative route or place for people to use whilst the operation is underway.

Be more aware of the effect of your work on people who are responsibly exercising the right of access

4.7 Under the *Health & Safety at Work Act 1974*, you have a duty to ensure, as far as is reasonably practicable, that the public are not exposed to any risks to their health and safety. This obligation does not change with the new right of access. In undertaking risk assessments, you will need to identify what risks might arise by considering the nature of public access and how the operation might affect it.

4.8 Requirements such as these can often be best met by planning ahead before you start a management operation. You could, for example, do this by:

- making use of any readily available information or guidance on how a management operation can be modified;
- thinking about where and when people are likely to be exercising the right of access;
- following the advice in more detailed codes of practice produced by bodies like the Scottish Landowners' Federation.

4.9 Paths are particularly important to making the right of access work successfully on the ground. Most people prefer to use paths rather than go across fields or along roads and, in doing so, they reduce potential impacts and disruption to management operations. For this reason, the legislation introduces a wide range of new duties and powers for local authorities to create, protect and manage paths, and to remove obstructions (see section 7).

4.10 An obstruction is anything which prevents or hinders a member of the public from exercising the right of access responsibly. Local authorities will be able to remove obstructions and to recover costs from the land manager responsible for the obstruction. Most land managers do not obstruct or restrict access and the use of this new power will hinge on whether or not the obstruction is unreasonable. Examples of "unreasonable" obstructions could include:

- locking a gate when it is unreasonable to do so;
- dumping materials across a path so as to obstruct access;
- the removal of a path or an access point without providing an alternative;
- a signpost worded in a way which intimidates or deters the public;

- extending a curtilage so that it covers a path without providing an alternative;
- the use of fencing without access points being provided in locations where there is good reason to believe that people will wish to cross it.

Modify a management operation if it is reasonable and practicable to do so

4.11 It will sometimes be possible to alter a management operation so that it does not unnecessarily restrict or impede people from exercising the right of access responsibly. This is not required if the modification would compromise viability or safety. Possible modifications, for example, might include:

- undertaking some operations when public use is likely to be lowest;
- keeping animals known to be dangerous away from fields crossed by paths forming part of a core path network;
- leaving a field margin so that people can walk or ride without causing damage to growing crops; and
- making provision for access when planning and undertaking a major land use change (eg. afforestation).

Work in partnership with public bodies

4.12 Much damage and disturbance is caused by people being unaware of how their actions can affect the outdoors and other people, ie. it is accidental or unintentional. People usually respond positively to a welcoming approach to access and you could help this by working constructively with your local authority. Possible ways of helping could include:

- taking opportunities to show people how they could modify their behaviour to avoid damage or disturbance, either by talking to them or by providing positive information in the form of signs or leaflets;
- avoiding the use of potentially intimidating messages on any signs;
- looking after paths as these are usually the best way of managing access;
- keeping control of guard or working dogs, especially near to paths.

4.13 Although there is no legal obligation on you to actively facilitate access, some land managers already provide paths and other facilities for the public on their own initiative and receive financial assistance from public bodies to do so. With a right of access and new duties and powers, public bodies are expected to invest more in new facilities, in the better management of access, and in education and information. This work, together with public bodies' ability to assist with any problems which arise on the ground, would be greatly assisted by a partnership approach. Examples of working in partnership could include:

- playing an active role, through your representative bodies, in local access forums;
- helping to identify possible paths across your land which would best help to integrate access and land management;
- helping local authorities to identify the core path network in their areas;
- helping local authorities and other public bodies to create new paths and to manage paths across your land;
- making sure that people can easily use existing access points;
- helping local authorities to identify alternative routes around farm steadings.

4.14 As for everyone involved in access, showing courtesy and consideration at a personal level is important. Good manners on all sides, expressed through courtesy and consideration, are fundamental to good relations between those enjoying the outdoors and those who live and work there.

Follow the Scottish Outdoor Access Code and any local guidance

4.15 By following the *Scottish Outdoor Access Code*, you can help the public to avoid causing damage or disturbance and help people to enjoy the outdoors and to learn more about the outdoors and its management. Over time, a wide range of more detailed codes will be developed, together with more local guidance. You must follow these approved codes and guidance.

5. Interpreting the rights and responsibilities: a practical guide for the public and land managers

5.1 The Code so far has described the rights and responsibilities of users in a general sense, regardless of the recreational activity or the setting. For land managers, the responsibilities provide a framework for how they might respond positively to the right of access and people exercising it, whilst at the same time balancing this with good management practice, safety and the viability of their businesses.

5.2 This part of the Code provides a practical guide to help the public and land managers to make informed decisions about what best to do in particular situations.

	Responsible behaviour by the public	Responsible behaviour by land managers
PLACES		
Fields with growing crops	You must avoid trampling crops. If a path exists across the field, you should follow it. If no path exists, you should walk or ride around the edge of the field or go through a neighbouring field. You must not take dogs into fields where vegetables are growing.	Wherever practicable, you should leave a field margin. After ploughing, paths forming part of a core path network must be reinstated within 2 weeks.
Fields with livestock	You must not worry livestock and this can best be done by giving them as wide a berth as possible. Sometimes it might be easier to go through a neighbouring field. Keep dogs on a short lead if there is no alternative route available which avoids the field and note the guidance below for fields where cows and calves, or lambs are present.	You should keep animals known to be dangerous away from fields crossed by a path forming part of a core path network. If this is not practicable and if public access can be expected, you should alert the public and signpost an alternative route.
Fields with cows and calves	You must not disturb cows with calves. Wherever practicable, you should go through a neighbouring field. If this is not possible, you should give the animals as wide a berth as possible. You must not take dogs into fields where there are cows or calves.	If the calves are in a field crossed by a path forming part of a core path network, you should advise people to keep to paths or signpost the nearest alternative route that is available.
Fields with lambs	You must not disturb ewes with lambs. Wherever practicable, you should go through a neighbouring field. If this is not possible, you should give the animals as wide a berth as possible. Keep dogs on a short lead if there is no alternative route available which avoids the field.	If the lambs are in a field crossed by a path forming part of a core path network, you should advise people to keep to paths or signpost the nearest alternative route that is available.

Mountains, hills, moorland and other uncultivated land	You should take special care during the deer stalking and grouse shooting seasons. If you are cycling or horse riding you must avoid fragile and sensitive ground, and keep to paths where these exist.	If you are fencing off land, you should provide appropriate access points.
Crofting land	Crofts and other smallholdings are often small and are usually marginal in terms of their economic viability. If you need to cross through crofting land, you should take special care to avoid damage or disturbance.	You should consider working with neighbouring crofters, grazing committees and the local authority to provide paths where there is public use.
Forests and woods	The right of access applies to forests and woods. If you are cycling or horse riding, you should keep to suitable paths. There are special safety obligations on land managers when operations are taking place so follow any warning signs and follow diversions.	If you are working in part of a forest or wood and require people to keep away or follow an alternative route through the wood, you must put up appropriate signs and indicate suitable alternative routes.
Gates, fences, drystone dykes and hedges	Always make use of a gate where one has been provided. If you go through a gate, leave the gate as you find it. Do not climb over fences, dykes or hedges unless there is no reasonable and practicable alternative available. If you have to climb over, avoid damaging the fence, hedge or dyke.	You should avoid locking gates where it is not necessary to do so and not at all on paths forming part of a core path network. You should try to avoid fencing across or very close to paths unless there are good reasons to do so. Avoid using barbed wire or electric fences close to paths wherever possible.
Paths	You can walk, cycle or ride along any path that lies outwith the curtilages of buildings or outwith areas where public access is already proscribed by the law. You must only cycle or ride on paths that are suitable for the activity and can stand up to the use, or dismount until the path becomes suitable again.	People will have a right of access along paths. Wherever practicable, you must avoid damaging paths and blocking paths with machinery, materials and fencing. If you wish to divert or close a path, follow the appropriate procedures. You must not use any intimidating signs.
Where an entrance fee is charged	No charge can be made for access, except to buildings and curtilages (such as a country house and formal garden). Where a legitimate business is based on a managed attraction, and where services are provided to the public (eg. Information, refreshment, car parking) a charge can be made and you must pay this charge.	You can charge for services provided (eg. car park, leaflets, refreshments, serviced camping areas) or for entry to a building and/or its curtilage. You cannot levy a charge for access to the outdoors.
Archaeological and historic sites	If the site is a building, then the right of access would not apply. In these cases, you should obtain the permission of the manager and pay any entrance charges. You must not climb over buildings or structures, disturb an archaeological dig, or take anything from the site. You must pay any charges for services provided, such as car parking and information.	You can levy a charge for services provided (eg. car park, leaflets, refreshments) or for entry to a building and/or its curtilage. You cannot levy any charge for access to the outdoors. Public bodies should provide information to visitors on how they might best avoid causing damage.

<p>Wildlife sites</p>	<p>You must take special care not to damage the site or disturb the wildlife. You should follow local guidance on where best to exercise the right of access within the site. If byelaws or management rules are in place you must follow these. Keep to paths if you are cycling or riding.</p>	<p>If you manage a nature reserve, you should provide information on the site (eg. what is being protected and why) and on where people can best go in order to avoid damage or disturbance. Providing paths can help to manage access and minimise damage.</p>
<p>Rivers and lochs</p>	<p>You must avoid disturbance of birds and other wildlife. You should not canoe, sail or row in water that is not suitable for the activity; make sure that the stretch of water is appropriate for your activity and that you will not cause damage or disturbance. You should respect the interests of other people, particularly those who are fishing (see guidance on fishing below). Small water bodies can have limited capacity for recreation alongside other uses of the water and wildlife has less space to feed or take refuge. Be especially careful and follow any local guidance.</p>	<p>You should consider providing facilities to assist visitors and your own needs.</p>
<p>Riverbanks and lochshores</p>	<p>You must avoid causing damage to riverbanks and lochshores as they can be particularly important for wildlife and for good fisheries management. If you wish to gain access to the river or loch, you should use a slipway where one exists. Islands in rivers and lochs can also be sensitive to disturbance and are often a refuge for wildlife, so you should take special care if you are passing close by or landing on an island. During the fishing seasons there are further responsibilities (see guidance on fishing below).</p>	<p>If you wish to regenerate or improve the riparian or riverbank habitats, through a combination of planting and fencing, you should provide gates and a route through the area.</p>
<p>Dams, spillways and reservoirs</p>	<p>The right of access extends to reservoirs but not to dams, spillways and valve towers (these are buildings). It might be possible to canoe or sail in the reservoir but byelaws may restrict certain types of access. You must not pollute the water as it may be used for public water supply.</p>	<p>Public bodies that manage reservoirs should take steps to promote the use of these reservoirs where access would not conflict with the prime purpose of the reservoir.</p>
<p>Canals</p>	<p>The right extends to canoeing and rowing in canals but not to swimming, diving, sailing or wind surfing. If you are canoeing or rowing, you must give way to motorised craft (as this is the prime purpose of a canal). For safety reasons, you must take special care close to tunnels and locks, and where the canal sides are high. Using towpaths can be dangerous when they are narrow or where there are low bridges. They can also be easily damaged. Thus, you should exercise care and always respect the interests of other users.</p>	<p>British Waterways should provide information on where people can best exercise the right of access.</p>
<p>Sports pitches</p>	<p>You must not exercise the right when sports pitches are in use. You should take special care not to damage the playing surface. Keep dogs off sports pitches. Horse riders and cyclists must keep a good distance from the pitch at all times (even when it is not in use).</p>	<p>Wherever practicable, you should consider providing a signposted route around the margins of the area covered by the pitches.</p>

Golf courses	You must not disturb a golf game. Walkers must follow paths where they exist and keep off greens and tees at all times. Only go across a fairway when it is not in use for golf or management purposes. Cyclists and horse riders must keep to paths at all times and never go on to any other part of a golf course. You must not damage the playing surface.	Wherever practicable, you should provide paths around or across the course and also advise people on the safest ways through the course. When the course is snow-covered, indicate where sledging can take place without causing damage (eg. by marking off greens and tees).
MANAGEMENT OPERATIONS AND SEASONAL ACTIVITIES		
Fields where work is in progress	You must avoid disturbing operations, such as ploughing and crop spraying and harvesting, by keeping well away from them. If there are no paths, you should go through a neighbouring field or, if there is no reasonable alternative, follow a path or keep to the edge of the field.	Take special care where a path crosses the field; if you have just sprayed such a field, you should advise the public accordingly.
Tree harvesting	You must avoid disturbing the activity and reduce safety risks by keeping to paths. You should follow any signs or alternative routes provided. If there are no paths, you should avoid the area and find the nearest safe alternative route.	If there is a path through the area where trees are being felled, you should make sure that the safety of people is protected or indicate an alternative route. Where there are no paths, you should put up notices at the main entrances to the wood.
Deer stalking on the open hill	You should avoid disturbance to a stalk by taking reasonable steps, in advance and locally, to find out where stalking is taking place and modifying your route or activity accordingly.	You should ensure that staff are briefed and aware of likely recreation and use (most people will exercise the right of access along paths, popular routes and ridge lines) and you should provide as much information as possible on where stalking is likely to take place.
Deer stalking in forests and woods	You should avoid disturbance by exercising care and complying with any signs and notices. Be especially careful at dawn and dusk.	You should ensure that staff are briefed and aware of likely recreation and use. You should put up signs and notices when the activity is taking place, or provide any other advice might be appropriate.
Grouse shooting	You should avoid disturbance by taking reasonable steps, in advance and locally, to find out where shooting is taking place and modifying your route or activity if asked to do so. Avoid crossing land where shooting is taking place.	You should bear in mind that most people will exercise the right of access along paths and other popular routes, and you should provide as much information as possible on where shooting is likely to take place.

<p>Low-ground shooting</p>	<p>You should avoid disturbance by taking reasonable steps, in advance and locally, to find out where shooting is taking place and modifying your route or activity if asked to do so. Avoid crossing land when shooting is taking place. Be especially careful at dawn and dusk.</p>	<p>You should bear in mind that most people will exercise the right of access along paths and other popular routes, and you should provide as much information as possible on where shooting is likely to take place.</p>
<p>Fishing seasons</p>	<p>If on land, you should keep a safe distance from an angler and avoid casting lines. If you are canoeing or rowing, you should draw the attention of anglers to your presence. You should keep noise to a minimum and keep as far as possible from the angler or await a signal to proceed in confined waters.</p>	<p>You should respect the needs of people exercising the right responsibly.</p>
<p>RECREATIONAL ACTIVITIES</p>		
<p>Cycling</p>	<p>If you are using a path, make sure that it can sustain the activity and the size of your group; if you are in doubt, seek out another, more robust, route or dismount. If you cycle off-path, you must not go over sensitive and fragile ground. You must cycle at a speed that does not endanger walkers and horse riders - and does not give them cause for concern - and give way to them on a narrow path.</p>	<p>You should identify, or help the local authority to identify, paths or routes across your land which are suitable for cycling.</p>
<p>Horse riding</p>	<p>If you are using a path, make sure that it can sustain the activity and the size of your group; if you are in doubt, seek out another, more robust, route. If you riding off a path, you must not go over sensitive and fragile ground. You must ride at walking pace when you meet walkers and cyclists, and show them respect so that no-one is injured or scared.</p>	<p>You should identify, or help the local authority to identify, paths or routes across your land which are suitable for horse riding.</p>
<p>Canoeing, rowing, sailing</p>	<p>You must not touch nets or other fishing tackle, or disturb anglers and other water users. You should travel quietly and not make unnecessary noise or disturbance to the water, particularly if close to anglers. Take great care when entering and leaving water to avoid damage to the banks and disturbance of wildlife. Use a slipway if one is close by. You can carry your canoe or boat across land. If this requires mechanical assistance you must obtain the permission of the land manager. You must avoid polluting the water.</p>	<p>You should work with the local authority and/or local groups to identify suitable parking and launching sites.</p>
<p>Swimming</p>	<p>You must not touch nets or other fishing tackle, or disturb anglers and other water users. Avoid polluting the water. In periods when a river is low, take special care not to swim in pools as fish are likely to be present in these pools and will find it very dangerous to move to another pool.</p>	

<p>Wild camping</p>	<p>Wild camping can be an essential part of a long journey or of enjoying remoter countryside. Wild camping is lightweight and transitory. The right of access extends to wild camping, provided that it is undertaken in small numbers, well away from any building or road, for one or two nights in any one place and where there is no practicable alternative available. It is expected that you only do this in unenclosed land. You should take reasonable steps, in advance and locally, to find out where it is best to camp in order to avoid disturbing land management operations and particularly during the stalking and grouse shooting seasons. You must not use an open fire, take away all refuse and be very careful about pollution.</p>	<p>You should consider identifying potential bothies and informal or formal camping sites, and consider working with local groups and others interested in the management of these places.</p>
<p>Ski touring and mountaineering</p>	<p>You should take special care at times of incomplete snow cover or thaw when fragile vegetation can be easily damaged.</p>	

6. The responsibilities of public bodies

6.1 Public bodies, particularly local authorities and Scottish Natural Heritage, will have a critical role to play in making the right of access work on the ground. This part of the Code sets out the main responsibilities of public bodies.

6.2 The legislation gives local authorities a wide range of new duties and powers. Informing the public and land managers about these is a key step in ensuring that they are used. More information on these duties and powers is provided in section 7.

Make full use of your duties and powers

6.3 The most important thing that public bodies can do is to make full, responsible use of their new duties and powers. Given a right of access, there should be far fewer legal obstacles (such as the difficulties with asserting rights of passage) to the fuller involvement of local authorities and other public bodies in access provision and management. There is a strong expectation that public bodies will play a key role in helping to make the right of access work on the ground, and this will include the need to promote responsible access, to discourage irresponsible actions, and to ensure that any restraints on access are fair and reasonable.

Meet your responsibilities as land managers

6.4 Many public bodies, including local authorities and bodies such as SNH and the Forestry Commission, are also land managers. Public bodies must set a good example by fully meeting their obligations as land managers under the *Scottish Outdoor Access Code*.

Secure adequate funding for your work on access

6.5 Adequate funding is essential if public bodies are to meet their responsibilities. Investment by public bodies in the provision and management of access has, to date, not matched the need. Making sure

that the right of access works on the ground, and fulfilling the commitment to make full use of your duties and powers, will require the allocation of adequate resources from existing budgets and new sources.

Set standards and monitor your performance

6.6 The legislation and the *Scottish Outdoor Access Code* will provide a new and better defined framework for access in the future, but making it work will require greater investment in new facilities, in management and in promoting responsible behaviour. Public bodies could help greatly by taking the lead in setting standards and monitoring performance, both nationally and locally (through the local access forums, for example). This would help to show where the priorities for investment are and what progress is being made towards good provision and management. Targets and standards could be set for:

- informing and educating people about their rights and responsibilities;
- the scale and nature of core path networks, and for the identification and management of these networks;
- the provision of new facilities, such as paths;
- the speed of response in cases of irresponsible and criminal behaviour;
- the development and dissemination of guidance; and
- the effectiveness of the new local access fora.

Show courtesy and consideration through your staff

6.7 Courtesy and consideration to all are good manners and are fundamental to good relations between the public, land managers and public bodies. As part of this, public bodies should make every effort to involve local communities and the new local access forums in their access work. This will help to ensure that the whole community - and especially those land managers who provide access - are not only comfortable with the new arrangements but make a positive contribution to facilitating and managing access locally.

Follow the Scottish Outdoor Access Code

6.8 By following the Code, public bodies can make a very significant contribution to making the right of access work on the ground. It is in everyone's interests to follow the Code and public bodies in particular should be setting a good example to everyone else.

7. Where to get help and assistance

7.1 This part of the Code provides practical advice to the public and land managers on where to get help and assistance.

a. Getting further information and advice

7.2 It is not possible for the Code to cover every possible situation, setting or activity. Free information and advice on your rights and responsibilities should be available from various public bodies, particularly local authorities and Scottish Natural Heritage. If you need more detailed advice or guidance, the main point of contact should either be the local authority or a local ranger service. Alternatively, you could contact the representative group for your recreational activity or for your land management activity. You could also contact the proposed *Scottish Outdoor Access Code telephone helpline* and *Scottish Outdoor Access Code website* which will have more detailed information on the rights and responsibilities.

b. The duties and powers of public bodies

7.3 All public bodies must recognise, accommodate and protect the right of access and the responsibilities set out in this Code in their policies, plans and actions. Scottish Natural Heritage will have a new duty to promote responsible behaviour and the *Scottish Outdoor Access Code*, and must keep the Code under review. All local authorities must:

- establish at least one local access forum to achieve complete coverage of their areas;
- identify and establish a core path network for their areas and to maintain a public record of this;
- ensure that its core path network is well-defined, accessible, protected and managed (this term includes regular maintenance);
- plan for and facilitate access.

7.4 Local authorities already have a range of powers to provide facilities in the countryside. The new legislation adds considerably to these powers to ensure that local authorities can fulfil their duties and to ensure that access in the outdoors can be managed when significant problems do occur. The powers include:

- protection of paths and removal of obstructions;
- diversion and closure of paths;

- provision of facilities, including paths, car parks, camping sites, picnic areas, gates, signposts and seats;
- promotion of recreation and access;
- maintenance of paths;
- provision of ranger services over any land or water in their areas;
- introduction of management schemes to ensure safe and enjoyable exercise of the right where levels of public use require this;
- assertion of rights of way on land and rights of navigation on water;
- acquisition of land or water.

c. Local access forums 7.5 Every local authority must establish, under the legislation, at least one local access forum covering its area. These local access forums will provide advice on a wide range of issues, including your rights and responsibilities, and on the avenues available to resolve any problems that arise. They may also be able to help mediate in any particularly difficult issues. They will also advise the local authority on plans and strategies, the identification of the core path network for the area and on the introduction of management rules and byelaws.

7.6 The local access forums will have members drawn from land managing groups, recreation groups, local public bodies and community groups. You can contact your local access forum through the local authority.

d. Access strategies and plans

7.7 Local authorities will have to set out their proposals for managing the right of access, for looking after their core path network and for providing new paths and other facilities. These proposals will be developed through consultation with key stakeholders and the general public. Details of the preparation of these strategies and plans should be available through the local press and local libraries.

e. Core path networks and other paths

7.8 The “core path network” is a new concept in looking after paths in Scotland. It is expected that the core path network in any local authority area will include all those paths needed to meet the needs of those living in or visiting the area for informal recreation and passage. Each local authority will need to identify the network for their area and then ensure that it is well-defined, accessible, protected and managed.

7.9 Local authorities will have powers to divert and close (either temporarily or permanently) paths, and to remove obstructions from any path. For paths forming part of your core path network, the local authority must act and must consult the land managers in doing so. For other paths

in your area, the local authority could act and must secure the agreement of the land manager before doing so.

f. Dealing with irresponsible behaviour

7.10 It is a fundamental objective of the legislation and the Code, supported by a major education and information programme, to encourage responsible behaviour. The legislation does not introduce any new criminal offences as sanctions already exist for a wide range of irresponsible and criminal activities (see Annex 1). The Code itself will have a strong evidential status (see section 1).

7.11 When someone does not follow the Code and, after being asked to modify his or her behaviour, fails to do so and damage or disturbance occurs, that person has put him or herself outwith the right through not exercising it responsibly. In this situation, the land manager would be entitled to ask that person to leave. If behaviour is criminal in nature the land manager should involve the Police. If the behaviour is not criminal, the land manager should contact the local authority for assistance which should be as swift as is reasonable and practicable for the location.

7.12 If a member of the public encounters an obstruction which they view as unreasonable they should report this to the local authority. The legislation sets out a procedure for the local authority to review the case and to act where this is required.

g. Interpreting the rights and responsibilities

7.13 It is inevitable that some problems and disputes will arise, either through genuine misunderstandings or because new issues arise which are not yet adequately covered by the Code. This detailed Code will help to reduce the number of problems and issues that might arise. Greater investment in the provision of facilities and in the management of access, particularly by local authorities, will also help to minimise problems. In cases where a problem recurs, you should contact the local authority first and/or bring it to the attention of your local access forum.

h. If there is a significant problem

7.14 In the vast majority of cases, it is expected that damage or disturbance will be avoided if everyone follows the Code. Furthermore, land managers can manage how people exercise the right of access if, for example, they need to divert people on the grounds of safety whilst a land management operation is underway (see paragraphs 4.4 and 4.5). Local ranger services will also be able to help resolve many issues.

7.15 There will be some occasions, though, when the scale of a problem is such that more formal action is needed by the local authority. Examples of when such action might be needed include:

- when the use of a particular place is intensive and heavy and some sort of zoning or limitations on numbers might be required on the grounds of safety, public health or amenity;
- when the environment is particularly sensitive to damage or disturbance, either from the range of activities taking place or from high levels of use;
- when there is a need to find a balance between different uses in the same place.

7.16 Local authorities have several powers to help them manage access in these sorts of situations. Before using these powers, local authorities will need to consult the relevant local access forum and give people an opportunity to comment by publicising their proposed use. These powers include:

- **management agreements**, which allow the local authority and the land manager to agree on the level of management needed in a particular area to promote recreation and to safeguard the natural beauty and amenity of the area;
- **management rules**, which allow the local authority to set down how recreational use should be undertaken in particular areas that are under pressure;
- **byelaws**, which allow the local authority to introduce more formal controls over recreational activities in a particular area;
- **acquisition**, whereby local authorities can purchase or lease areas of land or water and manage recreation directly.

7.17 It is expected that management rules and byelaws will only be introduced for places that are experiencing or are likely to experience significant damage or disturbance. Byelaws should only be used as a last resort as they extend the criminal law into access.

Annex 1. Irresponsible and criminal behaviour proscribed by the law

This annex lists activities and forms of irresponsible behaviour that are proscribed or limited by the existing statutory law. The right of access does not extend to any of these activities.

Activity	Statutory reference	Comments
Driving a vehicle off road	Road Traffic Act 1988 (S34)	Makes it an offence to drive a motor vehicle without lawful authority on common land, moorland or land of any other description (not part of a road) or on any road being a footpath or bridleway. Driving a motor vehicle on to land within 15 yards of a road for the purpose of parking is not an offence.
Worrying of livestock by dogs	Dogs (Protection of Livestock) Act 1953 (S1)	If a dog worries livestock on any agricultural land the dog owner or person in charge of the dog is guilty of an offence. Worrying includes a dog attacking or chasing livestock, or being at large in a field in which there are sheep.
Control of dogs	Civic Government (Scotland) Act 1982 (S48)	Any person in charge of a dog which fouls a footpath or way, or a verge maintained by a council and adjacent to a footpath/way, or any place maintained by a local authority for recreational purposes is guilty of an offence.
Control of dogs	Animals (Scotland) Act 1987 (S4)	Provides a defence for people who kill or injure a dog worrying livestock (there are stringent conditions on this).
Collective trespass	Criminal Justice and Public Order Act 1994 (S61)	If two or more people are trespassing and are present for the common purpose of residing there for any period, and have been asked to leave, and have caused damage or used threatening, abusive or insulting words or behaviour, or have between them 6 or more vehicles, they can be asked to leave by the Police. If they fail to do so, they commit an offence.
Aggravated trespass	Criminal Justice and Public Order Act 1994 (S68-69)	A person commits an offence if he or she trespasses on land in the open air and, in relation to any lawful activity people are engaged in or about to undertake, they do anything that is intended to intimidate those persons or to obstruct or disrupt the activity. Failing to leave having been asked to do so by a police officer is also an offence.

Trespassory assemblies	Criminal Justice and Public Order Act 1994 (S70)	Trespassory assemblies (20 or more people) can be prohibited where the permission of the land manager has not been given and if they might result in serious disruption to the life of the community or in significant damage to land or buildings that are of architectural, archaeological or scientific importance. The Order is made by the local authority. Various offences exist in connection with trespassory assemblies.
Dropping of litter	Litter Act 1983 (S1)	It is an offence to leave litter in any place in the open air to which the public are entitled or permitted to have access without payment.
Polluting water	Water (Scotland) Act 1980 (S75)	Any person guilty of an act or neglect whereby any spring, well or adit used or likely to be used for human consumption or domestic purposes or for manufacturing food or drink for human consumption is polluted or is likely to be polluted is guilty of an offence.
Safety	Health & Safety at Work Act 1974	People are under a duty not to interfere intentionally with or misuse anything provided in the interests of the safety, health or welfare of people.
Fishing	Salmon & Freshwater Fisheries (Protection) (Scotland) Act 1951 and Freshwater & Salmon Fisheries (Scotland) Act 1976	Fishing for salmon or sea trout without lawful authority or written permission from the owner of the fishing right is committing a criminal offence. Fishing for brown trout and other freshwater fish without written permission or legal right is guilty of a criminal offence in an area covered by a Protection Order.
Spawning fish	Salmon Fisheries (Scotland) Act 1868	It is offence to disturb spawning fish and spawning beds.
Lighting fires	Trespass (Scotland) Act 1865	Any person who lights a fire on or near any private road or enclosed or cultivated land or in or near any plantation without the consent and permission of the owner or land manager of the land is guilty of an offence.
Encampment or lodging	Trespass (Scotland) Act 1865	Any person who lodges in any premises, or occupies or encamps on any land without the consent and permission of the owner or land manager of the land is guilty of an offence.
Damage or disturbance to wild birds	Wildlife & Countryside Act 1981	There is a wide variety of offences relating to the killing or injuring any wild bird, capturing or keeping any wild bird, destroying or taking eggs, or destroying, damaging or taking the nest of any wild bird whilst it is in use or being built.
Damage or disturbance to animals	Wildlife & Countryside Act 1981	For protected species (about 100), it is variously an offence to kill or injure the animal, to capture or keep the animal, to destroy, damage or obstruct access to its place of shelter, and to disturb the animal while using its place of shelter. Other offences relate to badgers, bats, deer, seals, whales and dolphins.

Damage to plants	Wildlife & Countryside Act 1981	It is a crime to pick, uproot or destroy any plant in Schedule 8 or to uproot any plant not in that Schedule.
Damage to ancient monuments	Ancient Monuments & Archaeological Areas Act 1979	It is an offence to carry out any works without the consent of Scottish Ministers which result in: the demolition or destructions of or any damage to a scheduled monument; the removal, repair, alteration or addition to a scheduled monument; any tipping operations on land in, on or under which there is a scheduled monument.
Vandalism	Criminal Justice (Scotland) Act 1980 (S78)	Any person who without reasonable excuse wilfully or recklessly destroys or damages any property belonging to another is guilty of an offence.

Note: the provisions under the Wildlife & Countryside Act 1981 implement, in part, the requirements of the EU Birds or Habitats & Species (as appropriate) Directives.

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