

## Part 3 EXERCISING ACCESS RIGHTS RESPONSIBLY

### Exercising access rights responsibly: at a glance

You must exercise access rights responsibly and this part of the Code explains how you can do this. A summary of your main responsibilities is provided below.

- 1 Take personal responsibility for your own actions.** You can do this by:
  - caring for your own safety by recognising that the outdoors is a working environment and by taking account of natural hazards;
  - taking special care if you are responsible for children as a parent, teacher or guide to ensure that they enjoy the outdoors responsibly and safely.
- 2 Respect people's privacy and peace of mind.** You can do this by:
  - using a path or track, if there is one, when you are close to a house or garden;
  - if there is no path or track, by keeping a sensible distance from houses and avoiding ground that overlooks them from close by;
  - taking care not to act in ways which might annoy or alarm people living in a house; and
  - at night, taking extra care by keeping away from buildings where people might not be expecting to see anyone and by following paths and tracks.

**3 Help land managers and others to work safely and effectively.** You can do this by:

- not hindering a land management operation, by keeping a safe distance and following any reasonable advice from the land manager;
- following any precautions taken or reasonable recommendations made by the land manager, such as to avoid an area or route when hazardous operations, such as tree felling and crop spraying, are under way;
- checking to see what alternatives there are, such as neighbouring land, before entering a field of animals;
- never feeding farm animals;
- avoiding causing damage to crops by using paths or tracks, by going round the margins of the field, by going on any unsown ground or by considering alternative routes on neighbouring ground; and by
- leaving all gates as you find them.

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**4 Care for your environment.** You can do this by:

- not intentionally or recklessly disturbing or destroying plants, birds and other animals, or geological features;
- following any voluntary agreements between land managers and recreation bodies;
- not damaging or disturbing cultural heritage sites;
- not causing any pollution and by taking all your litter away with you.

**5 Keep your dog under proper control.** You can do this by:

- never letting it worry or attack livestock;
- never taking it into a field where there are calves or lambs;

- keeping it on a short lead or under close control in fields where there are farm animals;
- if cattle react aggressively and move towards you, by keeping calm, letting the dog go and taking the shortest, safest route out of the field;
- keeping it on a short lead or under close control during the bird breeding season (usually April to July) in areas such as moorland, forests, grassland, loch shores and the seashore;
- picking up and removing any faeces if your dog defecates in a public open place.

**6 Take extra care if you are organising an event or running a business.** You can do this by:

- contacting the relevant land managers if you are organising an educational visit to a farm or estate;
- obtaining the permission of the relevant land managers if your event needs facilities or services, or is likely, to an unreasonable extent, to hinder land management operations, interfere with other people enjoying the outdoors or affect the environment;
- talking to the land managers who are responsible for places that you use regularly or intensively.

## What is responsible behaviour?

**3.1** You share the outdoors with other people who earn their living from it or who live there or who enjoy it in other ways, and also with Scotland's diverse wildlife. You are exercising access rights responsibly<sup>19</sup> if you:

- do not interfere unreasonably with the rights of other people; and
- act lawfully and reasonably, and take proper account of the interests of others and of the features of the land.

**3.2** If you follow the guidance in this part of the Code, then you will be exercising access rights responsibly and not causing unreasonable interference. Part 5 of the Code provides a practical guide to your rights and responsibilities, and to the responsibilities of land managers, for many everyday situations.

**3.3** If you do not follow the guidance, then you could cause unreasonable interference. This could result in some form of damage (such as breaking a fence or trampling crops) or significant disturbance (such as hindering a land management operation, blocking a gate with a vehicle or intentionally or recklessly disturbing a wild animal). In these sorts of cases, you may fall outwith access rights and you could be asked to leave the land or water you are visiting. In some cases, you might also be committing a criminal offence (see paragraphs 2.12 to 2.13 and Annex 1).

**3.4** In practice, exercising access rights responsibly is about making informed decisions about what it is reasonable to do in everyday situations. The responsibilities that follow reflect this. You also need to be aware that whilst you might visit a place

only occasionally and feel that you cause no harm, the land manager or the environment might have to cope with the cumulative effects of many people. Acting with awareness and common sense underpins responsible behaviour.

- 3.5** Access rights apply both on and off paths but must be exercised responsibly. However, when you are close to houses or other occupied buildings, or in fields of crops, or in places where the environment is particularly vulnerable to damage, it may be sensible to follow paths and tracks where they exist. Doing so can help to facilitate access and help to safeguard the interests of land managers and the environment.
- 3.6** Land managers must not interfere unreasonably with your exercise of access rights. Their responsibilities are set out in Part 4.
- 3.7** In exercising access rights, there are six general responsibilities and this Part of the Code provides guidance on how to meet them. They apply regardless of your activity and the type of place you are visiting. These six responsibilities are described below.

## Take responsibility for your own actions

- 3.8** Land managers owe a duty of care to people entering onto their land<sup>20</sup>. The Land Reform (Scotland) Act 2003<sup>21</sup> states that the extent of the duty of care owed by a land manager to another person present on land or water is not affected by the access provisions within the Act. This means that access rights do not alter the nature of the liability owed by a land manager.

<sup>20</sup> For example, Occupiers' Liability (Scotland) Act 1960 and the Health & Safety At Work Act 1974.

<sup>21</sup> Section 5(2), Land Reform (Scotland) Act 2003

**3.9** Members of the public owe a duty of care to land managers and to other people. Adapting your behaviour to prevailing circumstances and using common sense will help to avoid incidents or accidents. If your recreation is one which is likely to cause a hazard (for example cycling fast or driving a cart or carriage with horses or dogs) you should take particular care not to cause risk to others. If you are on shared-use routes you must show care and consideration for others, deferring to those who are most vulnerable.

**3.10** It is important to remember that the outdoors is not risk-free. The outdoors is a working environment, used for many activities, such as farming and forestry. Cattle and other farm animals can react aggressively in some situations, and fences and walls are needed to keep cattle and other animals in a field. Land managers may put up signs asking you to avoid using a particular path or area whilst land management operations, such as tree felling or crop spraying, are under way. Take care to read such signs and pay attention to the advice given.

**3.11** There are also many natural hazards, such as uneven ground, rough paths, cliffs, steep and rocky ground, fast-flowing rivers and deep water with undercurrents. For some activities, such as mountaineering and canoeing, these challenges provide the basis for people's enjoyment of the outdoors. Whatever your activity, you need to take account of natural hazards, use common sense and take care. There is a longstanding legal principle called "volenti non fit injuria" which means that a person taking access will generally be held to have accepted any obvious risks or risks which are inherent in the activities they are undertaking.

**3.12** Remember that children do not always have the experience to make good judgements on what to do in certain situations. If

you are responsible for children, either as a parent, teacher or guide, take special care to ensure that they enjoy the outdoors responsibly and safely.

**Key points to remember in taking responsibility for your own actions:**

- **care for your own safety by recognising that the outdoors is a working environment and by taking account of natural hazards; and**
- **take special care, if you are responsible for children as a parent, teacher or guide, to ensure that they enjoy the outdoors responsibly and safely.**

## Respect people's privacy and peace of mind

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### Houses and gardens

**3.13** Everyone is entitled to a reasonable measure of privacy in their own home and garden. In exercising access rights, particularly if you are close to a house or garden, you must respect people's privacy. You should also avoid unreasonably disturbing their peace of mind.

**3.14** For this reason, the Land Reform (Scotland) Act 2003 states that you cannot exercise access rights on "sufficient adjacent land" next to a house (this also includes a caravan, tent or other place affording a person privacy or shelter). This means land sufficient to allow those living there to have reasonable measures of privacy and to ensure that their enjoyment of their house is not unreasonably disturbed<sup>22</sup>. There are two important things to remember:

<sup>22</sup> Section 6 (1)(b)(iv), Land Reform (Scotland) Act 2003

- you cannot exercise access rights in this area of “sufficient adjacent land” and so you need to be able to identify such areas; and
- when exercising access rights close to a house or a garden, you need to respect the privacy and peace of people living there.

**3.15** ‘Sufficient adjacent land’ is defined in this Code as normally being the garden around someone’s house. For most houses, this should be reasonably obvious on the ground: a formal garden next to the house and surrounded by a wall, hedge or fence. Some houses might have no garden at all or be located right next to a road, track or path. In some cases, the garden might be near to the house but not adjoining it or it might be more difficult to identify, perhaps because there is no obvious boundary such as a wall, fence or hedge. Things to look out for in judging whether an area of land close to a house is a garden or not include:

- a clear boundary, such as a wall, fence, hedge or constructed bank, or a natural boundary like a river, stream or loch;
- a lawn or other area of short mown grass;
- flowerbeds and tended shrubs, paving and water features;
- sheds, glasshouses and summer houses;
- vegetable and fruit gardens (often walled but sometimes well away from houses).

**3.16** Some larger houses are surrounded by quite large areas of land referred to as the “policies” of the house. These are usually areas of grassland, parkland or woodland. Here, too, you will need to make a judgement in the light of the particular circumstances. Parts of the policies may be intensively managed for the domestic enjoyment of the house and include



lawns, flowerbeds, paths, seats, sheds, water features and summerhouses. Access rights would not extend to these intensively managed areas. The wider, less intensively managed parts of the policies, such as grassland and woodlands, whether enclosed or not, would not be classed as a garden and so access rights can be exercised. In these areas of grassland, parkland or woodland, you can also exercise access rights along driveways, except where the ground becomes a garden, and pass by gatehouses and other buildings.

**3.17** When close to a house or garden, you can respect people's privacy and peace of mind by:

- using a path or track if there is one;
- keeping a sensible distance from the house, and avoiding ground that overlooks the house or garden from close by, if there is no path or track;
- keeping a sensible distance from a waterside house if you are on a river or loch;
- not lingering or acting in ways which might annoy or alarm people living in the house; and
- keeping noise to a minimum.

## **Other buildings and their curtilage**

**3.18** Access rights do not extend to the curtilage of any other building. Generally, such land will normally be closely connected, physically and in terms of purpose, to the building and forming one enclosure with it. It will usually be possible to judge what is the curtilage of a building by the presence of some physical feature such as a wall, fence, an area of hardstanding or some other physical boundary. Where there is no physical feature, you will need to make a judgement about

what land is used together with a building. When exercising access rights close to such buildings, use your common sense and remember to respect the privacy and peace of mind of those working there.

## Access at night

**3.19** Access rights can be exercised at any time of day or night. There are many reasons why people take access at night, including the valuable recreational experience it can provide, the need to do so during the winter or at other times of the year when remoter places are being visited, and to get home late at night. In exercising access rights at night, please remember that residents can be fearful for their personal security and safety and of possible criminal activities being carried out under the cover of darkness, and so your presence might be misunderstood. Also remember that, in some places, land managers might be carrying out work such as pest control at night. Natural and man-made hazards will also be less obvious.

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**3.20** If you are out at night, take extra care to respect people's privacy and peace of mind. Wherever possible, keep away from buildings and use paths and tracks where they exist. If you come to a field of animals, it might be better to go into a neighbouring field or on to adjacent land. Take extra care when going over fences, gates, drystone dykes and other similar features.

## Public rights of way

**3.21** You can still use public rights of way that run through gardens or along driveways, or which pass next to houses.

**Key points to remember in respecting people's privacy and peace of mind:**

- **access rights do not extend to people's gardens;**
- **use a path or track, if there is one, when you are close to a house or garden;**
- **keep a sensible distance from houses, and avoid ground that overlooks them from close by, if there is no path or track;**
- **take care not to act in ways which might annoy or alarm people living in the house, and keep noise to a minimum; and**
- **at night, hazards may be less obvious, so take extra care by keeping away from buildings where people might not be expecting to see anyone and by following paths and tracks.**

## **Help land managers and others to work safely and effectively**

**3.22** The outdoors is mostly a working environment that provides a livelihood for many people, including farmers, crofters, gamekeepers, foresters and estate owners. Damage and disturbance can cost people and their businesses both time and money. By law, land managers must take reasonably practicable steps to ensure that the public is not put at risk by their work<sup>23</sup>. Therefore, in exercising your access rights you need to help land managers to work safely and effectively, particularly when you:

<sup>23</sup> Health & Safety at Work Act 1974

- come across land management operations;
- encounter farm animals;
- wish to go into or through a field of crops; and
- come across gates, fences, walls and other similar features.

**3.23** Guidance on what to do in these situations is provided below. Guidance is also provided about what to do when you wish to follow a path or track through farmyards and land associated with other buildings where access rights do not apply. Practical guidance on what to do when you encounter land use activities like deer stalking, grouse shooting, low-ground shooting and fishing is provided in Part 5.

## **Access over land on which a management operation is under way**

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**3.24** Land managers need to conduct their work as safely and effectively as possible. Hindering such work can cost them time and money, and can be potentially hazardous to your safety and to the safety of those working on the land. Under the Health & Safety at Work Act 1974, land managers need to take reasonably practicable steps to protect people's safety. Most situations will be adequately dealt with by recommendations and advice, but in a limited number of cases, such as during and after spraying crops in a field with sulphuric acid or pesticides, they can be under a legal obligation to ensure that unprotected people are kept out of the field for a specified period of time, ranging from a few hours to four days in the case of sulphuric acid<sup>24</sup>.

**3.25** Much of the work of land managers is clearly visible when it is in progress and usually poses only very localised and obvious

<sup>24</sup> The Control of Pesticides Regulations (as amended) 1986

dangers, or lasts only for a short time. These activities include:

- ploughing fields, and sowing and harvesting crops;
- planting trees or hedges, or cutting down branches;
- moving animals from field to field or to farm buildings;
- muirburn<sup>25</sup>;
- cutting grass on playing fields or golf courses;
- erecting fences, walls, hedges and gates;
- routine water discharges from reservoirs and canals, and routine maintenance and repairs on reservoirs, canals or water intakes; and
- dredging in rivers, canals and lochs.

**3.26** If you come across such work whilst it is in progress, proceed carefully and keep a safe distance. The land manager might ask you to follow a particular route, and following this advice can help to minimise risk to your safety and that of others. Do not climb over any stored materials, such as straw bales or timber stacks, or any machinery.

**3.27** In a limited number of cases, the hazards can be more serious or less obvious, such as:

- crops being or have been recently sprayed with pesticides;
- trees being felled and harvested in a forest;
- military training or land with unexploded munitions;
- dangerous materials being used or stored.

In these sorts of cases, land managers must undertake a risk assessment and take reasonably practicable steps to ensure that people are not put at risk. Where a risk cannot be prevented or adequately controlled by other means, then the

<sup>25</sup> Muirburn is controlled burning of moorland to help regenerate heather.

precautions could include managing access within the area involved. Relevant information will normally need to be provided on the nature, location and duration of the risk (see paragraph 4.15). If such work is to run over several months, alternative routes may be provided. In some cases, you might be asked not to use a particular route or area, or not to do a particular activity whilst there is still a danger. Follow these precautions as they seek to protect your safety and that of others.

**3.28** Any such precautions need to be for the minimum area and time to let the work be conducted safely and effectively (see paragraphs 4.11 to 4.17), and any alternative routes provided need to be reasonably practicable for people to use. In some cases, such as tree felling areas in a forest where there is frequent public access, signs may indicate that it is safe to go along a particular route if the activity has stopped, such as for the weekend.

**Key points to remember if you come across a land management operation:**

- **keep a safe distance and take heed of reasonable advice provided by the land manager to ensure that you do not hinder the work;**
- **for some types of operation, such as crop spraying and tree felling, the land manager has to ensure that people are not affected – follow any precautions provided for your safety;**
- **do not climb over any stored materials, such as straw bales or timber stacks.**

## Access where there are farm animals

**3.29** In exercising access rights in fields where there are cows, sheep, horses, deer, pigs or other animals, you need to be aware that animals may react in different ways to your presence. Cows can be inquisitive and come towards you. If you have a dog with you, cows may react aggressively. Some animals, such as bulls, may react aggressively to protect other animals in the field. Sheep are more likely to run away from you although they can be aggressive when there are lambs present. Horses are more likely to come towards you. Deer in enclosed fields are most likely to turn aggressive during the rutting season and when there are young deer present. Pigs can turn aggressive at any time.

**3.30** Take care in exercising access rights in fields where there are farm animals by following this guidance:

- before entering such a field, particularly if there are young animals present, take account of any signs<sup>26</sup> and, where possible, look for an appropriate alternative route in a neighbouring field or on adjacent land;
- if there is a bull or pigs in the field, go into a neighbouring field or onto adjacent land;
- if you go into a field where there are animals, keep to paths or tracks where they exist or keep well away from the animals;
- keep a close eye on the animals and if they come towards you remember to keep calm and that it might be safest to leave the field at the first chance;
- do not take a dog into a field where there are lambs, calves or other young animals (see paragraph 3.55 for more detailed guidance);

<sup>26</sup> For example, official signs (approved by Government) about biosecurity measures or signs advising you that pregnant ewes have been put in a field just before lambing.

- if you go into a field of cows with a dog, keep as far as possible from the animals and keep the dog on a short lead<sup>27</sup> or under close control<sup>28</sup> – if the cows react aggressively and move towards you, remember to keep calm and take the shortest, safest route out of the field, letting go of the dog if you believe that the animals may attack; and
- if you go into a field of sheep with a dog, keep as far as possible from the animals and keep the dog on a short lead or under close control.

**3.31** In more open country, keep a sensible distance from animals, particularly when there are calves or lambs present.

**3.32** Some animal diseases, such as foot and mouth, can be spread by people, dogs or vehicles, though the risk of recreational users doing so is very small. In exercising access rights, you can help to maintain animal health and biosecurity by:

- never feeding or directly contacting farm animals;
- taking all litter, including any food or associated packaging, away with you;
- leaving gates as you find them;
- keeping dogs under proper control and removing dog faeces (see paragraph 3.55); and
- not parking your vehicle in a field where there are farm animals.

**3.33** If there is an outbreak of a contagious notifiable disease, such as foot and mouth, more detailed advice will be provided by the Scottish Executive. Following any official signs and using

<sup>27</sup> A short lead is taken to be less than two metres.

<sup>28</sup> Under close control means that the dog responds to your commands and is kept close at heel.



disinfectant footpads or baths where these are provided can help to minimise the spread of the disease.

- 3.34** Cow and sheep droppings can carry diseases, such as *E. coli*, which can then be passed on to humans. Although the risk of catching such diseases is very small, they are most likely to arise if you picnic or camp where there are farm animals, or if you do not follow good hygiene practice (for example, by drinking water from local streams or burns).

**Key points to remember in taking access where there are farm animals:**

- **be aware that cows, especially cows with calves, can react aggressively to your presence and so keep a safe distance from them and watch them carefully;**
- **before entering a field of animals, check to see what alternatives there are – it might be easier and safer to go into a neighbouring field or onto adjacent land;**
- **do not take your dog into a field where there are young farm animals, such as lambs and calves;**
- **if you take a dog into a field where there are cattle, then keep as far as possible from the animals and keep your dog on a short lead or under close control – if the cows react aggressively and move towards you, let the dog go and take the shortest, safest route out of the field;**
- **never feed farm animals and take all your litter away with you;**
- **leave gates as you find them.**

## Access where there are crops

**3.35** You can exercise access rights on the margins of fields, even if these have been sown, and on any land in which crops have not been sown or are not growing. You can also exercise access rights in fields of stubble and in fields where grass is growing for hay and silage, except where the grass is at a late stage of growth. Your ability to take responsible access in such fields will vary depending upon the circumstances at the time.

**3.36** When exercising access rights in a field of crops, avoid damaging the crop by:

- using any paths or tracks;
- using the margins of the field (if the margin is narrow or has been planted, avoid causing unnecessary damage by keeping close to the edge in single file);
- going along any unsown ground (providing this does not damage the crop); or by
- considering alternative routes on neighbouring ground.

**3.37** You can exercise access rights in fields where grass is growing for hay and silage, except when it is at such a late stage of growth that it might be damaged. Such fields will normally have thick, long grass, and have no animals grazing in them. "A late stage of growth" is taken to be when the grass is about 8 inches or 20 cm high. To avoid churning up the surface (this may contaminate the grass with soil and make it indigestible for cows and other animals), it is best to keep to paths or tracks if you wish to cycle or ride through such fields (see Part 5).

**Key points to remember when taking access in fields of crops:**

- **avoid damaging crops by using any paths or tracks, or by going around the margins of the field, or by keeping to any unsown ground, or by going onto neighbouring ground;**
- **walk or ride in single file where appropriate;**
- **grass grown for hay and silage is regarded as a crop when it is about 20cm high and when there are no animals grazing on it.**

## **Gates, fences, drystone dykes and similar features**

**3.38** In exercising access rights in the outdoors, you will encounter fences, drystone dykes and other similar features. These are very important in land management and can cost a lot of time and effort to put up and look after. Use a gate, stile or other access point where these have been provided. Make sure that you leave all gates as you find them. If you come across a closed gate, make sure that you close it again as, for example, farm animals and horses may otherwise escape and cause injury to themselves and other property. If a gate is locked and you need to go over it, then make sure that you climb the gate at the hinged end and take care not to damage it. Do not park your car, van or bike in front of entrances to fields and buildings.

**3.39** Drystone dykes and fences can sometimes be easily damaged. If you need to go over one, make sure you do so near to fence posts or where the wall looks strongest. Take care to avoid damaging the wall or fence.

## Access through farmyards and other buildings and associated land

**3.40** Access rights do not extend to farmyards. Farmyards are often busy places and so health and safety may be a particular issue. Many farmers also have concerns about security and privacy. However, traditionally, access to the countryside is often taken through farmyards. Using paths and tracks will often be the best means of access and will help the land manager. Accordingly, farmers are encouraged to continue to allow people to go through farmyards where this would not interfere unreasonably with land management requirements or privacy.

**3.41** If you are following a path or track which goes through a farmyard, the guidance is as follows:

- if the route is a right of way or a core path, then you can follow this through the farmyard at any time;
- if a reasonable, passable alternative route is signposted around the farmyard and buildings, then follow this.

In the absence of a right of way, core path or a reasonable, signposted route around the farmyard and buildings, you:

- might be able to go through the farmyard if the farmer is content or if access has been taken on a customary basis in the past;
- could exercise your access rights to go around the farmyard and buildings.

If you do go through a farmyard, proceed safely and carefully, watch out for moving vehicles and livestock, and respect the privacy of people living on the farm.

**3.42** Access rights do not apply on land which forms the curtilage of a building, such as a factory or a warehouse and storage area. Nor do they apply to a compound or enclosure containing a structure, works, plant or machinery, such as a chemical or processing plant, or a water treatment and sewage works. Generally, such land will normally be closely connected, physically and in terms of purpose, to the building, forming one enclosure with it and surrounded by a fence or wall. If there is no fence or wall, use your common sense and keep a safe distance away.

## Care for your environment

### Natural heritage

**3.43** Scotland's natural heritage<sup>29</sup> contributes greatly to people's quality of life and health, and awareness and enjoyment of their surroundings. It adds to local identity and sense of place. The physical environment provides outstanding opportunities for active pursuits. Opportunities to experience the natural heritage are a key part of an improved quality of life for everyone. This, in turn, can help to build people's awareness and appreciation of its value and importance.

**3.44** The diversity and importance of Scotland's wildlife means that we must look after the special features of our natural heritage, such as rare birds, plants and animals. Looking after these special features can involve management and, in some particularly important places, protection through various national and international designations.

**3.45** In enjoying the natural heritage, you can help by remembering that some plants can be easily damaged and that some birds and other animals can be easily alarmed or distressed if you do

<sup>29</sup> This term includes plants, animals and geological features, as well as natural beauty and amenity. Scotland's biodiversity is a key part of its natural heritage.

not take care. Also, be aware that other people might have exercised access rights in the same area before you – repeated visits may result, for example, in a nesting site being abandoned. In exercising access rights, therefore, you must take proper account of the features of the land and water<sup>30</sup>, including the natural heritage, and land being managed for conservation. You can best do this by:

- not intentionally or recklessly disturbing or destroying plants, eggs, birds and other animals, or geological features;
- not lingering if it is clear that your presence is causing significant disturbance to a bird or other wild animal;
- following any agreed information<sup>31</sup> aimed at preventing significant disturbance to protected plants, birds or other animals, or at preventing the spread of erosion in more sensitive areas;
- taking extra care to avoid disturbing more sensitive birds and animals, particularly during their breeding season; and by
- taking your litter away with you.

**3.46** Some types of irresponsible behaviour towards wild birds, animals and plants are an offence under the Wildlife and Countryside Act 1981 and related legislation (see Annex 1 for further details). For example, you must not intentionally disturb specially protected birds while nesting, or their young, and you must not intentionally uproot any wild plant. In a small number of areas and for very specific reasons, such as to protect a rare plant or bird, you might be asked to follow a specific route or not to exercise your access rights. In these areas, management might take several forms (see Part 6 of the Code for more information on the types of management that you might encounter):

<sup>30</sup> Section 2 (3) of the Land Reform (Scotland) Act 2003

<sup>31</sup> Agreed between land managers, recreation bodies and conservation bodies. This information might be provided locally or be more widely available.

- Voluntary agreements between land managers and recreational governing bodies or clubs. For example, climbers might be requested not to climb particular cliffs or sections of cliffs during the breeding season through the voluntary agreement of the land manager and recreational groups.
- Scottish Natural Heritage might have put up signs asking you to exercise access rights in a particular way or to avoid a specific area or route in order to protect the natural heritage<sup>32</sup>.
- A local authority or other public body, such as Scottish Natural Heritage, might have introduced byelaws<sup>33</sup> or other measures<sup>34</sup> designed to prevent damage or to help conserve the natural heritage.

To exercise access rights responsibly, follow any requirements placed upon you<sup>35</sup> and this will help you to avoid causing significant damage or disturbance.

**3.47** Some places are more prone to damage from recreational activities and so you might need to take extra care. For sensitive natural habitats, such as riverbanks, loch shores, marshes, blanket and raised bogs, mountain tops, steep slopes and coastal dunes, the key need is usually to prevent damage, such as erosion, as much as possible.

**3.48** Broken glass, tins and plastic bags are dangerous to people and animals and are unsightly. You must take your litter away

<sup>32</sup> Under Section 29 of the Land Reform (Scotland) Act 2003, Scottish Natural Heritage can put up signs to protect the natural heritage.

<sup>33</sup> Under Section 12 of the Land Reform (Scotland) Act 2003 for example.

<sup>34</sup> For example, through a nature conservation order under the Wildlife & Countryside Act 1981.

<sup>35</sup> Under Section 2 (2)(b)(ii) of the Land Reform (Scotland) Act 2003 you must follow a sign put up by Scottish Natural Heritage.

with you<sup>36</sup>. Doing so will reduce the hazard to people or animals, and will add to people's enjoyment of the outdoors.

**Key points to remember to help you care for your environment:**

- **do not intentionally or recklessly disturb or destroy plants, eggs, birds and other animals, or geological features;**
- **do not linger if it is clear that your presence is causing significant disturbance to a bird or other wild animal;**
- **follow any agreed local information aimed at preventing significant disturbance to protected plants, birds or other animals, or at preventing the spread of erosion in more sensitive areas;**
- **take extra care to prevent damage in more sensitive natural habitats and to avoid disturbing more sensitive birds and animals, particularly during the breeding season;**
- **follow any voluntary agreements between land managers and recreational bodies, or requests made by local authorities, Scottish Natural Heritage or other public bodies;**
- **take your litter away with you.**

## Cultural heritage

**3.49** Scotland's cultural heritage<sup>37</sup> contributes greatly to our enjoyment of the outdoors. Cultural heritage sites, such as monuments and archaeological sites, play an important role in our enjoyment, both as popular visitor attractions and as places

<sup>36</sup> Environmental Protection Act 1990

<sup>37</sup> This term includes structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes.



of quiet reflection. These sites are also important in their own right for what they tell us about the past <sup>38</sup>.

**3.50** Although some cultural heritage sites are managed as public attractions, most are not and many are not even immediately obvious on the ground. Many sites survive as ruins and some are only visible as earthen or stone mounds. Some, like standing stones or burial mounds, are quite small but others, like abandoned settlements, can extend across large areas of land. Many of these places have a fairly natural appearance, such as an avenue of trees in a designed landscape or a hill-top settlement.

**3.51** Some cultural heritage sites are protected by the law (these are called scheduled monuments), though many lack formal protection. You may not always be aware of the importance of a site or recognise that it is vulnerable to the pressure of visitors and might be easily damaged. In exercising your access rights, therefore, you need to treat these sites carefully and leave them as you find them by:

- not moving, disturbing, damaging or defacing any stones, walls, structures or other features;
- not digging or otherwise disturbing the ground surface (at these sites, some activities such as camping, lighting fires or using metal detectors can lead to such disturbance);
- not taking anything away, including loose stones and objects; and by
- not interfering with or entering an archaeological excavation.

**3.52** Scottish Ministers have new powers to put up signs asking you to avoid a specific area or route in order to protect the

<sup>38</sup> For more information on Scotland's cultural heritage, see [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com)

cultural heritage<sup>39</sup>. Following such requests can help you to avoid causing significant damage or disturbance.

**Key points to remember to help you care for your cultural heritage:**

- **leave any cultural heritage site as you find it and do not take anything away;**
- **do not camp, light fires or use metal detectors on any cultural heritage site; and**
- **follow any local, agreed guidance aimed at preventing damage to a site.**

## Keep your dog under proper control

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**3.53** Access rights extend to people with dogs, provided that the dog(s) are “under proper control”<sup>40</sup>. Many people own dogs and about one in five visits to the outdoors are by people with dogs. Walking a dog is the main opportunity for many people to enjoy the outdoors, to feel secure in doing so and to add to their health and well-being. On the other hand, many people, including many farmers and land managers, have concerns about dogs when they are not under proper control as this can cause serious problems, including worrying of and injury to livestock, disturbance of wildlife and alarming other people. Farmers also have concerns about dogs spreading diseases, particularly if dogs have not been regularly wormed<sup>41</sup>.

**3.54** In exercising access rights, you must keep your dog(s) under proper control. You must also ensure that your dog does not

<sup>39</sup> Under Section 29 of the Land Reform (Scotland) Act 2003, Scottish Ministers can put up signs to protect the cultural heritage.

<sup>40</sup> Section 9 (d) of the Land Reform (Scotland) Act 2003

<sup>41</sup> It is good practice to keep your dog regularly wormed, particularly if you take your dog into the outdoors frequently.

worry livestock<sup>42</sup>. What 'proper control' means varies according to the type of place you are visiting. Essentially, there are four important things to remember:

- do not take your dog into a field where there are young animals;
- do not take your dog into a field of vegetables and fruit (unless you are on a clear path);
- keep your dog on a short lead or under close control<sup>43</sup> in a number of other places; and
- remove any faeces left by your dog in a public open place.

**3.55** These responsibilities are explained in more detail below.

- **Fields where there are lambs, calves and other young animals.** Dogs can worry young livestock and cows can be aggressive when protecting their calves. For these reasons, do not take your dog(s) into a field where there are lambs, calves or other young animals. Go into a neighbouring field or onto adjacent land. In more open country, keep your dog on a short lead if there are lambs around and keep distant from them.
- **Fields of vegetables or fruit.** The main risk in these fields is that of diseases in dog faeces being transmitted to people. If there is a clear path, such as a core path or a right of way, follow this but keep your dog to the path. In all other cases, it is best to take access in a neighbouring field or on adjacent land.
- **Fields where there are cows or horses.** Cows can be frightened by dogs and may react aggressively or panic,

<sup>42</sup> Dogs (Protection of Livestock) Act 1953. Under the Animals (Scotland) Act 1987, a farmer, in some cases, has the right to shoot your dog if it is attacking livestock.

<sup>43</sup> A short lead is taken to be two metres and "under close control" means that the dog is able to respond to your commands and is kept close at heel.

causing damage to themselves or property, or be dangerous to the dog owner and the dog. Where possible, choose a route that avoids taking your dog into fields with cows or horses. If you do need to go into such a field, keep as far as possible from the animals and keep your dog(s) on a short lead or under close control. If cows react aggressively and move towards you, keep calm, let the dog go and take the shortest, safest route out of the field.

- **Fields where there are sheep.** If you need to go into a field of sheep, keep your dog on a short lead or under close control and stay distant from the animals. In more open country, when there are sheep around keep your dog under close control and keep distant from them.
- **Areas where ground-nesting birds are breeding and rearing their young.** You can reduce the likelihood of your dog disturbing ground nesting birds during the breeding season – usually from April to July – by keeping your dog on a short lead or under close control in areas where ground nesting birds are most likely to be found at this time. These areas include moorland, forests, grassland, loch shores and the seashore.
- **Reservoirs and stream intakes.** Some reservoirs and streams are used for public water supply. If there are intakes nearby, keep your dog out of the water.
- **Recreational areas and other public places.** Do not allow your dog to run onto sports pitches, playing fields or play areas when these are in use. In places where other people are around, particularly children, keeping your dog under close control or on a short lead will help to avoid causing them concern.

**3.56** If you are handling a group of dogs be sure that they do not pose a hazard to others or act in a way likely to cause alarm to people, livestock or wildlife. Dog faeces can carry diseases that can affect humans, farm animals and wildlife. The highest risks are in fields of cattle, sheep and other animals, in fields where fruit and vegetables are growing, and in public open places where people can come into direct contact with dog faeces, such as sports pitches, playing fields, golf courses, play areas, along paths and tracks, and along riverbanks and loch shores. If your dog defecates in these sorts of places, pick up and remove the faeces and take them away with you<sup>44</sup>.

**Key points to remember if you have a dog with you:**

- **never let your dog worry or attack livestock;**
- **do not take your dog into fields where there are lambs, calves or other young animals;**
- **do not take your dog into fields of vegetables or fruit unless you are on a clear path, such as a core path or right of way;**
- **if you go into a field of farm animals, keep as far as possible from the animals and keep your dog(s) on a short lead or under close control;**
- **if cattle react aggressively and move towards you, keep calm, let the dog go and take the shortest, safest route out of the field;**
- **during the bird breeding season (usually April to July), keep your dog under close control or on a short lead in areas such as moorland, forests, grassland, loch shores and the seashore;**

<sup>44</sup> Not doing so in any public open place is an offence under the Dog Fouling (Scotland) Act 2003. A public open place does not include agricultural land but it is responsible to lift faeces where there is a risk to farming interests.

- **pick up your dog's faeces if it defecates in a public open place; and**
- **in recreation areas and other public places, avoid causing concern to others by keeping your dog under close control.**

## Take extra care if you are organising a group, an event or running a business

**3.57** As an individual, you can exercise access rights as part of an organised group or by taking part in an organised event. Access rights also extend to some types of commercial activity (see paragraph 2.9). As a general rule, the larger a group or event, or the more regularly use is made of a particular place, the greater is the risk of causing unreasonable interference with the rights and needs of land managers and other people, and of causing impacts on the environment. Therefore, if you are responsible for organising a group or an event, or for running a recreational or educational business requiring access to the outdoors, you need to show extra care.

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### Organised groups

**3.58** Remember that your presence as a group can have an impact according to the size of the group, where you are and the time of year. In deciding your route and the size of your group, think about the needs of land managers and other people who are enjoying the outdoors. Take particular care in parking vehicles so that they do not block gates or entrances to buildings.

**3.59** If you are responsible for organising an educational visit to a farm or estate for a specific purpose, such as learning about how a farm or estate works, or to see a particular attraction

(such as an important wildlife site), make sure that you are fully aware of any operational requirements, sensitive areas or potential hazards. Contact the relevant land manager(s) in advance and follow their advice on what precautions you might need to take in relation to land management operations.

## Events

**3.60** Events are held for a wide range of purposes<sup>45</sup>. All events are organised to some degree, and their scale and timing can sometimes raise safety concerns, hinder land management operations or harm the environment. If you are organising an event, it is good practice to liaise with the relevant land managers. You need to obtain the permission of the relevant land manager(s) if your event:

- needs new or temporary facilities and services (such as car parking, fencing, signs, litter bins, marked courses or toilets); or
- due to its nature or to the number of participants or spectators, is likely, to an unreasonable extent, to hinder land management operations, interfere with other people enjoying the outdoors or affect the environment.

**3.61** For reasons such as safety or charging for entry, you might need to seek an order from the local authority to exempt a specific area from access rights for the duration of your event<sup>46</sup>. For larger events, you can help to reduce impacts on the interests of other people and the environment by:

- liaising regularly with the land managers and with others who have an interest in the event and its effects (such as the local authorities, local resident groups and conservation bodies);

<sup>45</sup> Group outings by club members are not classed as events.

<sup>46</sup> See Section 11 of the Land Reform (Scotland) Act 2003. Further information is also provided in paragraph 2.11 of this Code.

- having control of the numbers of participants and spectators, and being sensitive to the capacity of the location to absorb large numbers of people;
- making sure that the privacy of local residents is respected and that they suffer minimal inconvenience (for example, by making sure that local roads and parking areas can cope with the traffic from the event);
- making sure that you have plans for the safety of participants, spectators and others;
- planning the event so that easily damaged places are avoided and consulting relevant conservation bodies on what impacts might arise and how best to avoid these;
- making sure that water is not polluted and that all litter and human waste is disposed of properly;
- accepting responsibility to repair any damage caused;
- helping the local economy by buying goods and services locally; and by
- putting something back into the outdoors, for example by making contributions to the local community or to help enhance the local environment.

## **Running a business which utilises access rights**

**3.62** If you instruct, guide or lead people in recreational or educational activities (see paragraphs 2.8 to 2.9), either commercially or for profit, take extra care to minimise any adverse effects that you might have on the interests of other businesses, such as a farm or an estate, and on the environment. Doing a full risk assessment of your activities will provide a good starting point and you can show extra care by:



- planning your activities in ways that minimise possible impacts on land management and the interests of others should you wish to use a particular place regularly or if your visit might cause any particular concerns about safety or the environment;
- talking to the land managers who are responsible for places that you use regularly or intensively; and by
- obtaining the permission of the relevant land manager(s) if you wish to use a facility or service provided for another business by the land manager (such as an equestrian facility);
- if you are running a business that utilises access rights consider assisting with care of the resource used by your business.

**3.63** If you wish to take detailed photographs of houses or other buildings, you need to respect the privacy and peace of mind of those living or working there. Talking to the occupier can help a lot. If you wish to film a TV programme to further people's understanding of the natural or cultural heritage and which requires only hand-held equipment and involves no vehicles off the road, talk to the land managers beforehand and listen carefully to any advice provided. If you need to use vehicles or stay in an area for a few days or put down equipment or are filming for other purposes, you still require the permission of the relevant land managers. If you are writing a guidebook, leaflet or other promotional material about access in an area, try to talk to the relevant land managers to see if any local issues relating to privacy, safety or conservation need to be referred to in the publication.

## Undertaking surveys

**3.64** Access rights extend to individuals undertaking surveys of the natural or cultural heritage where these surveys have a recreational or educational purpose within the meaning of the legislation. A small survey done by a few individuals is unlikely to cause any problems or concerns, provided that people living or working nearby are not alarmed by your presence. If you are organising a survey which is intensive over a small area or requires frequent repeat visits, or a survey that will require observation over a few days in the same place, consult the relevant land manager(s) about any concerns they might have and tell them about what you are surveying, for what purpose and for how long. If the survey requires any equipment or instruments to be installed, seek the permission of the relevant land managers.

### **Key points to remember if you are organising an event or running a business:**

- **contact the relevant land manager(s) if you are organising an educational visit to a farm or estate for a specific purpose, and follow any advice on what precautions you might need to take;**
- **obtain the permission of the relevant land manager(s) if your event needs new or temporary facilities and services or is likely, due to the nature of the event or the number of people involved, to hinder land management operations, interfere with other people enjoying the outdoors or affect the environment to an unreasonable extent;**
- **for larger events, make sure that you minimise impacts on the interests of other people and the environment;**

- **if you run a business which utilises access rights, show extra care by minimising the impacts of your activities and by trying to talk to the land managers who are responsible for places that you use regularly or intensively.**

