

## Lighting fires and access rights under the Land Reform (Scotland) Act 2003

### Responsible fires

The lighting of a fire is allowed as part of the exercise of access rights, if it is done responsibly. The Access Code provides the following guidance:

- **Lighting Fires:** “Wherever possible, use a stove rather than light an open fire. If you do wish to light an open fire, keep it small, under control and supervised – fires that get out of control can cause major damage, for which you might be liable. Never light an open fire during prolonged dry periods or in areas such as forests, woods, farmland, or on peaty ground or near to buildings or in cultural heritage sites where damage can be easily caused. Heed all advice at times of high risk. Remove all traces of an open fire before you leave”.
- **For Land Managers:** “At times of drought, work with your local authority (fire services) to inform people of the high risks involved.”
- **Cultural heritage sites:** Cultural heritage sites are places such as monuments and archaeological sites, and the Code states “do not camp, light fires or use metal detectors on any cultural heritage site”.

On the inter-tidal foreshore, there are also common law rights for public recreational use which continue to exist, and these rights include lighting a fire. The foreshore is the land between the upper and lower ordinary spring tides.

### Legal controls over fires

Outwith these circumstances where a fire is allowed, there continue to be legal offences controlling the lighting of fires in other situations:

- **Civic Government (Scotland) Act 1982 (Section 56)** - “Any person who lays or lights a fire in a public place so as to endanger any other person or give him reasonable cause for alarm or annoyance, or so as to endanger any property, shall be guilty of an offence, and liable on summary conviction to pay a fine.” It may be taken that access rights have extended the ‘public place’ provision so it now applies to most land. This offence could apply quite widely, and is important if people or property are put in danger. The words “reasonable cause for alarm or annoyance” are important, and just because someone says they are annoyed does not always mean that an offence has been committed. There has to be a ‘reasonable’ basis, with a significant likelihood of danger or public nuisance.
- **Trespass (Scotland) Act 1865** - This Act prohibits lighting a fire in certain places, specifically “on or near any private road, or enclosed /cultivated land, or in or near any plantation.” The Land Reform (Scotland) Act 2003 amends this 1865 Act so it is no longer an offence to light a fire in these places if done by a person in the exercise of their access rights. This offence therefore remains in full effect if the person is outwith access rights - for instance for people fishing or hunting, or in places outwith access rights (eg where crops are sown or growing).
- **Roads (Scotland) Act 1984** – “a person who,.. by lighting a fire within..30 metres of a road, damages the road or endangers traffic on it” commits an offence under the Roads (Scotland) Act 1984 (s100e).

In addition, vandalism or malicious mischief are common law offences, and may be relevant in any serious cases where there is illegal gathering of material for a fire, or fire-raising. The police have powers to immediately issue a fixed penalty notice for vandalism. All such criminal offences are of course outwith access rights.

### What to do if you encounter irresponsible behaviour

If you encounter a fire that is outwith the guidance in the Code, a sensible course of action is to talk in a friendly way to the people involved, as it may just be thoughtless, and people will often modify their activity if they understand the reason for doing so. Ask them to bring the fire under control or put it out, explaining if necessary that their behaviour is outside access rights. If they refuse to do so, they could then be asked to

leave. If an individual persistently behaves irresponsibly over a period of time, you may seek an interdict against that person. If a person's behaviour is threatening, you should contact the police.

### **What to do if you encounter criminal behaviour**

If you encounter a fire that is giving reasonable cause for alarm and annoyance, or is endangering people or property, or if trees are being cut down for fuel (which is likely to constitute vandalism), such behaviour is a criminal offence. If appropriate, in the first instance you could talk to the people involved as above, but otherwise you should contact the police.

### **Nature and extent of access rights under the Land Reform (Scotland) Act 2003**

Everyone has statutory access rights established by the Land Reform (Scotland) Act 2003. You will only have access rights if you exercise them responsibly. You have rights of access to be on land and inland water:

- for recreation
- for educational activity
- for certain commercial purposes (e.g. mountain guides)
- and for passage ie crossing from one place to another.

Access rights cover everywhere except certain specified areas. These are some of the main exceptions:

- buildings
- structures, tents, caravans
- curtilage around buildings, and compounds
- reasonable privacy and disturbance zone around houses
- sports and recreation fields while in use
- schools and the land they use
- where you have paid for entry previously
- building sites, demolition and engineering works
- quarries and surface mineral workings
- sown or growing crops inc. hay / silage fields at late stage of growth
- golf courses, except to cross over them.

Access rights include walking, cycling, horse riding, canoeing, sailing, etc, but

- not if using a motorised vehicle or vessel (unless adapted for a person with a disability)
- not if hunting, shooting or fishing
- not if with a dog that is not under proper control
- not if taking away anything for profit.

### **Further information**

The Scottish Outdoor Access Code provides detailed guidance on the responsibilities of those exercising access rights and of those managing land and inland water. Contact Scottish Natural Heritage's Recreation and Access Group, telephone: 01463 725000 or email:

[recreationandaccess@snh.gov.uk](mailto:recreationandaccess@snh.gov.uk) see also: [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com)