

CONTENTS

1 INTRODUCTION 1

This part provides an introduction to statutory access rights and responsibilities, sets out three key principles to underpin the definition of responsible behaviour within the Code, and briefly explains the purpose and status of the Code.

2 ACCESS RIGHTS 5

This part describes where, when and for what activities you can exercise access rights, where these rights do not apply and which activities fall outside their scope.

3 EXERCISING ACCESS RIGHTS RESPONSIBLY 17

This part explains how people can exercise access rights responsibly. The main responsibilities are then described:

- take responsibility for your own actions (paragraphs 3.8 to 3.12);
- respect people's privacy and peace of mind (paragraphs 3.13 to 3.21);
- help land managers and others to work safely and effectively (paragraphs 3.22 to 3.42);
- care for your environment (paragraphs 3.43 to 3.52);
- keep your dog under proper control (paragraphs 3.53 to 3.56); and
- take extra care if you are organising a group, an event or running a business (paragraphs 3.57 to 3.64).

4 MANAGING LAND AND WATER RESPONSIBLY FOR ACCESS 53

This part explains how land managers can manage their land and water responsibly in relation to access rights. The main responsibilities are then described:



- respect access rights in managing your land or water (paragraphs 4.7 to 4.10);
- act reasonably when asking people to avoid land management operations (paragraphs 4.11 to 4.17);
- work with your local authority and other bodies to help integrate access and land management (paragraphs 4.18 to 4.22); and
- take account of access rights if you manage contiguous land or water (paragraphs 4.23 to 4.25).

5 A PRACTICAL GUIDE TO ACCESS RIGHTS AND RESPONSIBILITIES

69

This part provides a practical guide to help people decide what best to do in everyday situations, including canoeing, cycling, deer stalking, farmyards, fields, fishing, forests and woods, golf courses, grouse shooting, horse riding, sporting events and wild camping.

6 WHERE TO GET HELP AND INFORMATION

117

This part summarises where you can get more advice and information, how access and recreation can be managed, and what you should do if you encounter someone behaving irresponsibly.

ANNEX 1 Existing criminal offences created by statute

125

This annex provides an overview of the main criminal offences created by statute.

INDEX

131



Statutory access rights and responsibilities

1.1 Scotland's outdoors, extending from the parks and open spaces in our towns to the remote and wild areas of land and water in the Highlands, provides great opportunities for open-air recreation and education. Open-air recreation provides people with great benefits for their health and well-being and contributes to the good of society in many other ways. Part 1 of the Land Reform (Scotland) Act 2003 gives everyone statutory access rights to most land and inland water. People only have these rights if they exercise them responsibly by respecting people's privacy, safety and livelihoods, and Scotland's environment. Equally, land managers have to manage their land and water responsibly in relation to access rights.

1.2 The Scottish Outdoor Access Code provides detailed guidance on the responsibilities of those exercising access rights and of those managing land and water. By doing so, the Code provides a practical guide to help everyone make informed decisions about what best to do in everyday situations, and provides the starting point for short promotional codes and more detailed advice.

1.3 The Code is based on three key principles and these apply equally to the public and to land managers.

- **Respect the interests of other people.** Acting with courtesy, consideration and awareness is very important. If you are exercising access rights, make sure that you respect the privacy, safety and livelihoods of those living or working in the outdoors, and the needs of other people enjoying the

outdoors. If you are a land manager, respect people's use of the outdoors and their need for a safe and enjoyable visit.

- **Care for the environment.** If you are exercising access rights, look after the places you visit and enjoy, and leave the land as you find it. If you are a land manager, help maintain the natural and cultural features which make the outdoors attractive to visit and enjoy.
- **Take responsibility for your own actions.** If you are exercising access rights, remember that the outdoors cannot be made risk-free and act with care at all times for your own safety and that of others. If you are a land manager, act with care at all times for people's safety.

The status of the Code

2

- 1.4** This Code has been approved by Ministers and the Scottish Parliament. The detailed guidance in the Code should help to ensure that few problems arise. However, if there is a problem, the Code is expected to be a reference point for determining whether a person has acted responsibly. For example, where a dispute cannot be resolved and is referred to the Sheriff for determination, the Sheriff will consider whether the guidance in the Code has been disregarded by any of the parties. In this sense, the Code may be said to have evidential status. Failure to comply with the Code, however, is not, of itself, an offence¹.
- 1.5** Although the Code provides guidance on access rights and responsibilities, it is not an authoritative statement of the law. Only the courts can provide this. Wherever possible, the Code makes use of examples to help illustrate what a particular responsibility means. These examples are not meant to be exhaustive.

¹ Although legal offences do exist for many types of irresponsible or anti-social behaviour (see paragraphs 2.12 and 2.13, and Annex 1).

- 1.6 Advice on where to get help and information is provided in Part 6 of the Code.

Some key terms

- 1.7 Throughout the Code, references are made to seven general terms for convenience:

- **Land manager.** The Land Reform (Scotland) Act 2003 refers to owners and occupiers, and these include landowners, farmers, crofters, tenants, foresters and fishery owners. In some circumstances, this may include those acting for owners or occupiers where these other parties have possession of the land (for example, land agents and contractors). Many public bodies (see below) and voluntary bodies, such as the National Trust for Scotland, Royal Society for the Protection of Birds and the John Muir Trust, are also owners and occupiers of land. The term “land manager” is used to cover all of these types of owner and occupier.
- **Outdoors.** This term includes mountains, moorland, farmland (enclosed and unenclosed), forests, woods, rivers, lochs and reservoirs, beaches and the coastline, and open spaces in towns and cities.
- **Public body.** This term includes all Government Departments (including the Scottish Executive, Ministry of Defence and NHS Boards), local authorities and the national park authorities. It also includes a wide range of public agencies with a role in providing access, in managing land or water, or in promoting access to the outdoors, including Scottish Natural Heritage, British Waterways, Forestry Commission, visitscotland, sportscotland, Scottish Water, the local enterprise companies and the area tourist boards.

- **Local authorities.** References to local authorities should be taken to include the national park authorities. Both local authorities and national park authorities have the same duties and powers under Part 1 of the Land Reform (Scotland) Act 2003. Therefore, within a national park it is the national park authority, rather than the local authority, which has the relevant duties and powers under the Act.
- **Access rights.** This term means the statutory access rights established under the Land Reform (Scotland) Act 2003 unless stated otherwise.
- **Core paths.** Local authorities have powers to establish and maintain core paths. It is the duty of each local authority to draw up a plan for a system of core paths to give the public reasonable access throughout their area.
- **Land/Land and inland water.** Access rights apply to most land and inland water. References to land should be taken to include inland water.

A summary of your access rights

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

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

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

7 Access rights do not extend to:

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

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

Introduction

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

Where and when you can exercise access rights

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

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

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

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

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

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

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

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

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

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

What you can do under access rights

2.6 You can exercise access rights for recreational purposes, some educational activities and certain commercial purposes, and for crossing over land and water.

2.7 “Recreational purposes” is not defined in the legislation. It is taken to include:

- **pastimes**, such as watching wildlife, sightseeing, painting, photography and enjoying historic sites;
- **family and social activities**, such as short walks, dog walking, picnics, playing, sledging, paddling or flying a kite;
- **active pursuits**, such as walking, cycling, horse riding and carriage driving, rock climbing, hill-walking, running, orienteering, ski touring, ski mountaineering, caving, canoeing, swimming, rowing, windsurfing, sailing, diving, air sports and wild camping; and
- **participation in events**, such as walking or cycling festivals, hill running races, mountain marathons, mountain biking competitions, long-distance riding events, orienteering events and canoeing competitions.

2.8 Access rights extend to any educational activities concerned with furthering a person’s understanding of the natural or

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

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

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

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

Where do access rights not apply?

2.11 Access rights do not apply in the following places⁷.

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

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

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

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

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

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

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

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

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

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

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

What activities are excluded from access rights?

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

14

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

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

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

¹⁴ Section 9, Land Reform (Scotland) Act 2003

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

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

What about public rights of way and navigation?

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

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

¹⁵ Subject to the Highway Code being adhered to.

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

¹⁷ Section 5, Land Reform (Scotland) Act 2003

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

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

What about public rights on the foreshore?

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

What about activities and places not covered by access rights?

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

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

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.

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 responsibly¹⁹ 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 land²⁰. The Land Reform (Scotland) Act 2003²¹ 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.

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

²¹ 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

23

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 disturbed²². There are two important things to remember:

²² 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.

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 work²³. Therefore, in exercising your access rights you need to help land managers to work safely and effectively, particularly when you:

- 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

28

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 acid²⁴.

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

²⁴ 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;
- muirburn²⁵;
- 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

²⁵ 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 signs²⁶ 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);

²⁶ 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 lead²⁷ or under close control²⁸ – 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

²⁷ A short lead is taken to be less than two metres.

²⁸ 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 heritage²⁹ 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

²⁹ 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 water³⁰, 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 information³¹ 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):

³⁰ Section 2 (3) of the Land Reform (Scotland) Act 2003

³¹ 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 heritage³².
- A local authority or other public body, such as Scottish Natural Heritage, might have introduced byelaws³³ or other measures³⁴ designed to prevent damage or to help conserve the natural heritage.

To exercise access rights responsibly, follow any requirements placed upon you³⁵ 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

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

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

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

³⁵ 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 you³⁶. 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 heritage³⁷ 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

³⁶ Environmental Protection Act 1990

³⁷ 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 ³⁸.

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

³⁸ For more information on Scotland's cultural heritage, see www.outdooraccess-scotland.com

cultural heritage³⁹. 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

42

3.53 Access rights extend to people with dogs, provided that the dog(s) are “under proper control”⁴⁰. 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 wormed⁴¹.

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

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

⁴⁰ Section 9 (d) of the Land Reform (Scotland) Act 2003

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

worry livestock⁴². 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 control⁴³ 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,

⁴² 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.

⁴³ 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 you⁴⁴.

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;**

⁴⁴ 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.

46

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 purposes⁴⁵. 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 event⁴⁶. 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);

⁴⁵ Group outings by club members are not classed as events.

⁴⁶ 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.**

Part 4 MANAGING LAND AND WATER RESPONSIBLY FOR ACCESS

Managing land and water responsibly for access: at a glance

As a land manager, you must manage your land or water responsibly for access and this part of the Code explains how you can do this. A summary of your main responsibilities is provided below.

1 **Respect access rights in managing your land or water.** You can do this by:

- not purposefully or unreasonably preventing, hindering or deterring people from exercising access rights on or off paths and tracks;
- using paths and tracks as a way of managing access across your land so that access is integrated with land management;
- taking access rights into account when planning and implementing any major land use change or development.

2 **Act reasonably when asking people to avoid land management operations.** You can do this by:

- asking people, if you have an opportunity to do so whilst undertaking a land management operation, to follow a particular route;
- taking precautions, such as asking people to avoid using a particular route or area or to avoid doing a particular activity where there are more serious or less obvious hazards to their safety, such as from tree felling or crop spraying;
- keeping any precautions to the minimum area and duration required to safeguard people's safety;

- telling the public, especially if levels of public access are high or if the operation is particularly dangerous, about any precautions at any obvious access points (such as car parks and gates).

3 Work with your local authority and other bodies to help integrate access and land management. You can do this by:

- remembering that people respond best to land managers who show that people are welcome;
- working closely, where appropriate, with your local authority and its access officers and ranger service, local access forum and other bodies to help provide good paths across your land and to manage access positively;
- thinking about how you would like to see access provided for and managed on your land or water and involving your local authority in this.

4 Take account of access rights if you manage contiguous land or water. You can do this, wherever possible, by:

- respecting any rights of way or customary access across your land or water;
- avoiding the use of “no access” signs or the locking or removal of gates or other access points, particularly on paths or tracks likely to be used by the public or without providing an alternative means of access;
- working with your local authority and other bodies to provide and manage routes across your land that would best help to integrate access and land management;
- considering what impact your work might have on people exercising access rights on neighbouring land and modifying your work where this is reasonably practicable.

4.1 The Land Reform (Scotland) Act 2003 establishes access rights to most land and inland water in Scotland and places responsibilities on both users and land managers. This part of the Code explains how land managers can meet their obligations under the Act. It sets down some general responsibilities and provides guidance on them. These responsibilities apply to all land managers, including individuals, companies, local authorities, charities and other institutions, and other public bodies⁴⁷.

What is responsible behaviour?

4.2 The Land Reform (Scotland) Act 2003⁴⁸ states that, for land and water where access rights apply, you are using and managing your land and water responsibly in relation to access rights if you:

- do not cause unreasonable interference with the access rights of anyone exercising or seeking to exercise them; and if you
- act lawfully and reasonably, and take proper account of the interests of people exercising or seeking to exercise access rights.

4.3 If you follow the guidance in this part of the Code, then you will be managing your land and water responsibly in relation to access rights. Part 5 of the Code provides a practical guide, for many everyday situations, to access rights and to your responsibilities, and those of people exercising access rights. This guidance suggests a few simple measures that promote a positive approach and should ensure that you can continue with your work without any significant modifications being needed.

⁴⁷ See paragraph 1.7.

⁴⁸ Section 3, Land Reform (Scotland) Act 2003

4.4 Following the guidance in this Code will also ensure that people who wish to exercise or who are exercising access rights are not unreasonably prevented, hindered or discouraged from doing so. A positive approach towards paths and tracks, and towards informing the public about land management operations, will go a long way to minimising problems and encouraging responsible attitudes. Many land managers already adopt this approach.

4.5 Guidance on the responsibilities of people exercising access rights is set out in Part 3 of this Code. This guidance asks people to:

- take responsibility for their actions;
- respect the privacy of others;
- help land managers to work safely and effectively;
- care for their environment;
- keep dogs under proper control; and to
- take extra care if they are organising an event or running a business utilising access rights.

4.6 Much of the guidance in Part 3 will help to minimise any interference likely to be caused by people exercising access rights and ensure that you can continue to manage your land safely and effectively. Your responsibilities are set out below.

Respect access rights in managing your land or water

4.7 The Land Reform (Scotland) Act 2003 states that, for the purpose or main purpose of preventing or deterring any person entitled to exercise access rights from doing so, you must not:

- put up any sign or notice;

- put up any fence or wall;
- position or leave at large any animal;
- carry out any agricultural or other operation on the land; or
- take, or fail to take, any other action⁴⁹.

4.8 This essentially means not obstructing or hindering people from exercising access rights, either by physically obstructing access or by otherwise discouraging or intimidating them. Local authorities have a duty to uphold access rights and have powers to remove prohibition signs, obstructions and dangerous impediments, and to recover costs from the land manager responsible for the sign, obstruction or impediment⁵⁰.

4.9 This Code defines an obstruction or impediment as anything that stops or hinders anyone from exercising access rights responsibly. Obviously, land management involves putting up signs or notices, building fences or walls, ploughing fields, moving animals, storing materials, carrying out potentially dangerous land management operations (see paragraphs 4.11 to 4.17) and many other tasks. Given this, there is a need to define the point at which an action is deemed to be either deliberate or unreasonable in obstructing or hindering someone from exercising access rights. Examples of what might be deliberate or unreasonable could include:

- not reinstating a core path or right of way which has been ploughed, or had its surface otherwise disturbed, within 14 days of this happening⁵¹;
- asking people to avoid using a route or area when there is no safety-related reason to do so, or keeping up such a sign when the hazard has ceased (for example, keeping up a sign

⁴⁹ Section 14 (1), Land Reform (Scotland) Act 2003

⁵⁰ Section 14, Land Reform (Scotland) Act 2003

⁵¹ Failure to do this is an offence under Section 23 of the Land Reform (Scotland) Act 2003.

saying that a field has been sprayed with acid beyond that required by Regulations);

- locking a gate on any path or track without reasonable cause⁵² or on any well-used path or track⁵³ without providing an appropriate alternative for non-motorised access;
- putting up a fence, wall or other barrier across a path or track without providing a gate or other access point, or putting up a high fence over long stretches of open country without providing gates, gaps or other access points;
- placing a fence or other barrier right across a river without reasonable cause, or without leaving an appropriate gap where the river is used by canoeists;
- putting an electric wire or barbed wire across a gate or stile without providing some sort of protection for people;
- deliberately or unnecessarily making a path or track that might be used by the public difficult to use, such as by dumping materials or leaving machinery across it or by storing slurry or other waste, or providing an animal feeding site, over or next to it, when this could readily be done elsewhere, or by not reinstating the surface following land management operations;
- removing a path or a gate, or an access point to a river or loch, without providing a reasonable alternative nearby;
- erecting a sign or notice worded in a way which intimidates or deters the public;
- leaving an animal known to be dangerous in a field or area where there is a path or track likely to be used by the public;

⁵² For example, good reasons to lock a gate might be where it is important to prevent the movement of farm animals from one field into another field of farm animals or directly onto a public road, or where the local authority agrees that there is a problem with unauthorised motorised access.

⁵³ A "well-used" path or track is likely to be a core path, a public right of way, a signposted or promoted route, or one that is close to a town or village and which is likely to be used by local people and visitors.

- allowing a guard dog or working dog to intimidate people, especially close to paths and tracks;
- closing off an existing roadside parking area that is used for access purposes without giving appropriate notice to the local authority; or
- failing to take account of access rights when planning and undertaking a major land use change, such as planting new forests, building a golf course or developing new buildings and roads.

4.10 Paths and tracks can be a good way of providing for and managing access on your land so that it is integrated with land management. This is because many people, including disabled people and older people, prefer to use paths rather than go across fields or along roads and you have a better idea of where people are likely to be. Of course, people are not obliged to use paths and there will be places for which a fixed path may not be necessary or helpful and where only occasional access will be sought. However, it is sensible to retain paths wherever they exist and to reinstate them after land management operations have been undertaken. The Land Reform (Scotland) Act 2003 introduces a wide range of new duties and powers for local authorities to create, protect and manage paths, and to remove obstructions (see Part 6 of the Code). If you are in any doubt about doing something that might affect access rights along a path or track, talk to your local authority about it.

Key points to remember:

- **do not purposefully or unreasonably prevent, hinder or deter people from exercising access rights on or off paths and tracks;**
- **use paths and tracks as a way of providing for and managing access across your land so that access is integrated with land management;**
- **take account of access rights when planning and implementing any major land use change or development.**

Act reasonably when asking people to avoid land management operations

60

4.11 The establishment of access rights does not prevent you, as a land manager, from carrying out a wide range of land management operations as safely and effectively as possible (and so meet your obligations under the Health & Safety at Work Act 1974 and other relevant legislation). A key responsibility placed on those exercising access rights is to not hinder this work (see paragraphs 3.24 to 3.28).

4.12 Much of your work is clearly visible when it is in progress and poses only very localised and obvious hazards or lasts only a short time. These activities include:

- ploughing, and sowing and harvesting crops;
- planting trees and hedges, or cutting branches;
- moving animals from field to field or to farm buildings;
- muirburn;
- cutting grass on playing fields or golf courses;

- erecting fences, walls, hedges and gates;
- routine maintenance and repairs on reservoirs or water intakes; or
- dredging in rivers and lochs.

People exercising access rights are asked to proceed carefully and to keep a safe distance if they come across such work whilst it is in progress (see paragraph 3.26). If there is an opportunity to do so, you can ask people to follow a particular route (for example, to go around the edge of the field or into a neighbouring field or onto adjacent ground) to help minimise risks to their safety.

4.13 In a limited number of cases, such as when crops are being sprayed with pesticides or trees are being felled and harvested in a forest, or when dangerous materials are being used or stored, more serious and/or less obvious hazards can arise. You need to ensure that a suitable risk assessment has been carried out in order to identify any significant risks to the public and any precautions that need to be taken. In certain cases, the only way to prevent or adequately control the risks may be to manage access by the public, as in the case of red flag procedures used during active military training. If such management is required, give clear information to the public regarding:

- use of a particular route or area while the relevant operation is carried out; or to
- carrying on a particular activity (for example, it might be safe for someone to walk through or around a field but not to picnic) while the relevant operation is going on or for a set period thereafter.

4.14 If you are organising a corporate, community or social event, such as an agricultural show, car boot sale, wedding reception,

music festival, tournament or a car rally, you can ask people to avoid using a particular route or area for the duration of the event. In many cases, as with land management operations, informal arrangements will be sufficient to ensure that any interference from the exercise of access rights is kept to a minimum. If more formal arrangements are necessary, you can ask your local authority to exclude the land from access rights for the duration of the event⁵⁴.

4.15 People exercising access rights need to follow any precautions regarding the use of a particular route or area or carrying out a particular activity (see paragraph 3.27), but these precautions need to be reasonable and practicable. This means that the area involved and duration of any precaution needs to be kept to the minimum required to allow the work to be conducted safely and effectively, and that any request is appropriate for the type of operation and the level of risk involved⁵⁵. As far as is reasonable and practicable:

- keep the boundaries of the area affected to identifiable features on the ground (such as a dyke, fence or stream) or to a specified distance if there is no clear feature;
- tell the public, at any obvious access points (such as car parks and gates), where and for how long an operation is going on, using any standard wording that is already used or which becomes available;
- provide or suggest alternative routes, especially if the operation is likely to affect a well-used path or track, or a popular recreation site.

4.16 This does not mean that for every such operation you must tell the public or provide alternative routes. Generally, the higher

⁵⁴ Under Section 11 of the Land Reform (Scotland) Act 2003. Local authorities can approve orders for up to five days. Orders for six or more days require public consultation and Ministerial approval.

⁵⁵ This requirement also applies to any official signage, such as that used for animal biosecurity purposes.

the likely levels of public access (such as along well-used routes, at popular places or at the weekend) or the more dangerous an operation is likely to be, the more you need to give information or identify alternative routes. The action you take needs to be appropriate for the level of risk involved, which depends on the nature of the work, the site and the levels of recreational use expected.

4.17 In considering what is reasonable and practicable, you could:

- use any readily available information or guidance on how any effects of a land management operation can be minimised;
- use any general risk assessments developed for land management operations; and
- think about where and when people are likely to be exercising access rights, and whether the hazard is unlikely to be obvious to the public.

Key points to remember:

- **if it is necessary for safely and effectively undertaking a land management operation, you can ask people to go around the edge of the field or to go into a neighbouring field;**
- **where there are more serious or less obvious hazards, you can take precautions, such as asking people to avoid using a particular route or area or to avoid doing a particular activity;**
- **these requests need to be for the minimum area and duration required to safeguard people's safety.**

Work with your local authority and other bodies to help integrate access and land management

- 4.18** The Land Reform (Scotland) Act 2003 requires that you take proper account of the interests of those exercising or seeking to exercise access rights⁵⁶. The responsibilities placed on those exercising access rights (Part 3) will help to minimise any interference with your work.
- 4.19** There will be occasions, though, when steps need to be taken to provide for and manage access and recreation. For example, if you experience relatively high levels of public access, manage land close to a town or city, or believe that access is causing problems for your work or for the environment, then it is sensible to work with your local authority, your local access forum and others, including representative bodies for recreation and land management, to help facilitate and manage for access. Local authorities have a wide range of duties and powers to help with these sorts of situations (see Part 6 of this Code). If your local authority is wishing to develop new routes or other facilities, or promote responsible access through a ranger service or good signposting, then working with them makes a lot of sense.
- 4.20** Paths are often an effective way of providing for access across land as most people prefer to walk or ride along paths and they provide a good opportunity to successfully integrate access with land management. Local authorities have a new duty to prepare a core paths plan for their areas and have new powers to implement these, such as through path agreements. You can get involved in planning the core path network for your area by suggesting, for example, the best routes across your

⁵⁶ Section 3, Land Reform (Scotland) Act 2003. Those exercising access rights need to take proper account of the interests of others (such as land managers and other people exercising access rights) and this is reflected in the responsibilities set out in Part 3 of this Code.

farm, croft or estate. If you wish to encourage people to avoid sensitive areas or to go around, rather than through, farmyards, providing and/or signposting paths can help greatly. Working with your local authority and other bodies can help to achieve this.

4.21 Where appropriate, therefore, you could:

- suggest routes, including possible core paths, where access would cause least problems for your work and privacy;
- signpost practicable routes around farmyards, and around other working areas, if you do not wish the public to take access through such areas;
- work to protect paths when carrying out land management operations;
- identify particular margins around fields of growing crops that you would wish to encourage people to use;
- suggest places where people could best gain access to rivers or lochs with least impact on your work and privacy;
- suggest how you would like to see the local authority ranger service work on your land; and
- identify where best to provide people with advice and information.

Doing this should put you in a better position to influence the work and priorities of your local authority, your local access forum and others, and to seek any financial assistance and other support that might be available.

4.22 If you are contacted by the organiser of a group or event (see paragraphs 3.57 to 3.64), reply positively. If your consent is required, you are encouraged to give this if your concerns or those of others can be properly addressed.

Key points to remember:

- **people tend to respond best to land managers who show that people are welcome;**
- **where possible, work closely with your local authority and others to help provide good paths across your land and to manage access positively, such as through the local authority ranger service;**
- **think about how you would like to see access provided for and managed on your land or water and involve your local authority in this.**

Take account of access rights if you manage contiguous land or water

4.23 The guidance set out in paragraphs 4.5 to 4.22 applies to land managers responsible for land or water on which access rights can be exercised. This part of the Code provides guidance to land managers who are responsible for land or water on which these rights are not exercisable but where the management of their land or water may affect the exercise of access rights on contiguous land⁵⁷.

4.24 Land on which access rights cannot be exercised includes farmyards, railway and airfield infrastructure, building and construction sites, gardens, the curtilages of buildings and some dams (see paragraph 2.11). In using and managing this land, you need to take account of how this might affect the exercise of access rights on neighbouring land, particularly through those farmyards and across those dams where people might currently take access with few problems arising. In

⁵⁷ Section 10 (1) (d), Land Reform (Scotland) Act 2003 allows the Code to be used to give advice to managers of land to which access rights do not apply but which is contiguous with such land.

these sorts of situations, it would be reasonable for people to expect that such customary access could continue. Rights of way may cross your land and these rights will continue.

4.25 Wherever possible:

- respect any rights of way or customary access across your land or water;
- avoid the use of “no access” signs or the locking or removal of gates or other access points, particularly on paths or tracks likely to be used by the public or without providing an alternative means of access;
- work with your local authority and others to provide and manage routes across your land that would best help to integrate access and land management; and
- consider what impact your work might have on people exercising access rights on neighbouring land and modify your work where this is reasonably practicable.

Part 5 A PRACTICAL GUIDE TO ACCESS RIGHTS AND RESPONSIBILITIES

5.1 The responsibilities listed in part 3 of the Code apply regardless of your activity and those listed in part 4 of the Code apply to all land managers. This part of the Code indicates how these responsibilities apply to the more common situations encountered in the outdoors. By doing so, it provides a practical guide to help the public and land managers to decide what best to do in these sorts of situations. It does not cover all situations or activities but it should help to indicate what is or is not responsible behaviour. The guide is arranged alphabetically, as follows:

- Air sports
- Beaches and the foreshore
- Canals
- Canoeing, rafting, rowing and sailing
- Car parking
- Climbing
- Cultural heritage sites
- Cycling
- Dams
- Deer stalking in forests and woods
- Deer stalking on the open hill
- Disabled access
- Dogs
- Farmyards
- Fields of grass, hay and silage

- Fields of growing crops
- Fields where crops are being sprayed and fertilised
- Fields which are being ploughed or where crops are being harvested
- Fields with farm animals
- Fields with young animals present
- Fishing
- Forests and woods
- Forests and woods with ongoing forest operations
- Gates, fences and drystone dykes
- Golf courses
- Grouse shooting
- Horse riding
- Houses and gardens
- Human waste
- Lighting fires
- Litter
- Low-ground shooting
- Margins of fields of growing crops
- Military lands
- Nature reserves and other conservation areas
- Paths and tracks
- Picking wild berries and mushrooms
- Picnicking
- Public parks and other open spaces

- Riverbanks and loch shores
- Rivers, lochs and reservoirs
- School playing fields
- Sporting and other events
- Sports pitches
- Swimming
- Unfenced grassland with farm animals
- Wild camping
- Wildlife watching and surveys

5.2 Various recreation and land management bodies, as well as many public bodies, produce more detailed advice and guidance about good practice relevant to their activities or interests. These can cover a wide range of issues, including good behaviour, safety and the environment. As such, they can complement the guidance relating to the responsible exercise of access rights provided in this Code. Given the range of guidance and advice provided, it makes good sense to be aware of these and to follow the suggestions for good practice. Find out more by contacting a relevant body or going to www.outdooraccess-scotland.com.

5.3 Recreation and land management bodies are recommended to contact SNH before finalising advice on access and good practice and to ensure that such advice is compliant with the provisions of the Act and consistent with the Code.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

➤ AIR SPORTS

Access rights are exercisable above the surface of the land and so extend to non-motorised air sports, such as paragliding. By their very nature, many of these activities require the use of hilltops and escarpments. Maintain good liaison with relevant land managers at well-used launching and landing points. Take care not to alarm wildlife or farm animals and avoid damaging crops. If you wish to set up a landing point, such as for an event, contact the relevant land manager(s).

➤ BEACHES AND THE FORESHORE

Access rights extend to beaches and the foreshore. Follow any local guidance aimed at reducing dune or machair erosion or at avoiding disturbance of nesting birds. Public rights on the foreshore will continue to exist, including shooting wildfowl, fishing for sea fish, lighting fires, beachcombing, swimming, playing and picnicking.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

If you are responsible for a hilltop, escarpment or other well-used launching or landing point, you could work with your local authority and relevant recreation bodies to ensure that any disturbance or damage by air sports is minimised.

Access to Scotland's beaches and coastline is important, particularly as many people enjoy these places. Where appropriate, work with your local authority and other bodies to help facilitate and manage such access.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CANALS

Access rights extend to canals, canal towpaths and canal embankments, but the amount of recreational and commercial use and the safety issues arising means that this use has to be managed. If you wish to canoe or undertake other water-based activities on canals, follow any local byelaws or regulations, including the Waterways Code. Remember that canals can sometimes be confined and may contain deep water. For safety reasons, always give way to motorised craft. Canal locks and lifts are regarded as structures and so access rights do not apply. However, access across some lock gates might be possible where specific provision for access has been made.

Some people stay overnight on boats on canals and so you need to respect the privacy and peace of those living in boats. Take care not to cause alarm or annoyance, especially at night. Some towpaths can provide good access for cycling and horse riding, but when a towpath becomes too narrow or dangerous, such as where there are low bridges, then dismount. Keep dogs on a short lead to avoid causing problems for other users and for wildlife.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

All managers of canals are encouraged to facilitate access to towpaths by all types of user and to provide information on where people can best exercise access rights on canals and towpaths.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CANOEING, RAFTING, ROWING AND SAILING

Access rights extend to non-motorised water-based activities, such as canoeing, rafting, rowing and sailing. Make sure that the river, loch or reservoir is appropriate for your activity and the numbers involved, take care not to interfere unreasonably with other interests and avoid going close to water intakes, abstraction points or spillways. On some water bodies that are intensively used for a wide range of activities, various management measures, such as zoning and byelaws, may be needed for safety or water quality reasons and to protect the environment. Follow any agreed guidance provided.

Respect the needs of anglers by avoiding nets or other fishing tackle. When close to anglers keep noise and other disturbance to a minimum. On lochs, keep a safe distance from anglers. On rivers or other confined waters, await a signal from the angler or ghillie to proceed if they have a line in the water and follow any suggested route they indicate if safe and practicable to do so. Take extra care when entering and leaving water to avoid damaging the banks or disturbing wildlife, and use a public slipway if one is close by.

cont.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where appropriate, work with your local authority and/or recreation groups to identify suitable parking and launching sites. Where intensive recreational use causes safety, operational or environmental concerns you could work with your local authority and/or recreation groups to determine what management measures might be needed. Wherever possible, if a club or group of users wishes to have a motorised rescue boat present for safety reasons give permission for this.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CANOEING, RAFTING, ROWING AND SAILING *cont.*

Do not pollute the water.

If you wish to canoe or sail on a loch or reservoir used intensively by a commercial fishery, be aware that this can be very disruptive, may raise safety issues because of the high number of anglers in a relatively small area and may impact on the operation of these businesses. Always talk to the land manager before going onto such water.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CAR PARKING

Access rights do not extend to any motorised activities. However, many people use their cars to get into the outdoors and parking a vehicle without regard to the interests of other people can cause problems. Therefore, when you park your vehicle it is important not to cause any damage or create an obstruction by:

- not blocking an entrance to a field or building;
- not making it difficult for other people to use a road or track;
- having regard for the safety of others;
- trying not to damage the verge; and
- using a car park if one is nearby.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where appropriate, such as where there is a lot of informal parking causing local concerns, work with your local authority and other bodies to see if a formal car park could be provided.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CLIMBING

Access rights extend to climbing. Follow any agreements between a land manager and recreational groups that seek, for example, to safeguard a rare bird nesting site (such an agreement might ask you not to climb particular cliffs or sections of cliffs during the breeding season). If you are camping close to a cliff, follow the guidance for wild camping.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CULTURAL HERITAGE SITES

Access rights do not apply to buildings or to other cultural heritage sites where a legitimate entry charge is levied. In other cases, such as many unsupervised historic or archaeological sites, access rights apply. These sites can be of great value, though they might not always be obvious on the ground, so it is important to look after them. Follow any local byelaws, regulations or approved guidance asking you to modify your behaviour in order to protect a cultural heritage site. Leave the site as you find it by:

- taking care not to move, disturb, damage or deface any stones, walls, structures or other features;
- not removing anything from it;
- not lighting fires, camping or using metal detectors there;
- not interfering with or entering any archaeological excavations.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

You can charge for services provided and for entry to buildings. Public bodies should provide information to visitors on how they might best avoid causing any damage or disturbance to a site.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> CYCLING

Access rights extend to cycling. Cycling on hard surfaces, such as wide paths and tracks, causes few problems. On narrow routes, cycling may cause problems for other people, such as walkers and horse riders. If this occurs, dismount and walk until the path becomes suitable again. Do not endanger walkers and horse riders: give other users advance warning of your presence and give way to them on a narrow path. Take care not to alarm farm animals, horses and wildlife. If you are cycling off-path, particularly in winter, avoid:

- going onto wet, boggy or soft ground; and
- churning up the surface.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where possible, work with your local authority and other bodies to help identify paths or routes across your land which are suited for cycling. If you need to put a fence across a path or track then install a gate which allows multi-use access.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> DAMS

Dams are generally regarded as structures and in these cases access rights do not apply. However, access across dams is accepted by many land managers and so you should be able to continue to take access across such dams. Follow any local guidance on safety precautions.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Owners are encouraged to support access across dams if there are no specific safety issues. Take steps to advise people of any water discharges likely to cause a hazard. Whenever possible, respond positively to any requests for information concerning water discharges to support the exercise of access rights.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> DEER STALKING IN FORESTS AND WOODS

Deer control can take place within forests all year round, often around dawn and dusk. You can help to minimise disturbance by taking extra care at these times, and by following any signs and notices, if deer stalking is taking place.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Respect the needs of people exercising access rights responsibly, by being aware of where recreational use is likely. Putting up signs, although generally not necessary, may help people to use alternative routes.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> DEER STALKING ON THE OPEN HILL

Deer management can take place during many months of the year but the most sensitive time is the stag stalking season (usually from 1 July to 20 October, but with most stalking taking place from August onwards). During this season, you can help to minimise disturbance by taking reasonable steps to find out where stalking is taking place (such as by using the Hillphones service where one is available) and by taking account of advice on alternative routes. Avoid crossing land where stalking is taking place. Stalking does not normally take place on Sundays.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Be aware of where recreational use is likely, such as along paths, popular routes and ridge lines. Tell people about where stalking is taking place by using a Hillphones service or by using signs and information boards (in accordance with this Code) to give on-the-day information on stalking and alternative routes.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> DISABLED ACCESS

Access rights apply to everyone, including people with a disability. Access rights extend to being on or crossing land in a motorised vehicle or vessel which has been constructed or adapted for use by a person with a disability and which is being used by that person. Follow the Highway Code at all times. If you are using such a vehicle or vessel, take care to avoid disturbing animals or wildlife, and respect the needs of other people exercising access rights and the needs of land managers.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where appropriate, work with your local authority to identify routes, including core paths that can be easily used by people with a disability. Wherever reasonably practicable, provide gates, rather than stiles, on paths and tracks. This will help some disabled people, such as wheelchair users.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> DOGS

Access rights apply to people walking dogs provided that their dog(s) is kept under proper control. Your main responsibilities are:

- 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 there is a clear path, such as a core path or a right of way, but keep your dog to the path;
- if you go into a field of farm animals, keep your dog(s) on a short lead or under close control and keep as far as possible from the animals;
- if cattle react aggressively and move towards you, keep calm, let the dog go and take the shortest, safest route out of the field;

cont.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Do not allow a guard dog or working dog to alarm people, especially close to paths and tracks



DOGS *cont.*

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

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FARMYARDS

Although access rights do not extend to farmyards, many people take access through farmyards when following paths and tracks. In practice:

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

In the absence of a right of way, core path or 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; or you
- 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 machinery or livestock, and respect the privacy of those living on the farm.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Many paths and tracks go through farmyards. If there is no right of way or core path through your farmyard, you are encouraged to continue to allow access where this does not interfere unreasonably with your work. You could work with your local authority to signpost the best route through or around your farmyard.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FIELDS OF GRASS, HAY, AND SILAGE

When grass has just been sown, treat it like any other crop and follow the appropriate guidance (see fields of growing crops). When on land in which grass is being grown for hay or silage you can exercise access rights unless it is at such a late stage of growth that it might be damaged. Such grass will be grown in enclosed fields and have no animals grazing on it. A "late stage of growth" is considered to be when the grass is above ankle height (about 8 inches or 20 cm). In such cases, use paths or tracks where they exist or go along the margins of the field. Grass can also be grown for turf, usually on relatively flat ground and in large fields. In these cases, use paths or tracks where they exist or go along the margins of the field, when the turf is at an early stage of establishment or if you are cycling or horse riding.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Leaving uncultivated margins can help people to exercise access rights responsibly and help to support wildlife so it makes sense, wherever possible, to do this.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

> FIELDS OF GROWING CROPS

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.

Leaving uncultivated margins can help people to exercise access rights responsibly and help to support wildlife so it makes sense, wherever possible, to do this.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FIELDS WHERE CROPS ARE BEING SPRAYED AND FERTILISED

Land managers often need to apply fertilisers or other materials, such as slurry or lime, to fields of crops. The duration of the hazard depends on the material used but can extend from a few hours to four days in the case of sulphuric acid. As these can be dangerous to public health, land managers are required to ensure that people do not enter land on which pesticides have been used. Follow any advice asking you to avoid using particular routes or areas at these times.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Keep the area affected, and the duration and type of any limitation, to the minimum required. Where reasonably practicable, provide information on the area sprayed, the material used and the dates for the period of risk at any obvious access points, such as car parks and gates. Remove signs and notices when they are no longer needed.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

> FIELDS WHICH ARE BEING PLOUGHED OR WHERE CROPS ARE BEING HARVESTED

Access rights extend to such fields but do not hinder such work. If you encounter such work while it is under way, proceed carefully, keep a safe distance and follow any advice provided by the land manager. It might be safest to go into a neighbouring field or keep to the edge of the field.

Where necessary, tell people about the area affected and for how long, and provide an alternative route if a core path is affected. Reinstate a path that has been ploughed.

> FIELDS WITH FARM ANIMALS

Access rights extend to such fields, but remember that some animals, particularly cows with calves but also horses, pigs and farmed deer, can react aggressively towards people. Before entering a field, check to see what alternatives there are. If you are in a field of farm animals, keep a safe distance and watch them carefully. If you have a dog with you, see the guidance on dogs above.

Keep animals known to be dangerous away from fields crossed by a core path or other well-used route. If this is not possible, tell the public and signpost a reasonable alternative route.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

> FIELDS WITH YOUNG ANIMALS PRESENT

You can avoid disturbing sheep close to lambing time, or young animals such as calves, lambs, foals and farmed deer, by going into a neighbouring field or onto adjacent land. If this is not possible, keep as far from the animals as possible. Do not take dogs into fields where there are young animals present.

Where possible, avoid putting sheep close to lambing in fields where there is a well-used route or, if this is not possible, you could indicate a reasonable alternative route.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FISHING

Access rights do not extend to fishing. Anglers need to be careful when casting lines so be aware of where people are on the water and on the land. If a canoeist or other person on the water is close by wait until they have passed by before casting. If you have a line in the water, allow people on the water to pass at the earliest opportunity. Indicating where you would prefer canoeists or rafts to pass by can help but be aware that it might not always be possible for them to follow the route you suggest.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Respect the needs of people exercising access rights responsibly. If a canoeist, rafter or other person is on the water, let them pass by before casting a line. Ensure your clients are aware that people can exercise access rights along riverbanks and loch shores, as well as on the water. Where appropriate, work with your local authority and recreation bodies to help to integrate access with fishing and other riparian activities, and help facilitate responsible access along riverbanks and loch shores.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FORESTS AND WOODS

You can exercise access rights in forests and woods. If you are cycling or horse riding, keeping to suitable paths and tracks can help to minimise any damage. If you have a dog with you, keep it under close control or on a short lead during the spring (April to July) so that breeding birds are not disturbed. Livestock might be present in some forests and woods so take care if you come across any animals. Be careful not to trample young trees.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Assess the level and nature of public use of the forest or wood, and develop a plan to help manage for access on busy sites. Where possible, provide paths and other facilities, including interpretation, to help people to exercise access rights responsibly.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> FORESTS AND WOODS WITH ONGOING FOREST OPERATIONS

Tree felling, timber extraction and haulage may affect an area of forest and forest roads for several months. Read any signs warning you of forest operations, such as tree felling and extraction, and follow any precautions taken by the land manager. This will ensure that you do not hinder these operations and ensure your safety and that of people working there. In some cases, signs may indicate that it is safe to go along a route if the activity has stopped, such as for the weekend.

If you come across machinery, keep a safe distance. Take extra care if you are walking, cycling or riding along forest tracks as heavy timber lorries might be using the tracks. Do not climb on to timber stacks and keep children away from them.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Follow good practice, as set out in industry-approved guidance, in the management of work sites where people are taking access. Keep the area affected, and the duration and type of any precaution, to the minimum required. Tell people about these at the main access points and, if possible, provide alternative routes. If possible, concentrate felling and extraction at times when public use is likely to be lowest. Allow people to use particular routes when work has ended (such as for the weekend) and would not cause significant safety hazards. Ensure that all site operators and vehicle drivers are aware that people might be present.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> GATES, FENCES, DRYSTONE DYKES AND HEDGES

Use a gate where one has been provided and leave it as you find it. Do not climb over gates, fences, dykes or hedges unless there is no reasonable alternative nearby. If you have to climb over a fence, avoid causing any damage by doing so near to a post. Climb a gate at the hinge end.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Locking gates without reasonable cause or fencing across a path and not providing an appropriate gate might be viewed as unreasonable obstructions.

Where possible, avoid channelling the public between two fences. If you need to use barbed wire or electric fencing, take into account people's needs by providing protection at access points and by leaving sufficient room alongside paths.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> GOLF COURSES

You can only exercise access rights to cross over a golf course and in doing so, you must keep off golf greens at all times and not interfere with any golf games or damage the playing surface. Golf courses are intensively used and managed, and there can be hazards such as where golfers are playing "blind" shots. In exercising access rights:

- allow players to play their shot before crossing a fairway;
- be still when close to a player about to play;
- follow paths where they exist; and
- keep your dog on a short lead.

To avoid damaging the playing surface, cyclists and horse riders need to keep to paths at all times and not go on to any other part of a golf course.

When fertilisers or pesticides have been used, the duration of any hazard depends on the material used but should not normally extend more than a few days. Golf course managers can ask you to avoid using particular routes at these times. Following such advice can greatly help to minimise risks to safety.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Wherever possible, provide paths around or across the course and/or advise people on the safest ways through the course. This will help to minimise safety risks.

In winter, many people enjoy activities like sledging and cross-country skiing on golf courses. This can be important to local communities. These activities rarely cause any problems if done responsibly – by keeping off greens, tees and bunkers – and when there is sufficient snow cover. Golf course managers are encouraged to accept such access when it is carried out responsibly.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> GROUSE SHOOTING

The grouse shooting season runs from 12 August to 10 December, with most shoots taking place during the earlier part of the season. You can help to minimise disturbance by being alert to the possibility of shooting taking place on grouse moors and taking account of advice on alternative routes. Avoid crossing land where a shoot is taking place until it is safe to do so.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Be aware of where recreational use is likely, such as along paths, popular routes and ridge lines. Where appropriate, tell people about where shooting is taking place by using signs and information boards (in accordance with this Code) to give on-the-day information on shoots and alternative routes.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> HORSE RIDING

Access rights extend to horse riding. Riding on firm or hard surfaces, such as wide paths and tracks and well-drained ground, causes few problems.

On narrow routes, horse riding may cause problems for other people, such as walkers and cyclists. If this occurs, take extra care by giving way to walkers where possible or by looking for an alternative route. If you are riding off-path, particularly in winter, take care to avoid:

- going onto wet, boggy or soft ground; and
- churning up the surface.

cont.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where possible, work with your local authority to help identify paths or routes across your land which are suitable for horse riding and help to integrate access and land management.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> HORSE RIDING *cont.*

Take care not to alarm farm animals and wildlife, particularly if you go round a field margin. Do not go into fields where there are grazing horses or animals that might be a danger. Get permission if you wish to carry out repetitive schooling on other people's land or wish to use jumps or custom-made gallops when these are not in use.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> HOUSES AND GARDENS

Access rights do not extend to houses and gardens. In some cases, the extent of a garden might be difficult to judge. 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).

Some larger houses are surrounded by quite large areas of land referred to as the “policies” of the house. Parts of the policies may be intensively managed for the domestic enjoyment of the house and these will include some of the

cont.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

You may want to signpost alternative routes through your policies.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

> HOUSES AND GARDENS *cont.*

features listed above. Access rights do 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.

Use a path or track, if there is one, when you are close to a house and keep a sensible distance away if there is no path or track. Take care not to act in ways that might annoy or alarm people living there. At night, take extra care by following paths and tracks and, if there are no paths or tracks, by keeping well away from buildings.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> HUMAN WASTE

If you need to urinate, do so at least 30m from open water or rivers and streams. If you need to defecate, do so as far away as possible from buildings, from open water or rivers and streams, and from any farm animals. Bury faeces in a shallow hole and replace the turf.

> 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.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

At times of drought, work with your local authority (fire services) to inform people of the high risks involved.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> LITTER

Take away all your litter. Take particular care not to drop things like bottles, cans or plastic bags as these can damage machinery and if eaten by a farm animal or a wild animal they can cause severe injury or death. Do not leave any food scraps or associated packaging as these might be eaten by animals and help to spread diseases.

> LOW-GROUND SHOOTING

Low-ground shooting can take several forms. Pheasant and partridge shooting takes place during the autumn and winter in woods and forests, and on neighbouring land. Wildfowl shooting, such as for ducks, also takes place in the autumn and winter, usually on the foreshore or on land close to water and usually around dawn and dusk. You can help minimise disturbance by being alert to the possibility of shooting taking place in these areas during the autumn and winter and by taking account of advice on alternative routes. Avoid crossing land when shooting is taking place. Avoid game bird rearing pens and keep your dog under close control or on a short lead when close to a pen.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

If you have a litter problem on your land, you could raise this with your local authority or local access forum.

Be aware of where recreational use is likely, such as along paths and other popular routes. Provide as much information as possible on where shooting is likely to take place. You could think carefully about the siting of release pens to minimise opportunities for disturbance, such as away from well-used paths and tracks.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> MARGINS OF FIELDS OF GROWING CROPS

You can exercise access rights on the margins of fields in which crops are growing, even if the margin has been sown with a crop. Some margins can be managed for wildlife (remember that some farmers may receive payments for doing this) and for encouraging game birds so take care by keeping dogs on a short lead or under close control and by not lingering if birds become significantly disturbed by your presence. If the margin is narrow or has been planted, avoid causing unnecessary damage, particularly if you are cycling or horse riding, by keeping in single file and staying close to the edge of the field.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Leaving uncultivated margins can help people to exercise access rights responsibly and help to support wildlife so it makes sense, wherever possible, to do this. In popular places you may wish to encourage people to use particular routes.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> MILITARY LANDS

The Ministry of Defence has a presumption in favour of safe public enjoyment of its estate wherever this is compatible with operational and military training needs, public safety and security. The MoD needs to carefully manage access when active military training is under way, and where there are unexploded munitions.

Always take note of advice from range staff, troops and from warning signs. If in doubt, look for an alternative route or turn back. Red flags (in daytime) and red lamps (at night) indicate live firing areas, which might not be fenced. Do not enter a range if flags are raised or lamps lit. Be careful when crossing the land as there could be trenches or voids, and never pick up objects as they could be harmful. Be prepared for sudden noises that can startle people and horses.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Provide as much information as possible, in advance, on access arrangements where this does not put safety or security at risk. Ensure that signs give a clear indication of where the public may go and explain why some precautions, such as red flag/lamp procedures, are necessary. Keep the duration of these precautions, and the area affected, to the minimum required.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> NATURE RESERVES AND OTHER CONSERVATION AREAS

Access rights extend to these places but remember that they are carefully managed for nature conservation and to safeguard rare animals and plants. Take care to avoid damaging the site or disturbing its wildlife, or interfering with its management or enjoyment by others. Depending on your activity, you might be requested to follow a specific route or to avoid exercising access rights in a specific area: following such local guidance can help to safeguard the natural heritage of these areas.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Providing information on the importance of the site and on the best routes for people to follow, and providing good paths, can help to minimise damage and disturbance, and increase public awareness of wildlife.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> PATHS AND TRACKS

Access rights extend to all paths and tracks except where they go over land on which access rights do not apply. Rights of way are unaffected by the legislation. Access rights apply off-path, but when you are close to houses 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. This can help to facilitate access and help safeguard the interests of land managers and the environment.

Walkers, cyclists and horse riders can all exercise access rights on paths and tracks. However, on some paths, such as those which are heavily-used or which are prone to damage, the local authority may have provided local advice on what types of use are appropriate or how different users should behave to reduce risks to safety or to minimise damage to the path surface. Following such advice can help to minimise problems.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

You could work with your local authority and other bodies to help identify best routes across your land for land management and access purposes. Wherever possible, routes should be multi-use and maintain their local character. Avoid deliberately or unreasonably blocking paths or hindering access along them. If you wish to divert or close a path, follow any formal procedures if these exist. Avoid erecting any signs or notices that discourage access.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> PICKING WILD BERRIES AND MUSHROOMS

Customary picking of wild fungi and berries for your own consumption is not affected by the legislation. Care for the environment by following any agreed guidance on this activity. However, being on or crossing land or water for the purpose of taking away, for commercial purposes or for profit, anything in or on the land or water is excluded from access rights.

> PICNICKING

Access rights apply to picnicking. Take care to consider the needs of other people in choosing where to picnic. For your own health, avoid picnicking in fields where there are farm animals (or may have been recently) or where the farmer has indicated that the field has recently been sprayed with lime or slurry. Do not feed any farm animals and take all litter, including any food scraps, away with you.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where possible, tell people about the area sprayed, the material used and the duration of the risk, at any obvious access points, such as car parks and gates, which are well-used by the public.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> PUBLIC PARKS AND OTHER MANAGED OPEN SPACES

Access rights can be exercised in most urban parks, country parks and other managed open spaces. These parks are normally provided for recreational and educational purposes, but may also be managed to help safeguard the environment. Where the levels or types of use are such that peoples' safety or the environment is at risk, local guidance or management measures, such as management rules, regulations or byelaws, might have been introduced. Follow such guidance to help ensure that safety or the environment is not put at risk.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Promote the exercise of access rights in such places where this would not put safety or the environment at risk. Use measures such as management rules or byelaws as a last resort.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> RIVERBANKS AND LOCH SHORES

Access rights can be exercised along riverbanks and loch shores except where a garden or other curtilage goes right up to the water's edge. Be aware that riverbanks and loch shores are often a refuge for wildlife and may be used for fishing and related management.

Show consideration to people fishing and keep a safe distance if an angler is casting a line. Some lochs and reservoirs are used intensively as commercial fisheries and so can be potentially dangerous where a lot of anglers are casting in a small area. Take extra care in such areas. If you wish to use a boat and there is a public slipway or launching point available nearby you should use it. Take extra care if you are passing by or landing on an island as these can often be a good refuge for wildlife.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Respect the needs of those exercising access rights by letting people pass before casting a line. If you take steps to improve riparian habitats, to provide fishing paths or to place fences in moving water, respect the needs of those exercising or seeking to exercise access rights. For example, if you wish to use fencing to help regenerate or improve riparian habitats, provide gates or other access points or a reasonable, alternative route.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> RIVERS, LOCHS AND RESERVOIRS

Access rights extend to rivers, lochs and reservoirs (but never go close to spillways or water intakes). Care for the interests of other users and for the natural heritage of rivers and lochs by:

- not intentionally or recklessly disturbing birds and other animals;
- not polluting the water as it may be used for public water supply;
- making sure that the river, loch or reservoir is appropriate for your activity and the numbers involved;
- following the guidance in the Code, and any local byelaws, to ensure that your activity will not interfere unreasonably with the interests of other users, such as anglers, or the environment.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Where appropriate, work with your local authority and other bodies to help identify areas for parking vehicles at popular sites and places where people can best take access to the river or loch without causing any problems. Avoid putting fences from one side of a river to the other side without reasonable cause or without putting in gates at the sides or leaving a gap in rivers used by canoeists. Public bodies could take steps to promote the use of reservoirs where access would not conflict with water quality.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> SCHOOL PLAYING FIELDS

Access rights do not apply to land next to a school and which is used by the school (such as school playing fields).

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

When not in use by the school, such land may provide a valued local green space for the community. Schools are encouraged to permit such use by the public when not in use by the school.

> SPORTING AND OTHER EVENTS

Land managers sometimes hire out their land for sporting events, such as for car rallies, golf tournaments, archery or clay pigeon shoots, and other events, such as local shows, pop concerts, and sheep dog trials. These events are usually well-organised, sometimes with a charge for entry, and with marshals and signs directing visitors. Land managers can ask you to follow an alternative route while the event is under way. In some cases, the local authority may have formally excluded the area from access rights for the period of the event and you must respect this.

Inform the public of any limitations, in advance and at obvious access points, such as gates and car parks. Keep any limitations to the minimum required.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> SPORTS PITCHES

You cannot exercise access rights on any sports pitch, playing field or other areas set out for a recreational purpose (such as for archery or other target sports) while it is in use and take account of grounds maintenance operations, which can include the application of fertilisers or pesticides. In crossing over a sports pitch or playing field, take care not to damage the playing surface. Horse riders and cyclists need to go around such areas.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

If you have several pitches, consider providing a signposted route around the margins of the area covered by the pitches.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> SWIMMING

Access rights extend to swimming (subject to any local byelaws).

Remember that swimming in open water can be dangerous, particularly for children, and that the water might be used for public water supply. Help to minimise problems for other users by:

- do not swim close to water intakes, abstraction points or spillways;
- avoiding nets or other fishing tackle;
- not disturbing anglers and other water users;
- not polluting the water;
- being aware that in prolonged dry spells fish might be distressed due to low water levels.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Indicating where people can best take access to a river or loch can help to minimise any problems.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> UNFENCED GRASSLAND WITH FARM ANIMALS

You can exercise access rights over open pasture. Keep a sensible distance from animals, particularly where there are calves or lambs present, and avoid driving them over the land. Make sure that your dog does not chase or worry livestock by keeping it under close control or on a lead.

> WILD CAMPING

Access rights extend to wild camping. This type of camping is lightweight, done in small numbers and only for two or three nights in any one place. You can camp in this way wherever access rights apply but help to avoid causing problems for local people and land managers by not camping in enclosed fields of crops or farm animals and by keeping well away from buildings, roads or historic structures. Take extra care to avoid disturbing deer stalking or grouse shooting. If you wish to camp close to a house or building, seek the owner's permission. Leave no trace by:

- taking away all your litter;
- removing all traces of your tent pitch and of any open fire (follow the guidance for lighting fires);
- not causing any pollution.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

If you are experiencing large numbers of roadside campers or have well-used wild camping areas, you could work with your local authority and with recreational bodies to assist the management of such camping.

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

> WILDLIFE WATCHING AND SURVEYS

Watching and recording wildlife is a popular activity and falls within access rights. If you wish to intensively survey an area, make frequent repeat visits or use any survey equipment, consult the relevant land manager(s) to let them know of your intentions. Take extra care not to disturb the wildlife you are watching.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Wherever possible, co-operate with people who wish to carry out a survey and allow the taking of small samples where this would not cause any damage.

Part 6 WHERE TO GET HELP AND INFORMATION

6.1 By providing a detailed guide to access rights and responsibilities, which should help everyone make informed decisions about what best to do in everyday situations, the number of issues or problems that might arise should be reduced. Some issues and problems, however, are inevitable and may range from differences in interpreting access rights and responsibilities to coming across undesirable behaviour. Also, in some places the number of people or range of recreation activities might be causing significant problems for land management, people's safety or the environment and so some form of management might be needed. This part of the Code provides advice on:

- where to find out more about access rights and responsibilities;
- what can be done to manage access and recreation; and
- what you should do if you encounter someone behaving irresponsibly.

6.2 In dealing with any issue or problem that might arise, it is important that everyone shows courtesy and consideration to other people. Good manners are fundamental to good relations between those enjoying the outdoors and those who live and work there. Respecting the needs of other people and following the guidance in the Code will help a great deal.

Getting more advice and information

6.3 The Code cannot cover every possible situation, setting or activity. Free information and advice on access rights and

responsibilities, and on who to contact in your local authority is available online at: www.outdooraccess-scotland.com

- 6.4** This website also provides links to a wide range of representative bodies for recreation and land management, and to relevant public bodies. It also provides information on SNH's education programme and on where to seek grants and other support.
- 6.5** If you need more detailed advice or guidance, you should phone your local authority or national park authority directly (ask for the access officer or ranger service) or contact your local SNH office (see www.outdooraccess-scotland.com for contact details).

Facilitating and managing access and recreation

118

- 6.6** In some cases, the number of people visiting a place or the range of recreational activities taking place might cause some problems for land management, people's safety or the environment. Equally, in some places, better provision of paths and other facilities might be needed to maximise people's enjoyment of the outdoors, particularly by people with disabilities. In these situations, some form of formal provision and/or management will be needed. Local authorities, national park authorities and other public bodies, local access forums and representative bodies for recreation and land management, as well as land managers, can all help to provide for and manage access and recreation.
- 6.7** What sort of facilities or management is needed in an area will vary according to its location, the level and type of recreational use and the range and complexity of issues arising. Steps that can be taken include the following.

- The promotion of responsible behaviour through more detailed codes of practice, education, interpretation, training and promotional campaigns⁵⁸.
- Providing on-site advice through signage, waymarking and leaflets.
- Providing facilities, such as paths, gates and other access points, launching points, car parks and picnic areas, as a way of helping to manage access and recreation, and to integrate access and land management.
- Working with your local authority to identify routes, including core paths that can be easily used by disabled people.
- Running a ranger service to advise on and promote responsible behaviour, to contribute to educational and interpretive work, and to look after facilities.
- Taking precautions to safeguard people's safety, such as asking people not to use a particular route or area, or not to undertake a particular activity, while there is a specific land management operation under way (see paragraphs 3.24 to 3.28 and 4.11 to 4.17).
- Voluntary agreements between land managers and recreation bodies to help safeguard natural heritage interests at sensitive times of the year (such as climbing on cliffs where rare birds are nesting and rearing their young) or to zone intensively used places for different recreational activities.
- Putting up notices for the purposes of advising people of any adverse effect that their presence or their activities may have on the natural heritage or the cultural heritage⁵⁹.

⁵⁸ Scottish Natural Heritage and all local authorities have a statutory duty to publicise the Code. SNH also has a duty to promote understanding of the Code.

⁵⁹ Section 29, Land Reform (Scotland) Act 2003. Scottish Natural Heritage has this power for the natural heritage and Scottish Ministers for the cultural heritage.

- Management rules, byelaws⁶⁰ or other regulations where more directive management is needed to avoid significant problems arising and where voluntary agreements have not worked. Local authorities can introduce management rules on their own land or byelaws on any land or water on which access rights can be exercised. Other public bodies, including Scottish Natural Heritage, Scottish Water, British Waterways, Ministry of Defence and the Forestry Commission, can all introduce byelaws on land or water that they own or otherwise control. These byelaws must be consistent with the Land Reform (Scotland) Act 2003.
- The exemption of an area from access rights for a specific period and purpose by a local authority or Scottish Ministers (see paragraph 2.11).
- To prevent damage to a Site of Special Scientific Interest, the owners or occupiers of the site may need to notify Scottish Natural Heritage of “potentially damaging operations⁶¹”. Also, Ministers, on the advice of Scottish Natural Heritage, can issue a Nature Conservation Order⁶². This may be used to restrict access to a specific area (to protect a raptor nest for example).

6.8 The new local access forums will have a key role to play in bringing together all key interests locally to advise local authorities or national park authorities and other bodies on any matter arising from the exercise of access rights and issues relating to rights of way and to the new core path plans that local authorities must prepare. The local access forums can also offer assistance to the parties of any dispute about these

⁶⁰ A local authority can introduce byelaws over any land on which the access rights can be exercised to keep order, prevent damage, prevent nuisance or danger, or preserve or improve amenity. They must follow agreed procedures and consult relevant interests.

⁶¹ These might be replaced by the term “operations requiring consent” as proposed under the Nature Conservation (Scotland) Bill.

⁶² Under Section 29, Wildlife & Countryside Act 1981. A Special Nature Conservation Order can be made on a Natura site under The Conservation (Natural Habitats and etc) Regulations 1994.

issues. You can find out more about local access forums by contacting your local authority or going online at www.outdooraccess-scotland.com.

6.9 The Land Reform (Scotland) Act 2003 placed several new duties on local authorities and national park authorities⁶³. Each local authority and national park authority must:

- uphold access rights by asserting, protecting and keeping open and free from obstruction or encroachment any route or other means by which people exercise access rights;
- set up at least one local access forum for its area to advise it on any matter to do with the exercise of access rights or the core paths plan, and to offer help in any dispute arising;
- prepare a plan for its area, within three years, for a system of paths (known as core paths) sufficient to give people reasonable access throughout its area (procedures have been set out for doing this work and this includes consulting relevant interests); and
- review its byelaws and amend these where necessary.

6.10 Local authorities and national park authorities also have wide-ranging powers to help manage access and recreation. These powers include:

- employing a ranger service to help and advise people about access rights on any land or water where the access rights can be exercised and to perform such other duties on this land or water as the local authority determines;
- the introduction of measures for safety, protection, guidance and assistance to warn of, and protect people from any danger on land on which the rights are exercisable, to show or enclose recommended routes or established paths, and to give directions to such land;

⁶³ From time to time, Scottish Ministers may issue formal guidance to local authorities and national park authorities on the performance of any of their functions under the Land Reform (Scotland) Act 2003.

- entering agreements to delineate and maintain core paths;
- entering a management agreement with a land manager to set out how much management is needed to preserve or enhance the natural beauty of the countryside or to promote enjoyment of the countryside in an area, or to help manage access to any cultural heritage site;
- the removal of any prohibiting sign, obstruction or dangerous impediment that is intended to prevent or deter anyone from exercising the access rights, and recover the costs of doing so;
- the introduction of management rules to manage recreational use on land or water under its control;
- the acquisition of land or water to enable or facilitate the exercise of access rights (they can do so compulsorily with consent of Ministers);
- the exemption of particular land or water from access rights for up to five days (longer exemptions require public consultation and Ministerial consent).

6.11 All relevant public bodies can help by respecting, safeguarding and promoting access rights and responsibilities through their policies, plans and actions. They could do this, for example, by:

- reviewing and amending or developing policies and programmes of assistance (such as grants);
- considering the impact of new development proposals on access rights (such as through the development control process);
- working positively to help the exercise of access rights on their land and water;
- setting a good example by fully meeting their obligations as land managers under the Code;

- co-ordinating their access policies and initiatives with other public bodies;
- providing information to the public and land managers about exercising access rights responsibly and managing land and water responsibly for access; and by
- making full use of their duties and powers.

What to do if you encounter irresponsible behaviour

6.12 In practice, only a small proportion of people behave irresponsibly and much of this is due to people not being aware of the implications of their actions. With people's responsibilities set out in this Code and the greater emphasis on promoting responsible behaviour, the incidence of irresponsible behaviour should remain small. Inevitably, though, you might encounter some form of irresponsible behaviour. If you do, the sensible course of action is to talk to the people involved and ask them to explain their behaviour. Using aggressive language will only make a problem worse.

6.13 If a person is behaving irresponsibly and damage or significant disturbance is being caused, then you could ask them to modify their behaviour. If they refuse to do so, and this damage or significant disturbance continues, then they would not be exercising access rights responsibly and so they could then be asked to leave. If an individual does this persistently over a period of time, you could seek an interdict against that person. Never use force.

6.14 If a person's behaviour is criminal, you should contact the Police.

6.15 If you are exercising access rights and come across what you believe is a deliberate or unreasonable obstruction that stops or hinders you from exercising access rights, you could report this to the local authority. The local authority could then decide what to do in terms of removing the obstruction and upholding access rights.

6.16 A dispute over whether or not a member of the public or a land manager is acting irresponsibly could ultimately be referred to a Sheriff for a declaration. In dealing with this, it would be relevant to consider whether the person was following the guidance in this Code. Such action, though, should be relatively rare.

Annex 1 Existing criminal offences created by statute

This annex lists, in alphabetical order, the main categories of criminal behaviour that are statutory offences. The common law also provides for action where, for instance, a breach of the peace or malicious mischief is alleged. Access rights do not extend to any of these activities. The annex is meant to provide an overview summary. For detailed information, look at the relevant legislation. Provisions within the Highway Code for cycling and horse riding must be followed.

Activity	Statutory reference	Comments
Aggravated trespass	Criminal Justice and Public Order Act 1994 (Section 68)	A person commits this offence if, in relation to any lawful activity people are engaged in or about to undertake, the person does anything that is intended to intimidate and deter those people or to obstruct or disrupt the activity.
Collective trespass	Criminal Justice and Public Order Act 1994 (Section 61)	If two or more people are trespassing with common purpose to reside on land for any time, and: <ul style="list-style-type: none"> • have caused damage, or • used threatening, abusive or insulting words or behaviour, or • have between them 6 or more vehicles, they can be directed to leave by the police. If they fail to do so, they commit an offence.
Control of dogs (fouling)	Civic Government (Scotland) Act 1982 (Section 48)	If you are in charge of a dog and allow it to foul: <ul style="list-style-type: none"> • a footpath or footway, or • a grass verge maintained by a council and adjacent to a footpath/footway, or • any place maintained by a local authority for recreational or sporting purposes, you are guilty of an offence.
Control of dogs (fouling)	Dog Fouling (Scotland) Act 2003 (Section 1)	A person commits an offence under this law if they do not immediately remove the faeces defecated by their dog in any public open place.
Control of dogs (worrying of livestock by dogs)	Dogs (Protection of Livestock) Act 1953 (Section 1)	If a dog worries livestock on any agricultural land the person in charge of the dog is guilty of an offence. Worrying includes a dog attacking or chasing livestock, or being loose in a field where there are sheep.

Activity	Statutory reference	Comments
Control of dogs (worrying of livestock by dogs)	Animals (Scotland) Act 1987 (Section 4)	This is not an offence, but is included here because this Act provides a defence for people who kill or injure a dog which is worrying livestock, subject to stringent conditions.
Damage to ancient monuments	Ancient Monuments & Archaeological Areas Act 1979 (Sections 2, 19)	It is an offence to carry out, cause or permit any works, without the consent of Scottish Ministers, which result in the demolition or destruction of or any damage to a Scheduled Monument.
Damage or disturbance to animals	Wildlife & Countryside Act 1981 (Sections 9–10) and The Conservation (Natural Habitats etc) Regulations 1994	For protected species, it is an offence to: <ul style="list-style-type: none"> • kill or injure the animal, • capture or keep the animal, • destroy, damage or obstruct access to its place of shelter, and • disturb the animal while using its place of shelter. Other offences relate to badgers, bats, deer, seals, whales and dolphins. For protected species such as bats, otters, wildcats, great crested newts and natterjack toads, under European legislation it is an offence to: <ul style="list-style-type: none"> • capture, kill or disturb the animal, • take or destroy its eggs, • damage or destroy its breeding site or resting place. Contact your local Scottish Natural Heritage (SNH) office for further information.
Damage or disturbance to wild birds	Wildlife & Countryside Act 1981 (Sections 1–6) and The Conservation (Natural Habitats etc) Regulations 1994	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. Contact your local SNH office for further information.
Damage to plants	Wildlife & Countryside (Section 13) and The Conservation (Natural Habitats etc) Act 1981 Regulations 1994	It is an offence to dig up or remove any wild plant without the permission of the landowner. Certain plants are specially protected and it is an offence to pick, collect, cut, uproot or destroy these species, even if the landowner agrees. It is also an offence to keep, sell, advertise or exchange such plants. Specially protected plants are listed in Schedule 8 to the 1981 Act and in the list of European protected species in Schedule 4 to the 1994 Regulations. They include Killarney fern, floating-leaved water plantain, slender naiad and yellow marsh saxifrage. Contact your local SNH office for further information.

Activity	Statutory reference	Comments
Driving a vehicle off road	Road Traffic Act 1988 (Section 34)	It is an offence to drive a motor vehicle without lawful authority on: <ul style="list-style-type: none"> land of any description (not forming part of a road), or a footpath or bridleway except in an emergency. It is not an offence to drive a motor vehicle on land within 15 yards of a road for the purpose of parking the vehicle – although this does not confer any legal right to park the vehicle.
Dropping of litter	Environmental Protection Act 1990 (Section 87)	It is an offence to leave litter in any public open place (a place in the open air where you can go without paying).
Fishing	Salmon & Freshwater Fisheries (Protection) (Scotland) Act 1951 (Section 1) and Freshwater & Salmon Fisheries (Scotland) Act 1976 (Section 1)	Fishing for salmon or sea trout without lawful authority or written permission from the owner of the fishing rights is a criminal offence. Fishing for brown trout and other freshwater fish without written permission or legal rights is a criminal offence in an area covered by a Protection Order.
Lighting fires	Trespass (Scotland) Act 1865 (Section 3)	You are guilty of an offence if you light a fire: <ul style="list-style-type: none"> on or near any private road, on enclosed or cultivated land, in or near any plantation, without the consent of the owner or land manager.
Lighting Fires	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 to give reasonable cause for alarm or annoyance, or so as to endanger any property is guilty of an offence. A public place is any place to which the public have unrestricted access.
Obstruction in a public place	Civic Government (Scotland) Act 1982 (Section 53)	Any person on foot in a public place who wilfully obstructs the lawful passage of any other person is committing an offence. A public place means any place to which the public have unrestricted access.
Poaching	Night Poaching Act 1828 (Section 1)	It is an offence to take or destroy any game: <ul style="list-style-type: none"> on any land, whether open or enclosed, or on any public road. It is also an offence to go on any land at night with a gun for the purpose of taking or destroying game.

Activity	Statutory reference	Comments
Poaching	Game (Scotland) Act 1832 (Section 31)	It is an offence to trespass on land without the leave of the owner or proprietor in search of game, woodcock, snipe, wild ducks or rabbits during daytime.
Polluting water	Water (Scotland) Act 1980 (Section 75)	If you deliberately or accidentally pollute any spring, well or adit used or likely to be used for: <ul style="list-style-type: none"> • human consumption, • domestic purposes, • manufacturing food or drink for human consumption, you are guilty of an offence.
Polluting water	Control of Pollution Act 1974 (Section 31)	If you cause or knowingly permit to enter surface or ground water <ul style="list-style-type: none"> • any poisonous, noxious or polluting matter, or • any solid waste matter, you are committing an offence.
Safety	Health & Safety at Work Act 1974 (Sections 8, 33)	It is an offence to interfere intentionally with or misuse anything provided for the safety, health or welfare of people.
Spawning salmon	Salmon Fisheries (Scotland) Act 1868 (Section 19)	It is offence to wilfully disturb any salmon spawn, or spawning beds and shallows where salmon spawn may be.
Trespassory assemblies	Criminal Justice and Public Order Act 1994 (Section 70)	It is an offence to organise or participate in any trespassory assembly which has been prohibited by a Council on application from the chief officer of police. (Such prohibitions may only be ordered, for a period of up to 4 days, where such an assembly of 20 or more people would be without the landowner's permission, and may result in serious disruption to the life of the community, or serious damage to land or a building of historical, archaeological or scientific importance.)

Activity	Statutory reference	Comments
Using metal detectors in a protected place	Ancient Monuments & Archaeological Areas Act 1979 (Section 42)	<p>It is an offence to use a metal detector in a protected place without the written consent of Ministers. A protected place is any place which is either a site of a scheduled monument or of any monument under the ownership or guardianship of Ministers or a local authority by virtue of this Act or is situated in an area of archaeological importance.</p> <p>It is also an offence to remove any object of archaeological or historic interest discovered through the use of a metal detector in a protected place without the written consent of Ministers. Under Scots Law, all finds must be formally reported to the Crown and not to do so is an offence under Treasure Trove and under the Civic Government (Scotland) Act 1982.</p>
Vandalism	Criminal Justice (Scotland) Act 1980 (Section 78)	Anyone who, without reasonable excuse, wilfully or recklessly destroys or damages another's property commits this offence of vandalism.

Index

A

- Access rights – 1.7, 2.1 – 2.19
- Advice and help – 6.1 – 6.16
- Air sports – 2.7, Part 5

B

- Beaches – 1.7, 2.2, Part 5
- Biosecurity – 3.30, 3.32
- Birds – 2.13, 3.45 – 3.46, Annex 1
- Buildings – 2.11, 3.13 – 3.21, 3.40 – 3.42, 3.63, 4.9, 4.24, Part 5
- Byelaws – 2.11, 3.46, 6.7, 6.9

C

- Camping – 3.51 – also see Wild Camping
- Canals – 2.2, 3.25, Part 5
- Canoeing – 2.7, 3.11, Part 5
- Car parking – 3.32, 3.58, 3.60, 4.9, Part 5, Annex 1
- Carriage driving – 2.7, 3.9
- Caving – 2.7
- Climbing – 2.7, 3.46, Part 5, 6.7
- Commercial use – 2.6, 2.9, 2.10, 2.14, 3.57, 3.62
- Conservation – 3.43 – 3.52, 3.63, Part 5, 6.7, Annex 1
- Core paths – 1.7, 2.2, 3.41, 4.20, 4.21, 6.7 – 6.9
- Country Parks – 2.2, Part 5
- Criminal offences – see Annex 1
- Crofting / crofters – 1.7, 3.22, 4.20
- Crop spraying – 2.5, 3.10, 3.27, 4.13, Part 5
- Crops – 2.2, 2.11, 2.16, 3.5, 3.25, 3.35 – 3.37, 4.12, Part 5
- Cultural heritage – 2.8, 2.9, 3.49 – 3.52, 3.63, Part 5, 6.7, 6.10
- Curtilage – 2.11, 3.18, 3.42, 4.24
- Customary access – 2.19, 3.41, 4.24
- Cycling – 2.7, 3.9, Part 5

D

- Dams – 2.19, 4.24, Part 5
- Deer – 3.29
- Deer stalking – 3.23, Part 5
- Disabled people – 2.14, 4.10, Part 5, 6.6
- Diseases – 3.32 – 3.34, 3.53, 3.55, 3.56
- Diving – 2.7
- Dogs – 2.13, 3.29 – 3.32, 3.53 – 3.56, 4.5, 4.9, Part 5, Annex 1
- Dykes – 3.20, 3.28 – 3.29, Part 5

E

- Educational use – 2.6, 2.8, 2.10, 3.57, 3.59, 3.62, 3.64
- Events – 2.7, 3.60 – 3.61, 4.14, 4.22, Part 5
- Excluded activities – 2.12
- Excluded areas – 2.11, 2.16, 3.61, 4.14, 6.7, 6.10

F

- Farm animals – 2.2, 3.22, 3.29 – 3.34, 3.38, 3.53 – 3.56, Part 5
- Farmyards – 2.19, 3.40 – 3.41, 4.20 – 4.21, 4.24, Part 5
- Fences – 3.10, 3.20, 3.22, 3.25, 3.38 – 3.39, 4.7, 4.9, 4.12, Part 5
- Field margins – 2.2, 3.35 – 3.36, 4.21
- Fields with crops – 2.11, 2.16, 3.5, 3.22, 3.35 – 3.37, 4.12, Part 5
- Fields with farm animals – 2.2, 3.22, 3.29 – 3.34, 3.55 – 3.56, Part 5
- Fields with fruit and vegetables – 2.11, 3.54 – 3.56
- Fishing – 2.11, 2.14, 2.18, Part 5, Annex 1
- Firearms – 2.12
- Fires – 2.18, 3.51, Part 5, Annex 1
- Foreshore – 2.18, Part 5
- Forests and woods – 1.7, 2.2, 3.16, 4.9, Part 5

G

Gamekeepers – 3.22
 Gardens – 2.11, 3.13 – 3.17, 4.24, Part 5
 Gates – 2.2, 3.20, 3.22, 3.25, 3.32, 3.38, 4.9, 4.12, 4.25, Part 5, 6.7
 Golf courses – 2.2, 2.11, 2.19, 3.25, 3.56, 4.9, 4.12, Part 5
 Ground nesting birds – 3.55
 Groups – 3.57 – 3.59, 4.22
 Grouse shooting – 3.23, Part 5

H

Harvesting – 2.5, 3.25, 4.12, Part 5
 Hay / silage – 2.2, 2.11, 3.37, Part 5
 Health and Safety – 3.8, 3.22, 3.24, 4.11, Annex 1 – also see Safety
 Help and advice – Part 6
 Hill-running – 2.7
 Historic houses / sites – 2.7, 2.11, Part 5
 Horse riding – 2.7, Part 5
 Houses – 2.11, 3.5, 3.13 – 3.17, Part 5
 Human waste – 3.61, Part 5
 Hunting – 2.14 - also see Shooting

I

Inland water – 1.1, 1.7, 2.2, 2.10, 4.1
 Irresponsible behaviour – 1.4, 3.46, 6.12 – 6.16

K

Key Principles – 1.3

L

Land contiguous to access land – 4.23 – 4.25
 Land management operations – 2.5, 3.3, 3.10, 3.22, 3.24 – 3.28, 3.60, 3.62, 4.4, 4.7 – 4.10, 4.11 – 4.17, Part 5
 Land manager – 1.7, Part 4
 Large houses – 3.16, Part 5
 Liability – 3.8
 Litter – 2.13, 3.32, 3.48, 3.60 – 3.61, Part 5, Annex 1,
 Livestock – 2.13, 3.29 – 3.34, 3.53 – 3.56, Part 5

Local access forum – 4.19, 4.21, 6.6 – 6.8
 Local authority – 1.7, 3.46, 4.8, 4.10, 4.14, 4.18 – 4.21, 6.3 – 6.11, 6.15
 Lochs and reservoirs – 1.7, 2.2, 2.17, 3.25, 3.55, 4.12, 4.21, Part 5
 Low-ground shooting – 3.23, Part 5

M

Management Agreement – 6.10
 Management Rules – 2.11, 6.7, 6.10
 Metal detectors – 3.51, Annex 1
 Microlighting – 2.14
 Military lands / training – 2.11, 3.27, 4.13, Part 5
 Motor biking – 2.14
 Motorised access – 2.14 – 2.16, 4.9, Part 5, Annex 1
 Mountain biking – 2.7
 Mountain Guide – 2.9, 3.62
 Mountaineering – 2.7, 3.11

N

National Park authorities – 1.7, 6.5 – 6.11
 Natural heritage – 2.8, 3.43 – 3.48, 6.7
 Nature reserves – Part 5
 Night-time access – 2.4, 3.19 – 3.20
 Noise – 3.17
 Non-domestic buildings – 2.11, 3.18, 3.42, 3.63, 4.24

O

Obstructions to public access – 4.8 – 4.10, 6.10, 6.15, Annex 1
 Off-road driving – 2.14, 2.16, Annex 1
 Outdoors – 1.1, 1.7, 3.10
 Orienteering – 2.7

P

Paragliding – see Air sports
 Paths and tracks – 2.2, 3.5, 3.20, 3.30, 3.36, 3.37, 3.40, 3.41, 4.4, 4.9, 4.10, 4.20, 4.25, Part 5, 6.6 – 6.10
 Pay to enter – 2.11, 3.61
 Photography – 2.7, 2.9, 3.63

Picking wild berries and mushrooms – 2.14, 2.19, Part 5

Picnicking – 2.7, 2.18, 3.34, 4.13, Part 5

Playing fields – 2.2, 2.11, 3.25, 3.55, 3.56, 4.12, Part 5 - also see Sports pitches

Ploughing – 3.25, 4.9, 4.12, Part 5

Police – 6.14

Policies eg woodland – 3.16

Pollution – 2.13, 3.61, Annex 1

Privacy – 1.3, 2.11, 3.13 – 3.17, 3.20, 3.40 – 3.41, 3.61, 3.63, 4.21

Promotional campaigns – 1.2, 4.19, 6.7, 6.11, 6.12

Public bodies – 1.7, 2.11, 3.46, 4.1, 6.6, 6.11

Public parks – 1.1, 2.2, Part 5

Public rights of navigation – 2.17

Public rights of way – 2.15, 2.16

R

Rafting – Part 5

Railways – 2.11, 4.24

Rangers – 4.19, 4.21, 6.5, 6.7, 6.10

Reservoirs – see Lochs and reservoirs

Risk assessment – 3.27, 3.62, 4.13, 4.17

Riverbanks – 2.2, 3.47, 3.56, Part 5

Rivers and streams – 2.2, 3.11, 3.17, 4.9, 4.21, Part 5

Rowing – 2.7, Part 5

S

Safety – 1.3, 2.11, 3.8 – 3.12, 3.19, 3.22 – 3.28, 3.40, 3.60, 3.63, 4.11 – 4.17, 6.7, 6.10, Annex 1

Sailing – 2.7, Part 5

School grounds – 2.11, Part 5

Sheriffs' courts – 1.4, 6.16

Shooting – 2.12, 2.14 – also see:
 Low-ground shooting,
 Grouse shooting, Wildfowling

Silage – see Hay / silage

Signs – 3.10, 3.30, 3.33, 3.41, 3.46, 3.52, 3.60, 4.9, 4.25

Skiing – 2.7

Sledging – 2.7, 2.19

Sporting events – 2.7, Part 5 - also see Events

Sports pitches – 2.11, 3.55, 3.56, Part 5

Status of Code – 1.4 – 1.6

Stiles – 2.2 – also see Gates

Structures – 2.11, 3.42, 3.51

Surveys – 2.8, 3.64, Part 5

Swimming – 2.7, 2.18, Part 5

T

Tree felling – 2.5, 3.10, 3.27, 3.28, 4.13, Part 5

V

Visitor attractions – 2.11, 3.49, 3.59

Voluntary agreements – 3.46, 6.7

W

Walls – see Dykes

Wild camping – 2.7, Part 5

Wildfowling – 2.18, also see Low-ground shooting

Wildlife – 2.8, 3.44 – 3.48, 3.56

Wildlife surveys – 2.8, 3.64, Part 5

Wildlife watching – 2.7, 3.45, Part 5

Windsurfing – 2.7

Woods – see Forests and woods

