

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.