

## 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 bodies<sup>47</sup>.

## What is responsible behaviour?

**4.2** The Land Reform (Scotland) Act 2003<sup>48</sup> 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.

<sup>47</sup> See paragraph 1.7.

<sup>48</sup> 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 action<sup>49</sup>.

**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 impediment<sup>50</sup>.

**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 happening<sup>51</sup>;
- 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

<sup>49</sup> Section 14 (1), Land Reform (Scotland) Act 2003

<sup>50</sup> Section 14, Land Reform (Scotland) Act 2003

<sup>51</sup> 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 cause<sup>52</sup> or on any well-used path or track<sup>53</sup> 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;

<sup>52</sup> 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.

<sup>53</sup> 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**

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**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 event<sup>54</sup>.

**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 involved<sup>55</sup>. 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

<sup>54</sup> 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.

<sup>55</sup> 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 rights<sup>56</sup>. 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

<sup>56</sup> 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**

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**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 land<sup>57</sup>.

**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

<sup>57</sup> 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.