

**Harper Macleod LLP Opinion**

on

**Whether the operation of small unmanned aircraft is an exercise  
of access rights under section 1 of the Land Reform (Scotland)  
Act 2003**

**Provided to NatureScot and the National Access Forum**

March 2026

## 1. Introduction

- 1.1. This opinion is provided in response to a letter of instruction from NatureScot dated 5 March 2026. In terms thereof, instructing Harper Macleod to provide an opinion on whether a member of the public may rely on access rights under section 1 of the Land Reform (Scotland) Act 2003 (“the Act”) to fly small unmanned aircraft (“drones”) on land they do not own.
- 1.2. In the interests of clarity, a “drone” for the purposes of this opinion is a small aircraft powered by electric motors which can either be remotely controlled by manual input from a person or autonomous in the sense of utilising pre-programmed flight commands. It is presumed that the activity of flying a drone is undertaken by (i) a person standing on land who is either manually controlling the drone or releasing it (“the Operator”), and (ii) a drone being propelled through the airspace above land.
- 1.3. The focus of this opinion is on drones below 250g in weight and primarily used for recreational, non-commercial use. However, for reasons that will become clear, this note is equally applicable to both larger drones and commercial activities.

## 2. The Act

- 2.1. In terms of section 1 (s.1) of the Act, everyone has the right to be on land for specified purposes (s.1(2)(a)) and to cross land (s.1(2)(a)). The specified purposes are for recreation, carrying on a relevant educational activity (i.e. furthering a person’s understanding of natural or cultural heritage, or enabling or assisting others to further such understanding), or doing either of those things commercially for profit (s.1(3)). It follows from that last specified purpose that if flying a drone recreationally is a legitimate exercise of access rights then flying a drone for a commercial purpose is also a legitimate exercise of access rights.
- 2.2. Access rights are not only exercisable on the surface of land. They are also exercisable above and below the surface of land (s.1(6)). That means that access rights extend to the airspace above land. The only land which is exempt is land specified in section 6 of the Act.
- 2.3. Access rights must be exercised responsibly or the rights are deemed not to exist (s.2(1); *Reyana Stahl Anstalt v Loch Lomond and the Trossachs National Park Authority*, 2018 S.C. 406, per the Lord President at paragraph [3]: “*Although general access rights are given to everyone, they are immediately constrained as they are said to exist only when ‘they are exercised responsibly...’*”).

- 2.4. However, certain conduct is excluded from access rights under s.9. For the purposes of this opinion the two types of excluded conduct which seem most pertinent are s.9(b) (being on or crossing land for the purpose of doing anything which is an offence) and s.9(f) (being on or crossing land in or with a motorised vehicle or vessel other than one constructed or adapted for use by a person with a disability).
- 2.5. Section 6 sets out the land over which access rights are not exercisable. It generally exempts land for reasons of privacy, security and enjoyment. Given that this opinion is directed at whether drone flying is capable of being an exercise of access rights rather than where those access rights may be exercised I do not propose to consider the exemptions in section 6. If that is a matter upon which specific advice is sought then I can provide that separately. I would observe that the same principles that would apply to exempt the surface of land from access rights apply to exempt the airspace above land from access rights, although questions around privacy and enjoyment of property in particular will require to be judged according to whether a drone has a camera and what a reasonable person would consider sufficient adjacent land to exclude a drone from for reasonable measures of privacy and reasonable enjoyment of their house.
- 2.6. Section 10 provides for NatureScot to create and keep updated the Scottish Outdoor Access Code. The Courts have held that the Code holds a special position when considering access rights and ought to be considered when determining any questions about it (*Renyana Stahl Anstalt*, at paragraph [3]).

### **3. Section 9(f) – Exclusion of Motorised Vehicles and Vessels**

#### **Statutory Interpretation**

- 3.1. The conduct excluded by section 9(f) is being both in and with a motorised vehicle or vessel. Rather unhelpfully the Act does not define what is meant by “motorised”, “vehicle” or “vessel”. That means that one needs to apply principles of statutory interpretation to understand what the exclusion is intended to include.
- 3.2. The primary aim of statutory interpretation is to reach an understanding of the words used in order to give effect to the intention of the legislator. The starting point is that words should be given their ordinary meaning where the words or phrase used are only really capable of one meaning. It is only where there is doubt as to the meaning of the words that further consideration is required.
- 3.3. The plain meaning of “motorised” is that something is equipped with a motor (Collins English Dictionary). As applied to vehicles and vessels, that tends to

suggest that the motor powers a form of propulsion (Concise Oxford English Dictionary). The term is widely drawn and is sufficient to include both electric motors and petroleum powered engines. For that reason, I am satisfied that a drone is motorised within the meaning of s.9(f).

- 3.4. "Vehicle" means "carriage or conveyance of any kind used on land or in space" (Concise Oxford English Dictionary) or "any conveyance in or by which people or objects are transported" (Collins English Dictionary). Whilst I am aware that there are drones in the market which are designed for the transport of packages, such drones are not the focus of this opinion. Such "delivery drones" would undoubtedly meet the definition of "vehicle" in s.9(f). However, in respect of "recreational drones", it seems unlikely that they will carrying any item that would allow it to be classed as a "vehicle" within the ordinary meaning of the word.
- 3.5. "Vessel" typically refers to either containers, boats or ships (Concise Oxford English Dictionary; Collins English Dictionary). However the Collins English Dictionary does include, as the third meaning of "Vessel": "an aircraft".
- 3.6. That notwithstanding, it seems to me that there is at least doubt as to whether "motorised vehicles or vessels" includes drones. For that reason, I have given consideration to the legislative history behind the enactment of s.9(f).
- 3.7. The Land Reform (Scotland) Bill as introduced provided the following exclusion which ultimately became s.9(f):-

*"being on or crossing land in or with a mechanically propelled vehicle or vessel"*

The explanatory notes dated 27 November 2001 provided the following explanation at paragraph 30:-

*"Subsection (1) sets out general conduct which is excluded from access rights, such as **the use of motorised forms of transport**, criminal conduct, conduct in breach of a court order or being on a golf course for recreational purposes."*

- 3.8. The explanatory notes are informative. The Bill as introduced referred to mechanically propelled vehicles or vessels, but the explanatory notes identify that what was sought to be addressed was motorised forms of transport. That is in keeping with the ordinary meaning of the word "vehicle", which is that it is designed to transport someone or something between two places.
- 3.9. At a discussion of the Justice 2 Committee on 25 June 2002 (web link [www.parliament.scot/chamber-and-committees/official-report/search-what-](http://www.parliament.scot/chamber-and-committees/official-report/search-what-)

[was-said-in-parliament/J2-25-06-2002?meeting=2242&iob=10503](https://www.parliament.uk/business/committees/committees-a-z/commons-select/transport-and-infrastructure/committees-a-z/was-said-in-parliament/J2-25-06-2002?meeting=2242&iob=10503)) there was a discussion of what was meant by mechanically propelled vehicles and motorised vehicles through consideration of various amendments proposed at Stage 2 of the Bill. The thrust of that discussion was that what was really meant was motorised vehicles but that there required to be further consideration so as not to inadvertently exclude those with physical disabilities who may need motorised mobility aids. Throughout the discussion it appears that the focus was on motorised forms of transport.

- 3.10. The general purpose of access rights is to promote the benefits of taking access in the countryside. The focus of access taking has generally been restricted to access on foot, by bicycle or by horse when on land and by swimming, rowing boat, canoe or kayak on waterways. There is (perhaps understandably given the limits of technology at the time) no discussion centred on aircraft. In the absence of such direction we are left to wonder why motorised vehicles and vessels were excluded, in case that provides a guide that can be applied.
- 3.11. The principal reason for excluding motorised vehicles and vessels appears to me to be nuisance. Motorised vehicles are typically noisy. They may cause damage to terrain. They are also potentially dangerous to other land users. For all of those reasons, it seems likely that their use would interfere with the ordinary use and enjoyment of the land by land owners as well as the enjoyment of access rights by access takers.
- 3.12. Drones do not appear to cause the same levels of nuisance that traditional motorised vehicles and vessels do. They are not as noisy as the engines on an all-terrain vehicle or outboard motor, for example. They are typically flown above head height. Save perhaps in respect of crash landings, they do not cause damage to land. There is perhaps an increased risk of pollution if a drone is crashed and irretrievable. However, given the prevalence of cameras on modern drones, there is understandable concerns around the extent to which a drone is invading privacy.
- 3.13. Separately, insofar as one driver of access rights was to encourage individuals to exercise in the countryside for health benefits, there seems little point in permitting individuals to use transport instead, save in respect of those with a disability. That is not the issue with drones; access by foot or by bike will likely be required to reach the place where the drone is to be launched; albeit once there the operator will likely be stationary.

## **The Code**

- 3.14. The Scottish Outdoor Access Code has been approved by Scottish Ministers. In that respect, it is reasonable to assume that the guidance it

provides is reflective of the Ministers' intentions for the proper exercise of Access Rights.

3.15. The Code provides, at page 6, that "Access rights do not extend to... any form of motorised recreation". It continues, at page 14, that the Act: "excludes some other conduct from access rights, including... Motorised activities, such as moto biking and scrambling, off-road driving, the use of any powered craft on water, microlighting, and the use of powered model craft".

3.16. Insofar as the Code is to be utilised as a guide to what is permitted by access rights, the above tends to exclude the operation of drones.

## Opinion

3.17. Having regard to the above, it is more likely than not that the operation of drones is excluded conduct under section 9(f) of the Act. That is on the basis that:-

3.17.1. Drones are motorised;

3.17.2. "Vessels" is capable of including "aircraft";

3.17.3. The purpose of access rights is to encourage individuals to enjoy the health benefits of being in the countryside, and operating drones does not fit within that purpose;

3.17.4. The exclusion of conduct under s.9(f) appears to be to prevent nuisance to landowners and other land users; and

3.17.5. The Code, as approved by Scottish Ministers, appears to exclude all motorised recreation, including the operation of powered model craft, which would include drones.

3.18. Whilst the Parliamentary discussion around this exclusion centred on motorised forms of transport, that was likely a reflection of the publicly available technology at the time. I do not consider that the lack of reference to drones in that discussion means that drones are not captured within the definition. Indeed, the exemption relates to being "in or with" a motorised vehicle or vessel. The distinction between "in" and "with" envisages that one may have a motorised item which is not a form of transport.

3.19. Accordingly, I am of the opinion that flying drones is excluded conduct under the Act.

#### **4. Section 9(b) – Criminal Conduct**

- 4.1. Standing my views above on s.9(f), I do not propose to go into detail regarding s.9(b). In summary:-
- 4.1.1. Criminal conduct is excluded from access rights;
- 4.1.2. There are numerous statutory offences in Scotland relating to the operation of aircraft, including the piloting of drones in certain manners such as above certain heights or near to airports; and
- 4.1.3. Insofar as the purported access take operates the drone in a manner which is an offence, that is excluded conduct under s.9(b).
- 4.2. Obviously that exemption would relate to specific instances of unlawful operation of a drone and is not applicable to all situations. It is also only relevant insofar as my views on section 9(f) are wrong.

#### **5. Conclusion**

- 5.1. It follows from the above that I consider the operation of a drone to be excluded conduct from access rights under s.9(f).
- 5.2. Insofar as any person wishes to challenge that view, they are able to raise judicial proceedings under s.28 of the Act seeking a determination that operating drones is not excluded conduct.
- 5.3. If you require anything further then please do not hesitate to contact me.

Date: 31 March 2026

IN RESPECT WHEREOF



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