

# Access Fact Sheets



This guidance applies to Scotland only.



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# Land Reform (Scotland) Act 2003: a summary

## Introduction

Equestrians in Scotland welcomed the introduction of the Land Reform (Scotland) Act 2003 and the freedom it gave to access land. Now that the Act has been in force for a number of years this leaflet is a reminder to all access takers as to what the Act says, the rights it provides and how those rights should be exercised in the context of the horse.

## What rights are granted under the Act?

Section 1 of the Act provides that everyone has the right to be on land and to cross land so long as the access is for either recreational purposes, for carrying out relevant educational activities or for carrying on commercial activities (so long as those activities are also capable of being carried out otherwise than commercially or for profit). The Act defines these rights as “access rights”. The general access rights provided by section 1 are then limited by the rest of the Act.

## What rights are excluded?

The exclusions can be placed into two groups – land over which access rights are not exercisable (section 6 of the Act) and conduct which is not allowed when exercising access rights (in section 9). Land excluded includes:

- Buildings including the curtilage of a building, private gardens and sufficient land surrounding homes to ensure reasonable privacy for the people living there;
- School grounds including sports fields and land on which crops have been sown;
- Property which is open to the public but only on payment of a fee; and golf courses.

Conduct excluded includes:

- Committing an offence or breaching a court order;
- Hunting, shooting and fishing;
- Being responsible for a dog or other animal not under proper control;
- Taking away, for commercial purposes, anything in or on the land; and
- Motorised vehicular access (other than for motorised wheelchairs, etc)

The exclusions are aimed at balancing the rights of the public against those of people who live and work on the land. In addition, access rights must be exercised responsibly.



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# Land Reform (Scotland) Act 2003: a summary

## What is responsible access?

The Scottish Outdoor Access Code provided in section 10 of the Act sets out what constitutes responsible access and gives practical examples. As a general rule, responsible access means acting in such a way as to not cause unreasonable interference with the rights of others. All riders are recommended to read the Access Code most of which is based on common sense. As such, riders should:

- Take personal responsibility for their own actions and respect the privacy of others;
- Help land managers and others to work safely and effectively;
- Care for your environment;
- Keep all animals under proper control; and
- Take care when organising or running events.

Read the Scottish Outdoor Access Code at [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com).

## How are access rights regulated?

Under section 13, a local authority has a duty to uphold the public's access rights. They have a duty to assert, protect, keep open and free from obstruction any route or land by which access rights may reasonably be exercised. The local authority is therefore the guardian of the rights. They also have a duty to create a system of core paths sufficient for the purpose of giving the public reasonable access throughout their area. Many core paths are now in operation and although can be accessed by the public as a whole are to be welcomed by equestrians.

## Useful facts

- The exercise of access rights does not constitute trespass.
- The existence or exercise of access rights does not lessen any other existing rights of entry, passage or access.
- It is the duty of every owner of land to use and manage the land (and to conduct the ownership of it) in a responsible way so that proper access can be taken to their land.
- The rights are wider than those granted by the CROW Act in England and have created the concept of multi user access takers having to share the rights.



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# What is responsible equestrian access?

## Introduction

The Land Reform (Scotland) Act 2003 amended the nature and extent of Access Rights and in doing so granted many different types of user, including equestrians, greater freedom by establishing a statutory right of access over land in Scotland. Access can now be taken over most land and inland water in Scotland but it is for access takers to ensure that such access is exercised responsibly. There is a similar obligation on Land Managers to exercise their management functions so as not to impede the access taker.

The Act refers to the Scottish Outdoor Access Code which gives guidance as to what constitutes responsible behaviour. Access rights are deemed to be responsible if they are exercised lawfully and reasonably. In addition to determining whether access rights are exercised responsibly it is necessary to consider the possible unreasonable interference with the rights of any other person. In this respect, a balance must be struck between the rights of the person exercising their access rights and the rights of any Land Manager affected.

It is important not to mistake the rights afforded in the 2003 Act as equating to a free right to roam over any land. There are several exceptions and factors to be considered in determining whether access is responsible and likewise Land Managers must manage their land responsibly to allow for access.

## Responsible access

It is fundamental that you are considerate and aware of persons, animals and the environment surrounding you. You must also be respectful of other users be they walkers, dog walkers, cyclists etc. In doing so it is important to take into account the following considerations.

## Land Management Operations

The right of access does not include access to land upon which a land management operation is underway. It is important to respect this as land management provides a livelihood for many people and the failure to do so may cost them time and money as well as being potentially hazardous to your own safety. Land Management covers a multitude of agricultural activities.



# What is responsible equestrian access?

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These can include, for example:

- Ploughing fields, harvesting crops, fertilising, planting trees or hedges or cutting down branches;
- Moving animals from field to field or to farm buildings;
- Shooting, muirburn, cutting grass, timber operations, quarrying;
- Erecting fences, walls, hedges and gates, routine water discharges and maintenance of reservoirs / canals; and
- Dredging in rivers, canals and lochs.

It is important to note that while field margins and unsown ground are included in the access rights, particular care must be taken if access is taken through these and to ride in single file where appropriate as it may be difficult in some cases to take access on horseback without causing damage to the crop. It is important to always take a precautionary approach as some land management operations and hazards may not be obvious and to act upon the reasonable advice of the land manager to ensure that you do not cause any damage or put yourself or others in any danger. It is also important to take note of any signage displayed suggesting alternative routes.

## **Access where there are farm animals**

It is important to ride slowly past all livestock and not to enter any fields where there are animals which pose a danger to you or may be alarmed by you. Particular care should be taken where there are pregnant animals which may become startled or defensive by the presence of a horse which may, in turn, damage their young. You should keep to established paths or tracks within the field, keep a sensible distance from animals and keep a close eye on them at all times. Check for possible alternative routes across neighbouring land if there is a risk of any danger. Again take note of advice from land managers and any signage displayed.

## **Responsibility to the public**

Some people may be afraid of horses and may be startled especially by galloping horses. Remember that pedestrians are also entitled to exercise the access rights afforded by the Act, and that a balance requires to be met to ensure enjoyment by all.



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# What to do if you have an access problem

If you are encountering an access problem, consider these steps:

## **Step 1: Is your proposed access responsible?**

Access granted by the 2003 Act must be exercised responsibly and it should be remembered that the Act also applies to other users such as walkers and cyclists, therefore compromises must be made to accommodate everyone. If you are experiencing a problem with access, first think about whether your proposed access would be determined as responsible. To help you decide, read the provisions of the Land Reform (Scotland) Act 2003 and the guidance provided in the Scottish Outdoor Access Code. An overview of this can be found at [http://www.bhsscotland.org.uk/Pages/land\\_reform.html](http://www.bhsscotland.org.uk/Pages/land_reform.html)

## **Step 2: Negotiation and Compromise**

If you are satisfied that your access is responsible you should contact the landowner and explain calmly and politely to them your proposed access route and ask them to clarify their objections to the use of the route. Try to understand the landowner's concerns from his or her perspective and consider the objections reasonably. Also think whether there is anything you can do to alleviate the situation. Landowners will understandably be unwilling to accommodate riders where there is a likelihood of or evidence of disruption of their legitimate activities or damage to their land. Make sure you are able to demonstrate to the landowner, and assure him that your access will be responsible, that measures will be taken to avoid disruption and that any damage will be rectified. If a landowner is trying to compromise by for example providing alternative routes, be willing to consider these. The more that you can do in return for the landowner and others exercising access rights, the more they will be willing to provide in return. Do not be combative and withdraw gracefully from any potential aggravation.

## **Step 3: Contact BHS Scotland**

If you need more help, support and advice please contact Helene Mauchlen, Development Officer for Scotland, The British Horse Society, Woodburn Farm, Crieff, Perthshire PH7 3RG or call on 01764 656334 or [H.Mauchlen@bhs.org.uk](mailto:H.Mauchlen@bhs.org.uk)



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# What to do if you have an access problem

## Step 4: BHS Access Groups

You may also find it helpful to contact your local BHS Affiliated Access Group. Contact details for these groups can be found by visiting the link below. They have been successful in working together to promote and maintain existing access routes and establishing new routes and encouraging responsible access. Membership of these groups can prove very valuable for riders experiencing difficulties in relation to access. BHS Access Groups: [http://www.bhsscotland.org.uk/Pages/access\\_groups.html](http://www.bhsscotland.org.uk/Pages/access_groups.html)

## Step 5: Local Authority Access Officers

If after the above steps no compromise can be found and you still feel that access is being denied unreasonably you can report the problem to your Local Authority Access Officer.

To contact your local Access Officer go to <http://www.outdooraccess-scotland.com/> and choose 'Access Contacts' from the home page. Choose your area from the map and select 'local authority contact'. The Local Authority has a statutory duty to uphold the access rights and it is thus correct that it be asked to intervene where impasse has been reached. If the Local Authority will not get involved the matter should be raised with the local Councillor and / or MSP.

## Step 6: Legal Action

Legal action should be viewed as a final resort only. Litigation is an extremely lengthy and costly process and is best avoided.



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# Lobbying for equestrian access

## Introduction

Lobbying is the process by which individuals or organisations can attempt to influence decision makers (principally politicians) to change the law or Government policy to benefit the lobbyist. There are no hard or fast rules for successful lobbying but one of the key things you need to think about is identifying who you need to speak to. You need to consider who can make a difference or who is in a position to promote the cause. It is also important to think of other users who may be willing to join forces to pursue access.

The most appropriate group of individuals to target are MSP's. This is because most of the legislation that will affect access is devolved and so within the remit of MSP's rather than MP's. One of the tenets of the Scottish Parliament is its approachability so people should not be afraid to try to get MSPs to understand and support the cause. The Land Reform (Scotland) Act 2003 has really been a positive step in promoting liberal access rights for all. MSPs will be interested in knowing if the legislation is working in your particular area. MSPs can be asked to ask a question of the relevant Minister if there are specific problems regarding access.

When it comes to selecting an MSP to lobby, the easiest and best thing to do is to go to your local MSP. However, if you are unsure if they will support you, you should also remember that you do not need to choose your constituency MSP. You can also choose a list MSP from your region if you think they might be more sympathetic to your cause.

When deciding which MSP to lobby on equestrian matters, it will also be important to think about which of them are pro-horse riding, for example you might know that a particular MSP rides a horse themselves or even just likes horses and goes to the races.

One other effective way of identifying MSP's who might help is by finding out which of them are on the Rural Affairs and Environment Committee or perhaps even the Health and Sport Committee. It is also important to make it clear that you are not simply looking at equestrian interests. This legislation is for all users.



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# Lobbying for equestrian access

It is also appropriate to lobby at a more local level through local councillors and community councils.

It is important when considering a lobbying campaign for you to carefully consider what approach you are going to take. Whoever you approach will like a personal touch and they like to be approached by someone on the ground who they can relate to and who can add a bit of a personal story to the problem. A measured approach rather than a hysterical one is always preferable. It may also be worthwhile when lobbying for something which will have adverse effects on other individuals (or when looking at it from a politician's point of view other voters) to be prepared to be flexible. Sometimes offering compromises to those who might not support your position to achieve a partial outcome may be better than no outcome at all.

Politicians do not like to be lobbied for the sake of being lobbied, it is a good idea to have different people lobbying on different issues that are directly relevant to them. If Politicians are always confronted with the same person lobbying over and over again on different issues they might start to view that person as a serial lobbyist which could be detrimental to their chances of success. In certain circumstance it may be appropriate for the local riding club or riding establishment to take up a particular local cause.

Another lobbying option is to have a petition drawn up and signed and submit this through the Parliament clerks to the Public Petitions Committee at the Parliament. You can also set up an e-petition which may attract a wider audience than a normal petition. You do not need a huge number of signatures on your petition but you do need some public support and the more support you have the better. This process is more drawn out than the parliamentary question procedure but it might be the only option available to you if you are having difficulty finding a politician to support your cause. If lobbying politicians directly or the petition route is not successful, there is also the option to go through the press to mount a lobbying campaign if a sympathetic journalist can be found.

Clearly BHS Scotland has been involved in lobbying and it may be appropriate to look for sister organisations promoting other access takers to present a united front on lobbying.



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# Key cases under the Land Reform (Scotland) Act

## **Aviemore Highland Resort (AHR) v Cairngorms National Park Authority**

The fence and hedge had been erected before the Act came into force in 2005 and thus access rights were not exercisable at the date when the fence was erected. The purpose of erecting the fence therefore could not be to prevent people from exercising access rights as these did not exist before the 2003 Act came into force. This case demonstrates that the legislation cannot have a retrospective effect.

## **Tuley v Highland Council**

Owners of Land at Feddanhill Wood, Fortrose appealed against a decision requiring them to remove obstructions preventing access over a particular track in their woodland (The “red track”) by horse riders. Expert evidence indicated that horses would inevitably damage the red track and therefore the owners were acting responsibly in preventing access on horseback to that particular part of the wood, which was intended for pedestrian access. It became a problem that no expert evidence was led to counter the propositions on damage put forward by the owner’s Expert. Although this case may appear to be restrictive on the rights of equestrians and raise concern that a precedent will be established that it is not necessary for landowners to wait for actual damage to be caused before any action can be taken to prevent access. It has been suggested that this case will make it easier for landowners to prevent access but it must be remembered that each case will be determined on its own merit and all relevant factors will be considered if they are properly brought before the court. Furthermore, the land owners, in this case, did welcome access to their land and provided alternative access for other users including horse riders over other parts of their land, which was a major consideration in determining the outcome of the case.

## **Williamson v Highland Activities Limited**

A recent application for interdict, based on similar arguments to those put forward in the Tuley case was successful in the Court of Session. Highland Activities Limited had arranged rafting activities down part of a river within an area owned by Mr Williamson. Mr Williamson successfully claimed that because the rafts had to be carried over his land to the river this was causing damage to the pathways and was disrupting the balance amongst different recreational users. Interim Interdict (Injunction) was granted but at the time of writing a hearing has not taken place.



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# Key cases under the Land Reform (Scotland) Act

## **Gloag v Perth & Kinross Council**

Mrs Gloag bought Kinfauns Castle and renovated it for her personal use. The castle is surrounded by mown lawns, borders and woodland on the south and west of the garden ground. Mrs Gloag built a security fence around the property including the woodland and applied to have the area declared exempt from access rights, claiming it was necessary to enable those living there to enjoy reasonable privacy. The court considered the size and location of the land in question and decided that whole area fell within the description of sufficient land to enable persons living there to have reasonable measures of privacy in the house and to ensure that such enjoyment was not unreasonably disturbed. The court gave particular consideration to the size and location of the estate in reaching the decision and noted the Act did not provide that there is an onus on the occupant of the house to justify the exclusion of access rights, but that the occupant is entitled to sufficient land to ensure that their enjoyment in their house is not unreasonably disturbed and it is up to the courts to determine what this is.

## **Snowie v Stirling Council**

The owners of a substantial house and land extending to 70 acres restored gates which prevented public access. The Local Authority served notice on them to remove the gates. The owners resisted, arguing the gates were necessary due to concerns about security and privacy. The court allocated about 15 acres around the house as appropriate for exclusion from access rights and came to this decision on a similar basis as *Gloag v P&K Council* above. The owners have abandoned their appeal and the sheriff's decision will now become the point of reference for disputes concerning public access and individual rights to privacy, leaving the position very favourable for those seeking access. It is evident from both these cases that the Scottish Outdoor Access Code was not considered to have statutory effect as it is guidance as to behaviour in taking responsible access. Thus the main factors considered by the court are the characteristics of the house and its location in determining how much land is appropriate to exclude from access rights.

## **Fife Council v Nisbet**

This case highlighted the importance of established rights of way and how these have to be balanced with the right of privacy. The court fined a couple £500 each for continuing to interfere with an established right of way by erecting gates and extending their garden over the right of way and dismissed the argument that access across the route was an invasion of their privacy and human rights. Whilst



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# Key cases under the Land Reform (Scotland) Act

the fines may seem small the case had run over many years culminating with the Nisbets being held to have a complete disregard for court orders so there will be an expenses bill as well.

## **Forbes v Fife Council**

A jointly owned path ran along the back of houses and adjoining gardens in a housing development in Glenrothes. The owners of the path erected gates at either end as they had been experiencing antisocial behaviour by users, including provoking domestic pets and lighting fires, particularly at night. The court decided firstly that the paths did not constitute a private area in connection with the privacy of the houses. However, secondly, the access exercised at night could not be defined as responsible access and so the gates were to be unlocked from 8am to 8pm to allow access throughout the day to continue. This demonstrates the courts' attempts to strike a balance between the privacy claims and access rights and dealing with antisocial usage.

## **Creelman v Argyll & Bute**

Two properties at Stronardon were connected by a thin strip of ground which had barbed wire at either end of the track. The owners appealed a notice to remove a 'Private Road' sign and barbed wire served on them by the Local Authority as a result of a disagreement between the Creelmans and their neighbours at Dunans Castle who wanted those visiting the castle to be able to use the track. The track passed close to both properties and it was held that as the property was situated in a secluded area, it was reasonable to expect more privacy than if living in an urban location and access across the track would interfere with the reasonable privacy of the owners. Further, it was highlighted it was not walkers who were being adversely affected but was in fact a neighbour seeking to use the land for business purposes.

## **Conclusion**

The LR (S) Act 2003 and the Scottish Outdoor Access Code do not provide a prescriptive statutory structure to define what would constitute responsible access and what is appropriate land to be excluded from access rights. Indeed it would be impossible to enshrine these concepts in a rigid legal structure. As a result, each case requires to be decided on its own facts to achieve an appropriate balance between the exercise of access responsibly without undue restriction, with respect for property of others and prevention of damage of land and property.

# Further information

This leaflet applies to Scotland only. For more information contact:

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For more information about equestrian access, welfare, safety, training and tourism, please go to our website:

[www.bhsscotland.org.uk](http://www.bhsscotland.org.uk)

For information about the position in England & Wales please contact:

Access & Rights of Way Department  
The British Horse Society  
Abbey Park, Stareton  
Kenilworth  
Warwickshire CV8 2XZ

Tel 01926 707814  
Email [access@bhs.org.uk](mailto:access@bhs.org.uk)

[www.bhs.org.uk](http://www.bhs.org.uk)

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