

The logo for Anderson Strathern, featuring a stylized 'AS' monogram in red to the left of the company name 'Anderson Strathern' in white serif font.

AS Anderson  
Strathern

# Responsibility and Liability – the legal perspective

**BHS Scotland**

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# Access rights

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- Land Reform (Scotland) Act 2003 – Part 1
- everyone has a statutory right of access to be on land and to cross land. – Section 1(1)
- Rights may only be exercised for recreational purposes, for certain educational purposes or for the purpose of carrying out commercially or for profit an activity which the person exercising the right could carry on otherwise than commercially or for profit. – Section 1(3)
- Rights are exercisable over all land except land which is defined as excluded under Section 6

## Access rights to be exercised responsibly

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- A person has access rights only if they are exercised responsibly – Section 2(1)
- Access rights are exercised responsibly if they are exercised so as not to cause unreasonable interference with any of the rights of any other person - Section 2(2)
- Access rights to be exercised in accordance with the guidance set out in the Scottish Outdoor Access Code drawn up by Scottish Natural Heritage;
- Responsible exercise of access rights means the exercise of access rights in a way which is lawful and reasonable and takes proper account of the interests of others and the features of the land- Section 2(3)
- Duty on every owner of land and those who manage the land to use and manage the land conduct the ownership of it in a responsible manner – Section 3(1)
- Regard is had to Scottish Outdoor Access Code.

## Where can access rights be exercised?

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- Most paths and tracks, riverbanks, loch shores, beaches and the foreshore;
- Open countryside including hills and mountains;
- Core paths but bear in mind there is no legal requirement for all core paths to be accessible by all users;
- Land on which crops have not been sown and margins of fields where crops are growing or have been sown;
- Grass fields provided they are not hay or silage fields at a late stage of growth;
- Woodlands and forestry;
- Established rights of way;
- Grass sports or playing fields while not in use , but horses need to go round the edge and avoid causing damage;

## Restrictions that apply

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- The fact that horse riders are technically entitled to exercise access over these areas does not necessarily mean that you can ride anywhere you wish.
- Large parts of Scotland are farmed, crofted, managed as productive forestry or for wildlife;
- Land may not be physically suitable for horse riders.
- Scottish Outdoor Access Code provides guidelines for all those wishing to exercise access and land owners;
- 3 key principles;
- Respect the interests of other people;
- Care for the environment;
- Take responsibility for your own actions;

## Excluded land – section 6

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Access not permitted over certain areas of land:

- Curtilage of buildings;
- Adjacent to a house; - rights of owner to a reasonable measure of privacy.
- Contiguous to a school;
- Land to which public access is prohibited excluded or restricted;
- Building work, civil engineering, demolition works or work by statutory undertaker;
- Particular recreational purpose;
- Used for working minerals;
- In which crops have been sown or are growing;
- Land on which grass is being grown for hay and silage which is at a late stage of growth

## Responsible access

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- Respect the privacy of those living in the countryside;
- Avoid causing damage to the land;
- Don't hinder land managers' activities;
- Keep to established routes;
- Avoid bird nesting grounds;
- Avoid causing stress to livestock;
- Consider the rider's ability and the experience of both the rider and the horse;
- Keep dogs under proper control;
- Restrict your pace;
- Be seen- wear HiViz gear;

# Liabilities

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- Responsible access – duty to exercise access responsibly;
- Not exercising access responsibly then no statutory right to be on the land;
- Avoid excluded land;
- Avoid conduct excluded from access rights;
- Animals (Scotland) Act 1987;
- Third party public liability insurance cover

## Animals (Scotland ) Act 1987 – Section 3

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- Established provisions to clarify the strict liability for injury or damage caused by animals;
- Liability without deliberate or negligent conduct;
- A person will be liable for an injury or damage caused by an animal if 3 facts apply:
- The person was the keeper of the animal at the time;
- The animal belongs to a species known as either likely to severely injure or kill people or other animals (such as dogs) or to material damage property (such as cattle, horses and deer)
- Injury or damage is directly related to physical attributes;
- Keeper refers to someone who owns the animal or has possession of it;
- So applies to a loanee under a loan agreement or a person who has actual care and control of a child under the age of 16 who owns the animal or has possession of it

# Landowner`s liability

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- Occupiers` Liability (Scotland ) Act 1960
- Duty imposed on “the occupier” to show care to people on the land
- Level of duty of care is the level which it is reasonable to foresee is needed so that people do not suffer injury or damage;
- Occupier must consider any injury or damage which may be caused as a result of the condition of the property or anything omitted to be done by the occupier;
- Depends on the circumstances and facts of each case;
- What a reasonable person would consider to be reasonable;

# Exclusions

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- Excludes any liability over risks willingly accepted by the visitor;
- Excludes risks inherent in any pursuits so may include mishaps which are inherent in the ordinary activity of horse riding;
- Does not extend to natural features on land;
- Would not have to take measures to protect against potential dangers that arise from rocky slopes, streams or other natural features provided attributable to the natural landscape;
- Natural features have to be obvious;

# Health and Safety at Work Act 1974

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- Duties on employers to persons other than employees;
- Includes all members of the public and people taking access to the countryside;
- The standard is one of reasonable practicability;
- The duty arises out of the conduct of the undertaking;
- Examples include spraying of fields and crops with pesticides; the conduct of a shoot;
- Test of “reasonably practicable” will be judged by any Code of Practice published by a relevant organisation, such as HSE or Forestry Commission;

# Responsibilities of local authorities

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- Main bodies responsible for implementation of access rights under 2003 Act are local authorities and within National Parks, the National Park Authority;
- Duty to assert, protect and keep open and free from obstruction or encroachment any route, roadway or other means by which access rights might be reasonably exercised;
- May institute and defend legal proceedings in general or take such steps as they think expedient;
- Can issue notices to landowners in breach of section 14 – “section 14 notices;”
- Serve written notice on the landowner requiring remedial action within a specified time;
- Local authority may take remedial action and recover costs from the landowner;
- Theory – v- reality
- Post Drumlean and Midlothian