

## The Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code

**THIS BRIEFING COVERS:** The Act and Code; optimising the benefits for cycling; legal background.

### HEADLINE MESSAGES

- The *Land Reform Act* gives Scotland the most progressive access arrangements in the UK.
- It, and its clear and consensual approach to improving public access and resolving disputes, is a good model for other parts of the UK to adapt to their own contexts.
- The more opportunity there is for off-road cycling and cycle tourism in the countryside, the more money it can potentially make for national and local economies.

### KEY FACTS

- The public has lawful access to most land and inland water in Scotland, as long they act responsibly and follow the *Scottish Outdoor Access Code* (also for land managers). There are exemptions, but not many.
- The Act does not distinguish between different modes of travel. Whether on foot, cycle or horse, people exercising their rights have to decide for themselves whether their activity is responsible in the circumstances.
- Combined, mountain biking and leisure cycle tourism contribute between £236.2m and £358m per year to the Scottish economy, with a cumulative gross value added of £129m.
- Based on usage estimates of the National Cycle Network, Sustrans calculates that cycle tourism brought in £345 million to the Scottish economy in 2015.

### Cycling UK VIEW

- Cycling UK strongly supports this legislation and its outcomes.
- The new networks of 'core paths' are important not only for leisure cycling, but also for cycle travel for utility purposes (e.g. commuting, shopping etc.).
- Investing in healthy outdoor activities and more sustainable travel is vital, both locally and to help realise national aims for a healthier and more sustainable society.
- If monitoring shows that local authorities are not implementing their Core Path Plans voluntarily, the Scottish Government should consider revising the law to make it a legal duty.
- Cycle routes created under access legislation should be better integrated with those created under the separate legislation that applies to roads.
- With cyclists enjoying access to 'core' and longer distance paths, and to the countryside more widely, cycle tourism potentially offers significant benefits to the economy.
- Measures should be taken to remove locked gates and other barriers that are still preventing cyclists from accessing some land.
- Problems that arise from sharing paths should be resolved by Local Access Officers and Local Access Forums, many of which have Cycling UK members on them.
- Scotland's access legislation is a good model for other UK countries, and they should take steps to adapt it to their own contexts.



## BACKGROUND INFORMATION

- The *Land Reform (Scotland) Act*<sup>1</sup> provides a wide-ranging statutory basis for cycling off-road, not just in the countryside, but also in settlements.
- While the Act provides for general access, most people will exercise their rights on paths.
- The Act does not distinguish between different modes of travel. This means that whether on foot, cycle or horse, people exercising their rights have to decide for themselves whether their activity is responsible in the circumstances.

### 1. The Act in general

#### a. Access rights

- Part 1 of the Scottish *Land Reform Act* provides a general statutory right of access, provided this right is exercised responsibly. Access rights can be exercised for recreational purposes, for passage across land to get from one place to another, for educational purposes, and also for commercial purposes, as long as they are recreational or educational.
- Access rights apply to almost all land and inland water in Scotland (including appropriate land in towns and cities). There are only a limited number of exemptions set out in sections (s) 6 and 7, along with some limitations in s9 of the Act.
- The main exceptions under s6 are:
  - land adjacent to residential property, to allow for reasonable privacy for those living there;
  - land on which there is a building or other structure or works, plant or fixed machinery, including any compound or enclosure around it;
  - land where access is limited by other statute (say, land subject to limitations under military by-laws);
  - land on which crops are growing or have been sown. (Grass is only a crop in the later stages of growth when it is to be cut for hay/silage, and access is permissible around field margins);
  - sports fields etc. when not in use for their main purpose (but for a golf course, only the right of passage across it is possible);
  - land where entry was charged before the legislation;
  - and land on which engineering works or mineral working are being undertaken.
- Some s9 limitations are: hunting and fishing; having a dog not under proper control; and motorised activities, but exempting vehicles modified for and in use by a disabled person.

**Footways/footpaths:** this right does not extend to roadside footways ('pavements') or footpaths (a way not associated with a carriageway). This is because the Act exempts land that is already subject to restrictions imposed on it by any other Act (section 6(1)d), or by a Traffic Regulation Order. As the Act that covers footway/footpath cycling is still in force (*Roads (Scotland) Act 1984*, s129(5)), it is still illegal to cycle on a footpath or footway (unless it has been converted to dual use through a *Redetermination of Means of Exercise of Right of Passage Order*).

However, section 7(1) of the *Land Reform Act* does override other restrictions if the footway/footpath in question is designated as a core path (see below). As a result, anyone cycling on a footway/footpath that has become a core path may be able to do so without committing an offence under the *Roads (Scotland) Act 1984*. Nevertheless, users still have to decide whether it is responsible to cycle (or, indeed, ride a horse) on such paths (e.g. when they are congested with pedestrians – the provision for core paths, after all, mainly applies within the four big conurbations.). Core paths are not expected to serve all users all of the time and, on a footway, access rights would still mainly be restricted to the purpose of taking passage.



#### **b. Landowners**

- Landowners have a reciprocal duty in the Act to manage their land responsibly in relation to the interests of those exercising their access rights. Under the *Access Code*, land managers may seek restraint on access for operational needs or where hazards exist, but this has to be done responsibly and for the least area and time required.

#### **c. Access Authorities**

- The Access Authorities are Scotland's local authorities and the National Parks (Loch Lomond, The Trossachs and the Cairngorms).
- These authorities are responsible for upholding access rights, and also have a range of other powers and duties. These include: setting up at least one advisory Local Access Forum (LAF); the powers to remove obstructions and other barriers to access; and the powers to exempt land, either for up to six days (usually for events), or for up to two years (which requires formal consultation and ministerial approval).

#### **d. Core Paths**

- In Scotland, every access authority has to draw up a plan for a system of 'core paths' to give the public reasonable access in their area.
- A significant feature of core paths is their legal status, once adopted. This gives them certainty, preventing them from being diverted or removed without due process.
- There is, however, no legal requirement to implement Core Path plans.
- When preparing and developing their core path proposals, local authorities had to follow a consultation process. In some cases, unresolved objections led to an inquiry and delayed the adoption of the plans.
- Local authorities have the powers to sign and maintain the paths, but this is not a legal duty.
- The *Paths for All Partnership* offers guides and standards for paths and signage, as well as demonstration sites for people to visit. [www.pathsforall.org.uk/pfa-home](http://www.pathsforall.org.uk/pfa-home)

For more on core paths and cycling, see 3a below.

#### **e. The Scottish Outdoor Access Code**

- This code is the main reference point for defining responsibility in relation to access. It was prepared by the National Access Forum (NAF) and approved by the Scottish Parliament, while Scottish Natural Heritage (SNH) is responsible for publicising and promoting it. It is kept under review through the NAF, of which Cycling UK is a member.
- The basic principles on which the *Scottish Outdoor Access Code* is founded are:
  - Respect for the interests of other people;
  - Care for the environment;
  - Taking responsibility for your own actions.
- The Code contains a lot of general background information, but the responsibilities (Parts 3, 4 & 5) for those exercising rights (and the reciprocal responsibilities for land managers) form its core, and present straightforward and common sense guidance.

For more on the Code and cycling, see 2a below.





#### f. Resolution of problems

- The legislation expects problems to be resolved through consensus, so new offences have generally been avoided in the Act. Where problems arise, the first point of contact is the local authority's access officer. The Local Access Forum can help resolve them too.
- The NAF does not adjudicate on local cases, as it takes a broad overview of the working of the legislation and works with SNH to address general issues. However, the Act also provides for the Sheriff Court to adjudicate over whether land is within access rights, and on matters of responsibility. A small number of court cases have arisen, most of which concern privacy issues close to residential property.
- ScotWays publishes a guide to access case law, for both rights of way and recent cases under the Act.<sup>2</sup>

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## 2. The Act and cycling

**Cycling UK view:** Cycling UK strongly supports this legislation and its outcomes.

Cycling off-road for recreational purposes or making a journey across land in Scotland now has a clear legal status. However, the basis of this wide-ranging right is governed by the *Access Code*, much of which is general and common sense advice about being out in the open air.

General responsibilities are set out in the Code, Part 3 and fall under six main headings, while there is more specific advice for different recreations and settings in Part 5. The Code also has parallel guidance for land managers (Part 4).

#### a. General responsibilities and advice for cyclists

- **The six main headings in Part 3 for general responsibilities are:**
  - Take personal responsibility for your actions;
  - Respect people's privacy and peace of mind;
  - Help land managers and others to work safely and effectively;
  - Care for your environment;
  - Keep your dog under proper control;
  - Take extra care if you are organising an event or running a business.

Under each of these headings there is a wide range of guidance.

- **Specific guidance to cyclists in Part 5 says:**

"Cycling on hard surfaces, such as wide paths and tracks, causes few problems. On narrow routes, cycling may cause problems for other people, such as walkers and horse riders. If this occurs, dismount and walk until the path becomes suitable again. Do not endanger walkers and horse riders: give other users advance warning of your presence and give way to them on a narrow path. Take care not to alarm farm animals, horses and wildlife. If you are cycling off-path, particularly in winter, avoid: • going onto wet, boggy or soft ground; and • churning up the surface".

- SNH also publish a brief guide to responsible mountain biking in Scotland, *Do the Ride Thing* [www.outdooraccess-scotland.com/Practical-guide/public/cycling](http://www.outdooraccess-scotland.com/Practical-guide/public/cycling)
- For more on the full Code, see: [www.outdooraccess-scotland.com/the-act-and-the-code/introduction](http://www.outdooraccess-scotland.com/the-act-and-the-code/introduction)

#### **b. Off-road events, organised groups and commerce**

The Act and Code do allow for events, organised group activities and commercial pursuits, but there is specific advice for anyone who intends to use the land for such purposes. Commercial enterprises, for example, are encouraged to make a contribution to caring for the resources they use for their business.

### **3. Optimising the benefits for cyclists and cycling**

#### **a. Core paths for recreational and utility cycling**

##### **Cycling UK view:**

- The new networks of 'core paths' are important not only for leisure cycling, but also for cycle travel for utility purposes.
- Investing in healthy outdoor activities and in more sustainable travel is vital, both locally and to help realise national aims for a healthier and more sustainable society.
- If monitoring shows that authorities are not implementing their Core Path Plans voluntarily, the Scottish Government should consider revising the law to make it a legal duty.
- Cycle routes created under access legislation should be better integrated with those created under the separate legislation that applies to roads.

*Paths for All*, the charity partnership committed to promoting walking for health and the development of multi-use path networks in Scotland, defines 'core paths' as "... the most useful and important paths both for recreation and everyday journeys; for local people and visitors." See [www.pathsforall.org.uk](http://www.pathsforall.org.uk) (Cycling UK is a partner).

The idea behind core paths is that they should go where people want them to go. Developing the network for recreational activities should therefore go hand-in-hand with optimising it for everyday and functional travel too – e.g. commuting, shopping, transport between communities etc. Local authorities thus need to make sure that they integrate paths developed under the Act with the facilities they create for cyclists under other legislation. This means that good communication between access officers and roads/traffic engineers and planners is vital. Collaboration is also required between neighbouring local authorities where paths cross their boundaries.

As mentioned above, authorities have duty to prepare Core Path Plans, but there is no statutory duty for them to implement them. If monitoring shows that the Plans are not being delivered, then the legislation may have to be revised to make implementation a duty too. Also, while authorities have the powers to sign and maintain the paths, they are not legally obliged to do so. Investing in their management is, however, important if they genuinely want to encourage users, including cyclists, to enjoy the benefits of Core Paths.

For more on Core Paths, see:

[www.pathsforall.org.uk/pfa/creating-paths/core-paths-a-local-path-networks.html](http://www.pathsforall.org.uk/pfa/creating-paths/core-paths-a-local-path-networks.html)



## b. Recreational cycling and commerce

**Cycling UK view:** With cyclists enjoying access to 'core' and longer distance paths, and to the countryside more widely, cycle tourism potentially offers significant benefits to the economy.

Formal facilities for mountain biking in Scotland (e.g. specially constructed downhill runs) are not necessarily dependent on better access rights. This is because they may well use land set out for recreational purposes that is exempt from the legislation (a situation that could, potentially, make it irresponsible to walk there). Such status does not apply to all forest or hill tracks used by mountain bikers, of course.

**Recreational cycling and the economy:** Mountain biking and cycle tourism are already making an important contribution to Scotland's economy:

- A 2013 Transform Scotland report estimated that mountain biking and leisure cycle tourism combined contribute between £236.2m and £358m per year to the Scottish economy, with a cumulative gross value added (GVA) of £129m.<sup>3</sup>
- Off-road cycling in Scotland is becoming more and more popular, helping to boost income from tourism. A report on the 7Stanes mountain bike trails found that the project helped create 205 full time equivalent jobs in southern Scotland and brought in over £9 million in visitor spend in 2007. For more see: [www.7stanes.gov.uk/forestry/INFD-7BXLJM](http://www.7stanes.gov.uk/forestry/INFD-7BXLJM)
- The *Scottish Mountain Bike Development Consortium* (with Cycling UK membership and investment) has been set up to develop and increase participation in mountain biking as a sporting, recreational and commercially valuable activity. Delivery, through MTB cluster developments, is being promoting by *Developing Mountain Biking in Scotland*.
- SNH is planning to improve the opportunities for longer-distance routes. The aim is to move towards a network, which will expand prospects for recreational and utility travel.<sup>4</sup>
- A Sustrans guide to tourism providers on how to make their businesses more accommodating for cyclists, suggests that cycle tourism brought in £345 million to the Scottish economy in 2015 (this figure is based on usage estimates of the National Cycle Network).<sup>5</sup>

## c. Obstructions and barriers

**Cycling UK view:** Measures should be taken to remove locked gates and other barriers that are still preventing cyclists from accessing some land.

Although there are circumstances in which landowners can restrict access to their land, locked gates and other barriers that stop people from exercising their legal access rights should be removed if there are no reasonable grounds for the restriction. Local authority access officers should make sure that all reports of barriers to access are dealt with effectively.

The Code's section on cycling that applies to land managers says: "*Where possible, work with your local authority and other bodies to help identify paths or routes across your land which are suited for cycling. If you need to put a fence across a path or track then install a gate which allows multi-use access.*"





#### d. Resolving disputes

**Cycling UK view:** Problems that arise from sharing paths should be resolved by Local Access Officers and Local Access Forums, many of which have Cycling UK members on them.

It is inevitable that disputes between path users will arise from time to time. Those that involve cycling are best resolved with the help of organisations that represent cyclists, such as Cycling UK.

#### e. Following Scotland's example in the rest of the UK

**Cycling UK view:** Scotland's access legislation is a good model for other UK countries, and they should take steps to adapt it to their own contexts.

The *Land Reform Act* has opened up much more of the countryside in Scotland for cycling. Whilst a step in the right direction, the *Countryside and Rights of Way Act 2000* for England and Wales failed to go as far - cyclists there still face anomalies and unnecessary restrictions if they want to cycle off-road. For more, see Cycling UK briefings on rights of way in England & Wales, including:

- o Public footpaths
- o Bridleways, byways and cycle tracks
- o Local access forums
- o Rights of Way Improvement Plans

All at [www.cyclinguk.org/campaignsbriefings](http://www.cyclinguk.org/campaignsbriefings)

## LEGAL BACKGROUND

Scottish access laws differ from England and Wales. Part I of the *Land Reform (Scotland) Act* sets out a radical new approach to public access to land and inland water, which is more akin to access rights in Scandinavia. The closest parallel is Norway, which formalised its common law on the public right of access - the *allemannsrett* - in the *Norwegian Recreation Act 1957*.

Before the 2003 Act, many people were uncertain about the formal status of the law on access to land in Scotland. There had long been a general customary access to open country, but access on low ground was unsatisfactory.

The Labour manifesto of 1997 proposed a change in the law to open up the UK's countryside. This led to the *Countryside and Rights of Way Act 2000* (England and Wales). In Scotland, government was persuaded to extend the proposal to all land, and Scottish Natural Heritage (SNH) was invited to develop proposals. For this, it engaged the existing National Access Forum to promote a debate on the best way forward. The result was a report forming the basis of the parliamentary legislation.<sup>6</sup>

There are no statutory maps of rights of way prepared by Scottish local authorities as in England and Wales (hence no red lines to delineate ways on OS maps), and ways are not categorised by use.

Existing rights of access in Scotland - e.g. rights of way or the common law right of access to the foreshore - were not overtaken when the new statutory provision of the *Land Reform Act* came into force in February 2005. Rights of way - a much less robust system than south of the Border - are still important on land where access rights do not apply.

For more about rights of way in Scotland, see: <https://www.scotways.com/>



## FURTHER READING/WEBSITES

- *Scottish Outdoor Access Code* [www.snh.gov.uk/docs/A309336.pdf](http://www.snh.gov.uk/docs/A309336.pdf) / summary leaflet [www.snh.gov.uk/docs/B621366.pdf](http://www.snh.gov.uk/docs/B621366.pdf) . See also [www.outdooraccess-scotland.com/](http://www.outdooraccess-scotland.com/)
- [www.pathsforall.org.uk/](http://www.pathsforall.org.uk/) > support > downloads – various documents covering developing and managing paths, signage, benefits, accessibility, technical aspects, laws and liability etc.
- [www.scotways.com/](http://www.scotways.com/) - charity working to protect and develop access to the Scottish countryside for all.
- *Developing the Contribution of the National Heritage to a Healthier Scotland*. SNH. 2009. Explains, with policy background, how SNH plans to help improve Scotland's health, including encouraging outdoor activity. [www.snh.org.uk/pdfs/strategy/HealthierScotland.pdf](http://www.snh.org.uk/pdfs/strategy/HealthierScotland.pdf)
- Examples of urban and rural core paths plans:
  - [www.edinburgh.gov.uk/downloads/file/63/edinburgh\\_s\\_core\\_path\\_plan](http://www.edinburgh.gov.uk/downloads/file/63/edinburgh_s_core_path_plan)
  - <http:// Cairngorms.co.uk/working-partnership/national-park-strategies/core-paths-plan/>

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## REFERENCES

- <sup>1</sup> *Land Reform (Scotland) Act 2003*. <http://www.legislation.gov.uk/asp/2016/18/contents/enacted>
- <sup>2</sup> See [www.scotways.com](http://www.scotways.com) > Court Cases
- <sup>3</sup> Transform Scotland. *The Value of Cycle Tourism*. (Commissioned by Sustrans Scotland). June 2013. <http://transformscotland.org.uk/wp/wp-content/uploads/2014/12/The-Value-of-Cycle-Tourism-full-report.pdf>
- <sup>4</sup> See [www.snh.gov.uk/land-and-sea/managing-recreation-and-access/access-and-recreation-policy/paths-policy/long-distance-routes/](http://www.snh.gov.uk/land-and-sea/managing-recreation-and-access/access-and-recreation-policy/paths-policy/long-distance-routes/)
- <sup>5</sup> Sustrans. *Leisure Cycling Tourism Guide*. March 2017. [www.sustrans.org.uk/news/new-research-reveals-cycle-tourism-worth-%C2%A3345-million-scottish-economy](http://www.sustrans.org.uk/news/new-research-reveals-cycle-tourism-worth-%C2%A3345-million-scottish-economy)
- <sup>6</sup> SNH. *Access to the Countryside for Open-air Recreation – Scottish Natural Heritage's Advice to Government*.1998