



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 1

#### ACCESS RIGHTS

#### CHAPTER 1

##### NATURE AND EXTENT OF ACCESS RIGHTS

#### **1 Access rights**

- (1) Everyone has the statutory rights established by this Part of this Act.
- (2) Those rights (in this Part of this Act called “access rights”) are—
  - (a) the right to be, for any of the purposes set out in subsection (3) below, on land; and
  - (b) the right to cross land.
- (3) The right set out in subsection (2)(a) above may be exercised only—
  - (a) for recreational purposes;
  - (b) for the purposes of carrying on a relevant educational activity; or
  - (c) for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit.
- (4) The reference—
  - (a) in subsection (2)(a) above to being on land for any of the purposes set out in subsection (3) above is a reference to—
    - (i) going into, passing over and remaining on it for any of those purposes and then leaving it; or
    - (ii) any combination of those;
  - (b) in subsection (2)(b) above to crossing land is a reference to going into it, passing over it and leaving it all for the purpose of getting from one place outside the land to another such place.

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*Status: This is the original version (as it was originally enacted).*

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- (5) A “relevant educational activity” is, for the purposes of subsection (3) above, an activity which is carried on by a person for the purposes of—
- (a) furthering the person’s understanding of natural or cultural heritage; or
  - (b) enabling or assisting other persons to further their understanding of natural or cultural heritage.
- (6) Access rights are exercisable above and below (as well as on) the surface of the land.
- (7) The land in respect of which access rights are exercisable is all land except that specified in or under section 6 below.

## **2 Access rights to be exercised responsibly**

- (1) A person has access rights only if they are exercised responsibly.
- (2) In determining whether access rights are exercised responsibly a person is to be presumed to be exercising access rights responsibly if they are exercised so as not to cause unreasonable interference with any of the rights (whether access rights, rights associated with the ownership of land or any others) of any other person, but—
- (a) a person purporting to exercise access rights who, at the same time—
    - (i) engages in any of the conduct within section 9 below or within any byelaw made under section 12(1)(a)(i) below; or
    - (ii) does anything which undoes anything done by Scottish Natural Heritage under section 29 below,
 is to be taken as not exercising those rights responsibly; and
  - (b) regard is to be had to whether the person exercising or purporting to exercise access rights is, at the same time—
    - (i) disregarding the guidance on responsible conduct set out in the Access Code and incumbent on persons exercising access rights; or
    - (ii) disregarding any request included or which might reasonably be implied in anything done by Scottish Natural Heritage under section 29 below.
- (3) In this section the references to the responsible exercise of access rights are references to the exercise of these rights in a way which is lawful and reasonable and takes proper account of the interests of others and of the features of the land in respect of which the rights are exercised.

## **3 Reciprocal obligations of owners**

- (1) It is the duty of every owner of land in respect of which access rights are exercisable—
- (a) to use and manage the land; and
  - (b) otherwise to conduct the ownership of it,
- in a way which, as respects those rights, is responsible.
- (2) In determining whether the way in which land is used, managed or the ownership of it is conducted is responsible an owner is to be presumed to be using, managing and conducting the ownership of land in a way which is responsible if it does not cause unreasonable interference with the access rights of any person exercising or seeking to exercise them, but—

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- (a) an owner who contravenes section 14(1) or (3) or 23(2) of this Act or any byelaw made under section 12(1)(a)(ii) below is to be taken as not using, managing or conducting the ownership of the land in a responsible way;
  - (b) regard is to be had to whether any act or omission occurring in the use, management or conduct of the ownership of the land disregards the guidance on responsible conduct set out in the Access Code and incumbent on the owners of land.
- (3) In this section the references to the use, management and conduct of the ownership of land in a way which is responsible are references to the use, management and conduct of the ownership of it in a way which is lawful and reasonable and takes proper account of the interests of persons exercising or seeking to exercise access rights.

#### **4 Modification of sections 9, 14 and 23**

- (1) Ministers may by order modify, for the purposes of section 2 and 3 above, any of the provisions of sections 9, 14 and 23 below.
- (2) They may do so generally (that is to say in terms similar to those in sections 2 and 3 above as enacted) or by making provision which relates to particular areas, locations or classes of land or to particular access rights or particular activities which may take place in the exercise of access rights or to particular ways of using, managing or conducting the ownership of land or any combination of those.
- (3) Before doing so, they shall consult such persons whom they consider to have a particular interest in the effect of the proposed modification (or associations representing such persons) and such other persons as they think fit.

#### **5 Access rights, reciprocal obligations and other rules and rights**

- (1) The exercise of access rights does not of itself constitute trespass.
- (2) The extent of the duty of care owed by an occupier of land to another person present on the land is not, subject to section 22(4) below, affected by this Part of this Act or by its operation.
- (3) The existence or exercise of access rights does not diminish or displace any other rights (whether public or private) of entry, way, passage or access.
- (4) The existence or exercise of access rights does not diminish or displace any public rights under the guardianship of the Crown in relation to the foreshore.
- (5) The exercise of access rights does not of itself amount to the exercise or possession of any right for the purpose of any enactment or rule of law relating to the circumstances in which a right of way or servitude or right of public navigation may be constituted.
- (6) Access rights do not constitute a public right of passage for the purposes of the definition of “road” in section 151(1) (interpretation) of the Roads (Scotland) Act 1984 (c. 54).
- (7) A person exercising access rights is to be regarded as being in a public place for the purposes of section 53 (obstruction by pedestrians) of the Civic Government (Scotland) Act 1982 (c. 45).