



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 1

#### ACCESS RIGHTS

#### CHAPTER 2

##### NATURE AND EXTENT OF ACCESS RIGHTS: FURTHER PROVISIONS

#### 6 Land over which access rights not exercisable

- (1) The land in respect of which access rights are not exercisable is land—
- (a) to the extent that there is on it—
    - (i) a building or other structure or works, plant or fixed machinery;
    - (ii) a caravan, tent or other place affording a person privacy or shelter;
  - (b) which—
    - (i) forms the curtilage of a building which is not a house or of a group of buildings none of which is a house;
    - (ii) forms a compound or other enclosure containing any such structure, works, plant or fixed machinery as is referred to in paragraph (a)(i) above;
    - (iii) consists of land contiguous to and used for the purposes of a school; or
    - (iv) comprises, in relation to a house or any of the places mentioned in paragraph (a)(ii) above, sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure that their enjoyment of that house or place is not unreasonably disturbed;
  - (c) to which, not being land within paragraph (b)(iv) above, two or more persons have rights in common and which is used by those persons as a private garden;
  - (d) to which public access is, by or under any enactment other than this Act, prohibited, excluded or restricted;
  - (e) which has been developed or set out—
    - (i) as a sports or playing field; or
    - (ii) for a particular recreational purpose;

- (f) to which—
    - (i) for not fewer than 90 days in the year ending on 31st January 2001, members of the public were admitted only on payment; and
    - (ii) after that date, and for not fewer than 90 days in each year beginning on 1st February 2001, members of the public are, or are to be, so admitted;
  - (g) on which—
    - (i) building, civil engineering or demolition works; or
    - (ii) works being carried out by a statutory undertaker for the purposes of the undertaking,
 are being carried out;
  - (h) which is used for the working of minerals by surface workings (including quarrying);
  - (i) in which crops have been sown or are growing;
  - (j) which has been specified in an order under section 11 or in byelaws under section 12 below as land in respect of which access rights are not exercisable.
- (2) For the purposes of subsection (1)(a)(i) above, a bridge, tunnel, causeway, launching site, groyne, weir, boulder weir, embankment of a canalised waterway, fence, wall or anything designed to facilitate passage is not to be regarded as a structure.

## 7 Provisions supplementing and qualifying section 6

- (1) Section 6 above does not prevent or restrict the exercise of access rights over any land which is a core path.
- (2) Land which bears to be within section 6 above by virtue of a development or change of use for which planning permission was or is required under the Town and Country Planning (Scotland) Act 1997 (c. 8) shall, if—
- (a) such planning permission has not been granted; or
  - (b) such permission was granted subject to a condition which has not been complied with,
- be regarded, for the purposes of that section, as if that development or change of use had not occurred.
- (3) Where planning permission for such a development or change of use of land has been granted, the land shall, for the purposes of section 6 above, be regarded, while that development or change of use is taking place in accordance with the permission, as having been developed or having had its use changed accordingly.
- (4) In section 6(1)(b)(iii) above, “school” means not only a school within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44) but also any other institution which provides education for children below school age within the meaning of that provision.
- (5) There are included among the factors which go to determine what extent of land is sufficient for the purposes mentioned in section 6(1)(b)(iv) above, the location and other characteristics of the house or other place.
- (6) For the purposes of section 6(1)(d) above, access rights do not extend to the land to which public access is prohibited, excluded or restricted only to the extent of the prohibition, exclusion or restriction.

- (7) Section 6(1)(e) above prevents the exercise of access rights over land to which it applies only if—
- (a) the land is being used for the purpose for which it has been developed or set out and, in the case of land which is not a sports or playing field, the exercise of those rights would interfere with the recreational use to which the land is being put;
  - (b) the land is a golf green, bowling green, cricket square, lawn tennis court or other similar area on which grass is grown and prepared for a particular recreational purpose; or
  - (c) in the case of land which is a sports or playing field, the surface of the land is comprised of synthetic grass, acrylic, resin or rubber granule.
- (8) For the purposes of section 6(1)(e) above, land which has been developed or set out for a particular recreational purpose does not include land on which groynes have been constructed, deepening of pools has been undertaken, fishing platforms have been erected, or where other works for the purposes of fishing have taken place.
- (9) Section 6(1)(f) above does not prevent or restrict the exercise of access rights over land to which it applies by any person who forms part of a class of persons who are not, on the days taken into account for the purposes of determining whether that provision applies in relation to the land, required to pay to gain admittance to the land.
- (10) For the purposes of section 6(1)(i) above land on which crops are growing—
- (a) includes land on which grass is being grown for hay and silage which is at such a late stage of growth that it is likely to be damaged by the exercise of access rights in respect of the land in which it is growing, but otherwise does not include grassland;
  - (b) does not include headrigs, endrigs or other margins of fields in which crops are growing,
- and “crops” means plants which are cultivated for agricultural, forestry or commercial purposes.

## **8 Adjustment of land excluded from access rights**

- (1) Ministers may by order modify any of the provisions of section 6 and 7 above.
- (2) They may do so generally (that is to say, in terms similar to those in sections 6 and 7 above as enacted) or by making provision which relates to particular areas, locations or classes of land.
- (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.

## **9 Conduct excluded from access rights**

The conduct which is within this section is—

- (a) being on or crossing land in breach of an interdict or other order of a court;
- (b) being on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court;
- (c) hunting, shooting or fishing;

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

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- (d) being on or crossing land while responsible for a dog or other animal which is not under proper control;
- (e) being on or crossing land for the purpose of taking away, for commercial purposes or for profit, anything in or on the land;
- (f) being on or crossing land in or with a motorised vehicle or vessel (other than a vehicle or vessel which has been constructed or adapted for use by a person who has a disability and which is being used by such a person);
- (g) being, for any of the purposes set out in section 1(3) above, on land which is a golf course.