

# ***Access to the Countryside in Scotland – not a CROW, but a totally different animal!***

For many years there was confusion over the access legislation in Scotland – the access legislation that existed was unclear, the rights of way system was not working, land managers needed more practical support to help manage access and in order to help rural communities, visitors and tourists needed clearer access to Scotland's outdoors.

The Scottish Executive instructed Scottish Natural Heritage to review the legal arrangements and after a long consultation with all interested parties, the Land Reform (Scotland) Act 2003 was passed by the Scottish Parliament in May 2004 and the accompanying Scottish Outdoor Access Code was approved by the Scottish Parliament in July 2004. The statutory right of access came into effect on the 9<sup>th</sup> February 2005 giving Scotland one of the most forward-thinking pieces of access legislation in Europe, which is very different to the access legislation in England & Wales - the Countryside & Rights of Way Act 2000 (often called the CROW Act).

The Scottish legislation gives people the right of responsible, non-motorised access to most land and inland water in Scotland and is underpinned by 3 basic principles which apply equally to access-takers and land managers –

- Take responsibility for your own actions
- Respect the interests of other people
- Care for the environment

The English and Welsh legislation provides a right of access over 'Access Land', ie mapped areas of mountain, moor, heath and down, plus registered Common land – often known as a 'right to roam'. Maps showing this Access Land are available via [www.countrysideaccess.gov.uk](http://www.countrysideaccess.gov.uk) and [www.ccw.gov.uk/countrysideaccesswales](http://www.ccw.gov.uk/countrysideaccesswales)

## **The main differences between the Scottish legislation and the English & Welsh legislation are;**

### **Access rights**

In Scotland everyone has a right of responsible, non-motorised access over most land and inland water for recreation, some educational and commercial uses and for going from place to place. In England & Wales everyone has a right of access over 'Access Land', ie designated areas of mountain, moor, heath and down, plus registered Common Land.

### **What you can do under your access rights**

In Scotland everyone has the right of access for all forms of non-motorised access including walking, climbing, cycling, running, horse-riding, canoeing, wild camping, etc. In England and Wales you have the right to walk and undertake certain types of recreation including running, bird-watching, climbing, etc.

### **How can you undertake your access rights?**

In Scotland the right of access is conditional on the access-taker acting responsibly as guided by the Scottish Outdoor Access Code. Land Managers must also act responsibly in managing their land as also guided in the Scottish Outdoor Access Code. In England and Wales access-takers must follow the Countryside Code. There is also advice available for land managers in both Codes.

For information on the Scottish Outdoor Access Code see [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com)

For information on the Countryside Code see [www.countrysideaccess.gov.uk](http://www.countrysideaccess.gov.uk)

### **What you can't do**

In Scotland you can't take access in certain places such as: a privacy zone round people's houses, land in which crops are sown or growing, have a dog with you not under proper control, interfere with land management operations, hunt, shoot or fish. In England and Wales you are not allowed: to have a dog with you not on a lead near livestock and between 1<sup>st</sup> March and 31<sup>st</sup> July to avoid disturbing birds and sensitive animals, ride, cycle or camp, take part in air sports, swim in or use boats or sail boards on inland water.

### **What land managers can do**

In Scotland land managers can ask the public to avoid short-term land management operations such as timber operations or crop spraying. They also have the power to apply to their Local Authority to exempt land from access rights for up to 5 days for specific reasons such as an agricultural show or an open-air concert. In England and Wales land managers can limit access to Access Land at their own discretion for up to 28 days per year. They can also apply for a 'direction' from their local access authority to restrict public access for land management, public safety or fire prevention reasons.

### **Linear routes**

In Scotland Rights of Way still exist, but Local Authorities are planning systems of core footpaths which will also facilitate access. In England and Wales the current Rights of Way network applies, including some routes for cyclists and horse riders.

A table summarising the key differences between the access legislation north and south of the border is shown at the end of this article.

### **The situation in Northern Ireland –**

In Northern Ireland access legislation is less well developed. The Access to the Countryside (Northern Ireland) Order 1983 places a duty on district councils to assert, protect and keep open and free from obstruction or encroachment any public right of way. Councils are also required to compile records of public rights of way in their area.

Councils may also make proposals to the Department of the Environment for long distance routes and to date 13 of these have now been approved, 11 CAAN (Countryside Access and Activities Network) trails, the Ulster Way and the Newcastle Challenge Trail.

The Access Order also includes provision for wider access to open country but no related agreements or orders have been made by district councils. Generally, apart from de facto access, this type of 'freedom to roam' in Northern Ireland is currently only available at National Trust lands, country parks, forest parks etc. De facto access is currently available in many parts of the Mourne but strictly speaking, there is no legal basis for the recreational use of such land.

### **As far as orienteering in Scotland is concerned the following applies –**

If you as an individual want to access an area, you can do this as long as you act responsibly within the principles and guidance of the Scottish Outdoor Access Code. There is no need to

register this with British Orienteering for insurance purposes. The definition of 'responsible' will depend on the location, time of year, etc, and may change each time an area is accessed. In some cases you might be required to consult the local orienteering club access officer or club secretary for advice before you visit the area. (Also be aware of embargoes on some areas for events!). See Section 3.57 of the Scottish Outdoor Access Code.

If you and some club members want to access an area for an informal training run, and you do not put out any markers or other facilities, then again you can do so as long as you act responsibly within the principles and guidance of the Scottish Outdoor Access Code. Again there is no need to register this with British Orienteering. The definition of 'responsible' will depend on the location, time of year, etc and may change each time an area is accessed. You should consult the local orienteering club access officer or club secretary for advice before you visit the area. (Also be aware of embargoes on some areas for events!). See Section 3.60 of the Scottish Outdoor Access Code.

If a club or squad organises an event or activity of any kind which appears in any club or other fixture list, including evening training events, coaching sessions, Come and Try It's, etc, which involve a certain level of organisation, eg car parking, markers put out, timing, etc, then the organiser or leader must ensure that they have liaised with the land manager and that the activity is registered with British Orienteering for insurance purposes. The participants are required to act responsibly in accordance with the principles and guidance of the Scottish Outdoor Access Code and any other requirements requested by the event officials and land manager specific to the area being used. See Section 3.60 of the Scottish Outdoor Access Code.

Any event which appears in a club, SOA and/or British Orienteering Fixtures Lists will require to be registered with British Orienteering for insurance purposes, and the organiser must liaise with the land manager giving as much notice as possible. The participants are required to act responsibly in accordance with the principles and guidance of the Scottish Outdoor Access Code and any other requirements requested by the event officials and land owner specific to the area being used. See Section 3.60 of the Scottish Outdoor Access Code.

The SOA would ask that any squads or clubs from out-with Scotland who intend coming to Scotland to train continue to contact the National Orienteering Centre or the local club for advice on access and to ensure that all activities are registered with British Orienteering via the SOA Fixtures Secretary in the usual fashion. Tel: 01479 861474  
[nationalcentre@scottish-orienteering.org](mailto:nationalcentre@scottish-orienteering.org)

The web-site [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com) has all the information and advice required for access takers and land managers as well as links to the Land Reform (Scotland) Act 2003 and the accompanying Scottish Outdoor Access Code.

The Scottish Orienteering web-site also has useful information on orienteering access in Scotland. See [www.scottish-orienteering.org](http://www.scottish-orienteering.org)

For a free copy of the Scottish Outdoor Access Code from Scottish Natural Heritage. Tel: 01738 444177.

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## Summary of key differences between access legislation north & south of the border.

	<b>England &amp; Wales</b>	<b>Scotland</b>
<i>The legislation</i>	Countryside & Rights of Way Act 2000	Land Reform (Scotland) Act 2003
<i>Where you can go?</i>	A right of access over ‘ <b>Access land</b> ’ ie mapped areas of mountain, moor, heath and down, plus registered Common land.	A right of access over <b>most land and inland water</b> , for recreation, some education and commercial uses, and for going from place to place.
<i>What you can do?</i>	A right of access to <b>walk</b> , plus undertake certain types of recreation including running, bird-watching, climbing.	A right of access for <b>all forms of non-motorised access</b> including walking, climbing, cycling, horse-riding, canoeing, wild camping etc.
<i>How you can do it?</i>	Users must follow the <b>Countryside Code</b> (there is advice for land managers too)	The right of access is conditional on users behaving responsibly (land managers must manage their land responsibly too) – guided by the <b>Scottish Outdoor Access Code</b> .
<i>When you can start doing it?</i>	<b>In England</b> , the commencement of access rights was <b>phased in</b> across the regions with all complete on <b>31 October 2005</b> . Access rights to Access land in <b>Wales</b> began <b>28 May 2005</b> .	Statutory access rights under the Land Reform (S) Act began <b>9 February 2005</b> .
<i>What you can't do?</i>	Let your dog off the lead when you are near livestock, and between 1 March and 31 July to avoid disturbance to birds and other sensitive animals. Hunt, shoot, fish. Ride a horse or bicycle. Swim in, or use boats or sail boards on, non-tidal rivers, lakes etc. Camp. Airports.	Take access in certain places eg a privacy zone around people's houses; land in which crops are sown or growing. Be accompanied by a dog not under proper control. Hunt, shoot, fish. Interfere with land management operations.
<i>What land managers can do?</i>	Landowners and managers can limit access at their own discretion for up to 28 days per year. They can also apply for a direction to restrict access for land management, public safety or fire prevention reasons.	Land managers can advise the public on short-term management operations and ask them to avoid such areas. They can also apply to their Local authority to exempt land from access rights for up to 5 days for eg agricultural shows, open-air concerts.
<i>What about linear routes?</i>	The established Rights of Way network applies, including some routes for cyclists and horse riders.	Rights of Way still exist. Access Authorities will be planning systems of Core Paths which will also facilitate access.
<i>Where to find out more</i>	<a href="http://www.countrysideaccess.gov.uk">www.countrysideaccess.gov.uk</a> <a href="http://www.ccw.gov.uk/countrysideaccesswales">www.ccw.gov.uk/countrysideaccesswales</a>	<a href="http://www.outdooraccess-scotland.com">www.outdooraccess-scotland.com</a>

### Key Code messages for visitors: **NB** both Codes also give guidance to Land Managers

<b>Countryside Code – England &amp; Wales</b>	<b>Scottish Outdoor Access Code</b>
<ul style="list-style-type: none"> <li>• Be safe – plan ahead and follow any signs</li> <li>• Leave gates and property as you find them</li> <li>• Protect plants and animals, and take your litter home</li> <li>• Keep dogs under close control</li> <li>• Consider other people</li> </ul>	<ul style="list-style-type: none"> <li>• Take personal responsibility for your own actions</li> <li>• Respect people's privacy and peace of mind</li> <li>• Help land managers and others to work safely and effectively</li> <li>• Care for your environment</li> <li>• Keep your dog under proper control</li> <li>• Take extra care if you are organising an event or running a business</li> </ul>