

# National Access Forum - Scotland



## Commercial access to the outdoors in Scotland: guidance on local management

### Summary

- A wide range of commercial outdoor activities take place under Scottish access rights. These provide a wide range of benefits and generally give rise to few problems.
- Access management issues are often linked to intensive or frequent use of particular places rather than commercial access *per se*. Such issues can be managed in the same ways whether the area is used by the general public, commercial users or both.
- Any issues which are specifically linked to commercial access will often require local management. Access officers will have an important role, with assistance as needed from local access forums, and there may be scope to draw on wider support, for example from SNH's national access education campaign.
- The key starting point will normally be promoting responsible behaviour to the key parties in line with the Scottish Outdoor Access Code. If necessary, this might be supported by locally agreed management arrangements which apply the Code to local circumstances, or by other types of initiative such as voluntary contribution or accreditation schemes.
- Legal mechanisms also exist to address any persistent problems, although these will tend to be measures of last resort.
- This guidance includes annexes providing case studies and sources of further information.

### Introduction

1. Commercial activities based on outdoor recreation provide a wide range of benefits. These activities help people to make the most of Scotland's natural environment and can be of particular value in allowing the less confident or experienced, including some disadvantaged groups, to try new activities under relatively safe conditions. They also make a significant contribution to Scotland's wider tourism industry and are of considerable economic importance in many rural areas. These activities normally take place without significant problems, but local management may sometimes be needed to ensure that they do not unreasonably impact upon other interests. This guidance has been developed by the National Access Forum and Scottish Outdoor Access Network to help access officers, local access forums and others to address any issues which arise in conjunction with these activities.
2. The principal element in the legal framework for access to Scotland's outdoors is the access rights established by Part 1 of the Land Reform (Scotland) Act 2003. These rights apply to most land and inland water and must be exercised responsibly, and land managers have to manage their land responsibly with regard to access. The Scottish Outdoor Access Code explains what this means for recreational users and land

managers<sup>1</sup>. Under section 1(3)(c) of the Act, Scottish access rights extend to commercial users whose activities could also be undertaken by the public under these rights. Access rights also apply to educational activities linked to the natural or cultural heritage and these can overlap to varying degrees with commercial access.

3. Access management issues are often primarily associated with regular or intensive use of an area by large numbers of people rather than commercial use *per se*. Various general management approaches are available to deal with such issues and these options are essentially the same whether the area is used by the general public, commercial users or both. These general management methods are briefly reviewed in Annex 1, with links to further guidance in Annex 3. The remainder of this note focuses on issues and management approaches which are specific to commercial access.
4. Outdoor events sometimes take place on a commercial basis and are covered by additional guidance in the Code. The NAF has also developed further guidance on this topic, aimed at event organisers and land managers, which can be found at: <http://www.outdooraccess-scotland.com/out-and-about/recreation-activities/events/>.

### **Commercial activities under access rights**

5. Commercial activities which take place under access rights are very diverse and include a wide range of guided outdoor activities, outdoor skills training, tours and other services which are directly based on active pursuits, such as:
  - guided walking and climbing
  - guided pony trekking and off-road biking
  - commercial rafting and other paddlesports
  - activities such as canyoning or sphereing
  - guided photography or wildlife watching
  - outdoor personal fitness training, and
  - commercial dog walking.
6. Other commercial enterprises provide related services which indirectly depend on access rights. Examples include:
  - livery stables
  - mountain bike hire and related facilities, and
  - other outdoor equipment hire services<sup>2</sup>.
7. Many of these activities have little in common apart from their commercial basis. There is consequently no national representative body spanning all of these interests, and some of the more specialised pursuits may have no representative body. This has a number of practical implications which are noted below.

### **Managing issues linked to commercial access**

8. Where issues arise which are linked to commercial outdoor recreation, access officers may be called on to help promote responsible behaviour by commercial users or others, or to uphold commercial access rights. Resolving such issues will primarily depend on communication between the key parties, ideally at an early stage before the situation

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<sup>1</sup> Access rights are conditional on responsible behaviour, which is defined by the Act as not causing unreasonable interference with the rights of others. Land managers have a reciprocal duty to manage land responsibly, which is defined as not causing unreasonable interference with access rights. The Code is the statutory reference source which interprets these broad principles in practical situations.

<sup>2</sup> A wide range of general services have more indirect links to access rights, such as cafes and accommodation providers, but these are beyond the scope of this guidance.

begins to escalate. These discussions will usually need to take place on a local basis, partly because such issues tend to be relatively localised and sometimes reflect particular combinations of local circumstances, personalities and perceptions. More fundamentally, if there is no national body representing the activity concerned, local dialogue will be the only option. Access officers will therefore have a key role in working with the relevant parties at local level to promote better integration of commercial and other interests, based in particular on the framework provided by the Code.

9. Very few commercial access issues have so far arisen at a more than local level. If, however, such issues occur and are amenable to regional or national action, SNH may be able to assist through its Code education campaign. This has included several regional workshops for commercial dog walkers which took place during 2013, and SNH will consider other similar initiatives if needed to support local management by access authorities. General SNH campaign materials (available at <http://www.outdooraccess-scotland.com/help-and-information/marketing-and-resources/>) may also be helpful when promoting responsible behaviour among some local commercial users.

### ***Identifying the key issues***

10. As with any access issues, it will be important to clarify the underlying causes in order to identify the most appropriate management action – in particular because issues which are closely linked to commercial activity may require distinct management approaches. Such issues could arise in various ways:
  - Commercial users operate in a demanding business environment and have to provide an experience or service which meets the expectations of their clients, often with significant time constraints. This may sometimes work against the need for responsible behaviour, for example by encouraging a pony trekking business to take clients on an advertised route when it is churned and muddy in winter.
  - Some outdoor businesses make frequent use of particular locations and may therefore make a significant contribution to any cumulative impacts on these places. These might potentially include effects on the local environment or on other users or land managers, for example linked to the presence of large and conspicuous commercial groups.
11. Issues that are closely linked to commercial access have arisen, for example, due to the use of popular recreation areas by some professional dog walkers, who are responsible for large numbers of dogs - with corresponding impacts if these are not under proper control. Conflicts have also arisen between angling and commercial rafting on certain frequently used stretches of river.
12. Some management issues may be compounded by perceptual factors. Commercial interests may sometimes be viewed differently, and perhaps less sympathetically, by others - including other recreational users and land managers. Concerns are sometimes expressed about legal liability linked to commercial access, in particular by land managers, although in practice this is broadly similar to the position with regard to non-commercial access. If there are any differences, these would generally link to the relationships between operators and their clients rather than having implications for the land manager or other users.
13. An initial assessment will therefore be needed to identify the root of the issue, how this relates to the behavioural guidance in the Code and which parties need to be engaged in order to address it.

### ***Key messages from the Code***

14. A starting point for action to address pressures which are linked to commercial access will often be promotion of responsible behaviour, in line with the Code, to the relevant parties at local level. This activity could perhaps be seen as an extension of access authorities' general duty to publicise the Code (in conjunction with SNH) under section 10 of the Act. This is likely to involve drawing out the relevant messages and communicating them to the key interests, which will commonly be commercial users and/or land managers.
15. The Code provides a range of general guidance on responsible access and land management which relates to particular activities and situations, and which may be supplemented by local guidance at particular places, for example to safeguard protected species. Paras 3.57-3.59 (organised groups), 3.56 (groups of dogs) and 3.60-3.61 (events) will be relevant to some commercial activities, and it may be appropriate to refer commercial event organisers to the guidance on outdoor events that has been developed by the NAF. Para 3.4 of the Code is also relevant and extends the principle of individual responsibility to cumulative impacts, noting that: "*whilst you might visit a place only occasionally and feel that you cause no harm, the land manager or the environment might have to cope with the cumulative effects of many people. Acting with awareness and common sense underpins responsible behaviour*".
16. Para 3.62 is a key reference in the Code and relates specifically to commercial users:

**Extract from the Code - *Running a business which utilises access rights***

**3.62** *If you instruct, guide or lead people in recreational or educational activities (see paragraphs 2.8 to 2.9), either commercially or for profit, take extra care to minimise any adverse effects that you might have on the interests of other businesses, such as a farm or an estate, and on the environment. Doing a full risk assessment of your activities will provide a good starting point and you can show extra care by:*

- *planning your activities in ways that minimise possible impacts on land management and the interests of others should you wish to use a particular place regularly or if your visit might cause any particular concerns about safety or the environment;*
- *talking to the land managers who are responsible for places that you use regularly or intensively; and by*
- *obtaining the permission of the relevant land manager(s) if you wish to use a facility or service provided for another business by the land manager (such as an equestrian facility);*
- *if you are running a business that utilises access rights consider assisting with care of the resource used by your business.*

17. Para 3.62 has a number of key implications for commercial users. These include the need to take particular care to reduce their impacts on others, where necessary through a risk assessment process, and the need to plan pre-emptively to reduce the risk of possible conflict. Commercial users could consider developing an 'access strategy' to ensure that their business does not unreasonably affect other interests or the environment – aiming, for example, to 'spread the load' and address any issues which arise at particular places and times of year. Communication is also a key theme, noting the need to liaise with land managers if a specific place is used repeatedly.
18. It may be particularly helpful to emphasise these points if there are signs that they may not have been fully appreciated, and to work through their implications in relation to the particular activity and location concerned. The local access forum may be able to assist by providing additional expertise or by helping to resolve any dispute about the interpretation of responsible behaviour.
19. The third bullet of para 3.62 indicates that commercial operators should obtain permission from land managers if using a facility provided for another business, a situation which may

arise, for example, in relation to neighbouring livery businesses. This implies that a land manager who has provided such a facility could prevent commercially competing businesses from using it. Not all commercial use would necessarily compete with the business undertaken by the land manager (the two could sometimes be synergistic) and care would always be needed to ensure that any limitations on commercial use were consistent with the wider terms of the Act/Code and other relevant legislation. The implications of this general statement, which covers a number of potential situations, have not so far been tested in practice.

20. The final bullet in 3.62 refers to assisting with care of the resource, and commercial operators could be encouraged to “put something back” through individual arrangements with land managers or in a more co-ordinated way through voluntary contribution initiatives. Some practical examples are included in the case studies of Annex 2.
21. Para 4.22 of the Code includes some corresponding guidance for land managers which relates in part to commercial activities and encourages a positive approach:

**Extract from the Code – *Work with your local authority and other bodies to help integrate access and land management***

**4.22** *If you are contacted by the organiser of a group or event (see paragraphs 3.57 to 3.64), reply positively. If your consent is required, you are encouraged to give this if your concerns or those of others can be properly addressed.*

22. Various national bodies have developed specific guidance derived from the Code which relates to certain activities – and sometimes to particular types of commercial activity. This may be particularly useful when discussing relevant issues with the key interests and is listed in Annex 3.

### ***Managing the process***

23. The best way to initiate discussion will depend on the number of parties involved and the ease with which they can be contacted in a targeted way. A quiet word from an access officer, backed up by the Code, may be all that is needed, as commercial users who regularly visit a particular area have a strong interest in maintaining good relations with land managers and the wider community and may respond well to positive attempts to influence their behaviour. It may be helpful to highlight the role of commercial users in educating novice clients about responsible access, and in demonstrating this through their own practice. If necessary, it may also be possible to invoke some degree of peer pressure from relevant outdoor activity representative/governing bodies or, if appropriate, from commercial/professional bodies, to encourage responsible behaviour and safeguard the reputation of the sector as a whole.
24. If the issues being encountered are linked to multiple commercial users, there may be scope to address them through wider co-ordinated action within the sector. Businesses have a commercial interest in being seen to achieve high standards, for example by ensuring minimal environmental impact, which can confer an important advantage in a crowded and competitive market. There may consequently be opportunities to provide commercial incentives for responsible behaviour, for example by developing local accreditation schemes or linking to existing initiatives of this type. Annex 2 includes some examples of such schemes.
25. Access problems are not always attributable to the behaviour of a single user or interest group, and their resolution may require an accommodation to be reached by several parties. The local access forum may be able to play a helpful role in such circumstances, providing a neutral setting in which to air views and work towards solutions. These might

include local arrangements which could be agreed by the key parties, although it will be important to remember that any such concordats will be purely voluntary and are most likely to be honoured by those users and/or land managers who are party to the agreement.

26. Communication with and between the key parties is a key theme underpinning all of these approaches. A more extensive overview of potential communication methods is provided in guidance on *Communication not conflict* which has been developed by **sportscotland** and SNH (see Annex 3).
27. Persistent problems linked to particular commercial users or land managers can be addressed directly in various ways. As a first recourse for land managers, irresponsible users can be asked to modify their behaviour or, failing that, to leave, and this option may carry particular weight when commercial operators are accompanied by their clients. If all else has failed, the options of an interdict (as indicated in part 6 of the Code), action to uphold access rights (under section 14 of the Act) and proceedings for a declarator (under section 28) provide last resorts. Problems of this scale are very uncommon, but the prospect of such measures may sometimes help encourage the key parties to engage in constructive discussion.
28. In view of the diversity of commercial access and the low frequency with which problems arise, it is difficult for this guidance to address all possible scenarios – and potential approaches have therefore been discussed in general terms. Annex 2 presents some case studies to demonstrate the practical application of these methods in different situations. Annex 3 highlights some useful sources of further information.

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## **Annex 1: Summary of general approaches that can be used to manage areas which experience intensive use**

A number of management issues could potentially arise in any area where access takes place on an intensive or regular basis. These might relate to interactions with land management or between recreational users, or increased pressure on paths, other access infrastructure or the wider environment. These issues can be managed by a very wide range of common and well-established techniques which are well covered by existing guidance (see Annex 3), and apply equally if the area is used entirely by the general public or if there is a mix of commercial and other use.

The starting point for local access management will normally be to gather the necessary information to reach a complete and rounded view of the situation, allowing the key issues to be correctly identified. Having defined the issues in this way, a key focus of effort will often be communication with recreational users in various ways to influence their use of the site. This might include general messages about responsible behaviour or more specific requests, for example to temporarily avoid particular areas, and these could be conveyed by a variety of on-site methods and through wider communication channels (eg. online).

Physical measures to manage the impacts of recreation on the ground may have a role and could include the maintenance, diversion or creation of paths, and the provision, modification or relocation of other infrastructure such as gates, signs, information boards, car parks and toilets. There might also be scope for design measures which facilitate co-existence between different types of user, in line with the shared use approach which is now the norm under Scottish access rights. Regulatory options such as byelaws and management rules might be considered, but these approaches are unlikely to work in isolation, are usually an adjunct to other management methods and are only effective to the extent to which they can be enforced.

Management action at the site concerned can be supplemented by strategic measures to spread use more widely on a regional basis. Engagement with the planning system may be of particular importance and access strategies, open space strategies and core paths plans may all have key roles. It may also be desirable to actively promote alternative locations, which will usually be easier than trying to counter ongoing promotion of existing hotspots – as this may take place through a wide range of guidebooks and online sources and be very difficult to manage.

Where use is particularly concentrated, it may be appropriate to develop partnership approaches which allow all relevant users to engage in management decisions, perhaps based around the development of a visitor management plan. The access authority would have an important role in such partnerships, perhaps supported by the local access forum as a source of advice, sounding board and, if needed, to help resolve disputes or other difficulties.

Not all of the above measures are necessarily costly or labour-intensive to implement. In some instances, however, the availability of resources, including funding to maintain access infrastructure, may be a significant consideration. Grants are potentially available from a range of sources to help support work which relates to access. The Scotland Rural Development Programme (SRDP) may have an important role and an overview of other sources can be found on the Scottish Outdoor Access Code website at <http://www.outdooraccess-scotland.com/>. It may also be possible to explore voluntary arrangements by which regular users and other stakeholders, such as land managers or local businesses, could contribute in cash or in kind to the management of these places. Such initiatives can be of significant benefit in their own right and provide useful leverage to attract funding from other sources.

## **Annex 2: Case studies – managing commercial access**

### ***Livery services in Stirling – voluntary action by an individual commercial operator to help maintain the resource***

A livery yard in the Stirling area is close to a Country Park and promotes this as a resource for use by its clients. The Park has a “Friends” group which runs regular maintenance days involving track clearance, litter picking, re-surfacing and small drainage jobs. The owners of the livery yard and their clients always try to attend and help, and the owners note that “the Park is a tremendous resource for us both from a leisure and commercial point of view and it is only right that we contribute to maintenance. Not only are we happy to help because we ride there, but...because we utilise the park, helping preserve our assets is just good business sense.” This arrangement has been established by the livery yard without any access authority involvement and provides a good example of proactive action in line with the Code and in support of commercial objectives.

### ***Gorge walking in Stirling - liaison with commercial operators through the local access forum***

Stirling Council was approached by a landowner who was experiencing increasing demand for commercial gorge walking on his land, raising various concerns including litter and wider cumulative impacts. Groups had also begun to use his land for archery and to set up tents for people to change in without any discussion with him. The owner had been approaching the companies without success and came to the Stirling Area Local Access Forum for help. The Council worked with the owner to draft a letter that could be sent to each company to encourage responsible use of the site. This fairly low key approach has resulted in more discussion between the owner and some companies and a general reduction in use of the site, although it is possible that other factors may also have contributed to this outcome.

### ***River Dee recreational users voluntary notification system: an agreed arrangement for communication between water-based access and angling interests***

An arrangement has been agreed under which large commercial and educational parties moving down the Dee can give advance notice to ghillies and anglers by telephone, via the Dee District Salmon Fishery Board. This protocol is merely to encourage communication and does not include any agreed limitations on access. The arrangement is promoted by the Scottish Canoe Association and major river users in the area.  
<http://www.canoescotland.org/Portals/0/Access/River%20Dee%20-%20Request%20to%20voluntarily%20notify%20May%202013.pdf>

### ***River Spey local users’ agreement: informal guidelines agreed between commercial access and other interests***

The Spey Users’ Group, which includes the Fishery Board, angling and paddlesports interests (including commercial users) and access authorities, has developed local protocols which set out reciprocal guidelines for the behaviour of paddling groups and anglers. These are based on the Scottish Outdoor Access Code and developed further, by mutual consensus, to apply the Code to specific local circumstances. As with other such agreements, this approach has limitations in that only those agreeing to the protocol are likely to know about and adhere to it, but this type of approach may sometimes help reduce disturbance to all parties to manageable levels.

<http://www.speyfisheryboard.com/access/#> (specific guidance for paddlers on the Spey is also available at <http://www.canoescotland.org/AccessEnvironment/RiverSpeyGuide.aspx>).

### ***East Lothian Dog Watch: an accreditation scheme to promote responsible commercial access***

East Lothian Council has worked with a number of professional dog walking companies to develop an approved user scheme. Each company is assessed on application against key criteria based on dog welfare and responsible behaviour, including cleaning up after their dogs and exercising them in a responsible manner. Approved companies are promoted on the Council website and can use the accreditation in their own publicity material – and receive a badge to display on their vehicle.

[http://www.eastlothian.gov.uk/info/1211/animal\\_welfare\\_and\\_pest\\_control/196/dog\\_warden\\_services/3](http://www.eastlothian.gov.uk/info/1211/animal_welfare_and_pest_control/196/dog_warden_services/3)

### ***The Fife Big Green Footprint Scheme: a voluntary contribution scheme for commercial interests***

Fife Coast and Countryside Trust has developed this scheme to allow businesses to contribute to countryside and biodiversity management, as a way of demonstrating their green credentials and commitment to their local community. Businesses decide what they want to contribute and what work they would like to support, and receive benefits which include:

- corporation tax relief on donations (for registered companies);
- acknowledgement on relevant websites and in other promotional material;
- networking opportunities at an annual awards ceremony, and;
- a membership certificate to display for customers and staff.

[http://www.fifecoastandcountryside.co.uk/the-big-green-footprint\\_11.html](http://www.fifecoastandcountryside.co.uk/the-big-green-footprint_11.html)

### ***The Arran Trust: a gifting scheme co-ordinated by local businesses***

The Arran Trust provides funding for a range of conservation and environmental works, which is raised from various sources including donations from the public. Its membership comprises a wide range of tourism businesses including retail, accommodation and other service providers, and this model could extend equally well to commercial outdoor activity providers. Promotion of the Trust places strong emphasis on positive environmental management and sustainable tourism. The Trust has supported various environmental projects including local path provision and upgrading, for example in Glen Sannox.

<http://www.arrantrust.org/>

### ***Friends of OUR Park: Loch Lomond & the Trossachs National Park***

*Friends of OUR park* is a fundraising scheme which operates on a similar basis to the above and allows visitors to make voluntary donations, through businesses, which are directed into access and other projects in and around the National Park. The scheme is managed by the Friends of Loch Lomond & The Trossachs and gives businesses the option of becoming “Business Supporters” at three different levels with corresponding promotion through the Friends’ website and magazine. Supporters include local walking, mountain guiding and wildlife tour operators, bike hire businesses and wider service providers such as cafes and guest houses.

<http://www.lochlomondtrossachs.org.uk/index.php/friends-of-our-park/overview>

## **Annex 3: Further information**

### ***The Scottish Outdoor Access Code***

*Scottish Outdoor Access Code*. Scottish Natural Heritage (2005). <http://www.outdooraccess-scotland.com/outdoors-responsibly/access-code-and-advice/soac/>

### ***Good practice guidance for particular recreational activities (sometimes referring specifically to commercial access)***

Hillwalking, climbing and wild camping guidance:  
<http://www.mcofs.org.uk/advice-and-policies.asp>

Mountain biking:  
<http://www.dmbins.com/riders/do-the-ride-thing>

Dog walking and related guidance:  
<http://www.outdooraccess-scotland.com/out-and-about/recreation-activities/dog-walking/>

Inland water (*Using inland water responsibly: guidance for all water users*):  
[http://www.pathsforall.org.uk/component/option,com\\_docman/Itemid,166/gid,155/task,cat\\_view/](http://www.pathsforall.org.uk/component/option,com_docman/Itemid,166/gid,155/task,cat_view/)

Paddling guidance (including the Paddlers' Code):  
<http://www.canoescotland.org/AccessEnvironment.aspx>

Scottish Rafting Association Code of Conduct:  
<http://www.scottish-rafting-association.org.uk/codeofconduct.html>

Horse riding and related guidance:  
<http://www.bhsscotland.org.uk/resources.html> (including guidance on responsible commercial equestrian access: <http://www.bhsscotland.org.uk/responsible-riding.html>)

Watching wildlife on foot (for commercial operators):  
<http://www.wild-scotland.org.uk/about-us/wild-scotland-best-practice-guidelines/>

Outdoor events (NAF guidance):  
<http://www.outdooraccess-scotland.com/out-and-about/recreation-activities/events/>

### ***General guidance on access management***

*Communication, not conflict: using communication to encourage considerate shared recreational use of the outdoors.*  
<http://www.outdooraccess-scotland.com/responsible-access/recreation-managers/managing-people/>

*Towards responsible use: influencing recreational behaviour in the countryside.*  
<http://www.outdooraccess-scotland.com/responsible-access/recreation-managers/managing-people/>

Comprehensive guidance on integrating access with land management:  
<http://www.outdooraccess-scotland.com/responsible-access/land-managers/managing-access/>

*Management for people* (2004) - more detailed guidance for site managers:

<http://www.outdooraccess-scotland.com/responsible-access/recreation-managers/managing-people/>

Guidance on general access signage:

[http://www.pathsforall.org.uk/component/option,com\\_docman/Itemid,166/gid,155/task,cat\\_view/](http://www.pathsforall.org.uk/component/option,com_docman/Itemid,166/gid,155/task,cat_view/)

Guidance on signage relating specifically to stalking and other land management operations:

<http://www.outdooraccess-scotland.com/responsible-access/recreation-managers/guidance-and-templates/>

Guidance for promoting, developing and managing shared use paths:

[http://www.pathsforall.org.uk/component/option,com\\_docman/Itemid,69/gid,727/task,doc\\_details/](http://www.pathsforall.org.uk/component/option,com_docman/Itemid,69/gid,727/task,doc_details/)

Technical guidance on the design of paths and other access infrastructure:

<http://www.outdooraccess-scotland.com/responsible-access/recreation-managers/guidance-and-advice/>.

Managing informal camping:

<http://www.outdooraccess-scotland.com/responsible-access/land-managers/irresponsible-behaviour/>

Dealing with irresponsible behaviour:

<http://www.outdooraccess-scotland.com/responsible-access/land-managers/irresponsible-behaviour/>

Advice on a wide range of other access management topics can also be found at

<http://www.outdooraccess-scotland.com/responsible-access/>.