

Information

Land Reform (Scotland) Act 2003

Access Rights

Introduction

The Land Reform (Scotland) Act 2003 received Royal Assent in February 2003. It contains important rights and responsibilities for both members of the public seeking access rights and private land owners.

Access Rights – General Rights and Responsibilities

Section 1 of the Act contains a general right for members of the public to enter onto and to cross private land. However, this is only permitted for the purposes of recreation, carrying out a relevant educational activity, or 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.

Section 2 further provides that these rights must be exercised reasonably, i.e. they must not cause unreasonable interference with the rights of another individual, e.g. the land owner.

Land owners are under an obligation to use and manage their land in a manner which respects access rights (section 3). Further, section 5 re-states the existing law that a land owner still has a duty of care to anyone on his/her land.

Land owners are not permitted to prevent or deter access by erecting any signs, notices, fences, walls, hedges and other such preventive measures. The appropriate Local Authority has the power to remove any such measures if necessary.

The local authority can warn of any hazards on land and require anything which poses a risk to safety to be removed from the property. With the land owners agreement they may install gates, toilets and other such items for public use which they are required to maintain. In exercising these rights the Local Authority must have regard to the extent to which this assists people to exercise their access rights, and specifically to the needs of those with disabilities.

Exceptions – Type of Land

There are several notable exceptions to the type of land over which access rights may be exercised set out in section 6. These are as follows:-

- A building or other structures or works, plant or fixed machinery
- The curtilage of buildings other than houses, works compounds and schools
- The area around houses reasonable to allow a measure of privacy and for the enjoyment of the house not to be unreasonably disturbed
- Land developed or set out as a sports or playing field or for a particular recreational purpose
- Land excluded by virtue of past entry by payment (“the 90 day rule”)

The Scottish Ministers have powers to modify these provisions and certain other sections of the Act.

Exceptions – Conduct

Section 9 sets out types of conduct which are not permitted within the new statutory provisions as follows:-

- Hunting, shooting and fishing
- Where the individual is responsible for an animal which is not properly under control
- Removing items from the land for commercial purposes or for profit
- Being in or on a vehicle on the land (except in the case of a disabled person who requires the use of that vehicle)
- Being on a golf course for recreational purposes

Exceptions – Particular Land Exempted from Access Rights

Local Authorities are permitted, subject to consultation with landowners, local access forums and providing the public with an opportunity to object, to make an exemption order excluding the provisions of the Act for a particular area of land. If the order is to be in force for 6 days or longer it must be approved by Ministers. The maximum length of such an order is 2 years.

Local Authorities are also under an obligation to assert, protect and keep open land upon which access rights can reasonably be exercised.

Disputes

An application may be made to a Sheriff to declare whether rights and responsibilities are being exercised lawfully in terms of the Act.

As mentioned above the first cases challenging the rights and responsibilities of the Act are currently going through the Scottish courts. A summary of these cases is outlined below:-

Current Case Law

Tuley v Highland Council

In this case a landowner is appealing against a notice served by the Highland Council requiring him to remove barriers preventing access by horse riders. The landowner's position is that the routes in question are unsuitable for horses and any use of the land by horse riders would be irresponsible.

A court decision is awaited.

Snowie v Highland Council

The owners of Boquhan Estate locked all the gates to their property. The Council received complaints from members of the public. They requested the owners to open one gate to allow access. The owners initially complied with this, but later locked the gate again. Stirling Council served a formal notice on the owners, requiring the gate to be unlocked. The owners appealed against this.

A court decision is awaited.

Mrs Ann Gloag v Perth & Kinross Council

Mrs Gloag applied for a declaration that access rights do not apply to part of her land on her estate at Kinfauns Castle, Perthshire. This is the only case so far in which a landowner has taken a proactive approach. In addition to her claim under the 2003 Act Mrs Gloag has also claimed a breach of her right to privacy and peaceful enjoyment of her possession under the European Convention on Human Rights and the Human Rights Act 1998. Perth & Kinross Council and Ramblers Scotland are defending this action.

A court decision is awaited.

Conclusion

As is apparent from the summary of cases above, this new area of law is very much unsettled and clear precedents have yet to be set by the courts. In these circumstances it is important for individuals and land owners to have regard to their rights and responsibilities in terms of the 2003 Act, and in particular to the exceptions and limitations upon those rights.

Heather Walker
Trainee Solicitor

This note is intended as a brief introductory outline of some of the issues arising from the Land Reform (Scotland) Act 2003. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

© Turcan Connell 2007