

## **SOME ACCESS MATTERS FOR OUTDOOR EDUCATION PROVIDERS**

**Below are examples of the type of issues that may crop up now the access legislation is in effect. References to the Scottish Outdoor Access Code are included in brackets at the end of each answer. In many cases the specific answer will depend on the particular circumstances involved.**

1. A mountain guide who is taking a customer out hill-walking is carrying on a commercial activity does this fall within access rights because the activity involved– hill-walking – could be done by anyone else exercising access rights? And would the same apply to a canoe instructor from a commercial outdoor pursuits centre with a party of canoeists?

**Yes. The same would apply to a canoe instructor from a commercial outdoor pursuits centre with a party of canoeists. Other examples would be a commercial writer or photographer writing about or taking photographs of the natural or cultural heritage. (Advice on what you can do under access rights : para 2.9)**

2. If I wish to use a particular place regularly I can just go ahead and take my group there as much as I want to. Is it right that I no longer need to plan my activities in ways that minimise possible impacts on land management and the interests of others?

**No. You should plan your activities in ways that minimise possible impacts on land management and the interests of others. Take extra care if you are organising an event or running a business. You can do this by considering the relevant issues or contacting the relevant land managers to discuss the issues. (Advice on running a business which uses access rights: para 3.62)**

3. If I am responsible for organising a group or an event, or for running a recreational or educational business requiring access to the outdoors, do I need to take any extra care about the size of my group or which route I take?

**Yes. In deciding your route and the size of your group, think about the needs of land managers and other people who are enjoying the outdoors. You should take particular care in parking vehicles so that they do not block gates or entrances to buildings. (Advice on impact of group sizes: para 3.58)**

4. If I wish to instruct, guide or lead people in recreational or educational activities either commercially or for profit then I do not have access rights and must contact the local authority for permission to cross land. Is this right?

**No. You can now exercise access rights for recreational purposes, some educational activities and certain commercial purposes, and for crossing over land and inland water. (Running a business which utilises access rights: page 48)**

5. I used to contact the relevant land manager(s) if I was organising an educational visit to local farmland or nearby estate is it right that it is probably still at good idea to do that?

**Yes. You should still talk to land managers about the activities you intend to do on land as you may get some useful advice about how to minimise disturbance to his land management operations. (Advice on organising an event or running a business: page 19)**

6. An instructor I know at another center says Access rights now extend to wild camping but this only extends to 1 night. Is it right that I can only wild camp for 1 night and to be within my access rights?

**Access rights do extend to lightweight wild camping in small numbers and only for two or three nights in any one place. You can camp in this way wherever access rights apply but help to avoid causing problems for local people and land managers by not camping in enclosed fields of crops or farm animals and by keeping well away from buildings, roads or historic structures. Take extra care to avoid disturbing deer stalking or grouse shooting. If you wish to camp close to a house or building, seek the owner's permission. (Advice on wild camping: page 115)**

7. If one of my group members trips and hurt themselves on a path, can they sue the landowner for not maintaining it properly?

**The Code is underpinned by the principle of taking responsibility for your own actions, and highlights that the outdoors is not risk free. There is a longstanding legal principle called "volenti non fit injuria" which means that a person taking access will generally be held to have accepted any obvious risks or risks which are inherent in the activities they are undertaking. An 'occupier' of land has a duty of care towards people on that land, to the extent of foreseeing that harm is not caused through negligence. (Advice on taking responsibility for your own actions: paras 1.3, 3.8 – 3.12)**

8. A local commercial firm uses a nearby bridge to launch rubber rafts, and to jump off/abseil into the river below. They make a lot of noise and often leave litter behind them. In this case am I right to think the firm are not behaving responsibly, and therefore giving up their access rights?

**Yes. The Code provides specific guidance to organised groups and businesses utilising access rights, as well as to the expected behaviour of those organising specific activities. Contact should be made with the company to try to resolve the issues, involving the access officer and local access forum as required, and reporting the matter to the police if necessary. (Guidance on what is responsible behaviour: paras 2.13, 3.1 – 3.3 & 3.62)**

9. As long as I respect people's privacy and peace of mind am I free to take groups out on the hills at night?

**Yes, access rights apply at night, provided you do so responsibly. The Code advises to take extra care at night by keeping away from buildings where people might not be expecting to see anyone. (Advice on Respecting people's privacy and peace of mind and access at night paras 2.4, 3.19 – 3.20)**

10. Are land managers within their rights to stop me and my walking groups entering and walking along the edge of a field of potatoes that has been sprayed with sulphuric acid?

**Yes. Under the Control of Pesticides Regulations, a land manager has a legal obligation to ensure that people are kept out of a field sprayed with sulphuric acid for 4 days. Information should be provided to the public of the dates of the risk, the substance being used, and the area affected. Where possible, an alternative route should be described. (Advice on Access over land on which a management operation is under way para 3.24)**

11. I work for a small private outdoor centre. Will I have to inform my employer that we can no longer charge people for taking part in activities we lead such as walking, cycling and canoeing?

**No, charges for educational or commercial services are still allowed, though charges for the right of access (e.g. cycling up a track) are not. (Advice for events on charging for entry : para 3.60)**

12. Groups of young mountain bikers are making use of woodland trails owned and provided by the centre I work at. Would I be able to report this use as a criminal offence under the new Land Reform (Scotland) Act 2003?

**No. Whilst the trails are not in use the right of access applies. You could apply to the access authority for a section 11 order to exempt land from access rights for the duration of any events on the trail. There are no criminal offences under this Act. (Advice for events on charging for entry : para 3.60)**

13. As a windsurfer or canoeist, can I now access any inland water, even those designated as National Nature Reserves or Sites of Special Scientific Interest?

**Yes, as long as you are exercising your access rights responsibly, following any authorised advice and not contravening wildlife legislation. If you are part of a group with a motorised rescue boat, you will need permission to launch and use it from the land owner/manager. Avoid disturbance, particularly during the breeding season, around islands and in reedbeds and shrubs along shorelines where wildlife will take refuge. On some water bodies, various management measures such as zoning or revised byelaws may be needed for safety, water quality or nature conservation purposes. (Advice on Caring for your environment and the Natural heritage: paras 3.43 – 3.48, Part 5 Canoeing, rafting, rowing and sailing on p45, Nature reserves & other conservation sites on p53, Rivers & lochs on p55)**

Further information on access rights and responsibilities for the public and land managers is available via the outdoor access website [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com).