Rights of Access to Land

About Access Rights · https://scotways.com/ken/rights-of-access-to-land/

People approach us with many different access-related questions. As the conversation develops it may become clear that the problem is with a private right of way rather than a public right of way and we can’t help with those. People are often surprised to find out that there are different types of access right, so here’s a brief introduction to all of them. Let's start with the two extremes.

You own the land

If you have bought the land and all the rights to it then you can go where you like on it, pretty much as you like.

Trespass

At the other end of the spectrum is trespass. It’s not your land and you’re wandering across it without legal authority or the permission of the landowner or occupier. The Trespass (Scotland) Act 1865 still exists, although it has very little effect since the commencement of statutory access rights. However, it is still possible to trespass in Scotland, such as on airport grounds or similar areas where statutory access rights don’t apply. Remember too that you don’t have the legal authority to access land if you are not acting responsibly when doing so.

Between these two extremes lie a range of different permutations.

Private or servitude agreements

A landowner gives permission to someone to take access to or across a piece of land. The agreement could be a simple informal verbal agreement only applicable to that individual or a more formal written contract forming part of the title deeds of the land and so applicable to the owner of the land, whoever that might be.

These types of agreement can cover the purpose of the access, how it can be taken (such as on foot or by vehicle), and when and how permission can be withdrawn.

Linear routes agreed by this method are often called private rights of way and can be easily confused with public rights of way. They can also be a source of neighbour disputes. For example,

the title deeds for a terrace of houses may allow each individual household to cross the property of another householder to take their bins out.

These types of agreements are important if you buy a piece of land that does not abut the public road. You'll need a right of access to cross the land from the public road to the land you have bought. You may be able to use public rights of access, but they may not cover all your needs such as access by motorised vehicle. In this instance, you will need a private agreement, preferably detailed in your title deeds.

You can also create a private right through continued use, in a similar way to creating a public right of way e.g. by continuous possession for 20 years openly, peaceably and without judicial interruption.

Private agreements for public use

Sometimes called permissive access, a landowner can allow the public to use a path or an area of land. This may be through a written agreement or by word of mouth. People may be able to use the land without charge or they may have to pay.

Since the creation of the statutory right of access to land, there are extremely few places in Scotland where this sort of access occurs.

Public agreements and orders

Local authorities have statutory powers that allow them to create agreements or orders to give the public access to linear paths or to areas of land. Introduced by the Countryside (Scotland) Act 1967 and mimicking the English provisions in the National Parks and Access to the Countryside Act 1949, they were used to create the long-distance routes the West Highland Way, Southern Upland Way and Speyside Way.

Statutory access rights removed the need for these, though the Land Reform (Scotland) Act 2003 does contain provisions for path agreements and orders. These are not to create access as such but to allow a route to be physically made and to set out any maintenance requirements etc. Although the provisions can be used for any path, they are most likely to be used for core paths.

Core paths

Created by local authorities following consultation, core paths plans set out a network of paths that is sufficient for the purpose of giving the public reasonable access throughout their area.

A local authority is not under a duty to create, maintain or signpost core paths, only to make a plan for their area.

Public rights of way

A special burden on land formed by open public use over a minimum of 20 years without the permission, express or implied, of the landowner. Once the conditions to form a right of way have been met, the route is a public right of way. No further action is necessary.

Public rights of way are occasionally mentioned in title deeds.

Public roads

A network of roads to which the public has a right of passage by non-motorised and often, motorised means. This includes motorways, A and B roads, minor roads and a large number of footpaths and cycleways. Some, but not all, are maintained by local councils or the Scottish Government (trunk roads).

Access rights

Statutory access rights apply to all land and inland water unless the land falls into one of the limited exceptions.

Access rights at work

Your job may come with access rights. When you visit someone you will normally use their access rights, such as a postman delivering your mail. However, some jobs come with a right of access enshrined in law. There may be an approval process to activate the right such as a police search warrant, sometimes notice needs to be given such as a power company inspecting their equipment and sometimes people can access without notice such as firefighters in a life-threatening situation.