

## The Scottish Outdoor Access Code – Caselaw



The so-called existing “right to roam” was introduced as part of the Land Reform (Scotland) Act 2003. A number of cases have come before the court since the legislation was introduced including the three below.

### ***Gloag v Perth and Kinross Council 2007 S.C.L.R 530***

Gardens allowing a reasonable degree of privacy are excluded from access rights. The legislation does not set down what is “reasonable” in this respect. That is, there is no set distance - it depends on the setting and context of the house in question. *In Gloag v Perth and Kinross Council*, the Sheriff ruled that roughly 12 acres surrounding Ann Gloag’s (co-founder of the Stagecoach bus company) home at Kinfauns Castle were exempt as it was private garden, including four acres of woodland which had been contested by the Ramblers Association and Perth and Kinross Council. The Sheriff made a detailed assessment in his judgement. He looked at matters such as the siting of children’s play equipment, the topography of the areas surrounding the castle and the fact that Mrs Gloag may need higher than usual security due to the press and possible criminal interest in her activities/home.

### ***Reynana Stahl Anstalt v Loch Lomond and Trossachs National Park Authority [2018] CSIH 22***

Drumlean Estate lost a lengthy legal battle with Loch Lomond and the Trossachs National Park Authority over access to a popular mountain, Ben Venue, near Aberfoyle. The Estate had locked three gates and had erected a sign warning walkers of wild boar (there were no such animals present). A Sheriff originally found in the Estate’s favour, ruling that the Estate had been (subjectively) acting for a legitimate land management reason, but the Park Authority successfully appealed to the Sheriff Appeal Court. The Inner House has now clarified that the test is objective, based on an assessment of what is on the ground.

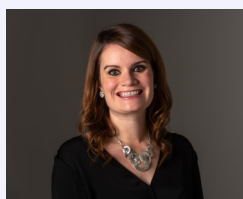
This should mean that there is more uniform application of the legislation, with guidance taken from the Code. The court found that the Estate could accommodate public access through responsible land management, e.g. by way of paths and signage. Complete exclusion of the public was not permitted.

### ***Manson v Midlothian Council 2019 S.C.L.R 723***

The Mansons, a couple living on the outskirts of Penicuik erected an 8ft-high locked gate across a footpath near their bungalow which led to Penicuik Estate. They claimed public use and antisocial behaviour had disturbed their family and undermined their privacy in breach of their human rights. The Mansons also asserted that the land in question was excluded from access rights (citing the provision of the legislation which allows a reasonable degree of privacy relied upon in *Gloag*, mentioned above). The court did not agree. The land did not fall with the privacy exclusion. The Manson's house was not easily visible from the path. The erection of the locked gate contravened the statutory duty to manage land responsibly - its purpose being to simply prevent access by the public. Irresponsible access such as littering and dog fouling could not be a reason for prohibiting all access. The couple were ordered to unlock the gate.

You can read more about the Scottish Outdoor Access Code [here](#).

If you require any more information about the Land Reform (Scotland) Act 2003 or any other aspect of Rural Business please contact:



**Louise Jones**  
**Director and Head of Rural Business**  
E: [louise.jones@dcslegal.com](mailto:louise.jones@dcslegal.com)  
T: 0131 625 9191