

# WORKING WITH FARMERS AND LANDOWNERS IN SCOTLAND

*The guidance which follows relates to outdoor access in Scotland. For information and advice on improving equestrian access or resolving issues in England and Wales, consult [www.bhs.org.uk](http://www.bhs.org.uk).*

## Do you need permission?

The Land Reform (Scotland) Act confirms a right of responsible access for non-motorised users to most land and inland water. In simple terms, this means that horse riders and carriage drivers have a legal right to ride on tracks, most paths, across moorland, grassland (other than grass being grown for hay or silage once it is more than ankle tall), through woodland, forests, on beaches, loch shores etc. – provided they behave responsibly. The Scottish Outdoor Access Code gives full details of where access rights do and don't apply [www.outdooraccess-scotland.com/Practical-guide/public/horse-riding](http://www.outdooraccess-scotland.com/Practical-guide/public/horse-riding).

You do not need to seek permission to exercise your legal access rights. Examples of situations where access rights are not included under the Land Reform Act for which you would need to seek permission include:

- access through a steading (other than on a right of way) or across other land where access rights do not apply;
- off-road trailer or lorry parking other than where this is specifically advertised with the landowner's permission;
- repetitive training or schooling on someone else's land;
- organised events, sponsored rides etc. (see BHS Scotland fact sheet on events). National guidance suggests that permission should be sought for any event involving more than 11 people. As horse riding and carriage driving can have a greater impact than walking, BHS recommends that you should seek permission for any event involving over six riders.

Although the Land Reform Act includes right of access “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”, as a matter of courtesy BHS recommends all livery yards, trekking centres, riding schools and others involved in commercial equestrian activity should consult with local landowners. How would you feel if you had strings of horses regularly using your land?

Approaching farmers and landowners to ask their advice or opinion is not the same as asking permission. Often the only person who knows exactly what the situation is on the ground is the farmer, landowner, stalker, shepherd or whoever else is involved with day to day management. Examples of where riders and carriage drivers might want or need to contact farmers, land owners or managers include:

- to find out whether there are any physical restrictions on access with a horse, such as stiles, kissing gates, locked gates, fences, dykes, very narrow boardwalks, steep steps or particularly boggy sections;
- to explore alternative options to avoid any restrictions;
- to identify if and when shooting, stalking, timber extraction or other such activities are scheduled to take place which might affect responsible access;
- to ask where you might meet cows, bulls or other livestock if you are particularly concerned about taking your horse past other livestock;
- to discuss which is the best route to take with a horse and/or which route will cause least disturbance for the farmer or landowner;

- to introduce yourself as a local rider, BHS rep etc.;
- before promoting off-road riding and carriage driving routes (see BHS Scotland fact sheet on protocol for this);
- to discuss proposed or recent changes to routes.

#### Other reasons you might need to contact or liaise with farmers and landowners

- To try and resolve a problem, such as an obstruction to public access where you believe responsible access rights apply.
- To discuss possible improvements, such as replacing a stile or difficult gate with a self-closing bridlegate, or drainage of a boggy section of track. Most farmers and landowners are open to discussion or suggestions (provided you are not expecting them to foot the bill).
- to discuss potential options to resolve irresponsible use by others.

#### **Key points to remember:**

- ❖ You don't need to ask permission before you ride or carriage drive off-road so long as you follow the Scottish Outdoor Access Code.
- ❖ Not all core paths are suitable for horse riding.
- ❖ Access rights aren't restricted to core paths.
- ❖ Asking permission to ride or drive where you have a legal right to do so can cause confusion about access rights and in some situations risk perpetuating unnecessary restriction on legitimate access.
- ❖ Approaching a farmer or landowner to ask about possible restrictions or to determine the best route is not the same as asking permission

#### **Whose role is it to liaise with farmers and landowners regarding problems or improvements?**

Access authorities are responsible for upholding access rights under the Land Reform (Scotland) Act, but even those authorities with a full-time access officer are usually strapped for resources and with the best will in the world, cannot hope to liaise with farmers and landowners as much as they might like. Most access authorities will be happy to advise you on rights and responsibilities, and existence of any claimed rights of way, but will expect individuals to do their bit to help find out who owns and manages land (see below). Some may also expect riders to make an initial approach.

Some BHS access representatives prefer to make the initial approach to farmers and landowners themselves. Others may be happy to advise but usually ask individual riders to make the first approach to try and resolve problems, and only become involved thereafter if the initial approach has been unsuccessful.

For organised events, permission for parking, or to discuss possible alternative routes, responsibility for approaching farmers and landowners rests very much with the relevant individual(s), whether this is a rider or organised group.

#### **Finding out who owns and manages land**

Determining who owns and manages land is not always straightforward. An individual field might be owned by one person, tenanted by someone else, and then grazed or cropped by someone entirely different. Scottish Government hold ownership details of most farmed land (including hill ground) but are reluctant to disclose any details for confidentiality reasons. The best way of finding out who owns and manages land is to ask around.

Locally you could:

- Ask neighbouring farmers
- Knock on the door of farmer(s) nearest to the route you are interested in;
- Ask other local riders, walkers, cyclists or anyone else you can think of. Google the name of the nearest farm or estate;
- Check the local authority website, which may include some relevant details;
- Ask the relevant access authority ([www.outdooraccess-scotland.com/Contact/local-authority-access-contacts](http://www.outdooraccess-scotland.com/Contact/local-authority-access-contacts));
- Look out for signs or boards at the entrance to forests displaying details of the manager or agent.

For access further afield, in addition to the above:

- Ask other riders, e.g. Silver Boot participants.
- Ask the local branch of SERC or TREC if they have organised an event which involved contacting local landowners.
- Contact the local BHS access representative, Equestrian Access Group, local riding club, livery yards etc. to see if they know who owns particular land.
- Consult Scotland's Land Information Service <https://scotlis.ros.gov.uk/> or go direct to the Registers of Scotland (<https://www.ros.gov.uk/services/ownership-search>) and either enter the postcode of the property or search by map. Standard fee of £3 per search will check name and address details held on the Scottish Land Register.
- Consult Who Owns Scotland <http://www.whoownsscotland.org.uk/index.php>, which for an annual fee of £10 for private individuals provides contact details of factors, agents and/or owners for nearly 2,000 landholdings covering approximately 10 million acres of Scotland.

## Getting the best response and building good relationships

First impressions count. Remember that even if you are approaching a landowner on a one-off basis, you will be seen as the face of all riders (and/or carriage drivers). Always be courteous. Explain your concerns, or the route you want to use, as clearly and concisely as possible.

Put yourself in the shoes of the farmer or landowner. How would you feel? In particular consider:

- How might whatever you are proposing affect them? Will it interfere with livestock, crop management etc?
- Are you likely to cause any damage? If so, how could this be reduced or avoided?
- Why should they agree to your request? Think not only about the legal aspects but also how it will affect their day to day activities. Most people will agree to reasonable requests, if you can make life easier for them.
- Will it affect privacy or security, and if so how could this be avoided? Some farmers actually prefer people to walk or ride through a steading rather than around the back so they can see what everyone is up to.

## Top tips for successful access negotiation

- ✓ Do your homework in advance about the route you are interested in.
  - Ask local riders, livery yards, riding schools or neighbours to find out a bit more about the history of access in the local area or along a specific route.
  - Do access rights apply, and is the proposed access responsible?
  - Check on the local Core Path Plan (CPP) to see if it is a core path. If you can't access the relevant CPP online, or in your local library, ask your local access officer. Not all core paths are necessarily suitable for equestrian use,

but there is generally a much stronger case for access on routes which have already been identified as core paths.

- Check with your local access authority, or Scotways, to confirm whether the route is recorded as a right of way (RoW), and if so, whether it is claimed or asserted, and the status of use (pedestrian and/or equestrian). Although in legal terms the LRA is usually now more relevant than rights of way in most circumstances, RoW still matter where access rights don't apply under the LRA, for example through steadings, or in the curtilage of buildings. Most farmers and landowners are also more open to discussion about a route which is recognised as a RoW – but just because a path or track isn't a RoW, doesn't mean you don't have a case.
  - Do walkers or cyclists use the path/track/land? Are there any restrictions or have there been any objections raised about their use?
  - Is there any past history of equestrian use? Although technically this doesn't affect right of access under the LRA, previous equestrian use can help strengthen your case.
  - Are there any viable alternative options, and if so, what are the pros and cons for riders or for the landowner?
- ✓ Always start with a positive and inclusive approach e.g. by asking for the help of farmers, land managers and others in finding a solution to a problem. Starting off a conversation with "we have the right to ride here..." is never going to win friends or influence people. Even if you know this is a true statement, think carefully what you are going to say and what you can do to encourage others to understand and sympathise with your perspective.
  - ✓ Ask what concerns or issues the person you are talking with may have, and discuss these sympathetically.
  - ✓ If you are dealing with an access problem, what can you or local riders do to help resolve the situation? Will you raise the funds to cover the costs of any work?
  - ✓ Developing and clearly signing a mutually agreeable path with self-closing gates is a positive way to manage public access (provided it isn't used as an excuse to deny other legitimate access). Most people prefer using clearly signed routes which they know the landowner is happy for them to use, provided it doesn't involve a disproportional detour.
  - ✓ Explore scope to work in partnership with other organisations, and/or to get involved with new path or access projects.

### **What to do if you get a negative response from a farmer or landowner**

Take a deep breath, keep calm, and try and find out why the farmer or landowner won't agree to whatever you have proposed. Do they have a different interpretation of access rights? Do they think equestrian access would be irresponsible, and if so how and why?

Helpful guidance on dealing with confrontation can be downloaded from the BHS website.

Before going any further, make sure you have the following information to hand:

- A map or plan and ideally a couple of photos which sum up the problem, or summary details of what you are proposing.
- Does the problem you are trying to resolve, or potential improvement you are proposing, affect walkers, cyclists and/or people with limited mobility as well as horse riders?
- How many people is the issue likely to affect, and how often?

Consider your options.

1. Speak with your local access authority (access officer, if there is one).

2. If you get a negative response and believe access rights apply, you could take the issue to your Local Access Forum (LAF), whose role is to encourage dialogue about access issues and provide an advisory and dispute resolution service.
3. Consult BHS Scotland who can offer guidance and advice.
4. Approach local councillors, your local MP or MSP and ask for their help and support. They will not usually be prepared to look into an issue unless you have already raised it with the access officer and LAF. It's worth bearing in mind that letters are often taken more seriously than emails or phone calls. Local authorities may well be committed to responding to letters within a certain timeframe, or taking action if the number of complaints about a certain issue exceeds a certain threshold. You might like to encourage other people to write by circulating a list of key points to include and relevant contact details, but generally 10 or 20 well written letters are more effective than 100 letters based on an identical template. A trickle feed of letters over several weeks is often more effective than a full post bag of complaints or letters arriving on the same day.
5. Could local or even national press coverage help? In some cases it may help towards a mutually acceptable solution. But bear in mind that media coverage can be a double-edged sword, particularly if the press misinterpret or misrepresent the facts as you see them.
6. Submit a petition to your access authority. Some authorities, such as Scottish Borders, have a specific petitions committee and process for considering petitions ([https://www.scotborders.gov.uk/info/20016/have\\_your\\_say/352/petitions\\_and\\_deputations/2](https://www.scotborders.gov.uk/info/20016/have_your_say/352/petitions_and_deputations/2)). In other areas, you could submit a petition to Democratic Services, the convenor of the relevant committee, or the leader of the council. Check with the clerk to the council of the relevant access authority, or equivalent, to see what local arrangements exist for submission and consideration of petitions.
7. You, as an individual, a local Riders Access Group, the local access authority or any other individual or organisation can apply (for a fee) to the sheriff to issue a declarator to confirm whether access rights apply under the LRA.
8. If you really don't believe the local access authority is doing its job, and you feel there is evidence that the access authority's lack of action amounts to maladministration resulting in public deprivation, there may be an option to take them to the local government ombudsman, but think carefully before taking this step. Wherever possible, BHS' advice is to try and work with rather than against the access authority. Many access officers are as frustrated as local riders by the ambiguity of some aspects of the Land Reform Act and Scottish Outdoor Access Code, and by the stringent budget and staff cuts which undermine what they can do when farmers and landowners refuse to agree to action to resolve a problem.

***Remember: as well as keeping a copy of all correspondence, it's worth keeping a written note of exactly who you speak with, on what date, the outcome of the discussion and any subsequent action so that you have an accurate record of exactly what has happened and when to refer back to in future.***

If you need further advice on equestrian access in Scotland, contact your local BHS access representative (see [www.bhsscotland.org.uk](http://www.bhsscotland.org.uk) for contact details) or Helene Mauchlen, national manager for BHS Scotland Tel. 07808 141077 or email [Helene.Mauchlen@bhs.org.uk](mailto:Helene.Mauchlen@bhs.org.uk).

For guidance on equestrian access in England and Wales, contact Access and Rights of Way Department, The British Horse Society, Abbey Park, Stareton Lane, Kenilworth, Warwickshire CV8 2XZ. Telephone 02476 840581. Email [access@bhs.org.uk](mailto:access@bhs.org.uk).

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